



Response to:

Portable long service leave scheme for the social and community services sector in Queensland.

NDS QUEENSLAND

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The Disability Sector

The disability sector is in the midst of far-reaching change. National and state reforms, particularly the introduction of the National Disability Insurance Scheme (NDIS), are transforming the operating environment for disability service providers and the individuals they serve. Change of this scale presents great opportunities, but also great risks.

Comparing the NDIS's Market Position Statements for New South Wales, Victoria and Queensland, it is Queensland that is anticipated to have the greatest percentage increase in the number of participants receiving disability support. Obviously this will require the greatest percentage increase in the workforce to deliver those services. These two issues of growth are further compounded by the state's geographical scale. Queensland has also had the fastest implementation of these states, with the 2018-19 period being the biggest roll out of the state's three year transition.

National Disability Services (NDS)

National Disability Services (NDS) is Australia's peak body for non-government disability service organisations, representing more than 1,100 non-government service providers. Approximately 150 of our member organisations are Queensland based. Collectively our members operate several thousand services across all types of disability, with member organisations ranging in size from small support groups to large multi-service organisations. Queensland's members reflect this diversity.

NDS provides members with a strong voice, enabling the sector to collectively initiate change, influence outcomes and deliver the funding needed to ensure the best possible quality of life for people with disability.

As a membership based organisation, NDS's Policy Priorities are:

- Shaping NDIS design and implementation, including pricing policy
- Promoting regulation and investment that enable the building of a sufficiently large, flexible and capable disability workforce
- Expanding open and supported employment opportunities for people with disability
- Strengthening governments' response to the National Disability Strategy
- Persuading government to reduce red tape

NDS is also very active in Queensland and is a major contributor to the nationally recognised WorkAbility Qld initiative. The initiative works collaboratively with the disability sector, government and the National Disability Insurance Agency (NDIA) to build the sector's workforce supply and capability to meet demand under the NDIS. It does this through both state-wide activity and place base engagement. WorkAbility Qld

has provided NDS with intimate knowledge of the disability sector's workforce issues and the challenges facing employers as they move to, or operate in, the NDIS environment. As a result, NDS has a keen interest to engage with the consultation process around a Portable Long Service Leave Scheme for the Social and Community Services sectors in Queensland.

Response to questions raised in the OIR's Consultation Regulatory Impact Statement:

Do you think a PLSL scheme in the SACS sector in Queensland is desirable?

NDS does not support a potential PLSL scheme with the inclusion of NDIS funded disability services, currently being considered by the Queensland Government.

While NDS supports measures that contribute to the availability, quality, skills and satisfaction of staff employed in the disability services sector, we are not convinced that portable long service leave is an effective workforce intervention. While we acknowledge the final costs of the Scheme and the administrative impacts of its implementation are unknown, we do feel that any imposed changes are likely to significantly impact the financial sustainability of disability services. This is at a time when service providers are currently struggling under NDIS prices.

Key Concerns:

- **Disability Services are moving to national NDIS funding**
 - NDS does not support imposition of additional state based costs on services transitioning to NDIS, a federally run scheme.
 - NDIS prices are based on the federal SCHADS award and do not take account of state specific additional costs.
 - Unlike previously, as the Queensland government withdraws from the funding of disability services it will be unable to adjust its ongoing funding to take account of new state legal requirements.
- **Impact Upon Sustainability**

Work undertaken by BDO on behalf of the Department of Community, Disability Services and Seniors to review the financial sustainability of existing disability services has reportedly found a significant number are in risk of failure.

 - Disability service providers are under extreme pressure with the transition to NDIS, and an additional cost impost is not sustainable. Many of the NDIS prices are extremely lean. McKinsey in its recent NDIS Independent Price Review noted ***“many traditional providers are struggling to operate profitably at current price points”***. A PLSL Scheme will have a major impact on cash flow.

By way of an example, if the new Scheme required quarterly payments by employers from the date an employee commences work this will be in contrast to current arrangements when many organisations do not allocate funds to current liabilities against LSL until workers have completed 5 years' service. As the RIS noted there is no standard approach to LSL accrual.

- Scheme cost and cash flow implications will undermine the financial viability of many organisations. This could contribute to withdrawal of some services from the market, exacerbating the emerging thin markets for people with disabilities in some parts of Queensland at a time when substantial growth is required.
- Additional costs may also further squeeze provision of supervision and training across the sector, already under pressure with NDIS prices.
- **Complex and costly administration due to Scheme's scope**
 - The scope of the Scheme sits poorly with the reality of disability work, and can be anticipated to lead to complex and costly administrative arrangements.
 - Many disability services will have ongoing LSL commitments through EBAs and Federal Awards which will need to be maintained, requiring allocation to internal funds as well as the new authority, and complex tracking of employee leave and benefit entitlements. Any transition between existing and proposed arrangements will be complex.
 - The disability workforce comprises a majority of part time or casual workers, often working for more than one employer simultaneously, and with fluctuating hours. The NDIA is hoping to see almost one third of NDIS participants 'self-managing' their NDIS packages in the future. We are also seeing a significant rise in sole practitioners, and allocation of work via the 'gig economy'. This workforce will be extremely complex to track in terms of hours/years worked.
- **Lack of evidence that portable LSL is an effective intervention to address acknowledged challenges facing the disability workforce**

The RIS notes several advantages of a Scheme however many benefits are unsubstantiated with evidence. NDS encourages further discussion and investigation of contemporary employment practices in the changing disability sector environment to ensure and future decision regarding PLSL is evidence based. Substantiating evidence will greatly assist with informing the sector of the benefits of PLSL should it be introduced.

What do you see would be the key benefits of a PLSL scheme for the SACS sector?

Any Scheme introduction would need to reduce compliance costs without impacting an organisation's balance sheet. If this can be achieved the potential to position the broader employment options for both new entrants and existing staff should be possible.

What costs do you see would be involved in a PLSL scheme for the SACS sector?

The greatest cost is managing the complexity of its introduction. Disability services providers are struggling with the restricted funding of the NDIS, the difficulties in the national payment portal and the complexities of becoming client and market orientated. Organisations have little reserve to undertake the cost of training and implementation of a PLSL Scheme. Should the government implement a PLSL scheme, NDS would strongly recommend the provision of financial support to support organisation's to implement.

Should a PLSL scheme be introduced for the SACS sector extend to both for-profit and not-for-profit organisations?

As the workforce is the same, with some employees working in both organisational structures simultaneously or across their working career, if the Scheme is to be introduced it should be across the board. This would also help to ensure a fair playing field across the sector.

Other questions and considerations:

NDS supports the 'Questions to be Considered' section of the 'Community Sector Peaks submission. These are copied below:

There are a number of questions we have about the PLSL scheme, which are below:

- What are the initial costs to participate in the PLSL scheme, and the real ongoing operational and administrative impacts for our organisations, particularly finance and payroll functions?
- If there are shortfalls or additional costs, will Government commit to funding these shortfalls?
- Retrospective accruals of LSL:
 - How will these costs be covered, particularly for workers with a present entitlement to LSL at the time of commencement of the scheme?
 - What period of time/service will be covered retrospectively and/or how should retrospective accruals/credits be calculated?
 - How will records be maintained, particularly historical records?
- How will the issue of continuous service and breaks from the sector under s 134 of the *Industrial Relations Act 2016* (Qld) (the IR Act) apply? We note in particular the gendered nature of the SACS workforce and potential for

extended carer gaps and/or career breaks from the sector, further explained below.

- What is the definition of a 'contractor' for the purposes of this scheme? (other issues of scope/coverage may need to be considered in more detail)
- Not-for-profit SACS organisations with public benevolent institution (PBI) status are able to offer their employees fringe benefits tax (FBT) concessions that allow employees to take advantage of salary sacrifice arrangements. How will these salary sacrifice arrangements be maintained and managed in the payment of LSL entitlements? Who has responsibility for payments to workers accessing LSL entitlements, including withholding income tax, administering FBT and salary sacrifice (as noted above), as well as issuing of PAYG summaries?

Without further information, we are unable to fully comment on the proposed model, although we reiterate our in-principle support for portable long service leave for SACS workers

Additional Background Information:

NDIA Pricing Assumptions

In its prices, the NDIA assumes

- that the disability support worker will be employed at a level 2.3 under the SCHADS Award
- a utilisation level of 95% for disability support workers
- a 1/15 supervision ratio, and a utilisation level of 95% for supervisors
- an overhead level of 10%, which equates to 15% if a provider is not subject to payroll tax
- no state specific additional costs on employers

Financial Sustainability of disability services

The following quotes from recent reports illustrate the current financial position of disability services.

- **Findings from the McKinsey Independent Pricing Review report, released March 2018**

While some providers have operating models that are profitable at current price points, many are struggling, particularly traditional providers delivering attendant care

supports...many traditional providers are struggling to operate profitably at current price points. This is attributable to a combination of factors: higher overheads; challenges in adapting to unit pricing and NDIA systems improvement opportunities; lower utilisation of workers; and higher labour costs' (p. 5)

'Current price caps are challenging, and many providers are unable to operate profitably within those price caps. Providers and participants have raised concerns that where providers are unable to supply services at a given price level, new supply will not be made available quickly enough to ensure that participants have access to an adequate level of support.' (p. 6)

'Demand will continue to rapidly increase as new participants enter the Scheme, and many providers are struggling to operate a surplus at the price cap with their current operating model. There is a risk that profitable providers will not grow quickly enough to supply the services required.' (p. 7)

'Some providers reported to the IPR team during its consultation process that they were drawing on surpluses and other funding sources, and cross-subsidising some support types, to continue to serve participants while they transition. They are concerned as to whether they can achieve a sustainable operating model in the future. Some major providers also reported that due to challenging economics operating in the Scheme, they are not accepting new participants for some services and are planning to reconsider their support offerings in 2018.' (p. 23)

'Moving to a unit-funded, consumer-driven environment has required providers to employ new staff to process payments and invest in IT systems and marketing. Some providers estimate that these costs have added 1.5% to their annual expenditure.' (p. 24) - (<https://www.ndis.gov.au/medias/documents/ipr-final-report-mckinsey/20180213-IPR-FinalReport.pdf>)

[Productivity Commission Study Report: NDIS Costs \(October 2017\)](#)

'The Commission heard from many stakeholders that the NDIA's pricing methodology has, in some cases, led to perverse incentives, poor participant outcomes and hindered market development — especially for supports required by participants with complex needs. According to the NDIA, existing providers (many who previously relied on block-funding) are finding it difficult to adjust to the fee-for-service model.' (p. 33)

[Victorian Government submission to PC Inquiry into NDIS Costs:](#)

'In some areas, the NDIA appears to have applied flawed assumptions to its calculation of prices. Examples include low allowances to train, supervise and recruit direct support staff, unrealistic assumptions around the amount of time staff need to spend undertaking non-client facing functions, and low assumptions around the proportion of

overall costs devoted to overheads (particularly during the transition period). Victoria considers that these areas should be corrected as soon as possible.’ (p. 35)

Based on experience to date, there will be a shortage of disability supports under the scheme.’ (p. 40)

(<https://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs.pdf>)

NDS State of the Sector Report 2017:

‘Only 58 per cent of disability service providers are planning to increase their services. They find staff hard to recruit, the policy environment is uncertain and they lack the working capital required to grow and change. Only four in 10 rate their financial condition as ‘strong’ or ‘very strong’, down from 53 per cent last year. Two-thirds worry they won’t be able to provide services at NDIS prices. In short, business confidence has dampened.’ (p. 4)

‘Inadequate NDIS prices pose a risk not only to individual disability service providers but to the scheme as a whole. If the supply of high-quality services is insufficient, the NDIS would fail to deliver on its great promise.’ (p. 5)

‘Growth in demand for disability services continues to outstrip supply. In the last 12 months, less than half of disability service providers (47%) could meet all demand. The outlook for 2018 suggests the supply gap will continue to widen with only 43% (compared with 53% in 2016) of disability service providers expecting to meet demand.’ (p. 7)

The number of organisations making a profit has fallen slightly. Only 34% of those who made a profit recorded a profit of 4% or greater. These results reinforce the findings from the NDS/UWA National Financial Benchmarking Study.’ (p. 15)

(<https://www.nds.org.au/news/state-of-the-disability-sector-report-2017-reflects-sector-under-pressure>)