

Portable Long Service Benefits Scheme  
Victorian Government

**cohealth response to List of Questions**

**Exposure Draft Regulations**

**Friday 31 May 2019**

## Background

cohealth is a registered community health service whose object is to promote the prevention and control of diseases in human beings, principally by establishing, promoting and operating a Community Health Service.

cohealth is a signatory to enterprise agreements (EA) that provide almost all our employees with long service leave portability. The entitlement under these EAs is double the entitlement contained within the portability legislation.

The portability legislation will require cohealth to pay into the new scheme, whilst continuing to accrue these EA entitlements. The difference in accrual rates will result in cohealth needing to procure, establish, and operate separate payroll systems. With no transition support available, nor allocations in current funding for investment in ICT systems, the procurement, establishment, and operation of dual systems will be at cohealth's expense and will need to be funded by repurposing existing client service delivery funding.

cohealth wishes to acknowledge that the portability legislation is a positive step forward for employees in the community services sector previously without a portability provision. Notwithstanding this positive advancement, the complexity of administering dual schemes will result in costs to community health services that, if unfunded, will result in continued stress on already resource-strained providers.

## Key issues for cohealth

Participation from registered community health services will duplicate portability entitlements that are available under existing EAs.

In the first year of the scheme, it is estimated the direct financial impact to cohealth of paying the duplicated levy will be \$400,000.

Management of the duplication of portability entitlements will result in cohealth needing to procure, establish and operate separate payroll systems.

The regulations fail to definitively outline which employees will be covered by the scheme, as there remains contradictory clauses and potential exemptions, particularly for community health services.

There are significant concerns relating to 'double dipping', which may see employers exposed to paying a long service benefit to a worker who has already claimed an entitlement from the Authority for the same period.

The Victorian Government must recognise the cost of compliance with the scheme, which provides a benefit already enjoyed by cohealth's employees under EAs.

If community health services remain in scope, cohealth calls on the Victorian Government to provide community health services with financial support to enable compliance with the scheme. Otherwise, cohealth may be required to redirect funding away from service delivery, facilities management and staff training and development to fund compliance.

## Industrial Relations Victoria consultation question

### 1. Is the prescribed additional information appropriate?

The information provided under Clause 5 of the exposure draft Regulations is appropriate for ensuring leave is accumulated correctly for each registered worker. The regulations fail, however, to account for workers whose role may differ throughout a workday or week, or where their engagement in "community service" work might change.

Caution has been exercised in recommending additions to the information cohealth would be required to provide to the Authority, as the administrative burden required to administer the scheme – including determining which employees are in or out of scope – is already prohibitive.

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

The capability of existing Human Resource Information Systems, and Payroll systems to accommodate the tracking and monitoring of duplicate portability entitlements is limited. The significant customisation required to facilitate this is not possible, nor economically feasible. It is likely cohealth will be required to procure, establish and maintain duplicate payroll systems, or implement significant manual work-arounds to comply with the Authority's information reporting requirements.

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

cohealth would expect responsibility for the sharing of information between the Authority and the external agency to sit with the Authority. Consequently, cohealth would expect the responsibility for gaining and maintaining consent to share information to also sit with the Authority. The burden for gaining and maintaining consent should not be passed on.

### 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?

As the exposure draft currently reads, an activity that is health or aged care work (section 7(6)) is prescribed not to be community service work. Further, instances where a service provides both health and aged care work as well as activities within the definition of 'community services' work, when the predominant activity provided by the service is health or aged care, then the service is not considered to be 'community services' work.

cohealth is a registered community health service, whose object is to promote the prevention and control of diseases in human beings, principally by establishing, promoting and operating a Community Health Service. Under the current draft, cohealth would therefore expect to be excluded from participation in the scheme.

Inconsistencies between the Act and the draft regulations with regards to the inclusion of community health services as employers, or staff as in-scope employees, must be addressed as a priority.

cohealth works within a social model of health. Services are codesigned with community, in partnership with the whole health and human service system. This results in team structures developed around consumer need, not professional identity. This means programs often utilise different professions to perform health services and community services, with staff often performing multiple roles across multiple teams. This complexity is not addressed in the exposure draft.

The regulations must include a predominance test that clearly sets out, which:

- a) activities or services are considered in-scope and out-of-scope; and
- b) workers are considered in-scope and out-of-scope; and
- c) employers are considered in-scope and out-of-scope.

In addition to the predominance test, it is recommended that the regulations adopt clear and consistent language with regards to the meaning of the terms "service", "activities", and "work".

There are significant gaps when the Act and draft regulations are applied to community health services as employers, and community health services staff as employers.

The following examples and queries serve to highlight the concern:

- An employee who works in an in-scope activity (e.g. case management) but has a qualification in allied health or nursing. Are they excluded from the scheme because of their qualification in allied health or nursing, or included because of their work as a case manager?
- An employee has dual roles with separate and distinct contracts with the same organisation. For example, one contract for three days as an allied health professional, and another contract for two days as a social worker. Is this worker included by virtue of their work as a social worker? Are they excluded by virtue of their work as an allied health professional? How should the employer define the predominance of their weekly workload?
- An employee may have a single contract to work as an allied health professional but may provide services across a number of distinct programs and funding streams, requiring different work on certain days (or part-days). For example, an allied health professional delivers NDIS-funded care for three days per week, and care funded by home care packages for the remaining two days per week. Is this worker included in the scheme by virtue of delivering an NDIS-funded activity? Or are they excluded from the scheme by virtue of this activity being a 'health service'? If they are included in the scheme, is the employer expected to pay the levy for the three days of in-scope activity under the NDIS or is the employer required to pay the levy for all ordinary hours because the predominant activity is the NDIS activity?
- An employee is promoted to cover a maternity leave position managing an in-scope community service activity for three days per week, while maintaining their ordinary role delivering case management for the remaining two days per week. Is the employer required to pay the levy for the two days of in-scope case management work, while recording the accrual of long service leave under the fair work instrument for the employee's entire ordinary hours?

**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?**

In their submission, the Victorian Healthcare Association notes that there are 150 modern awards to contemplate. They propose that a more efficient and balanced approach to determining inclusion and exclusion in the regulations would be for the Victorian Government to assert that all modern awards are exempt, and to then specify which awards and agreements are considered in-scope.

For example:

*Who is excluded as an employee?*

An individual to whom any of the following awards or agreements apply:

1. any modern award except for the:

Social, Community, Home Care and Disability Services Industry Award 2010;

Supported Employment Services Award 2010; and

Children Services Award 2010

2. any enterprise agreement that applies to employees covered by the awards excluded by 1.

**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?**

The time given to prepare for compliance with the legislation is inadequate. This is driven by the ongoing lack of clarity provided by the draft regulations (as to whether community health services are in scope), and the administrative burden of resourcing an unclear change in short timelines.

The proposed commencement date for community services must be delayed and, at a minimum, match the date for NDIS service provider commencement.

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

Given the ambiguities in section 11 of the draft regulations and their inability to protect employers from honouring a worker's request to access long service leave under a fair work instrument after they have received a benefit for the same period from the Authority, the Victorian Healthcare Association proposes the following alternative approach:

- 1) The employer registers an in-scope employee with the Authority
- 2) The employer provides the Authority with evidence that the employee has an applicable award derived or enterprise-derived long service leave entitlement, and that long service leave has been accrued for that employee
  - a) This would mean the employer is not required to pay a levy to the Authority, though the employer would still report all other required information to the Authority as part of their quarterly return
- 3) Where termination of employment occurs and the award- or enterprise-derived continuous service is broken (and with it, any fair work instrument accrual or entitlement to long service leave is negated) the employer will make the relevant payments to the Authority for the service period reported.

This approach maintains the intent of the Act, provides a long service benefit and portability to employees and protects employers from double payment of a levy and benefit.

cohealth supports this approach.