

7 August 2015

SUBMISSION TO THE PARLIAMENTARY INQUIRY INTO PORTABILITY OF LONG SERVICE LEAVE ENTITLEMENTS

Introduction

NDS is the peak body for non-government disability service providers with 200 members in Victoria and 1,010 nationally. We have a diverse and vibrant membership including small, medium and larger service providers who support thousands of people with disability. Our members employ over 8,000 people in Victoria and are supported by countless volunteers in delivering vital services. NDS is committed to improving the disability service system to ensure it better supports people with disability, families and carers and to build a more inclusive community. NDS has been at the forefront of the campaign to support the introduction of the National Disability Insurance Scheme (NDIS) and we are now supporting service providers as part of its trial in the Barwon region.

NDS is pleased to make a submission to this Inquiry into portability of long service leave (LSL) entitlements. It is noted that the Terms of Reference request the Committee to investigate employer schemes that provide portability of long service leave entitlements for Victorian workers.

As you will be aware the Victorian community services sector does not have a portable long service leave scheme. There was consideration of such a scheme for the sector in 2010 when the Community Services Long Service Leave Bill was presented to the Victorian Parliament. At the time, NDS undertook extensive consultation with members on the issue and commissioned independent financial analysis on the cost and impacts of such a scheme. In the light of this analysis, NDS requested that the government not pursue implementation of the proposed LSL Scheme for the Victorian community sector, a position which continues to be the

approach taken not only by Victoria but all States and Territories other than the ACT, where LSL for community sector workers has been available since 2010.

Portable Long Service Leave Schemes

NDS understands that interest in portable LSL schemes derives from a perception that such schemes may be a method of addressing recruitment and retention issues for various industry sectors. The disability sector faces substantial workforce challenges, as has been documented in [various NDS papers](#) including a workforce discussion paper and profiles of the workforce in the NDIS trial sites¹. These challenges include meeting significant increased demand for support workers with new community based service models, with less direct supervision and limited funding for training and professional development.

NDS submits that there are more cost effective strategies than portable LSL that directly address attraction and retention issues. For example the [CareCareers](#) initiative² assists in attracting workers to the sector, whilst increased pay, opportunities for permanency, and provision of sufficient and timely hours of work would also assist retention of staff. There remains a lack of evidence to support the case that portable LSL would assist in attracting and retaining staff in the community services sector. Furthermore it is possible that LSL may operate as a retention incentive for only some subsets of workers (e.g. older workers), resulting in potential distortions of a sector's labour market. It is arguable, in any event, that LSL is not a contemporary workforce measure given that it was originally introduced into the Australian industrial relations system to allow immigrants to make the sea journey back to the United Kingdom, and was developed at a time when many people had lifetime jobs. By contrast, social research undertaken by McCrindle³ into Australian society in 2015, indicates that the average employment tenure in Australia is now only 3.3 years and that, on average, Australians will have had 17 jobs over their lifetime, and worked in five different careers.

¹ See <http://www.nds.org.au/projects/article/179>

² See <http://www.carecareers.com.au/>

³ See <http://mccrindle.com.au/the-mccrindle-blog/job-mobility-in-australi>

In 2009-10, NDS opposed the proposed LSL Bill on the basis that not only was there insufficient evidence of the benefits of a portable LSL scheme, but that the proposed scheme represented an unreasonable cost imposition on employers and was administratively very complex. At that time, non-profit disability service providers were operating in a chronically underfunded environment and struggling to meet increasing demand for disability services. The nature of the work and the workforce, with high numbers of casual and part time workers with varying weekly hours of work; and the incidence of workers working across two or more employers concurrently, and moving in and out of the industry regularly, all contributed to a very complex environment in which to impose a portable LSL scheme. These factors continue to characterise the disability sector today.

Sector in transition:

Since 2010, the environment in which the disability sector has been operating has changed substantially. In 2012, Fair Work Australia (FWA) found employees under the Social, Community, Home Care and Disability Services Industry (SCHADS) Award were relatively lower paid compared to similar sectors. As a result, FWA granted pay rises in the sector of between 19% and 43% between 2012 and 2020. In our view, this decision may go some way to addressing workforce attraction and retention issues confronting the sector.

Disability Services are now undergoing a major transformation with the implementation of the National Disability Insurance Scheme (NDIS). The NDIS fundamentally changes the existing structures in the disability sector and poses radical challenges for all disability service providers. Funding is shifting from the traditional state system to a national program providing individualised funding to participants rather than block funding to organisations. This seismic shift in the disability funding model will create a competitive market for disability services where not for profit services will operate alongside and in competition with for profit providers, while the future role of government service provision remains unclear. It is expected that the full commencement of a national scheme will also see increasing delivery of disability services by organisations operating across several Australian states, rather than by state based organisations.

The three year rollout of the NDIS in Victoria is scheduled to commence in July 2016. However it is already evident from the experience in the Victorian NDIS launch site in Barwon that the pricing for services is extremely lean, and that providers are facing substantial financial pressures to adapt and restructure in order to survive in the new environment. NDS estimates that the NDIS 'efficient price' allows for funding of less than one day of LSL per employee per annum, based on an assumption that this provision is used by a very limited proportion of employees⁴.

The NDIS prices are modelled by reference to the salary and conditions of the national SCHADS Award. However, many Victorian disability service providers currently operate under expired EBAs based on Victorian award conditions, rather than under the Modern Award. They are therefore already disadvantaged in terms of maintaining costs within the NDIA price settings, as some of the common EBA conditions adopted in the sector are significantly above those provided by the Award.

The imposition of any additional state based costs on their workforce would further disadvantage disability service providers and, by association, their clients. The recent [Productivity Commission draft Report on the Workplace Relations Framework](#)⁵ argues that State Governments should not be able to unilaterally trigger costs for employers by creating public holidays. This view applies equally to the idea of introducing portable long-service leave and the related costs to employers in sectors where portable LSL has not been a feature in the past.

The argument against extra (and unavoidable) costs being imposed on disability sector employers is all the stronger in the context of full scheme NDIS roll-out from July 2016. The NDIS, in our view appropriately, promotes the practice of people with disabilities directly employing their support workers, in order to maximise individual choice and control for NDIS participants. Participation in a portable LSL scheme would inevitably only add to the complexity of the requirements facing such employers, prejudicing their ability to fully realise the benefits the NDIS holds out for them.

⁴ NDS Victorian internal analysis, available on request to Parliamentary Committee

⁵ See <http://www.pc.gov.au/inquiries/current/workplace-relations>

Conclusion

In 2009-10 NDS could not support the introduction of a portable LSL scheme for the Victorian community services sector due to the expected increased costs for disability service providers who were already operating in chronic underfunded environment. We were also concerned about the administrative complexity of a scheme designed to take account of the particular characteristics of the community sector, and the lack of evidence that such schemes represent contemporary effective means of addressing genuine attraction and retention issues.

The intervening years have not seen a resolution of these concerns. Indeed, the introduction of the NDIS potentially places greater financial pressures on service providers, and moves them into a competitive market operating at a national level. Any additional state based employment costs would operate as a financial penalty and unreasonably disadvantage Victorian providers.

I am happy to be contacted to discuss this submission further,

A handwritten signature in black ink that reads "David Moody". The signature is written in a cursive style with a long horizontal stroke at the end.

David Moody

State Manager, Victoria

National Disability Services