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Sent: Monday, 10 August 2020 4:20 PM

To: AMOD <AMOD@fwc.gov.au>

Subject: AM2018/26 - SCHADS - NDS reply submission

Dear Amod team

Attached please find a reply submission in relation to this matter. Also attached is an additional report that we seek to file as an update of material previously filed.

NDS does not require the authors of the May 2020 Report for cross examination.

regards

Michael Pegg
0439 399 952

IN THE FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

National Disability Services

Submission in Reply – AM2018/26

Social, Community, Home Care and Disability Services Industry Award 2010

Substantive Issues Tranche 2

& Community Language Allowance

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Introduction

1. National Disability Services (NDS) makes the following submission in reply pursuant to the Statement made on 10 July 2020 ([2020] FWCFB 3634), regarding the unions’ submissions of 20 July 2020.
2. This reply submission is in two parts.
3. The first part deals with the submissions of the unions regarding the report “*Working in new disability markets: A survey of Australia’s disability support workforce*”¹ (the Report).
4. The second part is a brief submission regarding the *NDS Workforce Census* (December 2019) which provides data that update some of the data contained in the NDS “*Australian Disability Workforce Report*” of February 2018² and of July 2018³, and which we seek to file in these proceedings.

¹ Cortis, N., & van Toorn, G. (2020). *Working in new disability markets: A survey of Australia's disability workforce* Sydney: Social Policy Research Centre, UNSW Sydney. <http://doi.org/10.26190/5eb8b85e97714>.

² Court Book p3329

³ Court Book p4295

Part 1 – Response to union submissions regarding the Report

5. In general, NDS does not take issue with the Report as a piece of research which provides insights into the experiences of the disability support workforce, and which should help to inform workforce strategy for disability service providers operating in the NDIS environment.
6. However, NDS does challenge the relevance of some of the specific findings sought by the unions in their submission of 20 July 2020.
7. At [8] of the union submission reference is made to the comments by the Report authors that the survey sample was primarily union members and that there is a likelihood of union negotiated enterprise agreements being in place⁴.
8. NDS submits that this points to a difficulty with relying on the report in support of proposals for variations to the modern award, because it is not possible to tell from the data which comments come from award or agreement covered employees.
9. An example of this difficulty is at [38] of the unions' submission where a respondent refers to their sleepover allowance of \$77. This is higher than the award allowance of \$48.45 at the time of the survey in early 2020, and may reflect the allowance commonly payable in Victoria under enterprise agreements, but which operate on a different basis to the award. But we have no way of knowing for certain what conditions apply to that respondent.
10. Some of the evidence from the Report that the unions point to appear to be issues of enforcement or compliance – assuming the matters raised relate to award-covered employees.
11. Our response is that on those types of matters the award already provides the remedy, if complied with.
12. One such issue relates to claims of unpaid work time. Other than the contested issue of how travel between clients is treated, NDS submits that the award and NES already provide an entitlement to payment for time worked and that the concerns expressed by survey respondents are matters of award compliance, not evidence in support of a need for award variation.
13. Issues raised in the unions' submission which appear to be about compliance rather than requiring an award variation as remedy include:
 - a) At [9] regarding unpaid work time at (a) and (e);
 - b) At [11] – [13] regarding unpaid time;
 - c) At [16] regarding tasks such as case notes and communicating with supervisors;
 - d) At [23] regarding team meetings;
 - e) At [41] regarding out of hours work by supervisors; and
 - f) At [50] regarding notice of rosters.

⁴ Cortis & van Toorn (2020) p13

Part 2 – NDS Workforce Census (December 2019)

14. NDS has produced a report dated December 2019 which effectively updates the earlier “*Australian Disability Workforce Report*” of February 2018 and July 2018 and which have previously been filed in this review⁵.
15. In general, the updated data confirms the general characteristics of the workforce in relation to the significant incidence of casual and part-time employment.
16. The findings which we propose could be made arising from this updated report are relevant to the claims around broken shift, minimum engagement, travel time and overtime.
17. There appears to be a small but significant trend towards permanent employment and away from casual employment, particularly in the states where NDIS has had the longest history and is relatively mature.

There has been a clear shift towards permanent employment in this six-month period. At 60% engaged permanently overall, the permanently engaged workforce is at its highest level since data collection started in 2015.

The shift was particularly noticeable in workforces in New South Wales and Victoria, where the early roll out of the NDIS means that demand for services has had time to settle. By contrast the proportion of permanent roles fell in Queensland, Tasmania and Western Australia.⁶

18. There is also an increase in average hours of work per week per worker, although the trend is not consistent across states.⁷

Michael Pegg

On behalf of National Disability Services

10 August 2020

⁵ Courtbook pages 3329 & 4295

⁶ NDS Workforce Census – Summary of the December 2019 Results, p1

⁷ Ibid p2

NDS Workforce Census

Summary of the December 2019 results

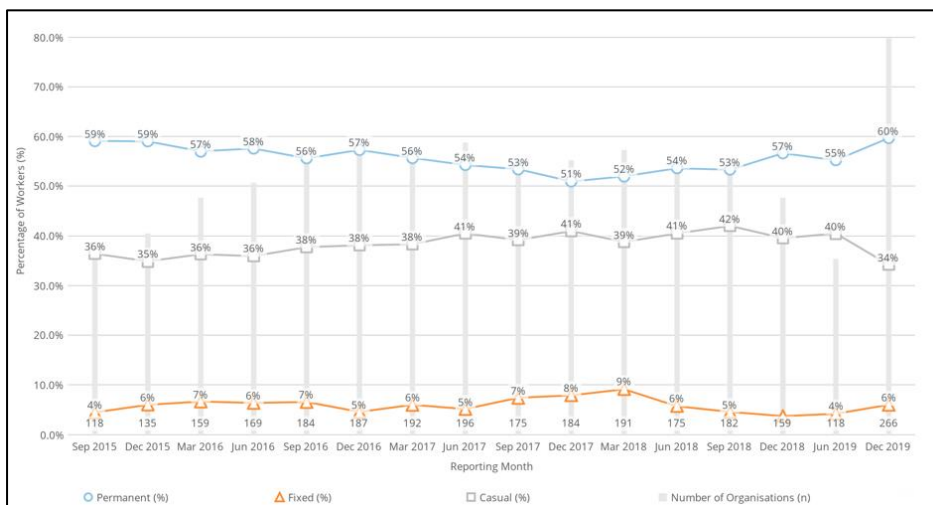
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Type of Employment

The move towards permanent employment suggests consolidation following a period of comparative volatility with the NDIS roll-out when casual employment became more common. Permanent roles might be expected to foster increased retention, service continuity of care (and therefore client satisfaction) and their increase in this period has some resonance with the upswing in confidence in the most recent State of Disability Sector.

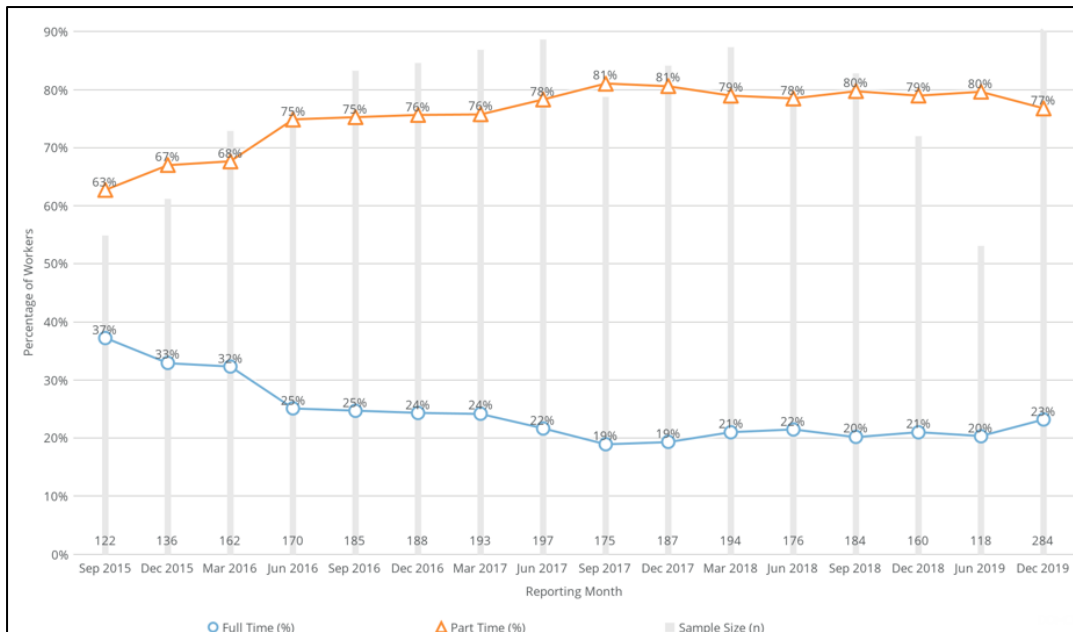
Chart 1: Type of Employment (%)



Full-time and part-time permanent work

This data collection period saw the first significant growth in full-time work at the expense of part-time work in the past four years. The percentage of full-time work rose to 23%, up from 20% in the previous period (the first half of 2019). Only New South Wales and Tasmania (where casual employment is particularly high) bucked the trend. This might be read as further evidence of the consolidation evidenced in the increase in permanent employment. More full-time roles could be as a result of the desire to retain quality workers by offering them more work, there being more work on offer, or more efficient rosters. It may reflect that work that service providers are doing to optimise their workforce to meet the challenging assumptions in the NDIS pricing (reasonable cost model) are bearing fruit.

Chart 2: Full-time Permanent and Part-time Work

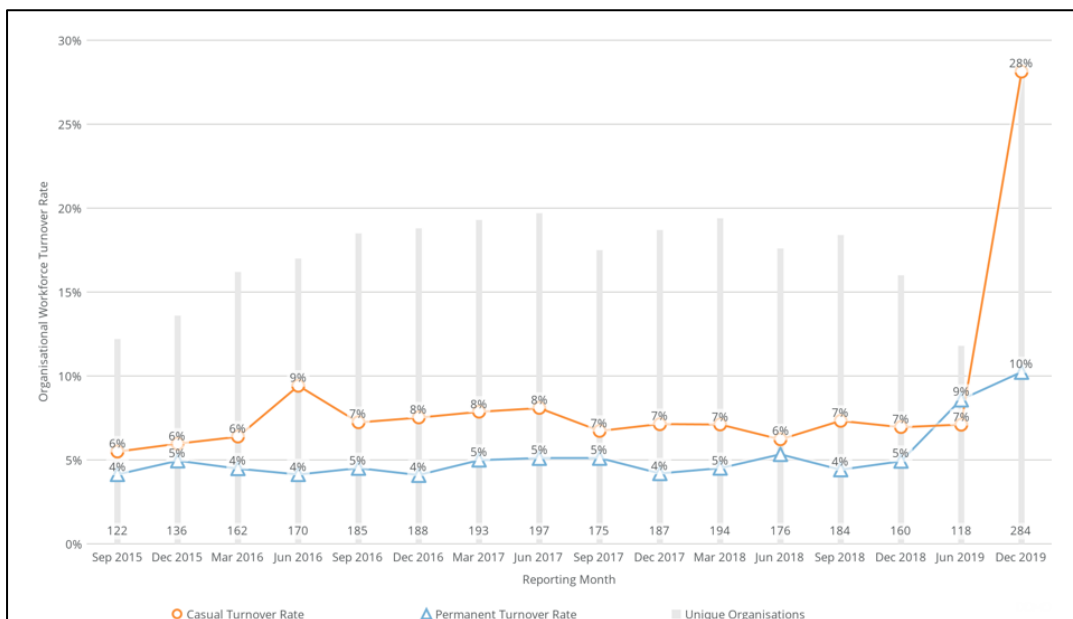


Turnover

There was a marked rise in the turnover of casuals across the board in this 6-month period. It would be reasonable to expect the turnover rate to be double the averages of the previous quarterly surveys, but these results indicate real increases over and above that measure. The results are consistent across all States and Territories, so we have some confidence that they reflect an accurate national trend.

These results might be seen to arise from a form of polarisation around workers' value and importance to their employers. As preferred (casual) workers are increasingly moved into permanent roles, the remaining casuals appear to be more liable to move to work elsewhere, or be let go.

Chart 3: Turnover



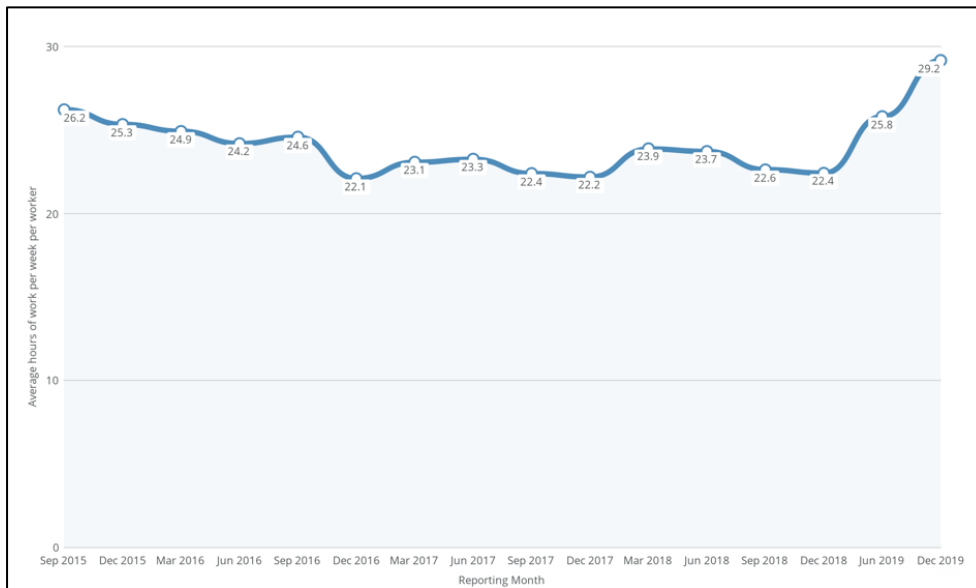
Average Hours of Work

Overall there is an increase in the average hours of work per week per worker, an indicator which started to rise in the previous survey period.

It is not a consistent picture across the country, the increase being driven by sizeable growth in Disability Support Workers' hours in New South Wales, Queensland, South Australia and Multi-state organisations. In the other States and Territories the totals of average hours worked fell.

An increase in hours offered/worked might be expected in line with the shifts from part-time to full-time employment, and from casual to permanent contracts.

Chart 4: Average Hours



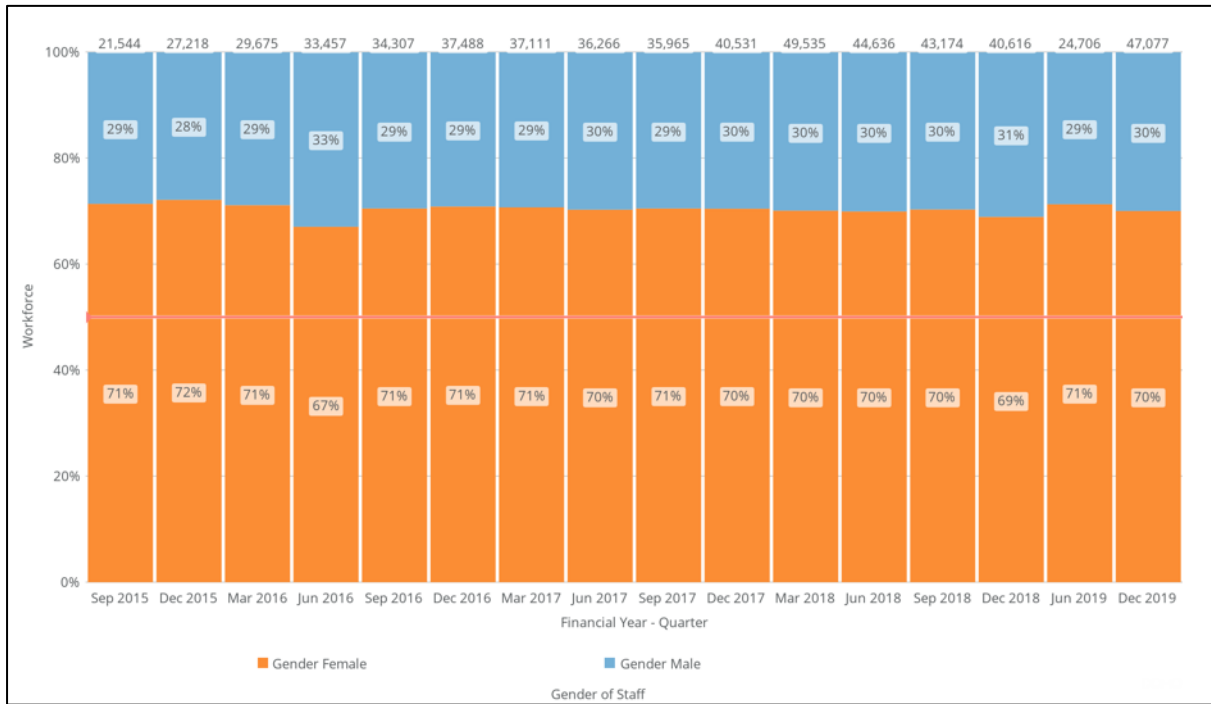
Female and Male Staffing Ratios

There appears to be little or no change in successive data collections in this key statistic. The workforce for disability remains overwhelmingly female, with little variation across all States and Territories.

The Allied Health workforce is skewed even more female, but saw a slight fall in this survey from 93% to 88%. This remains a concern for NDS and the sector – a workforce profile that is more balanced towards the profile of NDIS participants is desirable.

The national disability workforce strategy (in development) and other initiatives (Boosting the Local Care Workforce), to be successful, need to demonstrate how they will ensure a closer match between the workforce for disability and the beneficiary population.

Chart 5: Female vs Male Staffing Ratios



Spotlight Topic - Aboriginal and Torres Strait Islander Workforce

Just over a third of organisations (37.3%) collect data on the Aboriginal and/or Torres Strait Islander status of their workers, with a further 9% unsure whether they did or not. This is a disappointing result and makes it difficult to say with any confidence that the sector is tracking data that supports an assessment of whether the disability workforce is becoming more culturally proficient for Aboriginal and Torres Strait Islander client groups.

Of those that do, the Northern Territory had the highest percentage of workers of Aboriginal and/or Torres Strait Islander origin at 10% (albeit based on a small sample), followed by New South Wales at 7.5%, Queensland at 7.3% and Western Australia at 3.8%. In Victoria less than half a percent of workers identified being of Aboriginal and/or Torres Strait Islander origin; and there were none in the ACT, South Australia or Tasmania samples.

263 responses, of which 54% (n=263) said they did not routinely collect Aboriginal and Torres Strait Islander workforce data.

Chart 6: Organisations Collecting Aboriginal and/or Torres Strait Islander Workforce Data

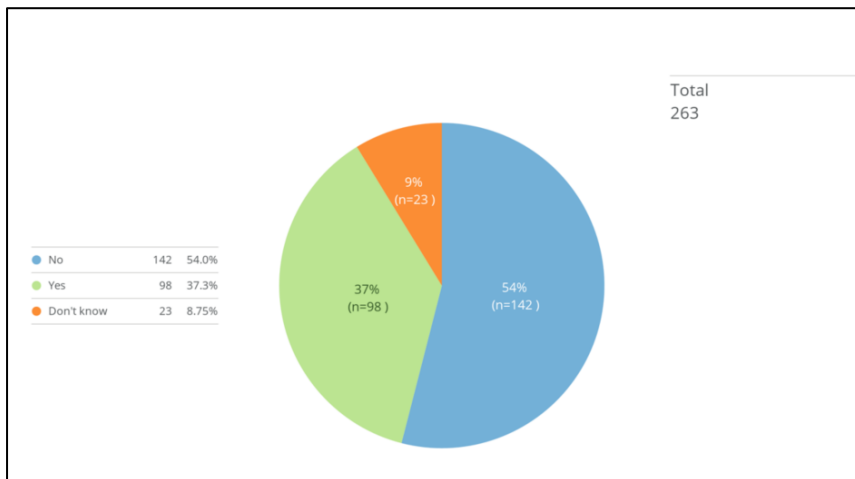
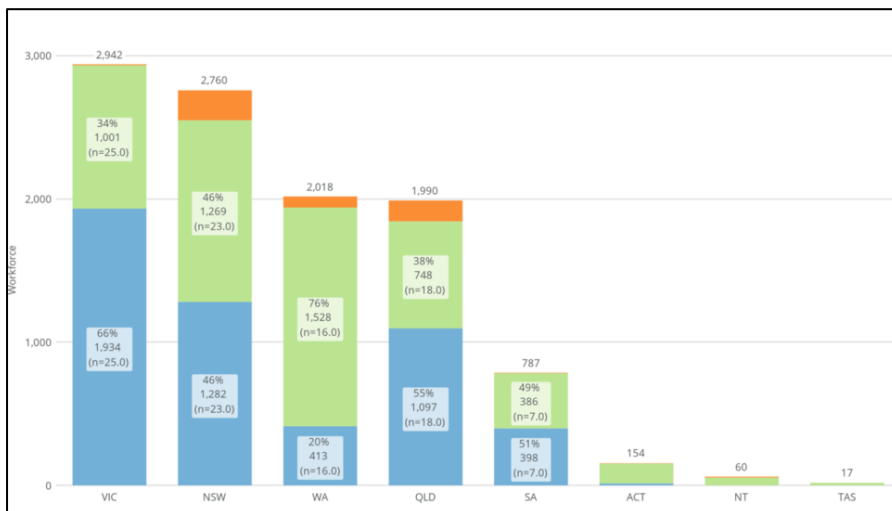


Chart 7: Aboriginal and/or Torres Strait Islander Workforce as at 31 Dec 2019



Appendix A – Sample Size

The Workforce Census launched to NDS members on 17 February 2020 and closed on 14 March 2020.

With a response rate of 26.3% and the highest number of organisations participating in the data collection since the survey commenced in 2015, the Workforce Census remains a valuable tool within the Disability Sector.

Chart 8: Number of Participating Organisations

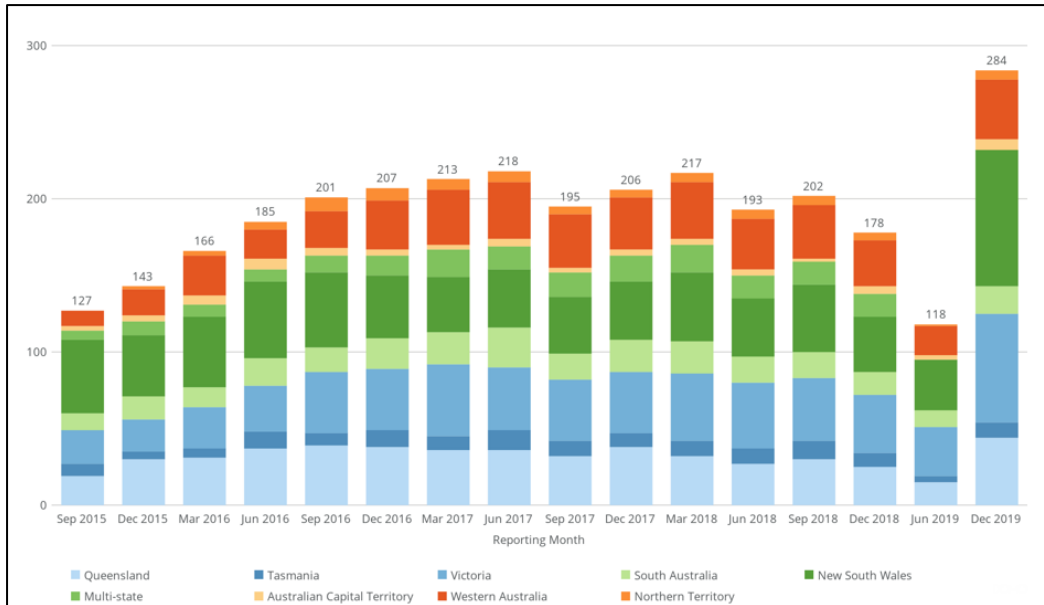
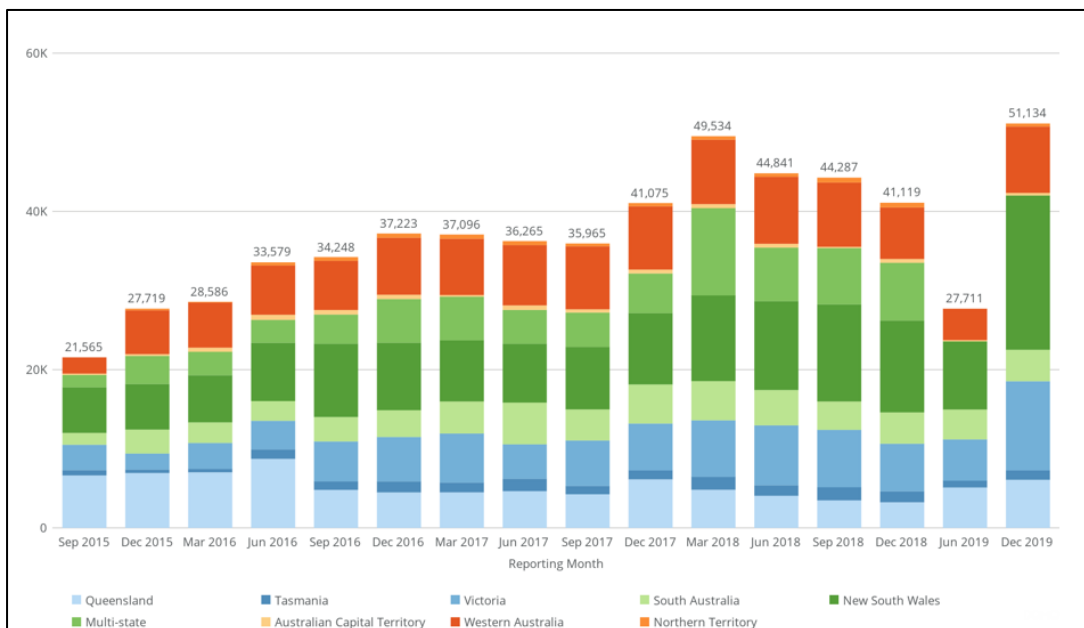


Chart 9: Number of Workers included in the Sample



Appendix B: What is the NDS Workforce Census?

The NDS Workforce Census fills a major workforce data gap in the disability sector and help answer some challenging questions for the sector including:

- Are more people being employed as casual rather than permanent workers?
- Is there a different mix of skills and demographics?
- What is happening to hours of work, working conditions and training?

NDS also enters data from other national data sources (like ABS) that you can use for comparisons. As more and more people use the Census, the NDS Workforce Census data will increasingly act as your primary source of benchmark data.

As more services use the Workforce Census, data on key trends will develop into useful evidence on issues such as workplace relations, NDIA pricing and market development.

Appendix C: Glossary of Terms

Term	Definition
Workers	The NDS Workforce Census collects data on workers in the disability sector only. A worker refers to paid employees only. Volunteers and supported employees within ADEs are not included.
Full-time workers	Full-time workers are those who ordinarily work 38 hours or more per week.
Part-time workers	Part-time workers are those who ordinarily work fewer than 38 hours per week.
Permanent workers	Permanent workers are workers who have an expectation of ongoing employment with the service. They are entitled to holiday and sick leave.
Fixed-term workers	Fixed-term workers are workers who have no expectation of ongoing employment with the service and have a definite termination date in their contracts. They may be entitled to some holiday or sick leave but are not paid any kind of casual loading.
Casual workers	Casual workers are workers have no expectation of ongoing employment with the service. They are not entitled to either holiday or sick leave but are usually paid a casual loading instead.
Disability Workforce	<p>Disability workforce are people directly providing disability services and those who coordinate or supervise their work. Client support officers, key workers and case managers are included. Managers are included IF they also have a direct client support role. The work that disability workforce undertake includes providing general household assistance, personal and emotional support, therapy support, case coordination and independent living assistance for people with a disability in their own homes or in the community.</p> <p>The national data is sourced from the Labour Force Survey conducted by the Australian Bureau of Statistics (ABS). The population of support workers nationally includes respondents whose occupation is classified as unit group 4231 aged and disabled carers under the Australian and New Zealand Standard Classification of Occupations (ANZSCO). This is the closest available match to the direct support workforce.</p>