

**SUPPORT
DISABILITY** 

SUPPORT

WORKERS

Health Services Union

RESPONSE: Consultation on Disability Royal Commission Response

Royal Commission into Violence,
Abuse, Neglect and Exploitation of
People with Disability

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This submission has been authorised by:

Tim Jacobson, Acting National Secretary, Health Services Union

For questions regarding this submission, please contact:

Andie Moore, National Policy and Projects Officer, Health Services Union

m. 0488 576 342; e. andiem@hsu.net.au

About the HSU

The Health Services Union (HSU) is one of Australia's fastest growing unions with over 95,000 members working in the health and community services sectors across the country.

Our members work in aged care, disability services, community health, mental health, alcohol and other drugs services, private practices and hospitals. Members are health professionals, paramedics, scientists, disability support workers, aged care workers, nurses, technicians, doctors, medical librarians, clerical and administrative staff, managers and other support staff.

HSU Disability Coverage

The HSU is the primary disability services union in Victoria and Tasmania, representing support workers at the frontline of service delivery. Furthermore, the HSU represents allied health professionals in every jurisdiction, including those engaged in providing services to National Disability Insurance Scheme (NDIS) participants.

Additionally, we represent a number of disability support workers in New South Wales (NSW), Western Australia, South Australia, Queensland and the Australian Capital Territory (ACT); however, the HSU is not the primary union for direct disability support workers in those jurisdictions.

Our broad disability membership across a range of professions gives us a unique insight into the rollout of the NDIS, how the Scheme is interfacing with other mainstream services and the market and workforce issues critical to the Scheme's success.

Overview

The Health Services Union welcomes the opportunity to respond to the recommendations of the Disability Royal Commission (hereafter DRC). The Royal Commission findings are the result of years of in-depth consultation, fact-finding and truth-telling and tell a harrowing story about how far Australia has to go to end structural ableism and achieve genuine equality for people with disability.

The HSU believes that the recommendations of the DRC are best taken in conjunction with the recommended actions of the NDIS Review. Together, they can form a roadmap for lasting reforms that support the full participation and inclusion of people with disability.

While the HSU supports some of the DRC's key recommendations, other headline recommendations require further detail to be fully effective, or while well-intentioned, may have adverse effects on people with disability and workers that support them:

- **A worker registration scheme requires minimum qualifications** (applied proportionate to risk, with appropriate transitional arrangements, recognition of prior learning and experience) in order to lift wages and conditions and expand career pathways in the NDIS.
- **Greater transparency and regulation of unregistered providers requires a risk-proportionate registration scheme** applying to all publicly funded providers and brokers of NDIS supports.
- **Recommendations to phase out group homes appear to restrict, rather than expand, the housing and living options** of people with disability. Without appropriate planning and consultation, their implementation risks undermining the conditions and livelihoods of thousands of workers at odds with its aspirations of a fairly remunerated workforce.

Our response below details these considerations before offering brief comments on other recommendations affecting workers in the final report. We look forward to working with the Government, community, and people with disability to ensure meaningful change that leaves no person with disability or worker behind.

Encouraging workers to enter and remain in the disability support sector (10.8-10.9)

Worker registration

The HSU supports **Recommendation 10.8**. Worker registration is critical to professionalising disability support work, and the HSU has been a strong supporter of worker registration, with our Victorian No. 2 branch, the Health and Community Services Union (HACSU), having played a pivotal role in setting up Victoria's disability worker registration scheme.

Recommendation 10.8 rightly recommends that consultation on the design of a worker registration scheme should begin as soon as possible. Considering the limited uptake of worker registration in Victoria's voluntary scheme, we agree that the Government should consider mandating worker screening and CPD requirements. Portable leave entitlements should supplement the scheme.

We agree that the design of a scheme should consider "recognition and accreditation" of workers' qualifications but urge the Government to go further: Consultation should also consider risk-proportionate qualification requirements for disability support work, and how provisional registration pathways, recognition of prior learning, industry and lived experience can ensure quality supports and a quality workforce does not come at the expense of labour supply.

We advocate this as only full qualifications can enable workers to be recognised for their skill through reclassification in the Award system and provide clear pathways to achieving higher qualifications.

Recognition of specialist skills and roles (e.g. disability practitioners) should also fall within the consultation's scope. Minimum qualifications would also effectuate Royal Commission recommendations of enhanced training requirements for providers.¹

We suggest that consultation is based on a mandatory, national version of the Victorian disability worker registration scheme, Australia's only disability worker registration scheme. We urge the Government to open consultation ASAP.

Regarding a portable training entitlement, the HSU offers qualified support. Careful consideration is required if a portable training scheme is designed to ensure employers retain their legal responsibilities to fund and support workers to undertake training regardless of any government workforce initiative. Workers must also be supported to achieve full qualifications rather than collections of unstackable micro-credentials.

Variations to the *Social, Community, Home Care and Disability Services Industry Award (SCHADS Award)*

We support **Recommendation 10.9** and are pleased the DRC has recognised the inequities in the SCHADS Award, notably the loophole through which disability support workers have been misclassified and paid lower wages as home care employees. The recommendation recognises that the delivery of good quality supports relies on an appropriately trained and remunerated workforce.

We would also draw attention to the sleepover allowance, which the DRC did not touch on. The sleepover allowance in the SCHADS Award compensates support workers for only 4.9% of the standard rate (a total of around \$56) when required to stay overnight at the premises where a client they are responsible is located (including respite care), with usual overtime hourly rates only payable where a worker is required to perform active work during a shift over one-hour duration.

Sleepover shifts create immense anxiety among workers and lead to burnout. Workers struggle to sleep well because they are still required to respond if necessary and are legally responsible for the safety and care of multiple clients in a home. There is a high level of disruption to sleepovers, requiring active engagement that prevents the ability to wake rested. This causes work such as administering medication, personal care, and transport to be carried out by exhausted staff, risking the health and safety of participants and workers.

The extremely low allowance does not compensate workers for the disutility of being required to spend nights away from their own homes and families, falsely assumes they can get a full night's rest at the client's premises and reflects the historical gendered undervaluation of support work generally.

We hope that as part of the Award review process, the industry and Government might work collaboratively with unions to close these loopholes, fix the Award and lift the wages and conditions of support workers.

Phasing out group homes (7.43-7.44)

We acknowledge recommendations to phase out group homes within 15 years, or over a generational timeframe, and the lived experience and testimonies of PWD who have testified before the DRC.

It is unacceptable that some participants have been forced to live in group homes because there were no alternatives available. We wholeheartedly agree that people with disability deserve more innovative housing options and stricter regulation of group homes and boarding houses.

¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 10, Disability Services* (Brisbane, 2023), p. 335.

The HSU has long-standing coverage of workers in group homes. The issue of segregated housing requires a considered policy approach which expands the housing options that people with disability can choose between. We do not support **recommendations 7.43 and 7.44**, which seek to reduce the housing and living options available for people with disability to choose.

The NDIS Review recommends redefining reasonable and necessary housing and living supports based on an average support ratio of 1:3 (action 8.1), envisioning greater uptake of “share house” living arrangements. Given this, *“there is therefore no longer a need for new SDA dwellings of four bedrooms or above, other than where this is the choice of participants.”*² While this suggests that those group home residents should reserve the right to retain group living arrangements if they suit them, it also implies that those not already living in SDA dwellings would be denied that choice.

Some NDIS participants may prefer to live in these larger residential settings and should not have that choice taken away from them. The choice of all participants living in group homes should be expanded rather than reduced: participants should have the right to seek housing that is a better fit for them or continue to live in the housing arrangements they are comfortable with.

Unintended consequences

The closure of group homes has unintended consequences for participants and workers:

- **Disruption and fragmentation of supports:** As individual dwellings support fewer residents, workers who previously worked in one home with a group of participants may be spread across numerous homes. This reduces the number of staff required to work in the home and decreases the likelihood that participants will be supported by a worker they are familiar with, potentially disrupting continuity of supports and diminishing natural safeguards.
- **Further casualisation:** As work becomes decreasingly tied to a single group of participants, support workers are more likely to be spread across numerous homes and multiple providers to make ends meet. This fragmented support work lends itself to casualised labour arrangements, making a precarious workforce even more insecure. In the long run, this will only further constrain the quality of disability supports and the choice of participants. In Victoria alone, over 500 sites will be impacted by these recommendations.
- **Workforce issues:** With a reduction in the number of people being able to live together in a group home, there is an increase in the number of sites that support workers are required to work across. The current shortage of disability support workers and the resultant working arrangements identified above will be exacerbated by this change.
- **Anxiety and burnout for support workers:** Arbitrarily tying a move away from group homes to a fixed time period risks rushing changes without providing certainty to workers about the future of their employment – workers who are already stressed, fatigued, over a quarter of whom are considering leaving the sector within five years.³
- **Poorer working conditions:** In Victoria, workers in group homes formerly operated by the state Department of Families, Fairness and Housing are employed under the *Disability Services Enterprise Agreement Victoria 2018 (DSEAV)*.⁴ These workers enjoyed substantial workplace entitlements when they were employed by the Victorian Government that are not found elsewhere, not limited to sleepover allowances over double that provided in the Award,

² NDIS Review, *Working Together to Deliver the NDIS - Final Report* (Canberra: Department of the Prime Minister and Cabinet, 2023), p. 150.

³ HSU, *Submission: Review of the National Disability Insurance Scheme* (Canberra: Department of the Prime Minister and Cabinet, 2023).

⁴ *Disability Services Enterprise Agreement Victoria 2018-2022* <<https://hacsu.asn.au/file/37316/14376>> [accessed 18 January 2024].

qualifications allowances, relocation allowances, training shift allowances, maximum shift lengths, supervision ratios, consultation rights over roster reviews, permanent care and pre-natal leave, as well as improved long-service, family violence and parental leave entitlements.

All these entitlements were retained by HACSU in the DSEAV when services were transferred to the not-for-profit sector in 2019 and continue to apply to around 7000 group home workers in those outsourced providers. If these providers close existing group homes against the will of participants, those workers will inevitably be either left with fewer entitlements on a different enterprise agreement, on the Award, or worse, without a job.

Implementation detail

Ensuring the choice and control of participants who would prefer to continue living in the same home will require adequate funding so it remains financially viable. Otherwise, as houses reduce their occupancy to three residents, they will eventually be forced to close, removing the choice and control of those people. This is already occurring across the sector.

Several opportunities exist to fund and sustain collective living environments for participants who prefer them by converting additional bedrooms to improve functionality and options for residents:

- **For workers:** into a sleepover room separate from the office, equipment storage or break rooms.
- **For residents:** into a sensory room, quiet space, or media room.

A housing system that allows people with disability to thrive and live on their own terms with meaningful choice and control does not have to trade off the livelihoods of an undervalued, casualised and feminised workforce. Any transition away from group homes must sustain adequate funding to avoid closures and provide workers certainty of funding, support, and entitlements.

A just transition for workers and participants can be synchronised with changes already recommended in the NDIS Review, such as trial periods for participants to explore different living options (action 8.3) and vacancy payments (action 9.2).⁵

Strengthening monitoring, compliance and enforcement (10.21-10.23)

The HSU has long called for greater monitoring, compliance, and enforcement in providers. Collecting data about unregistered providers and strengthening regulatory requirements within the NDIS rules and practice standards are welcome first steps in lifting quality and safeguards in providers.

We firmly believe these recommendations must be accepted in conjunction with the NDIS Review's recommendations to establish a genuinely risk-proportionate model of mandatory provider registration.⁶ At this stage, the only data the NDIS Commission can collect from unregistered providers relates to serious incidents and complaints.

Implementation detail

Taken on their own, recommendations 10.21-10.23 do not extend far enough. Greater data collection requires regulatory capture of all providers, intermediaries and platforms facilitating NDIS supports

⁵ NDIS Review, *Working Together to Deliver the NDIS: Independent Review into the National Disability Insurance Scheme - Final Report Supporting Analysis* (Canberra: Department of the Prime Minister and Cabinet, 2023), pp. 606–10.

⁶ NDIS Review, *Working Together to Deliver the NDIS - Final Report*, pp. 212–15.

by a mandatory, risk-proportionate provider registration scheme that at least ensures universal oversight. We urge the Government to pursue mandatory, risk-proportionate provider registration to ensure these recommendations can be fully implemented.

Other key recommendations

Volume 4: Realising the Human Rights of People with Disability

- *An Australian law to recognise the human rights of people with disability (4.1-4.4)*
- *Protecting Disability Rights through the Disability Rights Act (4.5-4.9)*
- *Strengthening the Disability Discrimination Act (4.23-4.34)*

The HSU supports the above recommendations that seek to ensure effective legal protections and entitlements for people with disability and build on foundational protections in the industrial system.

Volume 5: Governing for Inclusion

- *A new National Disability Agreement (5.1)*
- *Establishing a National Disability Commission (5.5)*
- *Australian Government governance arrangements for disability (5.6)*

The HSU supports the above recommendations, which would ensure consistent and comprehensive responsibilities across governments for eliminating discrimination against and maximising inclusion for people with disability.

Volume 6: Enabling autonomy and access

The HSU supports the below recommendations:

- *Cognitive disability health capability framework (6.24-6.26)*
- *Clinical placements for students and trainees (6.28)*
- *Post graduate training and continuing professional development (6.29)*
- *Specialised services (6.33)*
- *Navigating the health system (6.34)*

The HSU is pleased to see a focus on expanding a specialist cognitive disability health workforce in the Disability Royal Commission. HSU members have previously called for expanded dual-diagnosis capabilities, and as of 2022, Victoria only had eight dual-diagnosis mental ill-health and disability beds.⁷ All of the above measures point to a more collaborative health system with a preventative approach and the need for specialist, professional expertise in the disability sector.

- *Stronger legal frameworks for restrictive practices (6.35-6.36), targets and performance indicators (6.40)*

The HSU supports minimising restrictive practices and supports Recommendation 6.35 to provide greater oversight and regulation of restrictive practices.

Regarding recommendations 6.36 and 6.40, any recommendations pertaining to the reduction or elimination of restrictive practices must consider the health and safety of others, including workers, and involve in-depth consultation with the workforce.

⁷ HACSU, *Disability Support Plan: Securing the Future for Disability Support Professionals* (Carlton: HACSU, 2022) <<https://hacsu.asn.au/file/71930/33309>> [accessed 12 January 2024].

6.36 also refers to both health *and* mental health settings. Recommendations applying to the mental health sector require specific consultation with that sector, given that states and territories already have sector-specific regulation of restrictive practices with separate established guidelines, governance systems and governing principles,⁸ some having finalised their own Royal Commissions.

The broader discussion around reducing or eliminating restrictive practices must also consider the levels of resourcing required to safely manage levels of occupational violence. While this is already required by WHS law in each jurisdiction, the funding of health and disability services is often poorly coordinated with WHS obligations.

Volume 7, Part B: Inclusive Employment

- *Raising subminimum wages (7.31)*

The HSU agrees with this long-overdue recommendation that ensures all workers receive dignified, humane wages.

Volume 7, Part C: Inclusive Housing

- *Safety in supported residential services and their equivalents (7.38)*

The HSU endorses this recommendation. We believe this is best implemented within a new risk-proportionate provider registration scheme as recommended by the NDIS Review.

- *Access to alternative housing options (7.42)*

The HSU supports recommendation 7.42. Reform of funding models in housing and living is urgently required, and we note the NDIS Review's recommendations of an enrolment-based funding model for housing with vacancy payments that would ensure provider viability and participant flexibility.⁹

The HSU agrees that evidence on best practice and new market mechanisms are essential to supporting alternative housing options. Supporting individuals to access supportive home and living supports through individual transition plans and dedicated "high need" pathways is also critical.

The principle of these recommendations is to ensure participant agency in housing choice. The transition pathways must be made available to participants in group homes affected by recommendations 7.43 and 7.44, with participants reserving the right to stay in a home or living arrangement they feel comfortable in, if that is their choice.

Volume 9: First Nations People with Disability

- *A community-based approach and alternative funding models (9.5-9.9)*
- *Growing the First Nations disability workforce (9.13)*

The HSU welcomes the DRC's recommendation of a new funding approach for Aboriginal community-controlled health organisations, which is culturally sensitive and allows providers to fund disability supports more sustainably, as well as recommendations to invest and develop the remote disability support workforce. The HSU would add that proactively involving unions in workforce development plans and equipping them to bargain is crucial in establishing conditions to incentivise workforce attraction and retention.

⁸ E.g. *Mental Health and Wellbeing Act 2022 (Vic)*.

⁹ NDIS Review, *Working Together to Deliver the NDIS: Independent Review into the National Disability Insurance Scheme - Final Report Supporting Analysis*, pp. 782–84.

Volume 10, Part A: Disability Services

- *The role of support coordinators and independent advocates (10.2-10.5)*

The HSU supports the recommendations regarding support coordination. We have consistently advocated for greater regulation of support coordination to eliminate conflicts of interest, ensure consistent quality of advocacy services and broader access to advocacy services as an effective natural safeguard.

Funding for support coordinators for at least monthly face-to-face contact is also a welcome recommendation. This recommendation is significant for group homes and living arrangements with higher safeguarding requirements, where HSU members observe that few support coordinators get to meet their clients and participants rarely see them in person.

We note the NDIS Review's recommendations to replace support coordinators with "navigators" engaged directly by the NDIA. The HSU prefers this proposal over reforming support coordination. Bringing support coordination within the stewardship and oversight of the NDIA ensures intermediaries effectively support participant outcomes and that good governance and compliance are adhered to.

- *Provider of last resort scheme (10.10)*

The HSU welcomes this recommendation and has long called for a comprehensive provider of last resort scheme, which can include commissioned or block funding to providers where markets fail. We encourage governments to consider direct state or federal government provision of services where private providers cannot be sourced.

Volume 10, Part B: NDIS Commission

- *Controlling volume of reportable incidents to focus on risk (10.12)*

The HSU supports this recommendation in principle as it may reduce the time required for staff performance management in less critical disciplinary and safeguarding matters. The detail of how a demonstration of "competence" is attained must involve union consultation.

- *Improving provider safeguarding practices (10.14-10.17)*

The HSU agrees with the need to improve provider safeguarding but is gravely concerned that recommendations 10.14 and 10.15 allow providers to be consulted but not workers or unions.

Unless workers are actively involved in their co-design, model policies and procedures "for frontline workers" risk duplicating the many already-existing safeguarding policy documents that guide workers on best practice but fail to equip them to implement it (through funding or regulatory protections).

Worker consultation is critical to improving safeguarding practices. The framing of these recommendations risk pushing the positive duties of providers onto frontline workers and overlooks the intersections between safeguarding non-compliance industrial and WHS non-compliance.

- *Improving complaint processes (10.18-10.20)*

The HSU welcomes this recommendation but would also encourage the NDIS Commission to investigate whistle-blower protections and support workers to speak out around safeguarding as part of a "strategy for 'hard to reach groups'".

Volume 11: Independent oversight and complaint mechanisms

- *Independent complaint reporting, referral and support (11.3-11.4)*

The HSU supports this recommendation. We note that the Victorian Disability Worker Commission already retains a “one stop shop complaint reporting” function as part of its state-based worker registration scheme. This scheme should be expanded nationally based on a positive, national worker registration scheme incorporating proportionally applied qualification and CPD requirements.

Next steps

The HSU looks forward to working with the community, industry and Government in implementing transformative change to the sector that leaves no person with disability or worker behind and does justice to the testimonies heard by the Royal Commission. As next steps forward:

1. We encourage the Government to carefully consider the Royal Commission’s recommendations in conjunction with the NDIS Review and their full implications.
2. We urge the Government to meaningfully engage with support workers on recommendations that affect them every step of the way.
3. As a matter of priority, to quote **recommendation 10.9**, “*consultation about the scope and elements of the national disability support worker registration scheme should begin as soon as possible*”. We again request that consultation centres on a national, mandatory version of Victoria’s disability worker registration scheme, as Australia’s only disability worker registration scheme, and consider risk-proportionate qualification requirements.