

October 2019



VCOSS response to the Long Service Benefits Portability Interim Regulations 2019

Introduction

VCOSS welcomes this 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 organisations and workers.

Since well before the beginning of the scheme in July 2019, VCOSS has been raising concerns about clauses in the current regulations with the Victorian Government and the Portable Long Service Authority.

In the months since the scheme began, community sector organisations have reported significant difficulties in its implementation. There are inconsistencies and inequities in application, and a lack of clarity in the scope.

In particular VCOSS is concerned about ambiguity in the scope of employees covered by the scheme, and equity issues related to some (often low-paid) workers

being excluded. We have also highlighted the challenges related to the exclusion of certain sub-sectors of the industry.

The purpose of portable long service leave for the community services industry is to improve worker conditions, help employers retain and recruit staff and provide an employment benefit to those who would otherwise be excluded as a result of an industry subject to short-term contracts and insecure employment.

These benefits will be best realised by a wide application of the portable long service leave scheme. As it currently operates, the many inconsistencies and exclusions are undermining the potential benefits of the scheme and placing additional burdens on organisations already being asked to respond to new service, regulatory and funding models and requirements (for example from the National Disability Insurance Scheme and family violence reform). The time spent on understanding the scheme are taking time away from service delivery, and responding to vulnerable communities.

Substantially and meaningfully review the legislative framework

The proposed Interim Regulations make no significant or meaningful changes to the existing regulations.

VCOSS is disappointed the Victorian Government has not seized the opportunity in the re-making of these regulations to address the obvious ambiguities, inconsistencies and unintended consequences in the regulations.

Waiting 12 months to review the interim regulations is frustrating for community service organisations; it leaves them in a state of uncertainty, unsure what to tell their staff, how to plan, and what the budget implications are likely to be in 2020 and beyond. It also potentially opens them up to risks if workers who they determine to be out of scope are eventually determined to be in scope.

Adopt a broader definition of who is an employee

The Interim Regulations at clause 10(3) continue to be unclear. The language about “personal delivery of services or personal performance of activities that are community services work” is problematic.

Despite the welcome efforts of the Portable Long Service Leave Authority to help define what this clause means, through the production of a guidance note, the ambiguity remains.

We are aware that community service organisations are interpreting this clause in different ways and making different decisions about how it applies to their workers. There is a risk workers could be registered at one organisation, only to leave for a similar role in another organisation, who decides not to register them.

This clause has the potential to exclude significant numbers of employees providing vital administrative, back-of-house and support work, as well as team leaders and management staff. Some of these staff are among the lowest paid in the industry.

We see no justification for excluding administrative and support staff from the scheme. They provide essential functions for community service organisations and support service delivery.

This clause could be removed from the regulations, or a new clause drafted that significantly broadens the scope of who is an employee. It could make clear that workers supporting the delivery of community services are considered within scope.

Review sectors currently out of scope

The Interim Regulations currently exclude significant parts of the community service industry.

For example, the exclusion of women’s health services appears to be an unintended consequence of drafting that could be immediately remedied in the

interim regulations. VCOSS has spoken to some employers and workers in this sector who were unaware they are excluded, and expected and wanted to be part of the scheme. In a feminised industry, their exclusion risks deepening gender inequality.

The exclusion of community health services is in conflict with the Act (which appears to include workers in community health services who provide community service work), leading to ongoing confusion.

This creates confusion and undermines the scheme's ability to meet its purpose; to improve employee conditions in the community services industry. Workers performing similar or identical work in different parts of the sector are being treated differently, depending on who their employer is.

For example, a family violence worker employed by a community health service will be excluded while a family violence worker employed by a family violence service will be in scope.

This provision also excludes workers who are auspiced by out-of-scope employers. For example, several community legal centres and Primary Care Partnerships are auspiced by community health centres. As a result their workers are unable to access portable long service leave.

Review the impact of clauses that exclude large community service organisations

Schedule 1, clause 3(2)(c) of the Act excludes an organisation that “has a governing body appointed under an Act of the Commonwealth or the State.”

We understand this clause was intended to apply to statutory authorities. In reality, it is excluding several community service organisations who are major industry employers, like the YWCA. We know of several other very large community service organisations who are likely to be similarly excluded.

The exclusion of numerous large employers has the potential to impact the financial viability of the scheme, including by driving up the levy for smaller community service organisations who are already bearing the increased costs of the scheme.

For more information

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

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