



Fair Work Commission finds NDIS is not yet a reason to increase flexibility in the SCHDSI Award

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04 Aug 2017

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In July 2017 the Fair Work Commission handed down a decision regarding part-time and casual employment as part of its review of modern awards.

Employer organisations made submissions calling for a change to the current part-time employment provisions in the *Social, Community, Home Care and Disability Services Industry Award 2010*. They argued that the introduction of the NDIS requires greater flexibility in allocating working hours to part-time employees so that disability service providers can be more responsive to clients' needs. They further claimed that without a change to the award, the demand for individualised services created by the NDIS would result in a casualised workforce.

The Commission decided not to change the award, on the basis that there is no evidence so far that the NDIS has caused part-time employment under the award to be unworkable.

While the Commission acknowledged that some new employees were being employed on a casual basis, it decided that it is too early in the implementation of the NDIS to conclude that there is a permanent trend towards casual employment in the sector at the expense of part-time roles. In what may be a surprise to providers, the Commission took the view that the NDIS lends itself to reasonably predictable workforce planning and that providers will be in a position to limit the extent to which participants can demand the provision of services on a discretionary and unplanned basis.

The Commission's assessment appears to be that the growth in demand under the NDIS will in fact give providers a stronger negotiating position with care-recipients. For this reason, the Commission was not convinced that the award needed to be varied to give providers greater flexibility. The Commission determined that the current award provisions are flexible enough to deal with the NDIS service model. The Commission provided several examples of this:

- the award allows part-time workers to work a certain number of additional hours without overtime penalty rates
- the award does not set a minimum number of hours per week for part-time employees;

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- the award does not impose a minimum shift length for part-time employees;
- the award allows for an employee's pattern of hours to be varied by agreement in writing; and
- while the award requires agreement as to a regular pattern of work and the number of hours to be worked each week, that

does not translate to employees working the same guaranteed hours each week.

The Commission considered that it may be necessary to revise the award to clarify that last point.

The only significant change which the Commission intends to make at this stage is to amend the rostering provisions of the award to allow changes to rosters to be communicated electronically, including by text message.

Obviously, there is room for argument as to the level of flexibility in the award, and it remains to be seen whether the expected increase in the number of individual and micro-providers will significantly affect the market. The Commission accepted that its decision may need to be reviewed after the NDIS is fully implemented. Russell Kennedy will provide further updates if the Commission reviews its decision.

Disability service providers seeking greater flexibility from their workforces should review their contracts, letters of offer and policies to ensure they align with the revised award. Existing arrangements may otherwise restrict an employer's ability to change hours or rosters according to client demand.

It is also important to keep these changes in mind when negotiating any new or replacement enterprise agreement, to allow your organisation to best take advantage of the new clauses.

If you need advice about this decision or getting your workforce NDIS-ready, please contact our [Workplace Relations, Employment & Safety Team](#).

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