



VICTORIAN PEAKS AND STATEWIDE NETWORKS FORUM

4 AUGUST 2009

POSITION PAPER

PORTABLE LONG SERVICE LEAVE IN THE VICTORIAN COMMUNITY SERVICES SECTOR

Background

The non-government community sector Victorian Peaks and Statewide Networks Forum (convened by VCOSS) broadly supports the principle of portability of long service leave in the community sector.

Longer term pressures on attracting and retaining a skilled workforce in our sector means that a wide variety of strategies are required to deliver a professional and experienced workforce into the 2020s and beyond. The introduction of a portable long service leave (PLSL) scheme is potentially one of those strategies.

The Victorian Government has committed to introducing a legislated long service leave portability scheme which will cover the vast majority of community sector organisations (CSOs) in Victoria. Over the last year, the community sector has been in discussions with the Department of Human Services (DHS) about the development of an appropriate PLSL scheme model. The sector has provided feedback through a number of channels including the Portable Long Service Leave Reference Group established by the Government, the VCOSS Peaks and Statewide Networks Forum and communications with the Minister for Community Services, The Honourable Lisa Neville.

Many parts of the sector have provided consistent feedback about in principle support for a PLSL scheme that is viable and sustainable for the community sector from a financial and administrative perspective, as well as successful in securing employee entitlements and improved employee retention. To ensure that a sustainable model is developed, the sector has called for a number of models to be tested with the DHS Actuary and has sought access to the business impact assessment of these models.

Proposed model

On 29 July 2009, members of the VCOSS PLSL Working Group were briefed by the DHS about the Victorian Government's preferred model. The model proposed is the Central Fund Model where:

- Management of portable long service leave is to be centralised;
- Employers would register their employees and pay a quarterly levy payment to an authority/fund manager that would manage employees' long service leave (LSL) funds and entitlements;
- Administration fees would be factored into the quarterly levy;
- Monitoring and enforcement would be the responsibility of the authority/fund manager; and
- Award entitlements more generous than the *LSL Act 1992* would be managed by employers.

The Victorian Government has also reiterated that:

- Legislation for a community sector portable long service leave scheme is to be introduced in the spring session of parliament.
- A 'non-urgent' timeframe for implementation of the Scheme is preferred, but decisions about commencement of the Scheme are dependent on the outcomes of discussions with the Commonwealth Government in relation to the *Fair Work Act 2009*.

Sector response

At a VCOSS PLSL forum on 30 July and again at the VCOSS Peaks and Statewide Networks Forum on 4 August, representatives of the community sector considered the model proposed by DHS.

While many organisations and peak bodies support the principle of PLSL, the community sector has overwhelmingly voiced opposition to the Central Fund Model currently proposed by the Victorian Government.

The key issues of concern are:

1. Cost:

The overall net cost of LSL will rise as a result of increased administrative complexity (see below) and the transfer of funds from organisations' balance sheets to the central fund. This comes at time where many organisations are under financial stress as a result of the global economic downturn which has compounded ongoing financial pressures. It needs to be recognised that most CSOs are price-takers, which (unlike employers, such as those in the construction industry) cannot pass on price increases to customers.

Currently, the Victorian Government has ruled out any financial support to reflect the net cost impact, even though over a billion dollars of state government programs would be included in the scheme, along with significant other government agency funded programs outsourced to non-government community sector organisations.

2. Administrative complexity.

The vast majority of community sector employees are on awards or workplace agreements where LSL entitlements are superior to the *LSL Act*. The proposed model requires 'doubling up' of entitlement records, financial management and accounting, and maintenance of accurate records by both the employer and the new authority/fund manager.

3. Timelines:

The community sector does not support the legislation timelines proposed by the Victorian Government given that there has been no formal consultation period where the sector has had access to the business impact assessment of the various models.

There is significant opposition to the proposed model and the combined Victorian Peaks and Statewide Networks Forum does not support the model as it is currently proposed.

However, given the strong in-principle support for PLSL, Forum members at the meeting on 4 August expressed a desire to keep working with the Victorian Government to develop a sustainable scheme, with attributes as outlined below.

Attributes of a sustainable model

A sustainable portable long service leave scheme for the community sector would:

1. Be administratively simple and not duplicate record keeping on entitlements and provisions or employee service continuity across multiple systems.

The proposed Central Fund Model will only cover entitlements equivalent to the Victorian *LSL Act*. However, the vast majority of community sector employees (estimated at over 90 per cent) are subject to a wide range of awards and workplace agreements that exceed Act entitlements in terms of weeks accrued per year of service. This means that employers will have to maintain dual accounting records of entitlements under the scheme and entitlements that exceed the Act. This is a major limitation of the current proposal, particularly for small organisations with limited financial management and accounting resources. Together with the eligible 'gaps in continuous service' proposed, the complexity also opens up problems for employees seeking to cash out pro-rata accruals upon leaving a specific employer.

Other PLSL schemes (such as the building and construction industry scheme) have been set up to enable the full LSL responsibility (with all record keeping, such as anniversary dates and accrual records across various awards) to be 'outsourced' to a stand-alone fund. It is strongly recommended that this be considered as part of the scheme.

2. Be cost neutral for community organisations.

Portability will clearly cost more than current practice as more employees will access their LSL entitlements. The Victorian Government needs to recognise the increased financial costs for community sector organisations. Where employees are funded by government programs, the price set within these programs should cover the cost of LSL, including any extra cost of portability. This is already the case for all government employees and for a number of other schemes, for example health.

It was noted at the meeting on 4 August that a significant number of CSO employees are funded from non-government revenues, including investment returns and fundraising. This reinforces concern about the timing of the scheme (see item 4 below), given the significant impact of the economic downturn on investment returns and fundraising.

There is a clear precedent for the Victorian Government to financially support organisations to implement the scheme. For example, the exceptional events clause in the NGO Price Index and various enterprise bargaining tri-partite negotiations have been used to fund legally binding costs imposed on the sector, such as minimum wage safety net determinations and bargaining negotiations, where the increased cost of service cannot be passed on to consumers.

It is unclear how federal funding bodies will partner with the Victorian Government to ensure that programs predominantly funded by the Commonwealth would be priced to ensure the cost of PLSL is included in all relevant programs. This requires further clarification.

3. Be scoped to achieve demonstrable benefit to the relevant sectors and to the relevant employee sub-sectors.

Given the serious workforce crisis that will impact on the whole community sector over the next 10 to 20 years, the scheme needs to be scoped to maximise the mobility for employees across and within the non-government community sector, and help address the recruitment and retention needs of specific segments of the workforce.

The scheme needs to create relevant links between the community sector and related employers such as local government, state government, health and other relevant portability schemes. As service delivery is further reformed, the nature and definitions of what 'is' a CSO is likely to change in the next decade and the scope needs flexibility and possibly a series of tiers of 'full member', 'opt-in member', etc, as with other existing schemes.

The current proposal raises concern about who is 'in' and who is 'out'. For example, some sectors have expressed concern about segmenting employees where organisations provide a mix of not-for-profit and for-profit services (such as aged care). There is also a concern that the proposed scope would further marginalise the community sector from the health sector.

There needs to be clear criteria, a clear mechanism, and a dispute resolution process for determining who is 'in' and who is 'out'. This is particularly important for those organisations on the 'cusp' such as community health, employment services and social enterprises that are commercially run from within NGO entities.

The proposed model relates to Victorian community sector employees only. It is suggested that there be consideration of a more national model (or at least between two or more states, in negotiation with the Commonwealth) such as in the construction industry or Catholic education schemes. This might enable a widening of the numbers of employees covered and therefore overall viability and employee mobility, and greater flexibility to include or exclude certain service sectors.

4. The timing needs to align with the economic recovery - not with the current period where the community sector is dealing with significant investment losses and donation impacts associated with the GFC.

The current timetable for implementation needs to be delayed. This would allow for more effective consultation and for implementation of the scheme to commence as the economic recovery develops, enabling the balance sheets of community sector organisations to recover from the current downturn.

The global financial downturn has meant sector investment revenues are, anecdotally down by 30-60 per cent.

Further, the DHS Actuary advised that the 'Employer to Employer' alternative model would cost up to 0.1 or 0.2 per cent more than the Central Fund each year, but would gain the sector between 0.1 to 0.9 per cent into their balance sheets. Such an alternative model could be significantly more cost effective – enabling investment in information technology and other depreciable assets by employers whilst also delivering enhanced LSL entitlements to the whole sector's employees.

Therefore the timing of creating a Central Fund in 2010 is unpalatable, as balance sheet impacts would be commencing less than two years after the biggest capital losses in living memory.

While vacancy rates for experienced staff continues to be a concern in general, the current downturn in the labour market has, anecdotally, slowed down turnover and enhanced the depth of field of candidates for some sector vacancies.

Basically, the arguments for PLSL are weakened at a time of weaker labour market and organisational financial stress and strengthened at a time of tightening labour market and growth in the economy.

5. Be planned and prepared for, with support strategies for relevant sectors.

An implementation readiness assessment and planning timeline are required that enables full consideration of the model, scope, systems implications and organisational budget planning. This is especially so for organisations that need to review their LSL accrual accounting regimes (which are extremely diverse, in line with current turnover rates and in compliance with accounting standards).

Organisations need to be able to plan towards 'from year one' provisioning and accrual over more than one financial year. Aside from ensuring government programs can be readied to incorporate the full net cost of PLSL into NGO pricing frameworks, a range of ongoing support services and advice will also be required, particularly for small community sector organisations with limited financial management and accounting resources. There may be savings for small CSOs that are over-provisioned as well as enhanced planning and preparation required for those that are under-provisioned.

Further information

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