



NDS SUBMISSION TO THE REVIEW OF THE PORTABLE LONG SERVICE BENEFITS SCHEME 2023

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About National Disability Services

National Disability Services (NDS) is the peak body in Victoria and Australia for non-government disability service providers, with over 270 members in Victoria and more than 1200 members nationally. We provide information and networking opportunities to our members and policy advice to State, Territory and Commonwealth governments. NDS has a diverse and vibrant membership, comprised of small, medium, and larger service providers that deliver direct and indirect support to people with disabilities. Our members collectively offer the full range of disability services; from supported independent living and specialist disability accommodation services to respite, therapy, community access and employment.

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Introduction

NDS is committed to improving the disability service system to ensure it better supports people with disabilities and their families and carers and to building a more inclusive community. NDS is also committed to the provision of good employment and an appropriately skilled and sufficient workforce. In alignment with this, NDS welcomes the opportunity to comment on the Review of the Portable Long Service Benefits Scheme. This submission is informed by extensive consultation with NDS members, who have provided examples of the impact and costs of the Long Service Benefits Scheme on their organisations.

NDS is aware that in the current low employment environment impacting Australia, which is expected to remain for coming months, the need for improved retention of staff is critical. However, it also acknowledges that recruitment of new staff in this environment is difficult and expensive, with current estimates indicating that there will be a shortage of 213,000 workers in Victoria by 2024. This poses an opportunity for stakeholders to review whether existing workforce retention practices and strategies are cost-effective for organisations, and whether they will raise the quality of workforce management across the sector.

Key Issues

Lack of clarity around eligibility

Clarity over the scope of the scheme has been an issue since its inception. Over recent months, NDS has been working with the Portable Long Service Authority to support disability services to understand requirements and implement the Scheme. Despite good quality communication and assistance from the Authority, it has been evident that implementation of the Scheme has been fraught and that the 2020 change in regulations have not fully resolved this issue. The scheme's implementation has been complex and confusing, and created a substantial administrative burden for services.

There have been many concerns about the lack of clarity around coverage, particularly regarding supported employees, managerial, and administrative staff, with some NDS members spending hours

and hours analysing job roles and descriptions to determine eligibility. One provider mentioned that they had to seek legal advice on several occasions to clarify which of their workers fell under the scheme, as regulations appeared contradictory. Take the example below:

- The Long Service Benefits Portability Regulations 2020, Regulation 10 (1) (e): Workers under the Supported Employment Services Award 2020 are covered under the Scheme.
- The Long Service Benefits Portability Act 2018 – Schedule 1 clause 2 (2): Community service work does not include - (a) an activity that is funded by the National Disability Insurance Scheme within the meaning of the National Disability Insurance Scheme Act 2013 of the Commonwealth, unless such an activity, or class of activity, is prescribed to be community service work;

To clarify this inconsistency, the provider obtained independent legal advice on March 2023 and was advised that Supported Employers were not covered under the Scheme, something later contradicted by the updated advice on the Long Service Portability Regulations 2020, published in April 2023 by the PLSL Authority. Furthermore, when seeking clarity on whether some of the provider's managerial and administrative positions covered by the SCHADS Award fell under the scheme, the PLSL Authority responded by requesting copies of the employees' position descriptions and advising that the roles 'could' be seen to be covered by SCHADS and therefore eligible. The ambiguity in this reply was deemed unhelpful by the provider, who is now seeking independent legal advice to clarify the matter.

NDS faced a similar situation when the PLSL Authority provided advice on eligibility of supported employees at an NDS session that was recorded and promoted online, only to find months later that the advice provided was incorrect.

Recently, NDS sought clarification from the Portable Long Service Authority to assist employers in the disability sector to better understand their obligations under the scheme. The authority noted that some of their messaging and information may have resulted in under-registration for the scheme, with a correction posted in the authority's e-newsletter in March of 2021. Where under-registration may have occurred, the authority has advised they will work directly with service providers so that all workers can receive their entitlements and for employers to meet their obligations without penalty. Within this context, NDS acknowledges amendments made within the existing communications to ensure greater clarity around the coverage and operational aspects of the portable long service benefits scheme.

However, feedback from providers indicates that lack of clarity around eligibility remains an important issue. Role-specific inclusion is often ambiguous and open to misinterpretation. Therefore, if coverage under the Scheme is to remain linked to specific roles, specific and unambiguous guidance is required for organisations to determine which roles are covered.

Furthermore, the PLSL Authority could reconsider some of the eligibility criteria it has determined. Some providers stated that people working in managerial and administrative roles are actually disadvantaged by being included into the PLSL scheme given that the scheme does not pay for superannuation or offer any other entitlements – something they could access under a different award. The same is true for supported employees that do non-community service work, and for people who happen to work alongside people with a disability but whose role is not necessarily directly related to disability service provision (e.g. nursery labourers). Providers highlighted the fact that the skills required for these roles are transferrable between sectors, and therefore, should not be included in this particular initiative.

It is the belief of NDS that, if the objective of the PLSL scheme is to increase staff retention of client-facing roles in the disability sector (e.g. disability support workers), the PLSL Authority should limit the scope of the scheme to employees engaging directly in disability service provision.

Administrative complexities of implementation

In terms of administration, there seems to be a lack of clarity regarding payouts. In this sense, the National Employment Standard stipulates that the LSL payout rate is 1.65% - which equates to 13 weeks (about 3 months) over 15 years. However, 95% of national employers in the disability sector are employing staff under the SCHADS award, which has a payout rate of 13 weeks over ten years, and in some areas, of 13 weeks over 7.5 years.

The legislation stipulates that employers have a legal entitlement to pay at their rate. However, given there is a shortfall between what has been paid by the PLSL Authority and what the entitlement is, at the moment the employer needs to make up the difference. Current messaging from the PLSL Authority does not clearly state this.

In addition, there is a lack of clarity around what constitutes ordinary pay in relation to the scheme. For instance, the PLSL Authority has declared superannuation is not included, but they have not advised

how superannuation should be treated in the case where an employee wants to take long-service leave while working with an organisation. Similar matters arise when navigating maternity leave, termination pay, and backpay. As it stands, if an employee takes leave, providers cannot claim back from the PLSL Authority until the leave period has ceased, which has a significant financial impact if the employee takes leave for an extended period of time.

To address these matters, the PLSL Authority should clearly state in an official public record what they are going to pay and the costs that organisations need to cover. In this sense, the PLSL Authority could create standardised templates for providers to use when calculating pay that include the considerations mentioned above. Otherwise, employers may not be aware of their current obligations; creating significant liabilities.

Finally, disability service providers must still comply with the legacy awards from the past for all permanent staff, which means that they need to keep records for both schemes, thus duplicating efforts and spending additional time and efforts in complying with both schemes.

“To me it makes no sense to have to continue to accrue provisions as well as have this other system. It makes no sense to have the two systems running alongside one another (traditional and portable) when one should replace the other.”

This must be taken into account when considering the onus on providers for compliance with the PLSL scheme. In the future, the administration processes for both systems should be streamlined to reduce this burden.

Onerous reporting processes

Providers also raised concerns about current onerous reporting processes. Providers stated that payroll staff currently spend an inordinate amount of time to collate the data required to submit quarterly reports to the PLSL Authority, indicating that the process is inflexible and time-consuming:

“The system is structured for weekly pay cycles. We pay in fortnightly cycles. And if a staff member is on work cover, things are even worse. The PLSL Authority does not align with how work cover pays employees and how we pay them regarding ‘hours’. Finally, when submitting returns, there is no review

by the Authority of the previous quarters' returns to determine consistency. This all means that calculations become incredibly time consuming when submitting returns and reporting."

Another provider highlighted the long waiting times between submitting details for a return and the receipt of an invoice on which to make the relevant payment:

"A method of payment should be available at the time the details are submitted, thereby enabling the whole process to be completed at the one time. Employers have time frames in which to make submissions and payments. As it is, the process of reviewing submissions by the PLSL Authority would appear to be redundant, as any errors are highlighted at the time the details are entered into the return."

Finally, a third provider highlighted the need for employers to have access to data and reports on the PLSLA portal for accounting and auditing purposes:

"For example, we need to be able to access data to ascertain total LSL levies paid for each employee since the inception of the scheme. Currently no such report is available on the PLSLA portal. How can this be?"

The above feedback suggests that current reporting mechanisms are not appropriate for some employers and that a one-size-fits-all approach might be negatively affecting them. While standardisation is important, it is recommended that the PLSL Authority explores new approaches to reporting that might best suit different employers depending on their circumstances. In this sense, having different reporting templates based on pay cycles and finding ways to expedite reporting processes could be beneficial as well as providing employers access to data that is relevant to them.

Cost-effectiveness of the scheme

NDS has previously argued that the Scheme is costly and onerous for employers, and not a cost-effective strategy to address acknowledged challenges facing the disability workforce. While NDS supports measures that contribute to the availability, quality, skills, and satisfaction of staff employed in the disability services sector, there is a lack of evidence to suggest that portable long service leave is a cost-effective workforce intervention, as evidenced by the feedback below:

“The scheme is costly and perceived to have little benefit to our organisation and our capacity to retain workers. In the last two years, new staff that were employed by the organisation only stayed on average 5 months.”

Further feedback received from NDS members has affirmed these points, particularly emphasising the negative cash-flow impact of the Scheme on organisations:

“In the past, long service leave was a notional book entry, whereas now it is essentially tax. And it came out of nowhere, so organisations were not prepared for it. There is nothing to do to mitigate the impact it’s had. It is another administrative step for providers to comply with, in a sector where administrative dollars are not free flowing.”

Most disability funding in Victoria is now provided via the National Disability Insurance Scheme. This uses a national lean pricing model that does not account for state-based cost variations. Therefore, any additional state-based employment costs operate as a financial penalty and unreasonably disadvantage Victorian providers. In its ‘2022 State of the Disability Sector Report’, NDS reported that 36% of disability service organisations at a national level indicated that they expected to make a loss or deficit in 2022/2023, a figure that is higher in Victoria by 8%.

Regarding this, one provider comments that the Scheme is not only costing the equivalent to an additional two FTE’s per annum, but is also reducing the organisation’s ability to invest, thus further impacting on a significant source of their income generation. Other NDS members have cited the Scheme is costing an additional \$35,000 to \$100,000 per annum and have strongly opposed the need to pay into the Scheme from the first day of a worker’s employment, given that they may or may not be eligible for a long service benefits payment in the future. In the words of one disability provider, *“the scheme adversely affects the balance sheets of organisations that already work on thin margins, adding an additional burden on Victorian providers in a national market”*.

The above feedback suggests that the PLSL Scheme is posing a significant financial burden that is putting employers at a disadvantage while doing little to increase staff retention, as can be seen in the quote below:

“It can take me up to 12 months to train a support coordinator, but the turnover is still high. What ends up happening is that I train them up and then they go away as sole traders and take my clients with them. The disability sector is not yet at a stage where it can afford the financial pressures put on them. It doesn’t make sense to have the PLSL scheme in place when the [NDIA] price guide doesn’t take into account the qualifications, training, and support needed for workers in the sector. The PLSL scheme requires me to pay for leave up front when the employees have no intention of staying that long. Want to retain workers? Increase wages.”

Other providers added to this:

“If employees can get paid out at 7 years, they’ll take it because of the increased cost of living. People work for us to get their training, and then they work minimum hours and get clients on the side to keep the whole income. There is a financial driver at play. Why work for \$35 an hour when you can get \$60?”

To determine the true costs and benefits of the scheme to Victorian disability service providers, NDS recommends that the Victorian Government undertakes an independent cost-benefit assessment to determine the actual cost to productivity of administering the scheme as well as the impact it is having on workforce retention.

Inadequacy of existing communications

Despite existing communication efforts from the PLSL Authority, several stakeholders mentioned they were not aware of the existence of the Scheme until well after its implementation, which resulted in significant financial losses as they had to backpay the relevant fees.

“I started my new business a few years ago and I was very careful to review all the requirements entailed with that. Upon finding out about the existence of the PLSL scheme, I went from having a surplus to nothing. I lost tens of thousands of dollars on catch up fees. It caused me an absolute emotional breakdown. I couldn’t believe I didn’t know about it! It was quite concerning.”

In this sense, stakeholders stated that the PLSL scheme added financial hardship to an already difficult situation, and that new businesses had no means to affront the oncosts entailed. Worryingly, this lack of awareness seemed to exist for both, employers and prospective employees, which might mean that the proposed PLSL incentives for workforce retention may be misaligned:

“When recruiting, the staff at entry-level are requesting \$40 an hour and the staff with two years’ experience are requesting \$45 and over. Not one staff member has asked about entitlements. When we offer lower rates, they say ‘I can go on Mable and charge whatever rate I want’. When we mention the benefits of full-time and part-time employment, 90% of them have no idea what long-service leave is. This makes it extremely difficult for providers to compete.”

To prevent surprises, the PLSL Authority could consider increasing its communication efforts as well as diversifying its information channels by partnering with organisations and government bodies targeting entrepreneurs and new business owners.

In other matters, stakeholders also expressed that the tone of existing communications was inadequate and insensitive to the current pressures placed on them by the Scheme.

“I recently received an email from the PLSL Authority celebrating 3000 registered employers. I understand they see this as a win, but they don’t understand who they’re sending this message to! They don’t understand how we’re feeling about this.”

In order to address this, the PLSL Authority could consider using a different tone in its communications as well as include topics that will resonate and reassure employers currently experiencing hardship. Furthermore, it could create awareness-raising strategies and promotional campaigns targeted at employees in the disability sector to improve retention.

Conclusion and Recommendations

NDS acknowledges the professionalism and consultative manner that the PLSL Authority has demonstrated and appreciates its willingness to work with stakeholders like NDS to make sure the PLSL scheme benefits the disability sector. However, if the purpose of the scheme is to support disability service employees and to increase workforce retention in the sector, NDS strongly believes that this scheme is not a cost efficient and effective strategy to address the range of challenges facing the disability workforce. Rather, acceptance of the scheme is lacking. It is a cumbersome and administratively complex initiative, which adds to the cost and administrative burden of disability services. The PLSL scheme’s impact on cash flow is undermining the financial strength of services under

substantial pressure due to lean nationally based NDIA pricing. On the basis of member feedback, NDS recommends that the Victorian government:

1. Undertake an independent assessment of the full cost-benefit of the PLSL scheme, its impact on and cost to employers, and its impact on retention of Victorian community workers.

NDS also recommends the following measures to improve the scheme's performance and reduce confusion among disability service providers around the PLSL scheme, reduce processing times, and increase compliance.

2. Publish an official statement with unambiguous guidance regarding eligibility criteria as well as guidance regarding the steps employers need to take in the case of under registration.
3. Reconsider the inclusion of managerial and administrative staff in the scheme.
4. Publish an official statement with unambiguous guidance regarding payouts that clearly delineates the payout responsibilities of the PLSL Authority and the costs that employers need to cover themselves.
5. Create standardised templates for providers to use when calculating pay that include the considerations mentioned above.
6. Create a selection of standardised reporting templates based on different pay cycles and other payroll circumstances.
7. Provide employers access to relevant data and reports on the PLSLA portal for accounting and auditing purposes.
8. Streamline administrative processes between PLSL scheme and existing legacy schemes to reduce administrative burdens.
9. Increase and shift the tone of current communications to target new business owners in the sector and prospective employees. NDS will continue to promote information about the Scheme to help reach all impacted disability organisations.

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