

Fair Work Commission
Four Yearly Review of Modern Awards
Social, Community, Home Care and Disability Services Industry Award
Matter No: AM2018/26

SUBMISSIONS IN REPLY OF HEALTH SERVICES UNION

OVERVIEW

1. These submissions in reply are made by the Health Services Union (**HSU**), in accordance with paragraph (2) of the amended directions of the Full Bench, dated 2 September 2019.
2. The HSU has also filed the Further Statement of Mark Farthing dated 16 September 2019 and relies on that statement in support of the arguments below.
3. These submissions are in response to:
 - a) the proposed variations in the draft determination filed by the Australian Business Lawyers and Advisors Pty Ltd (**ABL**) on 2 April 2019, on behalf of Australian Business Industrial (**ABI**) the NSW Business Chamber (**NSWBC**), Aged & Community Services Australia (**ACSA**) and Leading Age Services Australia (**LASA**);
 - b) the submissions filed in support of the abovementioned draft determination, consisting of:
 - i. the submissions of ABL of 2 July 2019 on behalf of ABI, NSWBC, ACSA and LASA, including the witness statements of Scott Harvey dated 2 July 2019, Joab Darbyshire dated 28 June 2019 and Graham Shanahan dated 28 June 2019;
 - ii. the submissions of National Disability Services (**NDS**) of 2 July 2019, including the witness statement of Steven Miller dated 28 June 2019;

- iii. the submissions of the Australian Federation of Employers and Industries (**AFEI**) of 4 July 2019, which provide no evidence in support of the variations.
4. These submissions also respond in part to the submissions of the Australian Industry Group (**AIG**) insofar as they are relevant to ABL's claims as set out in their draft determination of 2 April 2019 and their submissions of 2 July 2019. AIG has not explicitly stated its support of ABL's claims, and has provided no evidence in support of the variations.
5. For ease of reference these submissions refer collectively to the parties supporting ABL's submissions, including ABI, NSWBC, ACSA, LASA, NDS, AFEI and AIG as '**the employers**'.
6. Consistent with the understanding at the conclusion of the discussion of the parties concerning the remote response allowance in the conciliation conferences before Commissioner Lee in August and September 2019, no submission is made herein in respect of that matter. The HSU reserves its right to make further submissions about that issue subject to the outcome of the discussions in respect of that matter.

VARIATIONS PROPOSED BY THE EMPLOYERS

7. In seeking to ensure a 'stable' system of modern awards, in accordance with the modern awards objective, in particular s 134(1)(g), the Full Bench held that where a '*significant change*' to a Modern Award is proposed in the four yearly review process, '*it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation*'.¹
8. The employers' proposed variations, and the HSU's response to each submission, are dealt with in turn below.

Variation 1: ordinary hours of work in clause 25.1 (clause 13.1 in Exposure Draft (ED))

9. The employers propose to delete 25.1. That clause currently provides:

25.1 Ordinary hours of work

¹ [2014] FWCFB 1788, [23].

(a) The ordinary hours of work will be 38 hours per week or an average of 38 hours per week and will be worked either:

(i) in a week of five days in shifts not exceeding eight hours each;

(ii) in a fortnight of 76 hours in 10 shifts not exceeding eight hours each; or

(iii) in a four week period of 152 hours to be worked as 19 shifts of eight hours each, subject to practicality.

(b) By agreement, the ordinary hours in clause 25.1(a) may be worked up to 10 hours per shift.

10. The employers propose to replace clause 25.1 with the following:

25.1 Ordinary hours of work

(a) The ordinary hours of work will be 38 hours per week or an average of 38 hours per week over the employee's roster period, up to a maximum of four weeks.

(b) Subject to clause 25.1(c), the maximum ordinary hours that can be worked per shift is 8.

(c) By agreement between an employer and an individual employee, ordinary hours may be worked up to 10 hours per shift.

11. The HSU opposes the proposed variation. No imperative or proper basis for the variation is demonstrated.

12. The proposed change to clause 25.1 is not a '*minor or technical variation*' as ABI contends². A significant amendment of the current wording is proposed.

13. No evidence demonstrating the erroneous or otherwise undesirable operation of the current clause is produced. It is not apparent what roster arrangements ABI says should be facilitated, but which are impeded by the current clause. No concrete alternative roster arrangement appears to be contemplated by any of ABI's witnesses. ABI has filed witness statements from:

- a) Scott Harvey, whose organisation Connectability does not employ any workers in direct support roles on a full-time basis³, and who does not identify any rostering difficulties concerning full time workers in other roles;

² ABI Submissions, 2 July 2019, para 4.9

³ Witness Statement of Scott Harvey dated 2 July 2019 [20]

- b) Joab Darbyshire, whose organisation Macleay Options Incorporated employs 50 full-time employees in classifications which are not identified and in respect of whose rostering, no evidence is given⁴;
- c) Graham Shanahan, from Coffs Coast Health and Community Care Pty Ltd, which employs 6 full-time employees, whose classifications and rosters are not disclosed⁵;
- d) Jeffery Wright, from HammondCare, which employs 798 full-time employees in classifications which are not identified⁶. Mr Wright's statement does not identify any impediment posed by clause 25.1 to the sensible and efficient rostering of those staff;
- e) Andrew Collins, from the Benevolent Society, which employs 812 full-time employees in classifications which are not identified⁷. Mr Collins' statement also does not identify any impediment posed by clause 25.1 to the sensible and efficient rostering of those staff;
- f) Deb Ryan, from Community Care Options, which employs 23 full time employees in classifications which are not identified⁸. Ms Ryan's statement does not identify any difficulties in respect of the the rostering of such full-time staff;
- g) Therese Adami, from Catholic Healthcare Limited, which employs 546 full-time employees in classifications which are not identified. Ms Adami's statement does not address the rostering of those employees⁹;
- h) Wendy Mason, from Baptist Care NSW & ACT, which employs 555 full-time employees including 176 such employees in its Home Services (home care) division. Ms Mason's statement does not address the rostering of such employees¹⁰.

14. NDS supports the claim but has provided no evidence to demonstrate the necessity either the wisdom or necessity of this proposed amendment. It has filed a witness

⁴ Statement of Joab Darbyshire, 28 June 2019, [10]

⁵ Statement of Graham Shanahan, 28 June 2019 (**Shanahan**), [16].

⁶ Statement of Jeffery Wright, 12 July 2019 (**Wright**) [14].

⁷ Statement of Andrew Collins, 12 July 2019, [20].

⁸ Statement of Deb Ryan, 12 July 2019, [21].

⁹ Statement of Therese Adami, 12 July 2019.

¹⁰ Statement of Wendy Mason, (undated) July 2019.

statement from Steven Miller from the Endeavour Foundation, which employs 236 full-time employees.¹¹ However, nothing in Mr Miller's evidence touches on the organisation's rostering practice, let alone demonstrates why any proposed change to clause 25.1 is necessary and consistent with the Modern Awards objective.

15. Contrary to the ABL Submission at [4.7], not all the *key elements* of the clause as currently drafted would be retained if the amendment were made. The amendment would remove the entitlement (albeit condition) of employees on a four week roster to a rostered day off. The employers' evidence does not address the question of rostered days off at any point.

16. The Commission should decline to make the change sought.

Variation 2: 'period of work' in clause 25.4(a) (clause 13.4 in Exposure Draft)

17. The employers propose to vary clause 25.4(a). Clause 25.4 currently provides:

25.4 Rest breaks between rostered work

- (a) *An employee will be allowed a break of not less than 10 hours between the end of one shift or period of work and the start of another*
- (b) *Notwithstanding the provisions of subclause (a), by agreement between the employee and the employer, the break between:*
 - i. the end of a shift and the commencement of a shift contiguous with the start of a sleepover; or*
 - ii. a shift commencing after the end of a shift contiguous with a sleepover may not be less than eight hours.*

18. The employers propose that the clause be amended to read as follows:

25.4 Rest breaks between rostered work

- (a) *An employee will be allowed a break of not less than 10 hours between the end of one shift and the start of another*
- (b) *Notwithstanding the provisions of subclause (a), by agreement between the employee and the employer, the break between:*
 - i. the end of a shift and the commencement of a shift contiguous with the start of a sleepover; or*

¹¹ Statement of Steven Miller, 28 June 2019 [11].

ii. a shift commencing after the end of a shift contiguous with a sleepover may not be less than eight hours.

19. The effect of the proposed variation would be to remove the words “period of work” from clause 25.4(a) and thereby diminish the scope of the protection for employees that is contained in that clause. The HSU opposes the proposed variation.

20. The term “period of work” has a meaning that is broader than the term “shift”. It includes sleepovers (as the qualification in clause 25.4(b) demonstrates) and excursions. Whilst not characterised as “shifts” under the Award, they are nonetheless periods of work, from which an employee should be entitled to recover before commencing further work. The elimination of the phrase from the clause would significantly impact its operation, and would shorten the period of rest between periods of work.

21. No evidence demonstrating the presently erroneous or otherwise undesirable operation of the current clause is produced. Indeed, nothing in the employer evidence addresses this issue at all. No basis for the variation is demonstrated.

Variation 3: change in roster - sub-clause 25.5(d)(ii) (clause 13.5(f) in Exposure Draft)

22. The employers propose to delete sub-clause 25.5(d)(ii).

23. Clause 25.5(d) currently provides:

(d) Change in roster

(i) Seven days' notice will be given of a change in a roster.

(ii) However, a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness, or in an emergency.

(iii) This clause will not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has four rostered days off in that fortnight or eight rostered days off in a 28 day roster cycle, as the case may be.

24. The employers propose that sub-clause 25.5(d) should be varied as follows:

(i) Seven days' notice will be given of a change in a roster.

(ii) However, a roster may be altered at any time:

A. by agreement between the employer and relevant employee, provided the agreement is recorded in writing;

B. to enable the service of the organisation to be carried out where another employee is absent from work on account of personal/carer's leave, compassionate leave, community service leave, ceremonial leave, leave to deal with family and domestic violence, or in an emergency; or

C. where the change involves the mutually agreed addition of hours for a part-time employee to be worked in such a way that the part-time employee still has four rostered days off in that fortnight or eight rostered days off in a 28 day roster cycle.

25. The proposed variation would:

- a) facilitate the change of rosters at any time where the employee has agreed to such variation; and
- b) expand the circumstances where a unilateral variation may be effected beyond illness or emergency.

26. The HSU opposes the proposed variation.

27. There is no evidence demonstrating the necessity for such a variation, nor that there is any proper case for such a variation in this industry. Amendments to the *Nurses Award* are inapposite. It is not appropriate to carry over on a piecemeal basis, provisions from awards that contain a raft of different conditions for employees and which have application in different circumstances.

28. So far as part-time employees are concerned, the amendment appears designed to undermine a fundamental protection: the entitlement to a regular pattern of work which appears in clause 10.3(c). Given that employees under this Award (unlike nurses) have no entitlement to an overtime loading until their hours of work exceed 10 in a day, 38 in a week or 76 in a fortnight¹², any dilution of the effect of clause 10.3(c) should not be regarded by the Commission as fair.

¹² Clause 28.1(b)

29. The evidence before the Commissions shows a high incidence of part-time work within the industries covered by the Award, and a high incidence of underemployment of those employees. The employer evidence indicates employers organisation their operations on the assumption that part-time workers will want to work additional shifts¹³. The absence of any penalty for doing so creates a structural incentive to do so. The employers' proposed variation to allow change of roster where there is agreement is unlikely to provide any real and substantial protection for employees. The facility to make changes by agreement should remain limited to changes to perform additional shifts.

Variation 4: client cancellation in clause 25.5(f) (clause 13.5(g) in Exposure Draft)

30. The employers propose to delete sub-clause 25.5(f).

31. Clause 25.5(f) currently provides:

(f) Client cancellation

- (i) Where a client cancels or changes the rostered home care service, an employee will be provided with notice of a change in roster by 5.00 pm the day prior and in such circumstances no payment will be made to the employee. If a full-time or part-time employee does not receive such notice, the employee will be entitled to receive payment for their minimum specified hours on that day.*
- (ii) The employer may direct the employee to make-up time equivalent to the cancelled time, in that or the subsequent fortnightly period. This time may be made up working with other clients or in other areas of the employer's business providing the employee has the skill and competence to perform the work.*

32. The employer's proposed clause reads:

(f) Client cancellation

- (i) This clause applies where a client cancels or changes a scheduled home care or disability service which a full-time or part-time employee was rostered to provide.*
- (ii) Where a service is cancelled by a client under clause 25.5(f)(i), the employer may either:*

¹³ Wright [35] – HammondCare offered 14,000 additional hours above contract hours in May 2019, or the equivalent of 92 FTE positions; Shanahan [30] – Coffs Coast Health offered an additional 902 hours of work to its 31 part-time employees in May 2019, an average of about 30 hours each or 7.5 hours per week.

- A. direct the employee to perform other work during those hours in which they were rostered; or*
- B. cancel the rostered shift.*

(iii) Where clause 25.5(f)(ii)(A) applies, the employee will be paid the amount payable had the employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.

- (iv) Where clause 25.5(f)(ii)(B) applies, the employer must either:*
- A. pay the employee the amount they would have received had the shift not been cancelled; or*
 - B. subject to clause 25.5(f)(v), provide the employee with make up time in accordance with clause 25.5(f)(vi).*

(v) The make up time arrangement cannot be utilised where the employee was notified of the cancelled shift after arriving at the relevant place of work to perform the shift. In these cases, clause 25.5(f)(iv)(B) applies.

- (vi) Where the employer elects to provide make up time:*
- A. the make up time must be rostered in accordance with clause 25.5(a);*
 - B. the make up time must be rostered to be performed within 3 months of the date of the cancelled shift;*
 - C. the employer must consult with the employee in accordance with clause 8A regarding when the make up time is to be worked prior to rostering the make up time; and*
 - D. the make up shift can include work with other clients or in other areas of the employer's business provided the employee has the skill and competence to perform the work.*

33. The HSU opposes the proposed variation.

34. The HSU agrees with primary position of United Voice that there should be no cancellation provision in this Award. If there is to be a cancellation clause, it should be on strictly limited terms. The employers' submissions and draft variation concede, implicitly, the inequity of the current position of not paying workers for a shift that has been cancelled the evening before it is to be performed. That inequity is glaring in an award in which the certainty of days and hours of work of part-time workers has been said to compensate for the absence of an entitlement to overtime penalties within ordinary full time hours.

35. The employers have neither demonstrated:

- a) a proper basis on the evidence for the extension of cancellation provisions to the disability worker stream; nor

b) that its proposed variation would establish a fair safety net for workers.

36. As to the former issue, the position for employers has improved considerably with the changes to the NDIS cancellation rules effective 1 July 2019. These changes are articulated in the NDIS Price Guide 2019-20, p. 17 available from the NDIS website: <https://www.ndis.gov.au/media/1455/download>. In his further statement concerning the pricing mechanisms under the NDIS¹⁴, Mark Farthing summarises the extensive pricing changes which took effect at the commencement of the present financial year. Those changes include both substantial increases to service rates compared to increases to wages over a comparable period as well as significant increases to loadings and the like.

37. Significantly, the rules around cancellation provide greatly expanded scope for services to recoup their costs in the event of cancellation. The updated cancellation rules provide for the following:

- a) a provider can charge an NDIS participant for a “short-notice” cancellation up to 90% of the fee associated with the scheduled activity/service. Such fee well exceeds the total labour costs of the service;
- b) a “short-notice” cancellation is defined as such if the participant:
 - i. does not show up for a scheduled support within a reasonable time, or is not present at the agreed place and within a reasonable time when the provider is travelling to deliver the support (i.e. a “no-show”); or
 - ii. has given less than 2 clear business days’ notice for a support that meets both of the following conditions:
 - the support is less than 8 hours continuous duration; AND
 - the agreed total price for the support is less than \$1,000; or
 - iii. has given less than 5 clear business days’ notice for any other support.
- c) There is no limit on the number of short notice cancellations (or no shows) that a provider can claim in respect of a participant.

38. The claims made by ABI regarding the operation of the cancellation provisions under the NDIS in paragraphs 5.12 and 5.13 of its submissions are incorrect.

39. The revised cancellation rules in the updated NDIS Price Guide provide a generous mechanism for service providers to recoup the costs of service cancellations.

¹⁴ Statement of Mark Farthing, 16 September 2019

40. The suggestion by Mr Harvey¹⁵, that the circumstances in which short notice cancellations may be claimed are “*very specific*” is obtuse and misleading. Rather than limiting the scope for such payment, the change to the provisions has greatly expanded the scope for such payment. The requirements now operate to ensure either 2 full business days’ notice of cancellation or 90% payment (for most ordinary attendances) and 5 full business days’ notice or 90% payment for appointments of greater length and cost. In those circumstances it is unclear how it may be posited¹⁶ that client short notice cancellations give rise to hours that are unable to be billed. Rather, given the generosity of the notice required, it is likely employees may be deployed usefully or lucratively for the period of the cancelled service.

16 September 2019

¹⁵ Statement of Scott Harvey, 2 July 2019 (**Harvey**) at [45]

¹⁶ Harvey [47]

Fair Work Commission

Four Yearly Review of Modern Awards

Social, Community, Home Care and Disability Services Industry Award

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FURTHER STATEMENT OF MARK FARTHING

1. I am employed as the National Campaigns and Projects Officer at the Health Services Union (**HSU**). I have been employed in this position since September 2019.
2. I was previously employed as a Senior Policy Advisor for the Health Services Union (**HSU**) Victoria No. 2 Branch, also known as the Health and Community Services Union (**HACSU Victoria**) from March 2016 until September 2019.
3. I have substantial research experience in the health and community services sector, with particular expertise in disability services and the National Disability Insurance Scheme (NDIS), as well as more broadly in industrial and workforce research and policy.
4. Between 2013 to 2016 I was employed as the Senior National Project Officer in the Health Services Union National Office.
5. My work background is set out further in my previous witness statement dated 15 February 2019.

Overview of Changes to NDIS Price Guide

6. The National Disability Insurance Agency (NDIA) is responsible for setting price limits and policies relating to the delivery of NDIS-funded supports.
7. This function of the NDIA is achieved through the production of a document known as the "Price Guide".
8. Price Guides typically operate for a full financial year (1 July to 30 June).
9. At least once per year, usually just prior to the end of the financial year, the NDIA revises the Price Guide to account for wage rises and general inflation. However, in some years more substantial variations to prices are implemented, either at that time or otherwise

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because of Commonwealth Government policy decisions and/or at the behest of the NDIA Board.

10. In the 2019-20 Price Guide, which came into operation on 1 July 2019 and is in operation as at the time of the making this statement, significant changes were made to several price categories and policies. In summary these were:

- a. General price increases and significant above-inflation increases for therapists and attendant care and community participation supports. For example, the price for attendant care and community participation supports delivered during the daytime on a weekday to a standard needs participant was increased from the previous financial year by 9.78% (or 18.01% when the TTP Payment is taken into account). The rates were as follows:

*Assistance With Self-Care Activities – Standard – Weekday Daytime (Level 1)
[01_011_0107_1_1]*

2018-19 = \$48.14

2019-20 = \$52.85/\$56.81 TTP

- b. The introduction of a Temporary Transformation Payment (TTP), which is a conditional loading calculated at 7.5% of Level 1 (standard needs) prices, but applicable in respect of Level 2 and Level 3 supports as well. The TTP will reduce each subsequent year by 1.5%. Providers can claim the higher TTP prices as long as they publish their service prices, list and keep up-to-date their business contact details in the NDIA's "Provider Finder" and participate in an annual NDIA-approved market benchmarking survey.
- c. A doubling of the remote and very remote loadings from 20% to 40%, and from 25% to 50%, respectively, of the price of the scheduled attendance. The rates for attendant care and community participation supports delivered during the daytime on a weekday to a standard needs participant are as follows:

*Assistance With Self-Care Activities – Standard – Weekday Daytime (Level 1)
[01_011_0107_1_1]*

Metro = \$52.85/\$56.81 TTP

Regional = \$73.99/\$79.53 TTP

Rural = \$79.28/\$85.22 TTP

- d. Increases to the length of time that providers can claim for the time spent travelling to participants from 20 to 30 minutes within city areas, and from 45 to 60 minutes in regional areas.

- e. Clearer rules around charging for non face-to-face time, with the NDIA stipulating that these activities are billable if they are part of delivering a disability support item to a participant such as writing a report about the participant's progress (rather than a general activity such as staff rostering).
- f. A revised cancellation policy which abolishes the limit on the number of cancellations or "no shows" that be charged per year (see section below for more detail on client cancellation policy changes)

Response to AiG Submission

11. In paragraph 76 of its submissions dated 13 July 2019, the AiG suggests that the only increase applied in the 2019-20 Price Guide was the 4.5% increase relating to the Commission's Annual Wage Review decision and the operation of the Equal Remuneration Order. This overlooks the increases announced by the Commonwealth Government on 30 March 2019, the key elements of which I refer to in paragraph 10 above, and which were incorporated into the 2019-20 Price Guide in addition to the 4.5% increase.
12. In paragraph 77 of its submission the AiG suggests that *"the information published by the NDIA to date does not suggest that the assumptions underpinning the pricing arrangements have been changed or that any additional funding has been released to address broader concerns previously expressed by employers about the inadequacy of the funding to cover the various costs associated with providing the relevant services, including labour costs."*
13. While the NDIA has not released materials explicitly identifying the methodology underpinning price limits for supports in the 2019-20 Price Guide, it does not necessarily follow that prior published pricing methodologies and assumptions are still correct, for the reasons I set out below.
14. In section 5.3 of its submission, the AiG refers to the NDIA's "Reasonable Cost Model" (**RCM**) and the report published by the University of NSW in June 2017 titled *"Reasonable, necessary and valued: pricing disability services for quality support and decent jobs"*. (**UNSW Report**)
15. The HSU along with the ASU and United Voice commissioned this report. I was intimately involved in working with the research team during the production of this report and was identified as such in the acknowledgements section prefacing the report, and am in a position to comment on the parameters of that research.

16. The UNSW report examined NDIS prices as they were in the NDIA's 2016-17 Price Guide, with the focus of analysis on the "base hourly rate" for standard needs, weekday, daytime support at \$42.79 per hour, specifically the support item: *Assistance With Self-Care Activities - Standard - Weekday Daytime*
17. In the 2019-20 Price Guide the price limit for *Assistance With Self-Care Activities - Standard - Weekday Daytime* is \$52.85 (\$56.81 with the Temporary Transformation Payment (TTP) loading). This represents a 23.51% increase (32.76% with the TTP) compared with the 2016-17 price limit.
18. The 2016-17 rate for a SACS 2.3 worker was \$24.70 per hour, whilst the current (2019-20) rate for the same worker is \$28.44. This represents a 15.14% increase over the same period. These wage rates are inclusive of the ERO component.
19. The NDIS price item has increased at a rate which is substantially greater than the increase in wages for the average level disability support worker. The price limits in the 2019-20 Price Guide therefore do not reflect the assumptions that were contained in the NDIA's original RCM, which was the focus of the UNSW report.
20. The AiG's claim in Paragraph 151 that "*there is nothing to suggest that the fundamental problems identified in the UNSW Report with the RCM will be alleviated by the funding increases*" appears to disregard the fact that the price increases and additional payments set out above well and truly outstrip wage growth, provide some significant new bases of entitlement to payment and presupposes that the assumptions contained in the RCM are still built into the price structure.
21. The UNSW report also critiqued a number of NDIA policies contained within the 2016-17 Price Guide which have subsequently been addressed in the 2019-20 Price Guide. These include:
 - a. Increasing the intensity loading for more complex participants, from two levels (standard and high-intensity) in 2016-17, to three levels Level 1 (standard), Level 2 (high intensity/complex) and Level 3 (higher intensity/more complex) supports in 2019-20;
 - b. A doubling of the remote and very remote loadings from 20% to 40%, and from 25% to 50% respectively of the price of the scheduled attendance.
 - c. Updates to the length of time that providers can claim for the time spent travelling to each participant to 30 minutes within city areas and 60 minutes in regional areas. This is an increase from 20 and 45 minutes, respectively.

- d. Clearer rules around charging for non face-to-face time, with the NDIA stipulating that these activities are billable if they are part of delivering a disability support item to a participant such as writing a report about the participant's progress (rather than a general activity such as staff rostering).
- e. A revised cancellation policy which abolishes the limit on the number of cancellations or "no shows" that be charged per year (see section below for more detail on client cancellation policy changes)

22. In summary, the AiG submission relies heavily on the UNSW report, which is predicated on an analysis of NDIS prices in the 2016-17 Price Guide. In light of the significant changes to both price limits and pricing policies contained in the 2019-20 Price Guide, much of the analysis in the UNSW report is no longer relevant.

Client Cancellation

23. The NDIA has significantly revised its cancellation rules in recent Price Guides.

24. In the 2015-16, 2016-17, 2017-18 Price Guides, the NDIA allowed providers to charge a participant the full amount of a scheduled personal care or community support up to 8 times per year when there was a short-notice cancellation or a "no show" by a participant. A short-notice cancellation was defined as such if the participant advised the provider after 3pm the day before the scheduled service.

25. In the 2018-19 Price Guide, the NDIA revised its cancellation rules which increased the number of times a provider could charge a participant for a short-notice cancellation or "no show" from 8 to 12 times per year, however, it reduced the amount that a provider could charge from 100% of the cost of the scheduled personal care or community support to 90%.

26. The 2018-19 Price Guide did not set 12 cancellations per year as a hard limit, instead specifying that "beyond this threshold, the NDIA will require the provider to demonstrate they are taking steps to actively manage cancellations."

27. In the 2019-20 Price Guide, which came into operation on 1 July 2019 and is in operation as at the time of the making this statement, the NDIA revised its cancellation rules again.

28. The revised cancellation rules provide for the following:

- a. A provider can charge an NDIS participant for a "short-notice" cancellation up to 90% of the fee associated with the scheduled activity/service.
- b. A "short-notice" cancellation is defined as such if the participant:

- i. does not show up for a scheduled support within a reasonable time, or is not present at the agreed place and within a reasonable time when the provider is travelling to deliver the support (i.e. a “no-show”); or
- ii. has given less than 2 clear business days’ notice for a support that meets both of the following conditions:
 - the support is less than 8 hours continuous duration;
AND
 - the agreed total price for the support is less than \$1,000;
or
- iii. has given less than 5 clear business days’ notice for any other support.

c. There is no limit on the number of short notice cancellations (or no shows) that a provider can claim in respect of a participant.

29. By way of example, a participant who had booked 2-hours of standard-needs community access between 9am to 11am on a Thursday at a cost of \$125.38 who cancelled any time after 9am on the Tuesday prior could be charged \$112.84 by their provider. Whereas a participant who had booked a full-day stay at a respite facility on a Thursday to receive 1:1 supports at a cost of \$1,546.39 who cancelled anytime after 9am Friday the prior week could be charged \$1,391.75.

30. In summary, the 2019-20 Price Guide provides significantly more flexibility and certainty to providers by abolishing the limit on the number of cancellations that may be charged per year and extending the definition of a “short notice” cancellation from 3pm the day before the scheduled service to less than 2 clear business days before the scheduled support.

31. The claims made by ABI in paragraphs 5.12 and 5.13 are therefore no longer correct in light of the 2019-20 Price Guide.

32. The revised cancellation rules in the 2019-20 Price Guide provide a significantly expanded capacity for service providers to recoup the costs of service cancellations.

Mark Farthing

16 September 2019