



# Submission – Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022

## About National Disability Services

National Disability Services (NDS) is Australia's peak body for non-government disability service organisations, representing over 1,000 non-government service providers. Collectively, NDS members operate services for Australians with all types of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. We have a diverse and vibrant membership, comprised of small, medium, and larger service providers, supporting thousands of people with disability. Our members collectively provide a full range of disability services, from supported independent living and specialist disability accommodation, respite, and therapy, to community access and employment. NDS is committed to improving the disability service system to ensure it better supports people with disability, their families, and carers, as well as supports building a more inclusive community.

## About this submission

NDS is pleased to make a submission to the Education and Employment Legislation Committee as part of its inquiry on the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (the Bill)*.

We support the Bill's stated intent to improve the workplace relations framework however we are also deeply concerned about the lack of consultation and potential unintended consequences of rushing reforms to Australia's workplace relations framework of this magnitude through the Parliament without consultation with employers and employer groups in our sector.

In the timeframe available this submission focusses on Parts 13, 20, 21 and 22 of the proposed Bill, however there are likely to be other areas that are relevant to our members.

## **State of the Disability Workforce**

The disability sector is one of the largest and fastest growing in Australia. This has been driven significantly by growth in the National Disability Insurance Scheme (NDIS). It is estimated that an additional 83,000 workers (or a 31 per cent increase in current workforce size) will be required across the NDIS sector by 2025 ([NDIS National Workforce Plan 2021-2025](#)). This is against consistently high turnover rates which see many workers leave the sector each year. In fact, it is anticipated that the NDIS will lose approximately 213,000 workers by 2025 ([NDIS National Workforce Plan 2021-2025](#)). When considered together the challenge facing the sector to attract, recruit and, importantly retain workers is considerable.

Disability service providers consistently report workforce as being their most pressing issue and this has only been exacerbated by COVID-19. In 2021, providers who responded to the NDS Annual Market Survey (see [State of the Disability Sector Report 2021 \(nds.org.au\)](#)) reported a dramatic rise in difficulty in recruiting disability support workers with this increasing to 70 per cent compared to 59 per cent in 2020. Given that significant amounts of core daily living supports are provided by disability support workers, in real terms this means that some people with disabilities were not able to access the daily support that they need.

Against this backdrop, we are concerned that significant changes to the workplace relations framework are being proposed without due consultation with or consideration for the impact on disability service providers, the disability workforce and, most importantly, the delivery of safe and high quality supports to people with disability.

## **Part 13 – Sunsetting of “Zombie” Agreements**

Part 13 of the Bill amends the Fair Work Transitional Act to sunset all remaining transitional instruments currently preserved by that act. This includes agreement-

based transitional instruments and enterprise agreements (also referred to as zombie agreements).

Our understanding is that these would automatically sunset at the end of the grace period for the agreement, to a default of 12 months, and would require employers to give affected employees notice of automatic sunset within six months of commencement. If a replacement enterprise agreement is not in place by the time of automatic sunset, a modern award may apply from that time or employer organisations may be required to enter into a bargaining arrangement.

Whilst we are not opposed to the intent of this amendment to the legislation, which would help ensure workers are paid under modern award conditions and/or under the better off overall test (BOOT), we are concerned by the timing of these changes on a sector that is already grappling with significant and ongoing reform.

The disability sector is poised to respond to the recommendations and findings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC), which is due to report in September 2023, as well the Independent Review Panel's report on the NDIS Review, due to report in October 2023.

Presumably, if enacted and depending on when the Bill receives Royal Assent, the changes outlined in Part 13 may also come into force in the latter half of 2023.

We are therefore deeply concerned about the sector's capacity to respond to and adapt to changes in the workplace relations environment, concurrent to other major reform work underway that is specific to the disability sector and that is likely to directly impact the supports being provided to people with disabilities. Ensuring that the extension provisions proposed are appropriate with streamlined and timely application processes will be critical.

## **Part 20 – Supported Bargaining**

Part 20 of the Bill would reform low-paid bargaining provisions in the Fair Work Act and create a supported bargaining stream, intended to assist those employees and employers who may have difficulty bargaining at the single-enterprise level. This includes those in low-paid industries including disability care, or those who face barriers to bargaining, such as employees with a disability, who may lack the skills, resources, and power to bargain effectively.

Again, whilst we are not necessarily opposed to the intent of this provision, without adequate consultation with the sector we are concerned about unintended consequences and difficulties with implementation of these changes within a sector that is already under considerable stress.

## **Part 21 and 22 – Single Interest Employer Authorisations**

Parts 21 and 22 would amend the Fair Work Act to remove limitations on access to single interest employer agreements.

While the changes proposed aim to streamline and remove barriers for single interest agreements for employers and facilitate access to single interest bargaining, we are concerned that the broad definitions of common interest proposed which include the nature of enterprises, terms and conditions of employment, geographical location and common regulatory regimes, could see disparate employers with varied operating conditions, possibly across different sectors be pulled into a common agreement. This is particularly relevant given that services or activities that appear similar on the surface are often government funded and bound by specific government agreements with fixed funding.

For providers operating in the NDIS, which is the majority of our members, prices are fixed meaning the capacity of disability employers to adjust to changes in wages, terms and conditions is limited. The NDIS Quality and Safeguards Commission and NDIS processes and procedures also require disability service providers to appropriately respect the decisions and wishes of the NDIS participants that they are supporting. This requires employers to balance the needs of their employees with the wishes of their 'customers' in ways that do not yet apply in other industries including the community services sector.

A simple example of this scenario would be organisations operating in a geographic area providing respite accommodation to children and young people. The nature of these enterprises could be considered similar however one organisation could be funded under a state or territory-based government contract, and another could be funded through the NDIS. Negotiated terms and conditions including wages, minimum engagement periods, notice of roster changes for example will affect these two employers differently. Consequently, any adjustment to the workplace relations

framework would need to be undertaken with a commitment to adjust any cost and implications for the sector through NDIS pricing.

There are also concerns that broadening the scope of single interest agreements could extend opportunities for protected industrial action. While this is the case under current legislation, the likelihood that more employer organisations will be covered under this stream could see increased interruptions to supports and services due to industrial action.

As noted, the disability sector is experiencing significant workforce shortages and as such are already competing with other sectors to attract and retain workers, with many relying on negotiating employment arrangements that meet the needs of the community that they are supporting and their specific workforces to differentiate their employee value proposition. Employers have noted that single interest agreements could have the perverse effect of making the disability sector and individual organisations less attractive to prospective and existing workers.

## **Conclusion and Recommendation**

For disability service providers, the operating environment is complex. Unlike the commercial world, price and processes to a large extent are set by the NDIS, leaving little room for the disability sector to adjust and respond to increased operating costs. The timeframe for the introduction of the Bill has allowed little time for employers and employer groups, and indeed other stakeholders, to fully consider, model, and explore the implications of the changes proposed.

We urge the Senate Committee to recommend that passage of the legislation is either delayed or that contentious elements of the Bill are split from the current legislation. This would allow more time for consultation with the disability sector to ensure there are no unintended and negative consequences arising from the proposed changes to the workplace relations framework that could affect the quality, safety, and sustainability of services to people with a disability.

It is not clear to us that there has been any consultation with the disability sector on exposure draft legislation before it was introduced in Parliament. Further, whilst this Senate Committee inquiry provides one avenue to comment on the legislation, the

timeframes required to examine the Bill and submit a response prohibit meaningful engagement with service providers and the wider sector.

**November 2022**