27 June 2020

VCOSS submission to Portable Long Service Scheme draft regulations

Introduction

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to provide feedback on the draft Long Service Benefits Portability Regulations (the permanent regulations).

VCOSS supports the purpose of the Portable Long Service Leave (PLSL) scheme, to provide employees access to an entitlement they often miss out on because of short-term funding arrangements and insecure work. Portability can help improve employee retention rates and boost wellbeing and satisfaction.

The proposed changes in the permanent regulations provide welcome clarity to employers and workers about who is covered by the scheme.

However, the portable long service leave scheme has significantly increased costs for community service organisations. Like many other industries, the community sector is facing new challenges and disruptions as a result of COVID-19.

Organisations are experiencing reductions in fundraising and donation income. For some, the end of Job Keeper and the uncertainty around the ongoing federal funding of the Equal Remuneration Order loom as financial cliffs. Many contracts have been extended for only three months, awaiting the delayed state budget in late 2020.

With low indexation rates in recent years, and increasing costs, government funding has slipped behind the true cost of delivering services. Underfunding community organisations leads to job losses and reduced support for vulnerable community members.

With more employees in scope of the PLSL scheme, organisations will have to stretch budgets even further. Community service organisations and employees, while generally supportive of the purpose of PLSL, should not have to trade-off quality of services and security of employment to meet its additional costs.

Funding contracts and indexation must account for the increased costs of PLSL.

Adopt a new employee test based on award coverage

VCOSS welcomes the abolition of the employee predominance test, and the inclusion of a new test based on award coverage.

The lack of clarity about which workers met the previous test was leading to confusion, inconsistency, and inequity across the industry. For the majority of employees (including administrative, payroll, policy and team leader positions) the proposed changes will make it clearer whether or not they are in scope of the scheme.

Many organisations consulted welcomed the change, noting that it will reduce confusion and administrative burden when employees change roles, are promoted or their positions restructured. Many organisations reported a strong commitment to the scheme, and to equitable access across their organisation. Several small organisations reported they had already registered all their staff, despite ongoing confusion around the employee predominance test.

However, the coverage of employees in management roles remains unclear, especially where they are employed on contracts that do not directly reference any award. VCOSS members reported that many management staff are paid well above the highest level of the SCHADS award and their positions are not contractually linked to the highest award level. It is unclear what the status of these employees will be.

There was support among many VCOSS members for CEOs and managers being in scope of the scheme, particularly in smaller organisations where positions are often not highly paid. PLSL is a further incentive and benefit for these positions. Excluding them from the scheme could act as a disincentive to organisations paying above award rates.

Some organisations, including Neighborhood Houses, employ staff who are outside the scope of the award coverage, for example tutors (who are covered by the *Educational Services (Post-Secondary Education) Award* 2010). Excluding some employees increases the administrative burden and creates inequities within workplaces.

Review the impacts on the community health sector

The community health sector has clearly articulated their position, that the sector should not be in scope of the PLSL scheme. VCOSS members in the community health sector reported concerns about the high cost, the administrative burden of maintaining multiple portability schemes and accrual processes, the inability of their payroll and HR systems to service multiple schemes, and the limited benefit to employees who already have more generous portability and leave provisions under their existing arrangements.

They noted that bringing their sector into the PLSL scheme may put at risk the portability arrangements already in place in the community health sector. This could have unintended impacts on the many other workers (not eligible for the community sector scheme) who may lose access to their portability entitlements.

Community health providers also reported confusion about the status of management and administrative staff who are employed under different awards. VCOSS understands that they will not be in scope under the proposed changes.

VCOSS also understands that changes to scope will not operate retrospectively.

Clarify the arrangements where employees accrue more generous entitlements

Several VCOSS members reported an ongoing lack of clarity around how the scheme interacts with other, more generous, long service leave provisions they may offer through their own enterprise agreements or employment contracts.

For example, under some enterprise agreements, employees accrue long service leave more quickly than under the PLSL scheme. As a result, employers will be drawing on the PLSL fund earlier than 7 years, to pay out long service leave to their employees.

Other employees are entitled to additional weeks of long service leave.

Organisations have received conflicting and confusing advice from the Portable Long Service Authority (PLSA).

Clearer guidance should be provided by the Government and the PLSA about the rate at which entitlements will be paid out, when employees accrue leave at a higher rate, and how this will occur.

Delay implementation

The community sector, like many other industries, is facing new challenges and disruptions because of COVID-19. Demand is high, and services are transitioning to new service models, including telehealth and remote delivery.

They are experiencing reductions in fundraising and donation income. For some, the end of Job Keeper and the uncertainty around the ongoing federal funding of the Equal Remuneration Order loom as financial cliffs. Many contracts have been extended for only three months, awaiting the delayed state budget in late 2020.

Introducing further regulatory and financial changes at this time will be an unreasonable burden on organisations and create significant cashflow challenges.

VCOSS recommends delaying the implementation of the changes as long as possible, until at least late 2020, to give the sector time to prepare and adapt.

Organisations also seek clarity about whether they will be reimbursed for employees, including senior management, if they register them for the scheme, in good faith, but are eventually found to be ineligible.

Where organisations are being reimbursed, it is important that processes are in place to facilitate timely reimbursement. Delays in reimbursement create additional cashflow challenges for organisations already facing difficult financial circumstances.

Incorporate the costs of PLSL into a fair indexation formula

The proposed changes will significantly broaden the scope of the scheme, ensuring more employees are eligible. While every organisation is in a different position, VCOSS members consulted reported on average about 20-25% more employees will be within scope.

While many VCOSS members welcomed this from an equity and retention perspective, they reported that the additional costs associated could be significant. Community organisations spend most of their budget on wages and salaries. Increased costs will inevitably lead to reductions in other areas, including service delivery and contact hours.

Organisations are already struggling to make ends meet. Many organisations now lack adequate funding to sustainably deliver services and plan for the future. Government funding for social service organisations has stayed at two per cent per annum over the past six years. Yet Fair Work Australia last year raised the minimum wage by three per cent, and other costs, like the increase to the superannuation guarantee, continue to rise.

A fair indexation formula incorporating wage rises, the superannuation guarantee, portable long service leave and the different costs of delivering services in rural and remote areas is desperately needed to guarantee community service organisations are sustainable and effective into the future.

Further information

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

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