



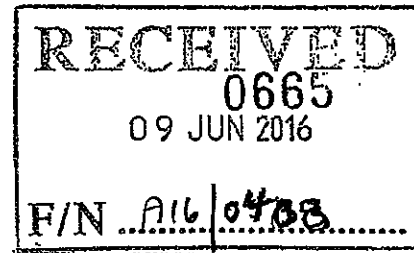
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Mr Steve Turner
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Dear Mr Turner

Re: Transfer of Disability Services to Non-Government Sector

As you are aware, on 19 November 2015 Department of Family and Community Services (FACS) staff were advised of the transfer conditions for those transferring to the non-government sector, by means of an email to all FACS staff. Transfer conditions were reiterated verbally to the PSA's Senior Industrial Advocate, Thane Pearce, on Wednesday 11 May 2016.

This letter is to provide you with written advice regarding the transfer entitlements and conditions that will apply to disability workers transferring to the non-government sector as part of the implementation of NDIS in New South Wales.

As you would be aware, the *National Disability Insurance Scheme (NSW Enabling) Act 2013* (NDIS Enabling Act) provides, at s14(4), that employment of a transferred employee with the new non-government employer is to be on the same terms and conditions as applied under an industrial instrument to the employee before transfer.

Further, the NDIS Enabling Act (s15) guarantees a range of employee entitlements for transferring staff. These include:

1. A requirement that, if transferring employees are provided with an employment guarantee, the **terms and conditions of employment under an industrial instrument cannot be varied within the employment guarantee period** except by agreement entered into by or on behalf of the transferred employee in accordance with applicable industrial law;
2. **Maintenance of existing superannuation arrangements** (including membership of defined benefit superannuation schemes for existing members);
3. **Continuity of employment** for the purposes of calculating benefits that may not have accrued at transfer date. Therefore, continuous previous service prior to transfer will continue to be recognised;
4. **Retention of rights to accrued leave**, including annual leave, sick leave, long service leave or extended leave accrued or accruing immediately prior to transfer; and

5. **Ability to cash out accrued annual leave and extended or long service leave.** All accrued annual leave and extended or long service leave that is not cashed out will be transferred to the new operator.

In addition to these legislative entitlements, the Government has made a decision on a transfer package which provides further transfer conditions to benefit transferring staff. These include:

1. A **transfer payment** of up to eight (8) weeks' base rate of pay, based on completed years of service, paid by the Government to all ongoing employees who transfer to a new operator; and
2. An **employment guarantee period** of two (2) years from the date of transfer for all ongoing employees so current award terms and conditions will continue to apply to them. The employment guarantee period is up to six (6) months for casual and temporary employees who transfer.

Further, existing industrial instruments will continue to apply post-transfer in accordance with Part 6-3A of the *Fair Work Act 2009*. The Act requires that existing industrial instruments covering disability workers will continue to apply post-transfer as **Copied State Instruments**. These Copied State Instruments may be preserved for up to five years.

I understand that a monthly consultative forum between FACS, NSW Industrial Relations and the PSA has been established and has met on two occasions so far. I trust that this forum will facilitate the sharing of information in relation to the transfer, and provide an opportunity for consultation on transitional arrangements and HR issues as they arise.

Yours sincerely



Vicki Telfer
Executive Director
NSW Industrial Relations

7 June 2016