

Portable Long Service Benefits Scheme

Victorian Government

List of Questions – Draft Regulations

31 May 2019

Quarterly returns

1. Is the prescribed additional information appropriate?

The organisation will be able to provide the additional information required as it relates to the individual's employment at the organisation.

Additionally – the agency would also need to be notified if any of the eligible employees are on unpaid leave which may impact upon their LSL accrual.

Presumably the employee will take unpaid leave and claim the LSL payment from the agency – how quick is the 'turnaround' in terms of payment to the individual. Can this be processed in advance. We worry how any delay in payment may impact employees who do live pay check to pay check.

How will the agency/organisation communicate to ensure unpaid leave for LSL with the organisation corresponds with claims to the agency. Will organisations have to get evidence from the agency that LSL has been paid to be able to approve LSL unpaid leave?

2. Will employers be in a position to provide this additional information?

Yes.

Disclosure of information

3. Are there any specific matters about privacy of information that you wish to raise as part of this proposed regulation?

No. Providing communication is sent to individuals who are eligible and there are simple/plain English instructions from the agency to explain to those individuals how to access their LSL benefits.

Community services sector

4. Do the exposure draft Regulations provide clarity as to the scope of the community services sector, what is community service work, and who is an employer, and an employee for the sector?

Clearer differentiation between home support services for aged persons and aged care work as the draft regulations stipulate that the former would be classified as community services work but the latter will not.

Further detail required to better define scope. As an organisation delivering multi-services which includes community service work, employment services, training (RTO) and aged care services. Will the scheme apply:

- *to the corporate services and administration roles that support the community service work (who are not personally delivering services to the community)? The legislation specifically excludes managers and executives but is not clear about other corporate services (human resources, finance, payroll, facilities, etc.) who support the employees delivering community services work.*

- *to employees on Common Law Contracts who conduct community service work?*
5. Is the list of awards and agreements at clause 9 of the exposure draft Regulations comprehensive? Should any of those awards or agreements be excluded? Should any other awards or agreements be included?
Clause 9 is misleading as it reads as though these Awards/Agreements are included. Perhaps the opening could be changed to state that the following Industrial Instruments would preclude those employees from eligibility to the scheme. Clause 9 lists a modern enterprise award (within the meaning of the Fair Work Act 2009 of the Commonwealth) and an enterprise instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth). This is not very clear – what modern enterprise awards? What enterprise instruments – too broad. Better to be specific or indicate modern enterprise awards or instruments under which community service work is performed.
6. Whilst it is proposed that the Regulations operate on and from 1 July 2019, the Regulations bringing children’s services, and disability services within the scope of the scheme only operate on and from 1 January 2020. This will enable businesses in those sectors adequate time to prepare for the legislation. Are these appropriate commencement dates?
We feel that operation from 1 July 2019 will be an unfeasible timeframe given that any alterations or further communication which follows this process of consultation may not yet be in place. Would recommend that they are all in force from 2020 or first stage is further out from EOFY period (toward the end of 2019).

No double-dipping

7. Does the proposed Regulation adequately address any risk of double-dipping?
Generally, but we suspect this will be very complicated particularly when it comes to multi-employees (employees employed under more than one Agreement or Award).

Additional feedback:

Salary Packaging: *How will the scheme impact on employees with salary packaging arrangements? When they take LSL, can the payment be salary packaged (currently pay processed during LSL can be salary packaged)? We, like many community service providers, we are a not for profit and have PBI status.*

Impact on employees with greater entitlements

How will we address employees who have greater entitlements than what is being offered under the new scheme, e.g.:

- *employees under one of our EBAs with greater than 5 years service but less than 8 who cease employment due to serious ill health or death the employee are paid out 60% of their pro-rata accrual of LSL – in the new scheme they will have to have worked at least 7 years)*
- *different rates of accrual of LSL (i.e. employees under our Agreements may accrue 13 weeks for 15 years versus others who accrue 13 weeks for 10 years)?*

Impacts on pay processing:

- *How does the agency know what to pay for LSL? Is it just treated like a cash withdrawal?*
- *How do we treat superannuation for LSL unpaid leave taken?*
- *Who will pay tax on the LSL taken?*
- *Will payment summaries be impacted – how will we account for any money received through the agency?*
- *How will allowances be treated under the new scheme? We currently pay some allowances (for example car allowance) when an employee takes LSL, how will this work under the new scheme?*
- *Will we need to contribute to the agency for the LSL of employees being paid workers compensation/make-up pay or will this be classified as a break in service?*

Multi-service employees and changes of employment:

- *We have a number of staff who work across different parts of the organisation (and are employed under more than one Agreement or Award). This will often be when employees provide services in Residential Care and Aged Care for example - or community service roles and administration.*
 - *If we are contributing to the agency but the employee is also entitled to LSL under an excluded Award or Agreement, how will we manage the payment of LSL?*
 - *Will the employee be paid in part by our organisation and have to seek the remainder from the agency or would we make contributions to the agency for both roles?*
- *If an individual wishes to be paid out their LSL after ceasing employment with an organisation (but is going to another community service work role) will they be able to do so?*
- *Employees who work in the one organisation but spend a period of time in a role/s defined as community service work under the scheme, and in other roles excluded from the scheme – how would they go about taking LSL? Do they apply in part for payment through the agency and some from the employer?*
- *If, within an organisation, an employee moves from community service work into an excluded role (i.e. management), would the organisation be able to seek a refund of monies contributed toward their LSL under the scheme?*
- *If an employee reaches 7 years of employment only 2 years into the new scheme, can they claim LSL (would they have to claim part from the agency and the remainder from the organisation)?*
- *What will happen to existing entitlements when the new scheme is introduced?*