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ELAA and CCC Joint Submission:

Review of the Victorian Long Service Benefits Portability Exposure Draft Regulations

About Early Learning Association

Australia Early Learning Association Australia (ELAA) is a peak body which works in partnership with early learning providers and parents to deliver our vision of excellence in learning for every child. Our diverse membership base of over 600 service providers managing services at more than 1,200 locations includes early years management organisations, independent kindergartens, local governments, long day care services, government and independent schools and out of school hours care programs.

About Community Child Care Inc

Forty-nine years ago, a small group of women sparked a child care revolution. They met around kitchen table to set up and support quality, community-based care for mothers- the first of its kind in Australia. It was these determined women who founded Community Child Care Association (CCC). Today, we continue to provide leadership and advocacy, work with government and support hundreds of education and care services. We are also the lead organisation the Victorian Inclusion Agency – a project which provides free inclusion support to education and care services.

Introduction

The early childhood education and care sector commenced in the Long Service Portability Scheme on 1 January 2020. ELAA and CCC continue to remain concerned about the impact of the Long Service Portability Scheme on the not-for-profit early childhood sector. The scheme has financial and administrative costs which further burden highly regulated and underfunded services.

The proposed permanent regulations provide greater clarity about which employees are included in the scheme, but fail to address the sector's concerns about its broader scope and the financial and administrative impacts.

Financial and administrative impacts

The biggest impact on the sector continues to be financial – specifically, the lack of access to provisions made for long service leave and which are not drawn down upon because staff leave the sector. These funds are used to support services to maintain their viability for times when enrolments may be lower than expected, for example, or to assist with unfunded maintenance and minor infrastructure costs. One service estimated that over the past five years they were able to use \$50,000 in unclaimed sick pay and long service leave to cover the replacement of awnings, blinds and floor coverings that cannot be funded by any other means.

Another service which has a high proportion of permanent staff and few casual staff has estimated that the scheme will increase their long service leave provision expenditure by almost 65 percent next financial year both through the level of the levy set and the inability to access (unused) funds once they have been paid to the Portable Long Service Authority.

Further costs to the sector are incurred by the increase in the allowable break in service of up to four years under the scheme as compared to the requirements for recognition of service breaks of only up to three months under the Victorian *Long Service Leave Act 2018*.

The scheme also causes additional administration in the quarterly reporting to the Authority and in administering long service leave payments for staff whose eligibility spans a number of different schemes. Prior to the introduction of the scheme employees in the community kindergarten sector already enjoyed portable long service leave through a long established custom and practice since 1984 and long service leave entitlements prior to that are held by the Department of Education and Training. The burden across the sector is felt most strongly by community kindergarten and other early childhood services which are managed by volunteers, many of whom are parents of children at the services.

The scope of the Regulatory Impact Statement (RIS) for the permanent regulations did not allow for consideration of the financial and administrative costs of the broader scheme for early childhood education and care service providers and these costs had not been adequately factored into

Clarification of employers included in scheme

The revised regulations seek to provide clarity about which employers and employees are included in the scheme from 1 January 2020. ELAA and CCC have previously raised concerns about the limited scope of the scheme which undermines the key objective of the scheme, that being to provide portability of long service to workers employed in the sector. Draft regulation 9(e) states that for-profit services are an exclusion. Private providers make up more than half of the ECEC sector. Regulation 8(2) defines activities funded by the National Disability Insurance Scheme as inclusions in the scheme. It is inconsistent to include private providers in the disability sector and yet exclude them in the definition of community service work in the ECEC sector.

The delineation between private and not-for-profit (NFP) organisations puts NFPs at a disadvantage at a time when competition with the private sector has increased significantly. NFP organisations are generally located in areas where families have a reduced capacity to pay fees. High and increasing rates of unemployment as a result of the coronavirus (COVID-19) pandemic will exacerbate this differential.

The regulations also exclude kindergartens which are registered schools within the meaning of the Education and Training Reform Act 2006. As part of the Victorian Government's commitment to rolling out three-year-old kindergarten to all Victorian children, they have committed to having a kindergarten on any newly built school site, so in an area of expected sector growth, excluding these employers potentially means that their employees are also excluded.

The current scheme covers in effect just 35% of employees in the ECEC sector. Our members value their staff and want to provide beneficial working conditions, however the limitations on the scope of the scheme mean that portability is in fact denied them, should they choose to work in the for-profit sector, in a local government managed service or a kindergarten which is registered as a school.

Recommendation:

- That the regulations ensure that private providers are included in the scheme.

Clarification of employees included in scheme

ELAA and CCC welcome the use of awards as a basis for determining whether or not an employee is included in the scheme. The use of awards will address concerns previously raised about the predominance test, which affected those positions which straddled both leadership/managerial functions with direct service provision, for example, educational leaders who work with staff to raise teaching standards and practices. It also eliminates the confusion for staff who work in a number of different positions which incorporate direct service or leadership role and only some of their time would be eligible for the scheme.

We have concerns, however, about the limitation of the awards included in the draft regulations and propose the inclusion of the Victorian Early Childhood Teachers and Educators Agreement (VECTEA) 2016 which covers teachers and educators in early childhood education in a diversity of settings including stand-alone kindergartens and integrated services. The award is currently being renegotiated and VECTEA 2019 is expected to be ratified in the coming months.

A number of services have mirrored awards with VECTEA or alternatively an organisation-based enterprise agreement, so we are pleased to see that workplace enterprise agreements are included in regulation 10 (2).

Recommendation:

- That VECTEA is listed under regulation 10 (1).

Double-dipping

The changes to Regulation 12 have clarified that an employee cannot receive a benefit under the Long Service Benefits Portability Act and a fair work instrument for the same period of service.

Summary

The changes to the regulations have addressed some of the concerns raised by our members, such as the problematic definitions of which employees were included in the scheme, however we continue to have grave concerns. The scheme will not improve portability arrangements for the vast majority of early childhood workers unless private providers are also in scope. The VECTEA must also be included in the list of awards to ensure the inclusion of early childhood teachers and educators.

If you have any questions about this submission, please feel free to contact Lisa Minchin, ELAA Advocacy and Grants Lead lminchin@elaa.org.au. Lisa's days of work are Monday, Tuesday and Thursday.

Sincerely,



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Early Learning Association Australia



Julie Price
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Community Child Care Association Inc