

**IN THE FAIR WORK COMMISSION
AM2018/26**

**4 YEARLY REVIEW OF MODERN AWARDS – SOCIAL, COMMUNITY, HOME
CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010**

**JOINT SUBMISSIONS OF AUSTRALIAN SERVICES UNION,
HEALTH SERVICES UNION AND UNITED WORKERS UNION**

INTRODUCTION

1. The Australian Services Union (**ASU**), Health Services Union (**HSU**), and United Workers Union (**UWU**) (collectively **the Unions**) makes these submissions in accordance with the Statement [2020] FWCFB 3634 issued on 10 July 2020 (**the Statement**), which directed union parties to file submissions in relation to the report, *Working in new disability markets: A survey of Australia's disability workforce* (**the Report**).
2. The Statement directed union parties to file submissions setting out:
 - (i) the parts of the May 2020 Report on which they rely;
 - (ii) the findings sought on the basis of the parts of the May 2020 Report on which they rely; and
 - (iii) the claims to which the findings sought relate.
3. Below we set out the findings sought in relation to the above claims and outline the relevant sections of the Report.
4. The Report is relevant to the following claims of the HSU:
 - S10 – Minimum Engagements*
 - S35 – Broken Shifts*
 - S19 – Travel*
 - S50 - Overtime for part-time and casual workers beyond rostered hours/8 hours*
 - S38 – Sleepover*
5. The Report is relevant to the claims of the ASU paid travel time, recall to work overtime and broken shift penalty claims.
6. The Report is relevant to UWU's claims regarding broken shifts, paid travel time and roster changes.
7. Broadly, the Report is significant because, as outlined in the introduction to the Report, it represents a large sample compared to existing surveys of disability workers.¹
8. It is also relevant to note, as observed in the introduction, that the sample is largely comprised of workers who are union-members.² As the authors of the Report note:

¹ Dr Natasha Cortis and Dr Georgia van Toorn, *Working in new disability markets: A survey of Australia's disability workforce Report*, Sydney: Social Policy Research Centre, UNSW Sydney, 12.

² Ibid 13.

union-based research samples may underrepresent workers who are newer to the industry and who are employed casually, and may over-represent those in larger, more established workplaces. Further, responses are likely to reflect conditions where union-negotiated enterprise agreements are in place, where better working conditions and safety protocols could be expected to result from a stronger union presence. Results should therefore be interpreted primarily as representations of the experiences and conditions of unionised workers and unionised workplaces, which tend to be better for workers than across the industry as a whole.³

MINIMUM ENGAGEMENT, BROKEN SHIFTS, AND TRAVEL

Findings sought

9. The relevant findings sought in relation to the HSU's minimum engagement claim, and the Unions' broken shift and travel claims may be summarised as follows:
 - a. Disability service employees work a significant amount of unpaid hours.⁴
 - b. Common unpaid tasks performed include completing case notes and other forms of reporting, co-ordination and communication functions, and driving and travelling for work (not including travel to and from the first and last clients of the day).⁵
 - c. Disability service employees are frequently not paid for travel between clients.⁶
 - d. Disability service employees feel that they are not adequately compensated for travel and use of their own vehicle for work.⁷
 - e. Disability service employees are under pressure to perform unpaid work in order to meet the needs of their clients.⁸
 - f. A significant number of disability service employees, particularly home-based support workers, feel that they spend too long waiting between paid shifts.⁹
 - g. The scheduling of discontinuous or broken shifts puts strain on disability service employees.¹⁰
 - h. The capacity of employers to require employees to work broken shifts, and the lack of a minimum engagement, facilitates the use of unpaid hours and fragmentation of work schedules.¹¹
 - i. These practices undermine the quality and sustainability of work in the sector, and the optimism of workers over their careers.¹²
 - j. The current Award provisions in relation to minimum engagements, broken shifts and travel are not adequate to meet the challenges facing disability workers in maintaining healthy work-life balance.¹³

³ Ibid 13-14.

⁴ Ibid 22-26.

⁵ Ibid 25 -26.

⁶ Ibid 53.

⁷ Ibid 48; 53.

⁸ Ibid 24-25;27-34.

⁹ Ibid 31.

¹⁰ Ibid 32-33.

¹¹ Ibid 22 -26.

¹² Ibid 22-34; 59.

¹³ Ibid 27-34;100-101.

10. The parts of the Report relevant to the above findings in relation to minimum engagements, broken shifts and travel time are expanded upon below.

Section 3.1 and Table 3.1 – Paid and unpaid work hours (pages 22-23)

11. On page 22, the Report's findings in relation to this topic and as set out in Table 3.1 on page 23 are summarised as follows:
- Overall, workers in the sample worked an average of 33.8 paid hours and 2.6 unpaid hours.
 - For every paid hour of work, the disability workers donated an additional 4.6 minutes of unpaid time (equivalent to 36.8 minutes for an 8-hour day).
 - Unpaid work constituted around 7% of total time worked in the last week (36.4 hours, paid and unpaid).

Section 3.3 – Unpaid work time (pages 24-5)

12. This section of the Report sets out a number of comments from survey participants describing how it is necessary for employees to work additional unpaid hours to ensure their clients were supported.
13. The authors of the Report observe that, *'feeling unable to fit in all the tasks required by clients was a significant source of strain for workers, who felt conflict between their own need to be paid for their work and the need to ensure client needs were met'*.¹⁴

Section 3.4 and Figure 3.1 – Tasks performed during unpaid time (pages 25-26)

14. Section 3.4 sets out which tasks survey participants reported they performed during unpaid time.
15. Relevantly in relation to the Unions' travel time claim, as well as broken shifts and minimum engagement claims, Figure 3.1 shows that 43% of participants spent at least one hour of unpaid time driving or travelling for work, not including the first and last trip between home and work each day.
16. The tasks the survey participants reported performing during unpaid time are summarised as follows:
- The most common task, reported by two thirds (67%) of the 960 workers who reported unpaid work time, was completing case notes, paper or online forms or other reporting.
 - The next most common tasks related to co-ordination and communication functions: communicating with colleagues or other service providers (reported by 58%), handover tasks (53%), and communicating with a supervisor (48%).¹⁵

Section 3.5, especially 3.5.3 and Appendix Table A.10 – Perceptions of working time arrangements (pages 27-34 and 100-101)

17. Sections 3.5.1 to 3.5.4 are concerned with issues of stability of working hours, unexpected, changes in working hours, the structure and organisation of shifts, and impacts, including its impacts on clients, anxiety about rosters and work-life balance.
18. Section 3.5.3 in particular is relevant to the Unions' broken shifts and travel time claims. One comment highlighted on page 31 reads:

¹⁴ Ibid 25.

¹⁵ Ibid 25.

The only thing I don't like is split shifts. Especially when working at a group home. I feel I waste a lot of money on petrol on those days, as I commute to work, then drive home for the split, then drive back to work to start my afternoon split and then drive back home that night.

19. According to Figure 3.5 on page 31, 15% of all survey participants agreed that they spend too long waiting between paid shifts. However, for home-based support workers, 31% agreed that they spend too long waiting between paid shifts.

Section 5.5 – Further comments on the NDIS (page 48)

20. Page 48 of this section collates some relevant comments from survey participants in relation to compensation for travel and costs of vehicle maintenance, depreciation and fuel. The following extracts are apposite:

Community-based support workers consistently raised the issue of having to use their own vehicle to transport clients, and not being compensated for the costs of maintenance, depreciation and fuel, under NDIS arrangements.

“Staff uses their own cars to transport client must receive a higher amount of compensation because after 4 to 5 years we need to purchase another car due to the high number of kilometres.”

“I have to use my personal car to transport clients on a daily basis and are not adequately compensated for it.”

Workers commented that they were required to use their own vehicle due to restrictions on funding for client travel. They noted that because clients are funded only for a specified number of kilometres, the costs incurred by additional (unfunded) travel are borne by staff.

“I have sustained damage to my car, my petrol cost is out of control and my clients barely have enough funding to get by.”¹⁶

Section 6.4 and Figure 6.5 – Payment for travel

21. This section discusses responses to specific questions in relation to work-related travel.
22. Figure 6.5 shows that, of the survey participants who responded to the questions, less than a quarter agreed with the statements, ‘I get paid for travel time between clients’ and ‘I get paid for my travel costs (e.g vehicle allowance, petrol, insurance, tolls).¹⁷

Section 6.1 and Figure 6.6 – Payment for team meetings

23. The section and Figure 6.6 observe that many disability workers reported not being paid to attend team meetings.¹⁸

Section 7.3 – Career Prospects (page 59)

24. The Report notes that:

¹⁶ Ibid 48.

¹⁷ Ibid 53.

¹⁸ Ibid 53.

a particularly interesting finding is how quickly new workers' optimism dissipates through their careers. Indeed, the proportion of workers who agreed their prospects for advancement were good was 56% among those in their first year, however this slips to 38% among those with 1-2 years' worth of experience, and falls further to 30% or less, among those with over 10 years of experience. This underlines potential retention difficulties, as the industry does not appear to be sustaining the optimism held by workers early in their careers.¹⁹

OVERTIME FOR PART-TIME AND CASUAL WORKERS

Findings sought

25. The findings sought in relation the HSU's overtime claims may be summarised as follows:
- a. Disability service employees, particularly those in home-based and community and day program settings, have high incidences of short working hours, such as 20 hours or less paid work per week.²⁰
 - b. For many employees, arrangement of hours of work in disability services are unpredictable, unstable and uncertain.²¹
 - c. Employees are regularly required to work additional hours above their contracted weekly or fortnightly hours. Some employees do not want to work additional hours but feel like they cannot say no.²²
 - d. A significant number of part-time as well as casual employees in disability services do not feel secure in their working arrangements.²³
 - e. Under current Award provisions there is little incentive for employers to review employees' guaranteed hours.
26. The parts of the Report relevant to the above findings in relation to overtime for part-time and casual employees are expanded upon below.

Section 3.2 and Table 3.2 – Workers with few paid work hours (pages 23-24)

27. This section observes that: '*[m]any survey respondents reported working substantially fewer paid hours than indicated in the mean and median hours shown above... Among all respondents, 11% worked 20 hours or less (across all their jobs in disability)*' (page 23).
28. The Table at 3.2 reveals that the settings with the highest incidences of short working hours are home-based settings and community and day program settings. For each of these, 18% of survey respondents said they worked 20 hours or less paid work per week.
29. Comments from survey participants highlighted in this section are as follows:

[I] need to be available for twice the amount of hours I actually work.

¹⁹ Ibid 59.

²⁰ Ibid 23.

²¹ Ibid 28.

²² Ibid 34.

²³ Ibid 58.

*Due to inconsistency of hours, I work two jobs just to reach full time hours. Problem is both demand 25+ hours a week. One job is not enough, two jobs is too much.*²⁴

Section 3.5, particularly 3.5.1, Figure 3.2 and Appendix Table A.10 and Table 3.2 – Stability of working hours (pages 27-34 and 100-101)

30. Section 3.5.1 focusses on the prevalence of ‘unstable and uncertain hours’ in disability work. One comment from a survey participant highlighted in the report was: ‘My hours can vary from 7 to 45 hours per week’.²⁵

31. Other comments included:

I am a casual so until fairly recently I had no idea how many hours I would be working in the next week.

*Inconsistent, sometimes not enough hours, sometimes too many hours, heavy workload during holidays times, expected to work non-stop, favouritism.*²⁶

32. Figure 3.2 shows that unpredictable hours are a feature of home-based care and support setting in particular, as 46% of survey participants disagreed with the statement ‘I work the same number of hours each week’.²⁷

33. Sections 3.5.2 and 3.5.4 are also relevant. The Report observes:

While some workers were worried about receiving too few paid hours, others were asked to work more hours than they wanted, and felt guilty about letting down team members and clients when they needed to say no.

*“Constantly being asked to do extra shifts does not help my mental health, as you feel you are letting down the team and the people you support.”*²⁸

Section 7.2 – Security of work and working arrangements (pages 58 – 59)

34. The Report found that a ‘substantial minority’ of permanent workers surveyed disagreed with the statement ‘My working arrangements feel secure’.²⁹

SLEEPOVERS

Findings sought

35. The findings sought in relation the HSU’s sleepover claim may be summarised as follows:

- a. Sleepover shifts can be a source of anxiety and burn out for disability service workers, who can find themselves unable to sleep during the shift.³⁰
- b. The current clause does not provide sufficient protections to ensure employees have access to the basic requirements for a night’s sleep during a sleepover shift.

36. The parts of the Report relevant to the above findings in relation to sleepover shifts are as follows:

²⁴ Ibid 24.

²⁵ Ibid 28.

²⁶ Ibid 28.

²⁷ Ibid 28.

²⁸ Ibid 34.

²⁹ Ibid 58.

³⁰ Ibid 32; 52.

Section 3.5.3 – Organisation of working hours (page 32)

37. On page 32, the Report observes that:

A strong theme in the comments related to sleepover shifts. These were a particular challenge and matter of concern for workers in supported accommodation settings, with some workers pointing out that these shifts contributed to long hours for little pay, poor wellbeing and safety risks:

“Sleepover shifts create extreme anxiety. I am unable to sleep due to anxiety and client behaviours. I then have to administer medication whilst tired. I then have to drive home after being awake for 24 hours. I have asked management if I can permanently drop my sleepover shifts. They have not allowed this and expect me to swap shifts or use my leave.”

...

“Not enough days off between shifts. E.g., work 10 days straight, 1 day off, back for 5 days straight. Burn out. Count sleep overs, when finish at 8am from this time on they count this as day off. When finishing night duty/active shift at 7am, from this time they count this as day off. Back for morning shift next day”³¹

Section 6.3 – Comments on pay

38. Further relevant observations and survey responses about sleepover shifts are found in this section, such as the following:

The award needs to be changed for sleepover shifts. As it stands we get a small allowance for being at work for 8 hrs, on call, usually limited sleep, always broken and disturbed sleep. I don't believe there are any other healthcare sector workers that are expected to be at work for 8hrs for \$77. I think if the general public knew this they would be shocked.³²

RECALL TO WORK OVERTIME

Findings sought

39. The findings sought in relation the ASU's recall to work overtime claim may be summarised as:

- a. Disability service employees work a significant amount of unpaid hours.³³
- b. Common unpaid tasks performed include completing case notes and other forms of reporting, co-ordination and communication functions.³⁴
- c. Short-staffing creates additional duties for supervisory and managerial staff who must respond to short notice requests for casual or on-call labour out of hours.³⁵

40. The tasks the survey participants reported performing during unpaid time are summarised on page 25 as follows:

- *The most common task, reported by two thirds (67%) of the 960 workers who reported unpaid work time, was completing case notes, paper or online forms or other reporting.*

³¹ Ibid 32.

³² Ibid 52.

³³ Ibid 22-26.

³⁴ Ibid 25-26.

³⁵ Ibid 35-36.

- The next most common tasks related to co-ordination and communication functions: communicating with colleagues or other service providers (reported by 58%), handover tasks (53%), and communicating with a supervisor (48%).

41. The Report highlights the following observation about workloads:

Something needs to be seriously done about House Supervisor and Operations managers workload. There is a silent expectation of working long hours and from home after you have completed your full days work.³⁶

42. The reliance by some services on-call or casual staff creates a burden on supervisory and managerial staff. The report observes that:

Another survey participant pointed out that while on-call or agency staff were engaged to fill gaps, this was not necessarily effective in alleviating workloads for other team members:

“We are dramatically understaffed (5 vacant lines) and shifts are filled mostly by on-call staff. These staff usually come in, do the minimum and leave. Often important paperwork is not done (meds etc) which requires chasing up.”³⁷

ROSTER CHANGE

Findings sought

43. The findings sought in relation UWU’s roster claims may be summarised as follows:

- a. Many workers reported instability in their paid work hours, including changes in shift times which workers were advised of at short notice.³⁸
- b. Unstable working arrangements undermined the reliability of disability workers’ incomes, and their ability to plan their work and organise other aspects of their lives.³⁹

44. The parts of the Report relevant to the above findings in relation to roster changes are expanded upon below.

Section 3.5.2 and Figures 3.3 and 3.4 – Unexpected Changes in working hours (pages 29-30)

45. This section observes that: *45% of respondents agreed or strongly agreed with the statement ‘My shifts can change unexpectedly’. However, unexpected changes in hours were more of an issue for workers in some settings. Higher proportions of workers in home-based care settings and community and day program settings agreed with the statement (65% and 58% respectively), compared with 41% of those in group homes or other supported accommodation settings (page 29).*

46. *These unexpected changes in shifts underpinned substantial financial insecurity (page 30).*

47. Comments from survey participants highlighted in this section are as follows:

Our rosters are a nightmare – changed, swapped, taken off, added on, without asking us.

I am unable to plan my free time. I get very stressed when my roster changes overnight without consultation.⁴⁰

³⁶ Ibid 36.

³⁷ Ibid 36.

³⁸ Ibid 7.

³⁹ Ibid 7.

⁴⁰ Ibid 30.

Section 3.5, particularly section 3.5.4, Figure 3.6 and Appendix Table A.10– Stability of working hours (pages 27-34 and 100-101)

48. Section 3.5.4 focusses on the impacts of ‘working time arrangements’ in disability work. One comment from a survey participant highlighted in the report was: ‘Rosters are a huge problem. We receive our ‘rosters’ the day before (on the Sunday). However, these are highly subject to change throughout the week. This means that participants are put in groups together who should not be in groups together (i.e. participants who trigger each others’ sensitivities). It also leads to miscommunication and confusion among staff, which in turn negatively impacts clients.’⁴¹

49. Figure 3.6 shows, 50% of respondents agreed or strongly agreed with the statement ‘I worry about rosters’.⁴²

50. Comments from participants in this section follow;

It is put up less than a week in advance and only one week at a time. I would prefer a fortnightly roster and at least 2 weeks in advance. Sometimes shifts change and it is impossible to make plans.

My roster affects me by having to continuously monitor changes to an agreed permanent roster by my organisation, thus causing anxiety and stress as management do not honour their agreement with me.⁴³

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⁴¹ Ibid 32.

⁴² Ibid 33.

⁴³ Ibid 33.