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VCOSS submission to Portable Long Service Scheme draft regulations

Introduction

VCOSS welcomes the opportunity to provide feedback on the draft Long Service Benefits Portability Regulations (the regulations). Improving the portability of long service leave within the community services industry benefits its employees.

The regulations clarify some of the outstanding questions about the scope and eligibility of the scheme. However, there remain some uncertainties and inconsistencies that must be resolved, to ensure the transition for organisations and workers is as seamless as possible.

The portable long service leave scheme may also result in increased costs for community sector organisations, inevitably meaning reduced services for Victorians facing disadvantage. To minimise costs and burden, organisations will need more support and information about their obligations under the scheme.

Extend timelines for including the early learning, community health and disability sectors

One of the most important considerations in the design of the scheme is who will be included.

The regulations propose including early learning and National Disability Insurance Scheme (NDIS) organisations in the scheme from 1 January 2020. It would be preferable to extend the inclusion date to July 2020.

Many early learning centres are small, with limited technology and human resources capacity. They were not expecting to be included in the scheme. They will need time to learn about it and their obligations, and to track employee leave and benefit entitlements.

The disability sector is transitioning to federal NDIS funding. The NDIS pricing model is placing many disability services under significant pressure, and many are

experiencing cash flow issues as funding sources change. Additional time would allow for the transition issues to be further resolved, and workforce changes to settle. There will also need to be discussions with the sector about how the scheme will impact sole practitioners and NDIS recipients acting as the employer, as well as casual workers employed across several organisations.

It would also be preferable to transition these sectors in July 2020, as it is a new financial year. Boards can better plan and budget if they are able to incorporate the new costs in their annual budget process, rather than have new costs introduced mid-budget cycle. For early learning centres in particular, this may require increasing fees to parents, requiring additional notification time.

The status of the community health sector is also unclear. The draft regulations appear to exclude community health services at clause 6(a). However, supporting material and commentary indicate an intention that community health be included.

The community health sector's industrial agreement also contains existing portability entitlements that will interact with the portable long service scheme. There is some concern among VCROSS members that despite the 'no double-dipping' provisions, the regulations will still allow employees to access both the portable long service scheme and their existing scheme within the broader health sector. The conditions of the schemes (including who is

covered, when employees can access leave and the amount they are entitled to) are different.

Community health services will also need to pay levies to both schemes, at least under the current industrial agreement.

The inclusion date for community health providers should be extended to 1 January 2020 to allow time for additional advice to be sought, problems to be worked through and the sector's status made clear.

Clarify the inclusion of executive and administrative staff

The regulations, at clause 9(2), propose excluding 'an individual employed in an executive or management role' if

- a) The role is wholly administrative; or
- b) The predominant activity in the role is not the personal delivery of services or the personal performance of activities that are community service work.

The term 'executive' is not defined, and may mean different things depending on context. VCROSS is concerned the provision leaves ambiguity for staff employed in middle management, administrative and executive support roles, who may fit this description.

VCROSS members also expressed concern about the status of cleaners, cooks and other employed staff members who are not

frontline service delivery staff or administrative staff.

We see no clear reason to exclude administrative, reception and support staff from the scheme. They provide essential functions for community service organisations and support service delivery.

Additional clarification is needed about who is intended to be excluded in this provision and if it is limited to CEOs and high-level management.

Clarify the application of awards and agreements

The legislation and proposed regulations, at clause 9(1), exclude from the scheme people to whom the following awards or agreements apply:

- a) A modern enterprise award (within the meaning of the *Fair Work Act 2009 Cth*)
- b) An enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 Cth*)

We are concerned this will create confusion among community service organisations about who is included.

Many community organisation employees are employed under enterprise bargaining agreements and multiple enterprise agreements. They may think these definitions apply to them and as a result they are excluded from the scheme.

We understand this is not the case. The 'enterprise instrument' relates to instruments that pre-date award modernisation reforms, the majority of which have been terminated. Modern enterprise awards apply to specific businesses, generally outside the community services industry.

However, the terminology in the regulations is confusing. If the regulations are unable to clarify the meaning of this section, it is essential that guidance material is provided to organisations and employees about the application of the scheme where enterprise agreements are in place.

Clarify the position of peak bodies and federally-funded agencies

The regulations do not address the inclusion of community sector peak and advisory bodies.

While some may be covered by clause 2(1)(f) of Schedule 1 of the Act, which includes community information and advocacy services, this is far from certain.

To avoid any uncertainty, the status of peak bodies (including those that do not receive state government funding) should be made clear.

Ambiguity causes problems for both organisations and the Authority. For example, a health peak body in the ACT is currently in a legal dispute with the ACT Long Service Leave Authority about their inclusion in the scheme. After being

excluded from the scheme, they have now been advised they are included, and will need to back-pay their contributions for the time they were out of the scheme.ⁱ

Victoria has the opportunity to avoid these problems in future, by making a clear decision now on the inclusion of peak bodies.

Provide organisations with information about their obligations

For the majority of Victorian community service organisations, the scheme becomes operational in little more than a month.

Most community organisations have voluntary boards of management, who will need time and support to understand their responsibilities and obligations under the new scheme.

In comparison to the cleaning and construction industries, in the community services sector entitlements will be paid out by the Authority to employees in cash, rather than as leave.

The cash nature of the scheme will need to be made clear to employers and employees and additional assistance provided about how people can access their entitlements.

Organisations will also need additional support in how to register workers, and calculate existing entitlements. Some community organisations have limited or outdated technology that will not readily provide this information.

There are also likely to be challenges where organisations have enterprise agreements with different or more generous conditions than the relevant awards/legislation. More guidance will be needed in how to manage these differences.

Further information

VCOSS looks forward to working with the Government and the Authority to continue refining the portable long service scheme.

For more information, please contact [REDACTED]
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ⁱ <https://www.canberratimes.com.au/story/6118339/bad-advice-by-govt-has-charity-in-court/>