

LHMU, WA BRANCH SUBMISSION TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO A NATIONAL DISABILITY LONG-TERM CARE AND SUPPORT SCHEME

INTRODUCTION

The LHMU, WA Branch welcomes the opportunity of making a submission to the Productivity Commission's Inquiry into a National Disability Long-term Care and Support Scheme.

The WA Branch has coverage of direct care workers in the non-government disability services sector. Our members provide various services to people with disabilities through their roles which range from Social Trainers, Residential Aides, Support Workers, providers of accommodation services, community access workers, recreational workers, property care and business services for supported employees. All members have direct care roles and assist residents in all their activities of daily living. If a member works as a Social Trainer for a major provider they will most likely hold a Certificate IV in Disability Services, however, there will be members in these roles who are unqualified.

This submission addresses the workforce issues raised in section 11 of the Productivity Commission Issues Paper. It is not the LHMU's intention to comment on the key design elements of a new funding model other than to offer broad support to any model that will deliver better working conditions for workers employed in the disability sector.

The LHMU accepts that in some respects our members' views may appear to differ from those put to the Commission by people with disabilities and their advocates. For example, there have been favourable views expressed on individualised funding arrangements and the direct employment of care workers. These arrangements may be empowering to people with disabilities however if not structured carefully they can also have the effect of disempowering the paid workforce. Whilst our positions on some issues may appear to differ we are all fundamentally interested in quality of care through attracting and retaining quality staff by ensuring minimum training, lifting wages and other conditions of employment and providing a career structure.

Over the past decade a number of research projects have considered the workforce problems confronting the human services sector, including in the Productivity Commission's recent research report *Contribution of the Not-for-Profit Sector, January 2010*. This body of research consistently identifies the same contributory causes: uncompetitive wage levels; an ageing workforce and an inability to attract and retain younger workers; underutilisation of existing workforce capacity; high levels of staff turnover; increasing complexity of care and rising consumer expectations; skills shortages and insufficient training; and the lack of career paths. The implementation of a National Disability Long-term Care and Support Scheme provides a unique opportunity to address these issues in a meaningful manner. With an ageing population and increasing life expectancy greater reliance will be placed on the paid workforce to provide care. Wages and on-costs are the largest component of the overall cost of providing paid care (75%-80%). In formulating a new funding model for disability long term care and support it will be remiss of the Productivity Commission not to take account of the funding required to ensure

the paid workforce is appropriately sized and skilled to meet current and future demand and workers are realistically remunerated.

In this submission the LHMU, WA Branch makes the following recommendations:

1. Provide sufficient ongoing funding to ensure that workers are remunerated appropriately for work of equal or comparative value.
2. Standardise workers' conditions of employment, other than wages, nationally across the sector.
3. Quarantine the component of funding for wages and pay it to those providers who demonstrate through registered industrial agreements that the benchmark rates of pay are being paid to their workers.
4. Ensure that funding for wages and indexation flows through to workers' rates of pay via appropriately worded registered industrial agreements.
5. Clearly define and mandate pre-entry qualifications at the Certificate III level or through recognized prior learning through paid and unpaid qualifications, professional and life experience.
6. Provide dedicated funding to encourage workers to gain recognised paid qualifications through payment of educational institution's fees and paid study leave.
7. Develop data collection specific to the sector's workforce needs to inform stakeholders.

PAY EQUITY

Workers in the community services industry are undervalued and under-remunerated for their work. The disability sector has the attributes that have been identified as factors contributing to pay inequity including:

- The dominance of female employees in the workforce, estimated at around 75% of the disability sector workforce. Care work is culturally devalued and is seen as an inherent, feminine skill.
- The disproportionate participation in part time and casual employment. Fifty five percent of the disability sector workforce is employed part time and 20% are employed on a casual basis.
- A history of award-reliant employment with less opportunity to collectively bargain for higher wages, working in small workplaces and with low union participation.ⁱ It is estimated that only 10% of the disability sector workforce is unionised.
- The current government funding models.

The LHMU is a party to the application lodged with Fair Work Australia in March 2010 for an equal remuneration order covering the social and community services industry. This application

if successful will have a profound impact on the funding required to address the undervaluation of the work and the inadequate remuneration of the workforce. The decision of Fair Work Australia will need to be considered by the Productivity Commission in determining the funding required under a disability long term care and support scheme.

THE CURRENT GOVERNMENT FUNDING MODEL

Since the 1980s the provision of disability services in Western Australia has been substantially privatised, that is, the government contracts to purchase essential services from the private sector and ceases to provide the same services in-house. *[A] primary rationale for this devolution of programs and the rise of contractualism was the belief that not-for-profit organisations could deliver services and programs cheaper than government could. Implicit in this was a downward pressure on the rising costs of social welfare, particularly wages and conditions.*ⁱⁱ In 2008/09 the WA Disability Service Commission funded 108 external service providers. Thirty percent of this funding was directed to the largest 5 providers and the majority of providers can best be described as “small.” In 2008-09 59% of the Disability Service Commission’s (DSC) budget was directed to external service providers and by 2013-14 this will grow to 69%. Over this time period there is no budgeted growth in services provided in-house by DSC.

In its decision on the application of We Can Association Incorporated the Fair Work Australia Tribunal observed that:

The DSC has deliberately adopted an individualised funding strategy where the money “follows” the client. The Commission has found this approach to be ‘extremely successful as it supports the sustainability of smaller, local NFP service providers.’ From the evidence presented to me in this hearing the strategy actually prejudices the sustainability of the non-government provider, and possibly, compromises the quality of service.”ⁱⁱⁱ

This is not a surprising observation. In a privately commissioned review of a non-government service provider’s staffing issues the impact of the move towards individualized funding was described thus:

Further, as residents left the organisation, or moved to a different identitywa house, as well as unfilled vacancies being created, those new residents who replaced departing residents have been in receipt of less funding than the person moving on. Most departing residents were long term residents who had funding at a level of around \$120,000 per annum. Their funding levels were determined not necessarily by their individual support needs, but through the disaggregation of existing service funding when the Commission moved from block funding to individual funding. Most new residents that have been negotiated into identitywa have had individual funding of less than \$60,000.^{iv}

The CEO of Uniting Care West, a major provider, said *it is very rare for these services to be fully funded by governments. There is an expectation always that they will purchase those services*

at a price far lower than what they would certainly be able to provide those services.^v The CEO of Centacare stated in his evidence to Fair Work Australia:

The only problem with contracting is that there has never been really a true assessment of the costs of delivering these services by a non-government operator. So even though government may know how much it costs to deliver a service within its own ranks, it has really never made an attempt to fully cost out what a service might cost if it's run by a non-government organisation. I think that creates quite a disparity between true costs and the funding that is received.^{vi}

The consequences to the disability sector of the low rates of workers' remuneration were described by the CEO of Uniting Care West:

Many of our organisations (Not-for-profit service providers) already have been in crisis particularly in the last economic boom here in Western Australia. We had great difficulties in recruiting and retaining staff. Some of the organisations were running vacancy rates at up to 30 per cent of their staffing and some organisations were running staff turnover rates at 26 per cent... We are facing another predicted boom in Western Australia which we anticipate will have significant impact on our sector.^{vii}

Cloghan C succinctly summarised the impact of privatised service delivery on workers when he noted that "*employees' conditions of employment just happen to be collateral damage in the new reality of delivering services in the community sector.*"^{viii}

CURRENT EMPLOYMENT ARRANGEMENTS

There are a number of practical examples of how non-government service providers erode workers' wages and conditions in order to provide services within an inadequate funding regime. Some are described below.

Example 1:

The LHMU brings to the Commissioners' attention a recent Fair Work Australia decision [2010] FWAA 5107 dated 12 July 2010, which has been referred to in this submission. Fair Work Australia was asked to approve We Can Association Incorporated's single enterprise agreement. This agreement provides conditions of employment that are below the minimum award conditions and consequently it fails the 'no disadvantage test.' In approving the agreement Cloghan C said *this Tribunal is now being asked to hold constant the interests of the employees subject to this Agreement, in the general interests of community. While I am prepared, given the unique and compelling circumstances, to agree to the Applicant's request to approve the agreement in the public interest, I do so with hesitation.*^{ix}

The *unique and compelling circumstances* identified by Fair Work Australia include: the proportion and nature of government funding the provider depends upon to provide its services; the inadequacy of the funding; the inability of the provider to increase revenue to offset additional costs; the fiscal prudence of not constructing an enterprise agreement that is unsustainable; and the inability to reduce costs without putting at risk the adequacy of care. With respect, these circumstances may be compelling but they are not unique. As the

Productivity Commission will appreciate from the submissions received these circumstances are common and are almost universally cited as the contributory causes of a sector in crisis.

The agreement neither provides for any increases in workers' remuneration, other than service increments, for the life of the agreement (4 years), nor does it provide award conditions such as overtime and penalty rates. With respect, it cannot be said that the interests of the employees are being held constant. On the contrary, the direct care workers are being required to reduce their standard of living in order to make up the funding shortfall in the provision of services to people with disabilities. The LHMU questions how this is seen as being in the public interest. Is the common good served when the disability sector has to compete for funding against other government priorities and then, within the sector, compete for division of inadequate funding between people with disabilities, their service providers and the paid workforce?

Example 2:

The following illustrates the kind of salary review clause that in this union's opinion is unacceptable and is counter-productive in encouraging worker recruitment and retention. This clause is in Multiple Sclerosis Society of WA (Inc)'s current, non-union negotiated enterprise agreement. This agreement is for a period of 5 years, provides for an hourly pay rate of \$16.05 for a carer and makes no guarantees of any wage increases during the life of the agreement:

Annual Salary Reviews

- a) *The salary rate of each employee shall be reviewed each year with any increase to take effect from the first pay period commencing on or after the review. Annual pay increases shall not be automatic and shall be subject to the employee's demonstrated efficient performance over the preceding twelve months. The annual review will also have regard to other factors including increases approved under the Australian Fair Pay Commission Decision and the financial position of the Society.*
- b) *Where an Employee is not granted an annual salary adjustment for work performance reasons, those reasons shall be stated in writing to the Employee.*
- c) *The parties shall review the salary rates in this Agreement should they fall below the Australian Fair Pay and Conditions Standard.*
- d) *Any disputes concerning annual salary reviews may be dealt with under Clause 14 – Grievance Procedures.^x*

Example 3:

It is becoming increasingly common for people with disabilities or their representatives to enter into a direct employment relationship with carers. These arrangements are usually facilitated through a service provider such as My Place Foundation Inc. The standard employment contract used describes the arrangement as "private and domestic." This is a misnomer. The care provided generally includes not only domestic care (cooking, cleaning, laundry) but also personal care (bathing, dressing, toileting) and other care (administering medications, medical procedures, managing challenging behaviour). The characterisation of workers employed under

these individual contracts as 'domestic' has significant adverse industrial significance in Western Australia:

1. As the employer is not a constitutional corporation WA's Industrial Relations Act 1979 applies.
2. Section 7 of the Industrial Relations Act 1979 defines an employee for the purposes of the Act. A person engaged in domestic service is expressly excluded as an employee and is denied the protections afforded by that Act.
3. As a consequence of this exclusion, the union has no right of entry to hold discussions with the employee, thus rendering the employee "invisible."
4. Section 3 of the Minimum Conditions of Employment Act 1993 (WA) defines an employee as a person within the meaning of an employee as defined by the Industrial Relations Act 1979. As the IR Act excludes persons engaged in domestic service, this has the effect of denying the employee the right to the minimum conditions of employment. The current adult base hourly rate in WA is \$15.45 per hour however this union is aware of unqualified persons being employed under this arrangement, who provide care, and are being paid an hourly rate well below the minimum hourly rate.
5. Employers are not obliged to make superannuation guarantee contributions for workers employed to do work of a domestic or private nature for 30 hours per week or less. In most cases this means the workers do not have superannuation contributed on their behalf.
6. The salary sacrificing benefits available to employees of public benevolent institutions are not available to care workers employed directly by people with disabilities or their representatives.

Example 4:

The use of host families is an alternative to the 'private and domestic' contractual arrangement described in Example 3. Under this arrangement a carer ("host family") contracts with a service provider or the person with disabilities directly to provide respite care in the carer's home. The carer receives a non-taxable expense reimbursement (refer ATO private ruling TD 2004/75) in recognition of the additional expenses, stress, upheaval and disruption to normal life. The carer receives payment ranging from \$150 per day to an hourly rate equivalent to that paid to a casual employee. The service provider provides personal sickness and accident and public liability insurance cover for the carer. The carer has no job security, no workers' compensation cover, no access to employer superannuation benefits, and is liable for all the costs of care (electricity, water, heating, food etc).

ADDRESSING THE PRODUCTIVITY COMMISSION'S QUESTIONS

How can workers be attracted to the industry? What role should the Government play in this process?

1. Provide sufficient ongoing funding to ensure that workers are remunerated appropriately for work of equal or comparative value.

Recent research commissioned by National Disability Services WA found that disability workers employed in the non-government sector are paid 13% to 26% less than in the government sector for the same work.^{xi} Similar findings were made by the Queensland Industrial Relations Commission in *Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and industry Limited, Industrial Organisation of Employers and Others (A/2008/5) [191 QGIG 19-59]*.

In Western Australia to align the non-government sector to the wages received by workers in equivalent positions in the government sector will require increases to:

- A minimum of \$20 average base hourly rate for unqualified support workers;
 - A minimum of \$25 average base hourly rate for qualified (Certificate IV) social trainers; and
2. Standardise workers' conditions of employment other than wages nationally across the sector by, for example, providing comparable allowances, overtime rates and entitlements (e.g. annual leave, personal leave and long service leave).
 3. Quarantine the component of funding for wages and pay it to those providers who demonstrate through registered industrial agreements that the benchmark rates of pay are being paid to their workers.
 4. Ensure that the indexation component of funding for wages flows through to workers' rates of pay via appropriately worded registered industrial agreements.

It is important to note that in Western Australia external service providers' funding is indexed annually by the Western Australian Non-Government Human Services Sector Index, a composite index based on projected wage price growth and the consumer price index. It is not a requirement for the providers to increase their workers' rates of pay by the wage indexation component of their annual funding. Without a requirement for the workers' pay rates to be automatically indexed it is inevitable that the disability sectors' levels of remuneration will continue to fall below market rates of pay. In the LHMU's experience providers often do not pass on the indexed wages component of funding and therefore it is recommended that the government mandates it as a prerequisite condition for funding.

What role should government play in upgrading the skills and training opportunities available for workers? What is the appropriate level of training required before commencing work in the industry?

1. Clearly define and mandate pre-entry qualifications at the Certificate III level or through recognized prior learning through formal and informal qualifications, professional and life experience.

In Western Australia there are no mandated pre-entry qualifications required to be employed as a direct care worker in the non-government disability sector. In other community sectors, such as the aged care sector, it is generally necessary for new entrants to hold relevant qualifications

prior to engaging in direct care work. With an increasing complexity of care levels for people with disabilities, higher expectations from service users and growth in community-based and in-home care delivery, direct care workers are often placed in demanding situations without immediate support.

2. Mandate induction of new workforce entrants to the sector on matters such as occupational health and safety, and wages and working conditions.

Most workers in the sector are employed on a part time or casual contract, often work in isolation and are not members of a union. It is essential that disability sector unions and care workers are given the opportunity to meet and discuss worker and industry issues in a collegiate environment. It is recognized that the de-institutionalization of people with disabilities has produced some good outcomes however a consequence is the disempowerment of support workers:

If home care is to be defended as a profession, it needs occupational and professional organisation of home care workers. If these organisations are weak, for instance because most home care workers have part-time jobs or are not members of a trade union, they will not succeed in maintaining professional cohesion or professional ethic and will lose their institutionalized power (Knijn & Verhagen 2007, p. 469).^{xii}

3. Provide dedicated funding to encourage workers to gain recognised paid qualifications through payment of educational institution's fees and paid study leave.

To increase the skill and knowledge base of the workforce there is a need for on-going training in response to changes in knowledge, new models of delivery of services and changing clients' needs through in-house refresher courses, and by encouragement to gain higher qualifications (Certificate IV and Diploma).

Ensuring that the workforce is appropriately skilled and up skilled is expensive. As noted earlier there were 108 external service providers funded in WA in 2008/09. In 2009/10 the number of service providers increased to 115. This level of fragmentation within the sector combined with inadequate funding levels and high levels of demand can result in providers, particularly smaller providers, not having the financial resources available to provide the minimum acceptable levels of training required.

4. Standardise pay scales and classifications that recognise and reward qualifications and experience.

A well-defined career structure provides a clear pathway for recognition and promotion and allows workers to transfer their skills across agencies. It encourages a sense of belonging, in turn improving retention rates within the agency and industry. Pay scales and classifications that recognize and reward qualifications and experience need to be standardised and applied consistently across the sector through registered industrial agreements.

What role is there for national accreditation?

The LHMU does not support national accreditation of the workforce. It is an unnecessary barrier to entry to the industry and is an additional impost and administrative burden.

What scope is there for productivity and efficiency gains in the sector?

The provision of services to people with disabilities is labour intensive and there is little scope to achieve labour productivity savings without compromising service delivery. From this union's perspective the recurrent expenditure savings government makes by privatising service delivery is almost entirely generated by eroding workers' wages and conditions and not through the private sector being able to provide the same services more cost efficiently than the government sector. If there are gains to be made in the sector *so that extra funding results in more and/or better services rather than paying more for the same service* then it should not be at the paid workforce's cost.

Other

1. Develop data collection specific to the sector's workforce needs to inform stakeholders.

Professional recognition requires, in part, an understanding of the size and characteristics of the disability sector workforce.

There are scant data held on the disability sector workforce. While jurisdictions generally keep data on government-employed disability sector workers, there is no comprehensive information about the non-government employed workforce. ... This gap in data significantly limits the ability of the sector to understand the nature of its workforce and to plan for the future. It represents a central barrier that must be addressed before the sector can trial and measure the success of initiatives to boost and maintain a healthy workforce^{xiii}

References

ⁱ Making it Fair. Pay Equity and Associated Issues Relating to Increasing Female Participation in the Workforce. House of Representatives Standing Committee on Employment and Workplace Relations. Canberra. November 2009.

ⁱⁱ Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and industry limited, Industrial Organisation of Employers and Others (A/2008/5) [191 QGIG 19-59]

ⁱⁱⁱ *We Can Association Incorporated Enterprise Agreement* [2010] FWAA 5107 (Unreported, Fair Work Australia, Cloghan C, 12 July 2010)

^{iv} Barbara Gatter & Associates, Review of i.d.entity.wa's Direct Care Staffing and Shift Structures. Unpublished. 2008.

^v Transcript of Proceedings, *We Can Association Incorporated Enterprise Agreement* (Fair Work Australia, Cloghan C, 10 June 2010) [2010] FWAA 5107

^{vi} Transcript of Proceedings, *We Can Association Incorporated Enterprise Agreement* (Fair Work Australia, Cloghan C, 10 June 2010) [2010] FWAA 5107

^{vii} Transcript of Proceedings, *We Can Association Incorporated Enterprise Agreement* (Fair Work Australia, Cloghan C, 10 June 2010) [2010] FWAA 5107

^{viii} ^{viii} *We Can Association Incorporated Enterprise Agreement* [2010] FWAA 5107 (Unreported, Fair Work Australia, Cloghan C, 12 July 2010)

^{ix} *We Can Association Incorporated Enterprise Agreement* [2010] FWAA 5107 (Unreported, Fair Work Australia, Cloghan C, 12 July 2010)

^x Multiple Sclerosis Society of WA (Inc) Collective Agreement 2008, Clause 9(2)

^{xi} William Buck, Business Advisers and Chartered Accountants. Independent Analysis of Salaries and Wages Paid to Support Care Workers. November 2009.

^{xii} Knijn, Trudie & Verhagen, Stijn. Contested Professionalism Payment for Care and the Quality of Home Care. *Administration & Society*, Volume 39 Number 4. July 2007.

^{xiii} National Disability Administrators & K.P.M.G. (2006). Investigation into disability workforce capacity issues. Research Report. Pg 2.