

31 May 2019

Early Learning Association Australia Submission: Long Service Benefits Portability Scheme

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 550 service providers managing services at nearly 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.

ELAA welcomes the opportunity to provide this submission on behalf of our members on the exposure draft Regulations for the Portability Long Service Benefits Scheme and the Regulatory Impact Assessment. We note that many of our members are also making submissions to respond to the consultation questions in detail.

Background

ELAA members value their staff and want to provide beneficial working conditions. The establishment of the scheme could have made a valuable contribution to the community sector early childhood workforce if it had been appropriately consulted and scoped.

ELAA has a range of significant concerns with the introduction of the *Long Service Benefits Portability Act*, including:

- Lack of consultation
- Workforce impacts
- Financial impacts
- Timing of the roll-out of the scheme
- Sector impacts
- Implementation of the scheme.

Each of these is discussed below and our recommendations to address these issues conclude this submission.

Lack of consultation

It is deeply concerning that the early childhood sector has been included in the regulations without the consultation which had been committed to by the former Minister for Early Childhood Education, Jenny Mikakos. When the bill was debated in the Upper House in September 2018, Minister Mikakos moved amendments to delete ECEC services and to allow them to be included later. This decision was made due to recognition of inadequate sector consultation. The Minister stated in parliament, that:

“A re-elected Andrews Labor government will work at adding additional parts of the community sector workforce at appropriate times in coming years once the authority and the scheme are up and running. I think it is important, and I put on the record, that further consultation will be undertaken with the early childhood education and care and disability sectors to minimise any cost to employers and to families beyond what they already are required to allocate to long service leave entitlements. I note that in other jurisdictions the authority has gradually reduced the levy once there has been sufficient funding and that it was invested to sustain future long service leave liabilities.”

Despite the public commitment, the Draft Regulations and Regulatory Impact Assessment have been developed in complete isolation of sector engagement. The consultation questions on the draft regulations assume that the fundamentals of the scheme have been set in place.

Financial impacts

The biggest impact on the sector is financial – specifically the lack of access to long service leave payments which organisations set aside and which won’t be able to claimed moving forward. Currently funds which are not drawn down are used to subsidise other services. Several service providers described using these payments set aside (once released after employees leave) to establish a sustainability fund. These sustainability funds are designed to assist maintain their viability for times when enrolments may be lower than expected, for example, or to assist with unfunded infrastructure costs.

The unpredictability of the levy which may rise or fall as decided by the Authority makes it difficult for our members to plan/budget if the levy changes. The financial impact outlined in the regulatory impact assessment is also considered to be conservative and does not reflect the administrative costs of the implementation and maintenance of the scheme. ELAA members have raised concerns about the estimation of time allocated for administration as too low, particularly in the transition phase. For example, a few of our providers have indicated that their payroll costs have already increased with the commencement of the Long Service Leave Act 2018 in November 2018 which required additional manual calculations and checking.

Adverse financial impacts are critical at a time when not for profit early childhood service providers, particularly Early Years Managers (EYM), are under increasing financial viability threat. Produced in February 2019, ELAA’s “Achieving a sustainable service system” highlighted that 66% of providers considered that without an increase in funding, they could only continue to provide services for less than two years, with half of these services (33%) estimating they could continue for less than 12 months.

There is a very real risk that the introduction of the Portability Long Service Benefits Scheme could place further adverse financial pressure on providers. Providers are left with few options to support the scheme, other than by increasing parent fees or through service closures. Given the prevalence of EYMs in vulnerable and disadvantaged communities, increasing fees is not an option. The most likely outcome is that providers will be forced to consider service closures. It is very important to note that ELAA is aware of at least two large scale EYMs in current discussion with the Victorian Department of Education to potentially close over 50 kindergarten sites.

It is likely that the administrative and cost burdens of the implementation of the scheme will see a large proportion of community-based kindergartens want to transition to early years management (EYM) organisations to avoid the complexity of the calculations. This won’t be an option as many of these EYM organisations are already struggling financially themselves.

Sector impacts

Nearly 50% of all education and care services are provided by the private sector, however the private sector is excluded from the scheme. This separation places not-for-profit (NFP) organisations at a disadvantage at a time when competition with the private sector has increased significantly. The scheme in effect encourages staff to remain in either the not-for-profit or the for profit sector. The transmission of quality across the whole sector, including privates and not-for-profits is likely to be inhibited by staff who are reluctant to lose access to and grow their entitlements.

The difference the Portability Long Service Benefits Scheme will make between private and not-for-profit providers can be illustrated by considering the advantage conferred to a private provider when considering a greenfield site. It is clear that private providers would have the advantage as they would not be encumbered by the additional costs of the long service leave contribution and would potentially be able to count part of their long service leave reserves as assets, whereas for the not-for-profit sector the portability scheme is purely a liability.

Service delivery impacts

Many providers that deliver early childhood education and care particularly EYMs, also provide other highly valued community services. The increased costs and lack of return of unexpended funds will reduce the capacity of organisations to provide other services and impact their ability to innovate.

Workforce impacts

There are likely to be unintended workforce consequences as a result of the implementation of the scheme. At a time when the early childhood education and care sector already struggles to attract and promote staff into leadership roles, this problem will be exacerbated by the Portability Long Service Benefits Scheme because leadership roles appear to be excluded from the scheme. At a minimum, the scheme will create instability in leadership or indirect roles in the sector because staff will lose their entitlements if the gap in service extends to four consecutive years. This lack of stability will have flow-on effects to the quality of service delivery.

Responses to questions at the Long Service Benefits Portability Scheme information forum held by the Department of Education and Training on 7 May 2019 state that whether early childhood advisors and educational leaders will be covered by the scheme is to be determined by the Authority. Educational leadership and inclusion roles are fundamental to providing a quality service to children. Barriers to people taking on this role need to be seriously considered given the expansion of kindergarten across the state and the challenges of attracting people to such positions.

As mentioned above, it will also be challenging for the workforce to move between the private and not-for-profit sectors with the disincentive of leaving the community services sector because of the impacts on long service leave entitlements while the private sector often provides higher pay. For example, a couple of our members have recently lost valued senior employees to the private child care sector for significantly higher salary levels that those community service organisations have not been able to match given financial constraints. As such, the stated goal of portable long service leave is not achieved.

Timing of the roll-out

Some organisations, particularly smaller standalone kindergartens, will find it extremely challenging to fulfil their obligations under the regulations due to other competing priorities including the implementation of school readiness funding and expansion of kindergarten to three-year-old children. The kindergarten expansion program is attached to almost \$7B in Victorian State Government funding and the quality and timeliness of its implementation is at direct risk due to the Portability Long Service Benefits Scheme.

There are also significant concerns that the Authority and the sector will not be in a position to commence the scheme at the proposed date of 1 January 2020 given the tight timeframes for finalising the regulations and ensuring adequate communications to organisations affected by the introduction of the scheme.

Implementation

There is no clarity on transition support attached to the proposed Portability Long Service Benefits Scheme. This is concerning as significant support will be needed for organisations to implement the scheme. The transition will be a cost burden to organisation with some estimates at 0.6 – 0.8EFT to provide the set-up data. For example, payroll systems are not currently set up to generate the long service leave reports to upload the information. It is unknown if payroll organisations will be able to respond before 1 January 2020 to support the introduction. It will require additional payroll processing employees for at least the three months transitional period to manually upload the data required and provide the additional information required for the quarterly returns.

Broader implementation issues include:

- Sector wide communication will need to consider the range of services and the best channels to reach them. It is anticipated that parent-run committees will need considerable support and advice in the transition to the scheme.
- A clear test will need to be developed to support the assessment of which roles are in and which are outside of the scheme and that the outcomes of the test be applied sector-wide to reduce the need for case-by-case assessments.
- Several questions were raised about how the payments to employees will be managed:
 - How will the Authority determine how much tax is paid by the employee? Is there a risk that the employee will be disadvantaged in the short-term by having a higher rate of tax, particularly for those employees that have access to salary packaging?
 - Will a payment summary be provided to the ATO?

RECOMMENDATIONS:

ELAA makes the following six recommendations on behalf of its members:

1. The proposed Portability Long Service Benefits Scheme is urgently reviewed to determine whether the scheme meets its own stated objectives. If the scheme does not meet its stated objectives, then the scheme should not proceed.
2. If the scheme meets its own objectives and is to be implemented, that:
 - scheme implementation is delayed until 1 January 2022 to allow the sector to implement major reforms such as school readiness funding and the implementation of three-year-old kindergarten.
 - proper and meaningful consultation including co-design of all aspects of the scheme is undertaken as an immediate priority.

- a sector-wide scheme including for profit providers be enacted to meet the stated goals of portability to all staff.
- employers be reimbursed those payments for past employees who leave the scheme and sector to avoid the over funding of the scheme.
- modelling be undertaken to examine the funding implications of whether workers in indirect roles be considered for inclusion, including educational leaders and managers.
- implementation by service providers is supported through financial contribution to cover the establishment period and adequate education be provided.
- the authority operates with transparency providing regular reports to contributors.

If you have any questions, please contact Lisa Minchin, ELAA Advocacy and Grants Lead, on:

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Lisa's days of work are Monday, Tuesday and Thursday.

Sincerely,



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