

Submission the Royal Flying Doctor Service of Australia (Queensland Section) to the Consultation Regulatory Impact Statement relating to the investigation of the introduction of a portable long service leave scheme for the social and community services

Background

To understand this suggestion, the RFDS has considered some of the portable long service schemes operating around Australia, and noted the following:

- Most states have a portable long service leave scheme for employees with the building and construction industry
- The schemes for this industry were established because the industry has a strong project based employment style- individuals are employed by one industry participant for the duration of a particular building project and upon the completion of that project
- At least in Queensland, funding for the long service entitlements is by way of a levy on all building projects, with this levy required to be paid as part of the building approval process
- In Queensland, portable long service leave has also been established within the contract cleaning industry, again because the nature of the industry is that most employees are on a casual / part time basis and many of the employers engage those people for the duration of their cleaning contracts
- For the Queensland contract cleaning industry the levy is payable by employers as a percentage of wages paid.
- In the ACT, there is an established portable long service leave scheme for employees within the community services sector.

In 2009 all of the above schemes were already in place when the Productivity Commission considered whether a Portable Long Service Leave scheme should apply to not for profits. The final report recommended against the establishment of a scheme for NFP's

Sector

Paragraph 2.5 includes a list of the services that are considered in the statement paper as provided by the social and community services.

The list is extensive and the range of services diverse.

There will be difficulties separating those services that are delivered by a community based organisation from those delivered by other organisations such as the RFDS in Qld.

Health services are delivered by a wide range of service providers from individuals, volunteer based organisations, charities such as RFDS Qld, Bushkids, and an increasing number of for profit providers.

All can have a mix of funding sources such as government block funding, bulk billing under Medicare and fee paying patients. Is there a need to distinguish between a community service and a for profit provider who is delivering an essential service to the community?

Most employees of the RFDS Qld are on a permanent basis.

In limited circumstances, a contract of employment is for a fixed period

The cap on the term of employment is a direct consequence of the funding that will apply to the project or to the service that is being delivered.

The governments choose to select particular periods of time for a particular project and those funded by the project are required to ensure that they are not exposed to costs beyond the funding envelope.

The RFDS Qld Longreach mental health base has been a prime example where, until recently, only short term funding applied. This destabilises the staff and the community in which the service operates.

In many regional communities, the local GP would be regarded as a community health provider due to the nature of the services delivered and support for the local community.

In other communities the RFDS provides the primary health service.

How is a community health service defined?

The RFDS Qld does not charge the patients for the services provided so would likely be a community health service.

The inter hospital patient transfer service operated under a series of contracts with Qld Health does not charge patients but is it a community health service?

RFDS Comment: The definition of the sector to be covered by the PLSL scheme is difficult to define given the wide variety of services and industries covered.

Changes influenced by the National Disability Insurance Scheme (NDIS)

In paragraph 2.5 on page 12 the paper suggests that the introduction of the NDIS is a significant factor that will impact on the employment in the sector.

All commentary regarding the implementation of the NDIS suggests that it will impact on the delivery of services to those covered by the NDIS. The most fundamental change is that services cease to be block funded and become the selection by the individual - consumer directed care.

The historical experience of the roll out of a similar scheme in the United Kingdom over twenty years ago is that disability services are no longer delivered by NFP's, and are now delivered by smaller for profit providers. Particularly disability in home care environments.

The RFDS is aware that organisations like BUPA and Telstra are looking to expand their health services market in the disability sector and the RFDS is working with some of these.

RFDS Comment: Australia will likely follow the UK experience and the introduction of the NDIS will disrupt the existing model of delivery of disability support services both in terms of the types of services provided and the organisations that will deliver those services.

Service providers

In paragraph 4.2 there is discussion on the scope regarding for profit and not for profit providers. The selection criteria for application of the PLSL scheme is the social and community services, with a multitude of categories suggested in paragraph 2.5.

The RFDS is required to tender for the supply of services. The Inter hospital patient transport is an example. The tender is open to all - for profit and not for profit.

Councils are often involved in the delivery of health and other services.

RFDS Comment: If a category is to be included, all service providers in the selected categories should be included namely:

- Not for profit entities, including charities
- For profit entities
- Government service providers

Government should include State, Commonwealth, Local and government owned enterprises.

If one category of service provider is excluded, the PLSL scheme introduces a market distortion including:

- Employees within one category of employer are offered PLSL while others employed by an employer with a different purpose or ownership group is excluded.
- Employers required to contribute to a PLSL have a fixed cash outflow expense to contribute to PLSL irrespective of whether their employees will remain with that organisation for the ten years' minimum.
- Employers that are outside the PLSL may accrue the liability as a provision but are only required to fund the cash flow and confirm the expense when the employees have attained ten years' service.
- Employers required to contribute to a PLSL have an additional administration cost completing service record returns to the authority that administers the PLSL.
- Employers required to contribute to a PLSL have an additional administration cost to claim back amounts held from the authority that administers the PLSL in respect of employees that remain with that employer and who become entitled to long service.
- If the RFDS Qld is required to contribute to a PLSL it have an additional administration cost to calculate their long service leave liability in that the entity would normally provide for long service leave in accordance with Australian Accounting Standards and will need to undertake additional work to ascertain the long service leave liability net of amounts that can be clawed back from the PLSL scheme.
- The RFDS Qld is required to prepare financial statements in accordance with Australian Accounting Standards

Rate of PLSL contribution

The liability for long services for an employer is estimated as 1.6% of wages. Long service leave is designed to reward employees who remain with an employer for more than the qualifying period, generally ten years.

Paragraph 6.2.2 canvases a range of rates.

RFDS Comment: It is inappropriate to compare the rate that applies in the building and construction industry as this rate applies to cost of construction work including labour and materials.

The introduction of a PLSL scheme should not cost any more than the existing cost of long service leave.

Many persons on whom the levy is paid never collect any long service leave, no different to what happens now. Given the scheme gets to retain these funds and the additional administration cost to the employer it should be less than 1.6%.

Administration

The Industrial Relations Act requires all employers to maintain adequate records to allow the calculation of leave entitlements.

Where an employee remains with RFDS Qld for a period that qualifies the employee to receive long service leave, RFDS Qld remains liable to pay the long service leave entitlement to the employee and in the future to seek reimbursement from the PLSL scheme.

From 1 July 2018, the RFDS Qld and other employers with more than 20 employees were required to implement Single Touch Payroll - a system requiring employers to electronically report all payroll payments to the Australian Tax Office on or before the date of the payroll payment.

This Single Touch Payroll electronic reporting system extends to all remaining employers effective from 1 July 2019.

The practical impact of the Single Touch Payroll system is that the reporting requirements are so detailed requiring all employers to use an electronic software payroll package to manage their taxation administration requirements.

The change from 1 July 2019 applies to all employers, including both for profit and not for profit entities.

The RFDS Qld payroll software application includes the management of annual, personal and long service leave entitlements.

Consequently, calculating and reporting to a State based authority on the qualifying hours of employees will introduce separate and additional reporting commitments.

Sub Paragraph 6.2.2 (ii) includes the statement

There may also be administrative efficiencies in the long service leave entitlement being centrally administered and risk-managed, as opposed to individual employers making their own arrangements.

The RFDS will not be relieved of any responsibility to maintain employment records for long service leave entitlements. Many employees of RFDS Qld may qualify under the Qld PLSL for part of their employment with a particular employer.

RFDS Comment: All employers will have payroll software that will assist in managing the employer's responsibilities under the Industrial Relations Act. Any reporting required pursuant to a PLSL scheme will be additional and the amount of time will depend on the design of the system - refer our comments on qualifying employees.

Individual employers will continue to need to manage their records and finances to deal with the long service entitlements of their employees.

Sector employee retention

Paragraph 6.0 includes the statement

A PLSL scheme has potential to improve the attraction and retention of skilled employees in the sector thereby reducing training, recruitment and retention costs and encouraging improved productivity.

If employee service in any of the categories listed in paragraph 2.5 qualifies for the PLSL scheme, the range of skillsets and qualifications is very wide.

The above extract from Paragraph 6.0 will have little application if all employers in the sector are not included - that is, not for profit, for profit and government entities.

Whilst it may be argued that a PLSL scheme may encourage an individual to remain in the same sector, the introduction of a PLSL scheme may make it more attractive to employees to move between employers.

This will result in higher costs for the RFDS Qld as it needs to replace staff, incurring recruitment costs, induction training costs and lost production / efficiency during the handover time. The RFDS has a substantial induction program to manage the health services delivered

As the suggested PLSL scheme is limited to Queensland, the scheme may introduce other distortions.

RFDS Comment: The statement that the Qld PLSL scheme will reduce costs has limited scope as a PLSL scheme is likely to result in additional costs to the employer.

Qualifying employees

The Impact Statement paper does not consider the question of which employees qualify and where employees are partly engaged in the services that are considered in the statement paper as provided by the social and community services (paragraph 2.5).

The implication is for the entitlement of the employee and the determination of amount of payroll on which the levy will apply.

There are a number of questions to be resolved:

1. Where an employee is engaged in delivering services for part of their employment and the balance of their time is devoted to other activities

Example - a person employed for 3 days per week on the delivery of community health services and two days a week on fundraising support

Does the employee participate in the Qld PLSL scheme as to 100% or a lesser percentage - in the example 60%?

2. Where an employee is engaged in delivering services in Queensland for part of their employment and the balance of their time is devoted to delivering services in another state

Example - a person employed for 3 days per week on the delivery of community health services and 2 days a week on the delivery of community health services at a NSW community.

Does the employee participate in the Qld PLSL scheme as to 100% or a lesser percentage - in the example 60%?

3. Where an employee is employed by a RFDS Section in another state and their residential address is interstate but they are on secondment to a qualifying activity in RFDS Qld, working in Queensland, is that employee required to be included in the list of persons on whose payroll the levy is paid, even though the employee and the employer both know that the employee will not complete ten years' service in Queensland. (If yes, this will be another example where the employer will be required to pay the cost of long service leave twice).

What if they remain an employee of the interstate entity?

4. The RFDS Qld has Public Benevolent Institution status and offers effective salary packaging to its employees with the result that the RFDS Qld is able to pay a lesser salary than would be required if it were a for profit enterprise.

Where an employee is salary packaging an amount, is the payroll to which the levy applies the actual payroll paid to the employee or is the payroll have to be adjusted to a notional payroll.

5. An individual commences full time employment in the qualifying sector and is paid a low wage whilst training and in support of the cause they are working for. At a later date, they are employed on a full time basis with a different organisation in a well-paid role.

Example - employee for 9 years at \$25,000pa and then 3 years at \$80,000pa.

How is the inverse applied - employee for 9 years at \$75,000pa and then 3 years at \$30,000pa?

What rate is used for the employee when they access the PLSL for their 12 years of service?

6. Only a handful of people will be employed by the RFDS Qld under the awards referred to. Others will be employed under Nurses awards, Pilots awards, EBA's for doctors, and similar. Will the scheme apply to all employees who deliver the qualifying services?
7. Will there be a minimum wage requirement for the time worked to qualify for PLSL scheme purposes?

Does a volunteer qualify for their time to count as time for PLSL scheme purposes. There are many volunteers involved the delivery of RFDS services in the rural and remote communities. Will there be a minimum wage level for the time to count for PLSL?

8. Where a person's employment remuneration level fluctuates over the years, how is the amount paid to a person qualifying for PLSL calculated?

RFDS Comment: The remuneration levels of employees within the sector vary from volunteers, to minimal to substantial for highly qualified specialists. It is hard to envisage a mechanism that accommodates the variations in employment hours and in employment remuneration.

Taxation FBT

Sub Paragraph 6.2.2 (i) includes the statement

Employers would face additional direct costs such as increased payroll tax (PLSL payments would be counted in determining payroll tax liability) and fringe benefits tax (which would be payable on contributions to the PLSLS).

RFDS Comment: We note the comment that fringe benefits tax (FBT) will apply to the contributions. If this is an outcome, the cost to the RFDS Qld of a PLSL scheme will be approximately double the amount of the contribution paid to the scheme. The exempt FBT component per employee is generally already fully used so the RFDS Qld will be liable to pay FBT on the extent of any fringe benefits provided.

FBT applies at the top personal income tax rate.

The scheme should be designed to ensure that FBT does not apply.