



Ministerial Review of the State Industrial Relations system WAI S submission in response to Interim Report March 2018

Background: WA's Individualised Services (WAI S)

Western Australia's Individualised Services (WAI S) is a member-based community organisation working in partnership with people, families, service providers and government agencies to promote and advance individualised, self-directed supports and services for people living with disability, including psychosocial disability.

Since our inception in 2010, we have evolved to become thought leaders in this space, providing comprehensive, intentional support with integrity, passion and authenticity at our core. By leveraging our extensive local, state, and international network, we seek to lead, influence, innovate and inform to create meaningful and lasting change, supporting people to build capacity and live their lives on their own terms.

Unlike any other organisation, we partner and work with all sector stakeholders, as well as providing vital links, ensuring that disability services respond to the unique needs of people. We work to ensure that people can access and navigate the services and the sector to achieve their goals.

WAI S is the only organisation that has a specific focus and purview of supporting and developing the capacity of people, families, service providers, Local Co-ordinators and government, specifically in the area of individualised, self-directed supports and services.

A significant and growing area of our work is providing information and support, to people, families, and service providers, in relation to the legal considerations and obligations for people to design, develop and manage individualised support arrangements, including Homesharer, Co-residency, Host family, Flat-mate, or Mentor. This support extends to models of management such as Self-management or Shared-Management. People who self-manage receive their funding directly from the funder and have the option to privately employ their own workers with this funding. People who share manage work in partnership with a service provider. An arrangement is negotiated and built upon a partnership between the provider and the person to support the person to privately employ their own workers, if they choose this option. WAI S provides information and supports to both providers and people who self or share manage encompassing areas such as Industrial Relations, Taxation, Superannuation, Workers Compensation and Occupational Health and Safety. WAI S provides this support in a variety of methods and formats to ensure responsiveness and accessibility of the information and support by the person, family or provider.



A significant portion of the people WAI S provide information and support to are people with disability or their family members who have chosen to privately and directly employ their own support workers. During the first six months of this financial year alone (2017-2018) WAI S has provided information and support to more than 500 people.

WAI S membership has a focussed group of people/families and service providers who are committed to individualised supports, and people having choice and control in their life. WAI S member organisations have over 20 years' experience in supporting people to privately, and successfully employ their staff in their homes.

WAI S and WAI S members commitment to quality individualised supports ensures the information provided is clear, current and aligns with the policies of governing authorities and legislation. We work with these governing authorities, lawyers and KPMG in seeking advice that feeds into the information we provide.

Not only does this information build confidence in people and providers to design an individualised service, assists them to be the best employer they can be, but it also reduces the risk of employers finding themselves in non-compliant legal situations.

Focus: Private households (people with disability and families) employing workers

The foundation of all modern societies is the acknowledgment of everyone's right to exercise their citizenship by leading and directing their own lives. It is essentially one of the most basic and fundamental elements of being human. This basic right matters to everyone regardless of ability, age, health or experience. The ability to decide how you want your life to be, who you want to be connected to and how you are supported are essential factors that we all understand and expect in our own lives. Across Australia and internationally, there has been a significant shift in how supports are provided to people and Western Australia has had initiatives where people can privately employ their own supports since the early 1990s.

With the introduction of the NDIS across Australia, it means people have the opportunity for increased choice and control with their supports and services. The NDIS is an entitlement, social insurance scheme, not welfare, and the scheme has a lifetime approach to support, investing in people with disability to improve their life outcomes.



Section 3 of the National Disability Insurance Scheme Act (Cth) [NDIS Act] outlines the objects of the Scheme and highlights that the Scheme gives effect, in Australia, to the United Nations Convention on the Rights of Persons with Disabilities (as well as a number of other UN Conventions). Some of the key objects of the Scheme and rights these effect include:

- Supporting the independence and social and economic participation of people with disability;
- Enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
- Promoting the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community.

Section 4 of the NDIS Act, in turn, provides guiding principles for the Scheme, based on these enshrined rights, that include:

- People with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development;
- People with disability should be supported to participate in and contribute to social and economic life to the extent of their ability;
- People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control.

The NDIS, in practice, provides not only the funding for people to obtain individualised supports and services, but it also offers flexibility and choice with which people can manage the funding for their supports to help them achieve their goals and enjoy an ordinary life. The flexibility offered to people to manage their supports includes the option for people to self-manage or share-manage (with a service provider) their funding. With these management options, people with disability or their families are able to privately and directly employ their own support workers. This option offers people the ultimate in choice and control over who their workers are, what they do and how they do it when they are supporting people. For most, this ensures their support workers match their personal preferences and better meet their support needs. Much of the support that workers provide is in and around people's home to support them with personal care, home life and to access and participate in their communities.

WAI S and WAI S members support people and families to be good and fair employers, by providing information and support about what their legal considerations are when they are hiring their own workers. In particular, we provide information in relation to industrial relations, taxation, superannuation, health and safety and workers compensation, as foundational and fundamental legal considerations. As the Review is likely to be well aware, this information is extensive, can be



complex, and could be considerably daunting to someone who has not had exposure to these laws before nor had to apply them. Furthermore, people and families in receipt of NDIS funding can already lead especially stressful lives. The intent of the funding is for it to be used to support people to lead good lives in their community, not to unnecessarily burden them.

WAI S Position

In the context of people with disability and their families privately employing their own support workers, WAI S fundamentally believes that:

1. People with disability and their families also need optimum flexibility to offer their support workers mutually beneficial conditions of employment when their workers are supporting them in and around their private homes; and
2. Support workers are entitled to have fair and reasonable wages and employment conditions.

The impact of the removal of the exclusion will be significant:

1. Not only will it increase the compliance burden on private families and households (as has been raised in prior submissions);
2. It will also –
 - a. Reduce their ability to be flexible and offer mutually beneficial conditions of employment; and
 - b. Potentially prohibit a large number, if not all, of highly individualised living arrangements that enable people with disability to live good lives in as natural a home environment as possible (for example, in their own private homes as compared to residential group homes).

WAI S and WAI S members have found that use of the exclusion has afforded flexibility to people, with workers provided with fair and reasonable conditions of employment. WAI S refutes that many of the workers in the arrangements we refer to are subject to exploitation as was raised as a concern in the Interim Report. The flexibility has, however, allowed for an approach akin to the “Better Off Overall Test” (BOOT) used for the creation Enterprise Bargaining Agreements whereby people and workers are able to negotiate conditions of employment that are workable for both parties, particularly within an environment where the relationship is an interaction between formal and informal supports in a home environment and based on flexibility for both parties.



Individualised Living Arrangements

Being connected to other people is a basic human need that provides the foundation of our existence and how we live together as a society. Our relationships are essentially one of the most important and fundamental elements of being human. As a modern society we have a variety of ways that people develop a sense of belonging, be it through intimate relationships, family networks, friendship circles, communities of interests or by simply being present in our local communities. How these relationships look, feel and evolve for each one of us will differ based on our own personalities, circumstances and values. However, the need to belong and connect to others matters to everyone regardless of ability, age, health and experience. It is for this reason that people who work in Human Services strive to assist others to develop good support systems that enhance, promote and develop their relationships.

Highly individualised living arrangements can support people in one of the most natural and beneficially ways possible – real people connecting, supporting and sharing their lives. The aim is to reflect the way in which naturally formed relationships work and develop. The primary focus is about sharing lives, which means there are benefits to both parties; the people who require support and the people offering support. Both parties have lives to share and experiences to contribute, offering everyone enriched experiences and enhanced quality of life. So often, people who share their lives and their homes in individualised living arrangements report the enormous benefits to their own lives and their families.

The home is the platform for people to develop reciprocal relationships where the person is accepted and included as a valued participant in the home and life of the support person (and their family, where applicable). With this develops new opportunities and everyday life experiences for the individual that they may not have otherwise experienced in other more formal and structured support arrangements. Similarly, supporters have the potential to have new experiences they may not have otherwise experienced were it not for their relationship with the individual they are supporting.

The fundamentals to these individualised living arrangements include:

- **Belonging and Connection** – The right to be part of a relationship and be connected to others.
- **Independent Living** – The right to be a citizen with full access to an ordinary life.
- **Self-Determination** – The right to be in control of your own life and for your views and preferences to be acknowledged and reflected in your relationships and your home.



- **Flexibility** – The right to decide how to use your resources and how they will be managed to best suit you and your lifestyle.
- **Choice** – The right to choose your home and the life you live.
- **Trust** – The right to be trusted as an equal partner in the relationship.

The success of these living arrangements requires an intricate and delicate balance between formal support arrangements and informal relationships built on trust, mutual respect and reciprocity. These arrangements are also highly dependent on the flexibility with which people are able to use their resources.

Private and domestic arrangements have enabled highly individualised arrangements in WA to succeed and be high in numbers for more than 15 years.

Examples: Individualised Living Arrangements

Michael

Megan and her husband have been living with Michael for three years. Megan met Michael through a friend of Michael's who thought she'd be a good match as a housemate for Michael. Megan and her husband were looking for a home in the area where Michael lives and as they had met Michael socially before, they were keen to explore living with him. Megan and her husband both are employed in the local area and have some friends in common with Michael. Michael does not need much support from Megan, it's more as a back up and for security at night time. Michael has other support workers that he uses to provide the support he needs.

There is a clear agreement in place outlining what is expected of the Megan and Michael. Megan and her husband contribute to some of the costs of sharing the home. Megan receives a payment to cover any formal support required as outlined in an agreement.

Outcomes for Megan and her husband:

- They have reduced outgoings and a home to live in, in a location that is preferable to them.
- They receive a payment in exchange for agreeing to provide a level of formal support whilst in the home.
- They live in a natural home environment where the relationship has developed into a very strong friendship.



- They have a flexible support arrangement that works for all of them. Providing formal support within the context of a genuinely loving relationship is mutually beneficial to both the supporter and person.
- The supporter supports the person to achieve their goals.
- The supporter feels she is contributing to the person's life and gaining from the person, too.
- The supporter has developed friendships with not just the person but also their friends and families.

Outcomes for Michael:

- The person is able to live independently with a combination of live in support and regular rostered supports.
- He has someone that he knows well, feels confident he can rely on, and feels comfortable with living with him and providing his personal support.
- He feels safe in his home, especially at night, knowing someone is there and is available if needed as he would need physical assistance to leave the home if there was a fire or other emergency.

Jarrett

Scott and Rob have lived with Jarrett for a little over two years. Jarrett had the space in his home for two housemates and felt that having two would work better for him so that the support is shared between them. Jarrett wanted to live with guys his own age. Jarrett's health has been variable over time which means Jarrett has needed varying amounts of support. This was negotiated with Scott and Rob. Jarrett has been able to live in his own home, with less anxiety, as a result of having housemates and the support they provide. Scott and Rob contribute to only some of the costs of sharing the home. Scott and Rob receive a payment to cover any formal support required as outlined in an agreement.

The benefits to everyone are very similar to the example above of Michael and his supporter. However, in this scenario, the nature of the arrangement and the relationship developed is such that the two supporters are house mates who are Jarrett's peers and provide limited formal support. The support provided is more natural and built into their time spent together including sharing meals, sharing the commitment of having one of them always sleeping overnight at the house. The supporters themselves say the arrangements feels not too different to being a "regular housemate".



Susan

Susan is a young lady who has her own home, works part time, has lots of friends, a very full social life and is an active member of her local community. Susan can do most things on her own. She does have a wheelchair she uses to get around and supports to assist her with her with things such as preparing and eating her food, showering and everyday household chores.

She is fiercely independent but appreciates that she does need support to live on her own. She did not want full time carers in her home or agency employees who work to strict time frames and inflexible work arrangements and decided to find a likeminded person to develop a flexible support arrangement that was mutually beneficial.

She found Paula, a young lady of a similar age who was living in a hostel in town and trying to break into the music scene. Paula was finding it difficult to make ends meet and was working all day in a coffee shop to pay the hostel fees then working all night singing with a band in pubs and clubs to progress her music career. After some discussion an agreement was made. Paula would live with Susan and contribute to some of the costs of living in the home. Paula would also be paid an hourly rate for any formal support hours required throughout the week.

Some weeks Susan requires very little support whilst other weeks when her medical condition flares up she needs more support. Susan's family are also close by to help out to give Paula some down time, when needed. This arrangement has now been in place for over two years and Susan and Paula are very happy.

Joan

Joan grew up in Melbourne in the 1950's, travelled extensively, lived overseas and ended up living in Perth in the 1980's. It was at this time, she was diagnosed with multiple sclerosis. In 2001 she met and moved in with the man who is now her husband, David.

The impact of Joan's MS slowly increased, to where Joan uses a wheelchair for her mobility, requires full physical support, peg feeding, and support to communicate and be understood. David, her husband, has his own psycho social support needs and, due to this, it was difficult for Joan to get the care and support she needed. There were serious concerns over Joan's welfare, the safety of the staff when David wasn't well, and David was struggling with the significance of his role as Joan's needs increased.

Joan was clear, and it was important to her, that she wanted to be with her husband as much as possible, but also knew she needed more support than he could offer. Joan was also clear she did



not want to enter a nursing home. David was clear he wanted to be with Joan, but needed more support, and time for himself to get his own support needs met. They both wanted time together, but also needed time apart.

There were a number of accommodation and support options explored and trialled. The one that worked for Joan and David was a co-resident live in support arrangement. A rental property was intentionally sought to be very close to their family home so Joan could be very close to David. A property was found for Joan, around the corner from David.

A long term support worker of Joan's, Jan, chose to move into Joan's new house, which was a paid salaried arrangement, packed with a range of other benefits (for example reduced living expenses, regular breaks, time off, holidays) that mutually benefitted both Joan and Jan.

Joan stays with David every weekend, with individual support staff assisting her at critical times throughout the day. Jan picks Joan up from David on Mondays, takes her to their home and supports her there until Friday with breaks and additional supports provided. Each day Jan takes Joan back to see David and she spends the afternoon with him.

Outcomes for Joan and David:

- Joan gets high quality support through the week.
- She gets to see her husband each day and be home each day.
- On the weekends, Joan and David live together but with safeguards and support.
- David's mental health has improved.
- Joan's health has improved dramatically.
- She's reconnected with her daughters, grandchildren and extended family.
- Joan now has a solid base from which she has been able to do other good things with her life such as holidays, theatre and massages.
- When the time comes Joan can be supported in a familiar place and her husband will be able to care for her in this final phase.

Outcomes for Jan:

- Flexible, well paid, fair and highly individualised employment arrangement whereby Jan is happily employed, but also shares a home with Joan.



Trevor

Trevor was an engaging Aboriginal man who was born in the 1950's, and grew up living in institutions in WA. Trevor had very few personal relationships with people he could rely on and relied solely on the service system to provide his supports. When the institutions closed, Trevor moved into his own home, and he communicated in a variety of ways, that he never wanted to go back to that institutional style of living. He wanted to live in his own home with support. Trevor loved being around people, children, music, but needed to have a home that was his safe haven.

As Trevor aged, his support needs increased to where he used a wheelchair, he required two people for his mobility when moving or transferring, he needed support to communicate and be understood and he required full physical support across his home and in the community. Trevor was at risk of being placed into a nursing home due to his significant increased support needs, the rapid deterioration that was occurring, and his vulnerabilities. There were many conversations about where Trevor could best be supported. If the service provider respected Trevor's direction and wish, it would be for him to remain at home with support.

A co-resident live-in arrangement was considered, and the live-in supporters were very intentionally recruited around what Trevor wanted and needed. A Maori family, Mary, her husband and children eventually moved in with Trevor. Mary was the paid co-resident who provided the formal support. There were also additional paid supports providing relief and breaks to Mary throughout the day and week. Mary's other family members provided informal support only.

Trevor's physical and medical needs slowly increased and he passed away a few years after Mary moved in. Trevor had a big funeral, with his co-resident family, and their extended family singing, dancing and celebrating his life.

Trevor got to exercise his right to stay at home with support. Trevor did not have to return to a controlled environment or nursing home to live out his years. Trevor had people around him, who genuinely cared about him. Trevor was able to live in the way that was important to him with as much control and say that he could.

Mary and her family got to share a home with Trevor, develop personal caring relationships with him whilst Mary was also paid well with flexible conditions for her formal support that met her needs and those of her family's.



Response to Specific Interim Report Recommendations

Term of Reference 4: Definition of 'employee' and coverage

The 2018 Industrial Relations Act (WA) (2018 IR Act) not exclude from its coverage any employee whose place of work is the private home of another person, presently referred to as "any person engaged in domestic service in a private home" in s 7(1) of the IR Act.

WaiS strongly urges the Review to consider the implications of the removal of the exclusion to the definition of employee. If the Review determines that the removal of the exclusion must proceed, WaiS strongly urges the Review to then consider exceptions for people who are privately employing workers in a domestic arrangement as to how the legislated minimum conditions of employment would apply. These exceptions could include:

- Private households employing workers to support a person in their home not be subject to unfair dismissal laws;
- Private households employing workers to support a person in their home not be subject to redundancy obligations;
- Private households employing workers to support a person in their home not be subject to long service leave obligations;
- Private households employing workers to support a person in their home not have to apply minimum conditions of employment restrictively, but afforded application of the minimum conditions of employment using a legal mechanism akin to the "Better Off Overall Test".

WaiS understands that the International Labour Organisation (ILO) Protocol does not require a prohibition of employment arrangements that are entered into voluntarily by both parties and in which workers work without threat of force/penalty. Mutually beneficial arrangements, akin to those whereby the conditions apply concepts such as BOOT, do not then necessarily contravene the requirements of the ILO Protocol, which requires the prevention of "forced or compulsory labour."

Furthermore, the position of the Australian government regarding the Domestic Service Workers Convention 2011, when they refused to ratify it, supports the fundamental underpinnings of mutually beneficial arrangements, which provide for non-prescriptive, flexible payment and work conditions for private and domestic workers. Especially as these arrangements are already regulated for in Australian law through legislation.



Again, like Enterprise Agreements, these mutually beneficial arrangements could provide regulated wage and conditions of employment through the use of a legal mechanism resembling BOOT - while allowing employers and employees adjustable, tailor-made work and payment terms.

A taskforce be assembled and chaired by a representative of the Department of Mines, Industry Regulation and Safety (DMIRS), with representatives from the Chamber of Commerce and Industry WA (CCI), UnionsWA and the WAIRC, to assist employers and employees in the change to the regulation of employment in Western Australia contained in proposed recommendations in [37].

Given the implications of any changes to the IR Act, especially in relation to coverage of employees and the exclusion and WAI S and its members experience and connection with vast numbers of people privately employing workers and the organisations that may support them, WAI S requests that it be included on the taskforce being assembled to oversee the assistance provided to employers and employees.

WAI S notes that the Review recommends that the Government put in place a program providing assistance to households who would become employers under any amendments to the legislation. WAI S supports this recommendation and requests WAI S is consulted in the development of such a program.

Whether, and if so what, limitations or safeguards ought to be imposed upon industrial inspectors or people holding right of entry permits with respect to the carrying out of their duties, rights and privileges at places of work that are also private residences.

WAI S is very concerned about the possibility of industrial inspectors entering peoples' private residences and strongly submits that very strong, firm and clear restrictions are put in place against this.

For potential breaches of the Industrial Relations Act or Minimum Conditions of Employment Act, WAI S does not see any legitimate grounds for investigations by an industrial inspector or union official to take place on-site in a person's private home. Such potential breaches could be adequately investigated offsite.

If on rare occasion, an on-site investigation is found warranted, WAI S urges strong regulatory safeguards be put in place to protect the privacy, comfort and security of private householders.



We note that, under section 49K IR Act, an authorised representative presently does not have authority to enter any part of the premises of an employer that is principally used for habitation by the employer and his or her household. WaiS submits that this should remain.

Term of Reference 6: State Awards for Private Sector Employees

Private and domestic households do not currently fall under the coverage of any award. WaiS strong position is that for people with disability and families and any other private households who are privately employing workers in domestic arrangements, these arrangements continue to be award free. Particularly within the context of minimum conditions enshrined in legislation, the need for an award on top of this simply does not exist.

Furthermore, WaiS submission is that it is the flexibility afforded people to offer mutually beneficial conditions of employment that enables them to live good lives with the supports they need. Any award will be unduly prohibitive and restrictive, far more than any legislated minimum conditions.

Lastly, awards have historically been developed for industries, on the foundations that organisations, companies and businesses operating in different industries require an instrument that provides for adequate protection of and conditions of employment to employees. What is to be afforded to employees may vary from industry to industry. WaiS submits that private households are not part of an industry and are, in fact, distinct from it.

Concluding Remarks

WaiS and its members want to reiterate the critical importance for people and their families to have choice, control and options to employ their workers in ways that are fair, reasonable and flexible for all parties. These individualised supports and, especially, individualised 'live-in' home arrangements based on flexible but fair and reasonable, mutually beneficial conditions are what enables them to be sustainable and have longevity. The removal of the exception across the board, would mean a significant impact to people being supported, and particularly people who are significantly vulnerable, or with complex support needs. The options available for people in this situation will be reduced, and the 'live-in' support arrangements less likely to be as highly individually designed, flexible and embedded in the things we all value - a home, belonging, love, community, mutual respect and contribution. In fact, many may have move from an individualised, independent living arrangement to living in group, congregate arrangements. Furthermore, it



would also disregard the many people, and community members, who offer and provide individualised support to people, who currently have very flexible, mutually beneficial employment arrangements directly with people, particularly in 'live-in' support arrangements.

If the Review would like any further information or to discuss anything contained in this submission, WAI S Committee and Executive would be more than willing to assist.

On behalf of WAI S and WAI S members,
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Co-CEOs