

**FORM 4**  
**Notification to Industrial Registrar of Industrial dispute pursuant to  
section 130 of the Industrial Relations Act**

- 1. Name:** Public Service Association and Professional Officers' Association  
Amalgamated Union of New South Wales
- 2. Address:** 160 Clarence Street, Sydney, NSW, 2000.
- 3. Capacity of Notifier:** Industrial Organisation of Employees
- 4. The question, dispute or difficulty concerns the following industrial matters:**
  - i. The NSW Government plans to outsource all public sector specialist disability services in NSW by 2018.
  - ii. This is the result of an agreement signed by the NSW and Commonwealth Governments in December 2012 to establish the National Disability Insurance Scheme (NDIS) in NSW.
  - iii. While the precise detail remains unclear, we anticipate the proposal will directly affect more than 10,000 public sector staff as the disability services currently provided by Ageing, Disability and Home Care (ADHC) are transferred to the private sector.
  - iv. We understand the first tranche of the transition process may commence as early as 1 July 2016.
  - v. The government has further flagged its intention to exercise *Part 3 – Arrangements for transfer of staff of the National Disability Insurance Scheme (NSW Enabling) Act 2013* (the Enabling Act) to forcibly transfer 'disability services employees' by way of ministerial order, under the auspices of a 'transfer agreement', into employment with new private sector providers. We have included a copy of the Enabling Act, marked TAB A.
  - vi. In relation to the mooted 'transfer agreement', it is of particular concern that the proposed terms are substantially inferior to similar arrangements for the staff of other transferring public sector entities.
  - vii. Despite earlier commitments from the agency, the Department of Family and Community Services (the Department) has, on behalf of the government, now advised us that the government does not intend to negotiate transfer arrangements with the unions.
  - viii. While we have met with the Department on a number of occasions through established consultative forums, the Department's efforts to consult with us have been cursory and opaque.

- ix. The *Crown Employees (Public Service Conditions of Employment) Award 2009* (cl. 65) requires consultation to be conducted in a manner consistent with the *Consultative Arrangements Policy and Guidelines 1997* (the Guidelines). Under these Guidelines consultative arrangements must enable 'employees, through their union(s), to participate in and influence decisions which directly affect them..' (p6.)
- x. The Department has written to its staff to advise them that a NDIS-specific 'workforce mobility and development strategy' has been developed. No consultation has occurred in relation to this project.
- xi. We have recently learnt the Department is preparing (or indeed has prepared) an 'options paper' for the government which outlines a 'market testing' process for services and the anticipated method of service transfer. Again, no consultation has occurred in relation to this significant project.
- xii. The *Agency Change Management Guidelines* (Premier's Memorandum M2011-11), which are mandatory for agencies 'undergoing significant organisational change', require agencies to prepare an 'organisational change management plan' for consultation with staff and their unions.
- xiii. According to the change management guidelines, change management plans should include a range of information relating to the proposed change and its anticipated impact on staff and services.
- xiv. We submit that:
  - a. The Department is withholding information relevant to the government's plans to outsource all public sector specialist disability services in NSW by 2018;
  - b. The Department is required to engage in consultation with us about such matters in a manner that allows us to influence decisions which directly affect our members, including the development of any transfer agreement pursuant to the Enabling Act;
  - c. Despite advising staff that the transition process to the private sector may commence as early as 1 July 2016, the Department is yet to prepare an organisational change management plan in accordance with the *Agency Change Management Guidelines*.
- ix. We seek the following recommendations:
  - a. that FACS consults in a manner consistent with the prevailing sector and agency consultative arrangements including the establishment of a specific purpose consultative forum with the Public Service Association which will focus on the transition of services to the private sector;
  - b. that future consultation include detailed information sharing and, in particular, the provision of any documented advice the Department has

prepared for the NSW Department of Premier and Cabinet, the NSW Public Service Commission and/or the NSW Minister for Disability Services regarding transfer arrangements for disability services staff and any advice concerning the market testing process for services and the anticipated method of service transfer;

- c. that the Department prepare and consult with the Public Service Association on an organisational change management plan as is required by the *Agency Change Management Guidelines* (Premier's Memorandum M2011-11, Document Number D2011\_14));
- d. that no changes associated with the proposed outsourcing of disability services occur in relation to staffing, including the transfer or reassignment of staff, until proper consultative arrangements have been established and a change management plan has been developed in consultation with the Public Service Association;
- e. any other recommendation the Commission deems appropriate.

**5. The award, agreement or determination which applies to the employees is:**

*Crown Employees Ageing, Disability and Home Care – Department of Family and Community Services NSW (Community Living Award) 2015*

*Crown Employees (New South Wales Department of Family and Community Services) Residential Centre Support Services Staff Award 2015*

*Crown Employees (Public Sector – Salaries 2015) Award*

*Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*

**6. The person to contact on behalf of the notifier is:**

Thane Pearce  
Senior Industrial Advocate  
Public Service Association of New South Wales  
160 Clarence Street,  
SYDNEY NSW 2000

**7. The other persons affected by or involved in this question, dispute or difficulty are:**

Director Employee Relations, Safety and Well Being  
Department of Family and Community Services  
320 Liverpool Rd  
ASHFIELD NSW 2131

Executive Director  
NSW Industrial Relations  
47 Bridge Street  
SYDNEY NSW 2000

**Date:** .....

**Signed:** .....

ANNE GARDINER  
GENERAL SECRETARY

**To:** The Industrial Registrar  
50 Phillip Street  
SYDNEY NSW 2000