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Industrial Relations Victoria

Department of Premier and Cabinet

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To Whom It May Concern,

Thank you for the opportunity to respond to the Portable Long Service Leave Scheme – Draft Regulations.

bestchance Child Family Care is an independent not-for-profit organisation providing Early Learning and Care, Support for Children’s Inclusion, Family and Community Support and Adult Learning and Engagement.

bestchance is responding to the Draft Regulations as a provider of a range of services that will be complexly impacted across a range of program types.

Please find below our response to this consultation.

Should you have any further questions please do not hesitate to contact me on the details listed below.

Yours sincerely

Kevin Feeney

Chief Executive Officer

Response to Portable Long Service Scheme – consultation on Draft Regulations

Introduction

bestchance Child Family Care is an independent not-for-profit organisation which has been providing support to children and families since 1895 in Greater Metropolitan Melbourne and surrounding townships. Today, bestchance operates a network of children's services across Greater Melbourne and its surrounds providing **Early Learning and Care** through Long Day Care, Family Day Care and Early Years Management; **Support for Children's Inclusion** through Early Childhood Intervention and The Cheshire School; **Family and Community Support** through Supported Playgroups, In-home Support and Community Support; and **Adult Learning and Engagement** through Volunteering, Accredited Training and Learn Local.

bestchance wants all children, families and individuals to thrive in their community. Because of this we are driven to get in early to change life trajectories through inclusive and relationally-based education.

bestchance is responding to the PLSLS Draft Regulations as a provider of a range of services that will be complexly impacted across a range of program types. A cursory calculation shows the reach of services that will be impacted:

- Early Learning and Care programs that provide 80 centre-based sessional and long day care services for approximately 5,400 children that employs over 600 educators.
- Early Childhood Intervention services that provide therapeutic support to 172 children and employs 9 therapists.
- Family and Community Support services that provide support to over 100 children and their families and support over 150 volunteers that employs 5 support workers.

In addition to providing a response the issues raised through the consultation questions (Part two), bestchance have responded to and provided recommendations on the following issues:

- Outcomes for the workforce
 - Coverage of the scheme
 - Implementation and administering the scheme
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Part One: bestchance assessment of implications

Outcomes for the workforce

bestchance are committed to seeking positive and equitable outcomes for all of our employees and support any initiative that seeks to attract and retains employees and to improve their long-term wellbeing. As far as possible within its means, bestchance also provides over award/enterprise agreement family, learning, charitable and other non-salary benefits.

bestchance hold some reservations in relation to the effectiveness and cost of the regulations in achieving its intended outcomes and note significant limitations in relation to the coverage and benefit of the regulations – particularly as they relate to the ECEC workforce.

Coverage of the scheme

bestchance have some concerns in relation the coverage of the scheme that result in inequitable access to the scheme for the ECEC workforce and inequitable treatment of not-for-profit ECEC services resulting in increased financial pressure, administrative burden and risk.

Inequitable access

The Economic, Education, Jobs and Skills Committee, *Inquiry into Portability of Long Service Leave Entitlements Report*¹ referred the Early Childhood sector as one that PLSL could be improved in, however it made specific note of the AEU submissions, which described the barrier associated with segmenting different parts of the ECEC sector and the increased pressure and inequity this places on employees within it. Analysis of the ECEC workforce pertains only to the limitations of the existing informal long service leave scheme. No analysis is presented on the structure of the ECEC workforce. This presents a significant limitation given that the Regulatory Impact Statement cites “non-traditional forms of employment such as: fixed term contract work, casual employment and independent contract work”² as the cause of the primary issue to which the PLSL Scheme is a response.

In contrast, the 2016 Early Childhood Education and Care National Workforce Census figures show a high proportion (~86%) of the Victorian workforce have been in their current roles for less than six years. The highest proportion being in their current role for between one and three years (~45%). The results for “Years of experience in ECEC sector” follow a similar trend: a high proportion (~67%) of the Victorian workforce with less than six years’ experience. Again with the highest proportion (~36%) having between one and three years of experience. Rather than indicating high levels of job insecurity or turn over, these figures appear to show a high number of the workforce are new to the sector. Similarly, the census did not show highlight issues of under employment with only just over a quarter of the Victorian workforce (~26%) work 19 hours or less on part time basis in Victoria, a figure similar for bestchance (~24%). Fixed term contracts and casual employment are not an issue at bestchance, ~2% of employees on fixed term contract and ~20% employees are employed casually, the rest are engaged as permanent employees.

The insecurity and contracted nature of the workforce that the scheme is proposed to address is not reflected in these figures.

Despite this, bestchance agree that the structure and system of PLSL should be improved for the ECEC sector, however the scope of any introduced regulation should include the entire sector. This will ensure that operational inequities are avoided, and that the objective be achieved for all ECEC sector employees.

¹ Parliament of Victoria Economic, Education, Jobs and Skills Committee, (2016), [Inquiry into portability of long service leave entitlements](#)

² Department of Health and Human Services Victoria, (2019), Long Service Benefits Portability Scheme, Regulatory Impact Statement.

While the scheme seeks to address issues of fair and equitable access to LSL, it fails to address the broader inequities caused by only scoping in not-for-profits ECEC providers. The impact of this is that most of the ECEC sector will be excluded.

Over half (~52%) of licenced places for children are available through *Private for Profit* providers. Further, *Private for Profit* providers operate 65% of centres that are licenced for 100 children with a faster growth outlook and easier access to funds to invest in greenfield sites. In contrast, *Not for Profit* providers account for only 35% of the providers and 30% of the places available in Victoria. In addition, a larger proportion (53%) of *Not for Profit* services offer fewer than 50 places.

As a ratio driven sector, a smaller proportion of the workforce are employed by the *Not for Profit* sector. Given that the majority of ECEC provision occurs outside of the *Not for Profit* segment of the market, the PLS Scheme does little to address fair and equitable access to LSL for the entire ECEC workforce. A reality of this scheme is that an employee can continue to work in the sector and lose their entitlements should they become employed by a for profit provider for 4 years or more.

Recommendation: Exclude all ECEC services from the scheme until due consideration can be given to the entire sector.

Inequitable treatment of *Not for Profit* Providers

bestchance are concerned about absorbing the financial impacts that the PLS scheme will have. The scheme represents unfunded cost that will have implications on cash flow and will reduce access to revenue that would otherwise be reinvested into our service delivery. bestchance is particularly concerned about the inequitable financial impacts that *Not for Profit* ECEC providers will face that others in the sector will not be required to absorb.

In real terms, the scheme will have a negative impact of \$150K on our cash flow each year based on current employment figures. The impact on our cash flow is worsened by removing any potential to reverse accruals once paid into the scheme. This will significantly limit our ability to reinvest in supporting program quality, development and innovation.

In relation to budgeting and setting fees, the LSL budget for kindergartens is currently 2% so the actual cost of 1.65% is covered. Therefore as long as we meet budget everywhere else fees will not need to be immediately increased due to the introduction of Portable Long Service Leave. We do however foresee increases to our costs for Portable Long Service leave associated with:

- Cash flow – as all LSL accrued amounts will need to be paid to external party on a quarterly basis;
- Administrative cost – managing LSL process – cost of Payroll staff administering 2 different schemes – one external through the Authority and one internal;
- Loss of interest income for the cash-out flow (\$5K to \$15K p.a. and increasing each year);
- Cost of setting up reports through the Payroll system to be able to send data to External Scheme (\$2K per day consultancy fee) – this will be one off at the start of the scheme.

As described above, not only do *Not for Profit* providers make-up a smaller proportion of the sector, they tend to offer smaller scale community based service offerings and lower economies of scale. These services provide more targeted support to meet an identified community need or vulnerability with a focus on quality provision, providing care to more disadvantaged segments of the community. *Not for Profit* providers represent the largest proportion of service providers operating in SEIFA 1 areas (43%), 88% of which are meeting or exceeding the National Quality Standard.³

³ Analysis of ACECQA quarterly snapshot data - Q1 2019

Not for Profit ECEC providers are disproportionately impacted by this scheme in an increasingly competitive environment in which service provision and employee attraction and retention are occurring. Emerging policy initiatives, such as the implementation of three-year-old kindergarten, will amplify the competition for employees, salaries and conditions in a constrained financial environment experienced by *Not for Profit* providers while seeking to provide high quality, targeted ECEC programs.

Recommendation:

To replicate the current cost structure and ability for providers to retain benefits the authority should develop and implement a mechanism to return LSL payments to employers once an employee is deemed to have left the sector. Or, in the absence of such a mechanism, identify and fund the transitional and ongoing costs of implementing the scheme.

Implementation

Clarity of the scheme

One of our key implementation concerns pertains to clarity as to which employees are included from the scheme. Clear tests that address diverse service delivery contexts and that give weighting to 'predominance testing' are required to support clarity and transparency in decision making and to avoid inadvertent omissions that carry uncertainty in cash flow or unexpected industrial repercussions.

Recommendation: Develop clear tests and tools to model scenarios that enable employers to rule employees in or out of the scheme based on diverse sector configuration.

Administrative burden

The PLS Scheme will require both system development, specialised reporting and manual comparison of employee data on a regular basis to avoid errors or omissions. This development and handling will incur costs and complicate existing administrative processes associated with ensuring correct long service leave payment calculations and handling of entitlements aligned with existing regulatory frameworks. This will significantly increase the complexity and demand on Payroll services and increase costs to organisation in commissioning specialised recording and reporting systems.

For example, with the implementation of the Long Service Leave Act 2018, Payroll services at bestchance have had to increase manual calculations and checks of long service leave entitlements with an additional two days spent most fortnightly pay runs. Despite bestchance using an industry leading payroll system, we have concerns in our system readiness to quickly absorb additional changes.

There are a number of scenarios that further complicate administration processes associated with the PLS scheme:

- Calculation of entitlements included in the scheme and those accrued prior, including retrospectively honouring of informal portable long service leave agreements in the sector;
- Employees that hold two positions within an organisation or across multiple organisations, who are impacted by the predominance test;
- Casual roles and manual assessment of service history breaks.

Part Two: Response to consultation questions

Complete List of Questions – Provided for the consultation process

Quarterly returns

1. Is the prescribed additional information appropriate?

The prescribed additional information is appropriate but additional guidelines with examples would be useful. A user group of payroll professionals could be established and frequently asked questions developed over time. A practice (dummy run) for employers over a transitional period may also be beneficial.

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

Yes, employers will be in a position to provide the additional information but it will require manual calculation and data entry at a significant cost to the organisation. It would be useful for the Authority to liaise with and provide a list of requirements to payroll software providers to assist in the calculations.

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.

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?

Greater clarity about the predominance test, including potential tools, tests and/or worked examples would assist payroll to determine inclusion or exclusion of entitlements.

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?

It is clear, however additional clarity about Health Professionals engaged in community service work outside of a health care setting would be useful.

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?

No. The commencement dates would benefit from a longer transitional period. Additional funding is required if 1 January 2020 is adopted.

No double-dipping

7. Does the proposed Regulation adequately address any risk of double-dipping?

Yes, it appears it does. It would be useful to have a review period and consultation with employers 12 months into the operation of the scheme however, to assess if any issues with double dipping have arisen.