

CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

In this update:

1. Payroll and payslip issues
2. Devolution of disability services to individual consortium partners
3. Consultation
 - (i) JCC Terms of Reference
 - (ii) Mandatory Award obligations including Clause 65 of the Award and the 1997 Consultative Arrangements
 - (iii) On-call arrangements
 - (iv) Reporting lines
 - (v) Outstanding correspondence/ failure to consult
4. HVDS/MNCDS casual transition process
5. Work Health Safety and Warabrook
6. Fair Work Commission – application for name change
7. Leave without pay - Extended leave calculation
8. Next JCC meeting

On Wednesday 1 August 2018, your delegates and industrial staff from the CPSU NSW/PSA met with Hunter Valley Disability Services (HVDS) to discuss collective member issues at the third Joint Consultative Committee (JCC) meeting which was held at Warabrook.

As before, many of the issues discussed also relate to our members from Mid North Coast Disability Services (MNCDS) given that Ability Options is also partner in that consortium.

The JCC is an ongoing consultative committee where CPSU NSW industrial staff and delegates are able to consult with management on workplace matters of mutual interest in accordance very clearly defined principles in your copied State Awards.

Attendees

CPSU NSW representatives and delegates: Dean Allen, PSA/CPSU NSW Industrial Officer; Gino Di Candilo, PSA/CPSU NSW Organiser; Rachel Smoothy and Kate McGrath (delegates).

Management representatives: Julia Squire, Chair, HVDS; Adele Cashion; Naomi McCorkell; Brenda Gledhill; Julie Melehan; and Rebecca Collins

Issues discussed included:

1. Update regarding payroll and payslip issues

The CPSU requested an update regarding member concerns involving serious underpayment, overpayment and payslip omissions by HVDS and MNCDS. HVDS advised that an internal project team has been working to resolve the issues and that this has led to the first successful pay period in July 2018 in which the earlier payment and record keeping errors appear to have been resolved. HVDS advised that this has been detailed in a recent staff bulletin and claimed that there has been a decline in the number of these issues being reported.

The CPSU NSW restated outstanding member concerns including those relating to overpayments, the unclear consequences for income taxation returns, repayment arrangements



CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

and further payslip leave balance omissions relating to public holiday leave accrual.

Additionally, the CPSU NSW requested priority attention to any unresolved payslip, underpayment and overpayment issues by HVDS/MNCDS. The CPSU NSW suggested management should organise additional staff resources and a more intensive systematic approach for all employees affected by the improper underpayment, overpayment and payslip detail issues particularly given the difficulty experienced by some members to keep track of underpayments, leave balances and the adverse impact experienced by some members in relation to periodic bank or loan debits.

The JCC was advised by management that a thorough resolution process would be put in place including a timeframe and that each payroll since transfer from FACS (eight and 11 months ago) would be rerun in order to generate a new payslip which should assist members to identify any payslip discrepancies. Management was unable to provide an estimate of a timeframe for this process although indicated that it would be given priority attention.

Members have reported that payroll issues have not been fully resolved and accordingly the CPSU NSW will continue to raise this issue with HVDS/MNCDS until it is resolved.

2. Transfer of disability services to individual consortium partners

The CPSU NSW requested an update in relation to recent announcements by both HVDS and MNCDS that staff will be transferred at some

stage in the near future to the individual partner entities of both consortia apparently prior to the expiry of the two-year employment guarantee.

Consequently, Ms Julie Squire, CEO at Ability Options and a HVDS Board member travelled to Warabrook from Sydney in order to address the JCC meeting and provide an update on behalf of HVDS only.

The JCC was informed that HVDS has recently recruited Mr Luke Hughes in order to support the HVDS Board and implement arrangements for the transfer of disability services staff from HVDS to the individual consortium partners namely Ability Options, ConnectAbility and Finding Yellow.

The CPSU NSW reiterated our request for consultation in relation to any proposed changes in accordance with the mandatory consultation obligations pursuant to *Clause 65 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* and the *1997 Consultative Arrangements*.

The JCC was informed that there would not be “much impact” arising from the transfer of staff to the consortium partners.

The JCC was informed of further management arrangements including that Ms Michelle Hodge will undertake the role of General Manager for MNCDS and Sydney operations and Ms Naomi McCorkell will manage the Hunter region. The CPSU NSW restated a request for provision of updated Organisation charts which we had previously directed to Ability Options the week prior. At the JCC the CPSU NSW was assured that updated Organisation charts for HVDS and



CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

MNCDS would be provided within 'several days'. Despite our subsequent written reminder sent to HVDS/MNCDS, the CPSU NSW has yet to be provided with updated Organisation charts for HVDS and MNCDS.

At present, the CPSU NSW is unclear as to what the proposed devolution or transfer of disability services to the individual consortium partners will entail until HVDS and MNCDS provide further detail by way of effective and prior consultation. Given the recent poor track record of HVDS and MNCDS with respect to other matters detailed within this and our previous Bulletins, we will monitor this issue closely and report back to members as further information becomes available.

Members are reminded that your conditions of employment are guaranteed for two years and up to five years in accordance with the National Disability Insurance Scheme (NSW Enabling) Act 2013 and that anything otherwise would constitute a breach of that legislation and the contractual obligations of both consortia entered into with the NSW State Government. Should that arise the CPSU NSW may need to pursue various legal options.

3. Consultation

(i) JCC Terms of Reference and cancellation of previous JCC meeting

As members would recall from the last CPSU NSW Bulletin dated 6 June 2018 found [HERE](#), this JCC meeting was originally scheduled for 3 July 2018 at Sydney.

Unfortunately, HVDS/MNCDS cancelled that meeting on short notice and then also cancelled a further rescheduling due to a variety of excuses including firstly, that a further meeting could not proceed until the CPSU NSW provided a written Terms of Reference for the conduct of JCC meetings. That is, information that the CPSU NSW and HVDS/MNCDS had already agreed in principle at the first JCC meeting held on 6 April 2018.

In other words, a Terms of Reference simply corresponding with what your Award conditions mandate should be done to facilitate a regular consultative forum for the CPSU NSW to be able to consult with management on workplace matters of mutual interest and concern on your behalf.

Secondly, HVDS/MNCDS then advised that the combined JCC meetings would be split into separate JCC meetings apparently due to recent restructuring impacts within the consortium partners for both HVDS and MNCDS.

The CPSU NSW argued that this appeared to be an unnecessary move given that the industrial issues and member concerns to date have been replicated across both HVDS and MNCDS. The HVDS management representatives declined our request to continue a combined HVDS and MNCDS JCC meeting schedule. The CPSU NSW has requested scheduling arrangements including particulars of management representatives who will be attending the future separate MNCDS JCC meetings although we have yet to receive a response.



CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

Thirdly, the earlier dates for the JCC meeting were cancelled as HVDS would now be inviting a number of additional management attendees to the next JCC meeting and as they were 'Newcastle based' the meeting previously agreed for Sydney would now need to be convened in Newcastle.

The CPSU NSW provided written Terms of Reference well before the further JCC meeting on 1 August 2018 however HVDS/MNCDS then did not provide a written response until shortly before midnight on the evening before the JCC meeting held on 1 August 2018. This meant that the CPSU NSW was unable to consider the contents or discuss with delegates in any meaningful detail prior to the JCC meeting on 1 August 2018 at 10am.

At the JCC meeting on 1 August 2018, management then proposed that the draft Terms of Reference should be discussed at further extraordinary meetings in order to negotiate a final, agreed format. The CPSU NSW opposed a meeting given that we had not yet been afforded a reasonable opportunity to consider any proposed changes submitted at almost midnight the night before the JCC meeting.

In any event, the CPSU NSW and delegates will consider the written contents of any HVDS/MNCDS feedback and respond to HVDS/MNCDS in due course.

(ii) **Mandatory consultation obligations including *Clause 65 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 and the 1997 Consultative Arrangements***

These are fundamentally important principles of your Award conditions which define the consultation provisions and a guaranteed central role of the CPSU NSW/PSA in the consultation process on your behalf.

Members will be disappointed to learn that both HVDS and MNCDS are simply not taking their compulsory obligations seriously to effectively consult on matters of mutual interest and concern, both formal and informal which they are required to do in accordance with *Clause 65 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, found [HERE](#) and the *1997 Consultative Arrangements*, found [HERE](#).

The CPSU NSW has raised this as an agenda item with HVDS/MNCDS for the past five months including at all three of the JCC meetings held to date and through extensive unanswered correspondence to HVDS/MNCDS. To say that the HVDS/MNCDS response and obfuscation to date has reached farcical proportions would be an understatement.

The CPSU NSW has requested a simple 'yes' or 'no' response from HVDS/MNCDS as to whether they agree that they **must** adhere to the above Award consultation mechanisms.



CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

In short, HVDS/MNCDS has steadfastly refused to acknowledge that it is bound specifically by the above mandatory Award consultation provisions and to date has made a mockery of their obligations in relation to **prior** consultation with the CPSU NSW. For example, the CPSU NSW has become aware of a number of HVDS/MNCDS policies implemented without effective or prior consultation including the *Code of Conduct and the Investigation policy and procedure*.

At the JCC, the CPSU NSW foreshadowed to the HVDS/MNCDS management representatives in the strongest terms that unless an urgent response to this item is provided to your union then the multiple breaches of the Award will inevitably lead to a dispute notification to the Fair Work Commission.

The HVDS/MNCDS then assured the CPSU NSW that these items would be reviewed urgently. Despite that assurance, the CPSU NSW has not yet been provided with a response.

(iii) On-call arrangements

The CPSU NSW detailed member concerns regarding changes to rostering arrangements for Coordinators and Respite (CARs) and Managers Accommodation and Respite (MARs). The CPSU NSW highlighted our concern that HVDS and MNCDS are increasingly in breach of their mandatory Award consultative obligations. The CPSU NSW has never been consulted with respect to this significant change which has apparently been implemented two days after a hastily convened meeting by management on 10 July 2018 with a number of affected staff.

Unfortunately, what is becoming increasingly evident is that HVDS and MNCDS either do not understand their mandatory consultation obligations pursuant to the Award or they are flagrantly ignoring the very clear obligations to consult with the CPSU NSW.

(iv) Reporting lines

Further to the above meeting convened by management on 10 July 2018, the CPSU NSW detailed concern that recent changes to reporting lines had been implemented without any consultation with the CPSU NSW. HVDS had announced that two PSCs were swapping their responsibilities.

(vi) Outstanding correspondence/failure to consult

The CPSU NSW listed no less than ten items of outstanding correspondence or requests for information dating from the first JCC meeting held on 6 April 2018. This included a request for consultation in respect of all HVDS/MNCDS employment policies and procedures under review and to furnish a list of all such policies currently being reviewed by the consortia.

The CPSU NSW also reiterated that we have yet to receive any response to extensive written feedback submitted in respect of an 'updated' Code of Conduct dated 18 May 2018 which has tripled in size from a seven-page document to a 22-page policy and included a range of draconian and potentially unlawful amendments totally at odds with your guaranteed employment conditions and legislated standards for all Australian workers. For example, in relation to drug and alcohol



CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

testing and a stipulation in relation to potential criminal offences along with a requirement for staff to sign an acknowledgement to abide by the Code of Conduct. The CPSU NSW contends that the policy has not been properly or effectively consulted prior to its implementation and therefore should not apply until HVDS and MNCDS meet their mandatory consultation obligations.

Members are therefore requested to not sign an acknowledgement in relation to the updated Code of Conduct dated 17 May 2018 until such time as prior and effective consultation with the CPSU NSW has been conducted as HVDS/MNCDS are required to do. Given that HVDS/MNCDS has been unable to provide its own acknowledgement in relation to its mandatory consultation obligations described at item 3(ii) of this Bulletin, it is disappointing that HVDS/MNCDS are apparently already applying the updated Code of Conduct in respect of current misconduct allegations and investigations against their staff and our members.

The CPSU NSW has sought proper consultation in relation to the Code of Conduct and if a satisfactory resolution is not achieved this issue may need to be determined by the Fair Work Commission.

4. HVDS/MNCDS casual transition process

The CPSU NSW requested an update and was advised that the recruitment action has now concluded resulting in eighty-three appointments to casual employment pursuant to the *Social, Community, Home Care and Disability Services Industry Award 2010*. Members are reminded that

we are still your union and this applies to all roles transferred from FACS.

5. Work Health Safety and Warabrook

The CPSU NSW requested an update regarding substantial Work Health and Safety (WHS) breaches at the Warabrook site.

HVDS advised that further improvements have been implemented including installing soundproofing, completing mandatory tagging and testing of all electrical equipment, planning for fire safety drills and ensuring that the first-aid kit now meets the legislative requirements as none of these items had done previously.

HVDS was unable to advise whether the single doorway for entry and egress would be added to and indicated that the newly appointed Transition Manager (Luke Hughes) will be reviewing arrangements for the permanent transfer of many of the affected staff including those temporarily relocated Charlestown and Maitland.

HVDS advised there are no further WHS issues or concerns with respect to the staff currently located at Charlestown and Maitland nor at other HVDS and MNCDS sites. The CPSU NSW reiterated previous member concerns relating to increased distances to travel to work at one of the above temporary locations.

The CPSU NSW has requested direct inclusion in recent email bulletins to some stakeholders regarding WHS updates at Warabrook and an update in respect of planned extensions at the Warabrook site arising from previous WHS breaches including in respect of the single



CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

doorway for entry and egress. Despite our request, to date the CPSU NSW has not received any further information or update from HVDS.

6. Fair Work Commission – application for name change

Further to our last JCC Bulletin dated 6 June 2018, the CPSU NSW can report that quite a lot has happened since we first wrote to HVDS and MNCDS by letters dated 16 May 2018 requesting their consent to our Fair Work Commission ('FWC') applications seeking Orders for the CPSU to be named as the PSA Federal counterpart under your copied State Awards.

HVDS and MNCDS initially consented to our applications by letters dated 5 June 2018.

For reasons known only to HVDS and MNCDS they subsequently contacted the FWC and advised that they were unaware of the FWC proceedings and had not provided consent to the name change applications. The CPSU NSW wrote to the FWC and provided copies of extensive correspondence relating to the matter including letters of consent from HVDS and MNCDS and requested that the matters should be listed for mention so that we could agitate the matters further.

The FWC then listed the matters for a Mention on 31 July 2018 although this was postponed at the request of HVDS and MNCDS until 16 August 2018.

The CPSU NSW raised the issue at the JCC meeting and HVDS/MNCDS confirmed that our request was under consideration by the respective boards for both consortia.

At the JCC, the CPSU NSW foreshadowed that if HVDS/MNCDS were unable to provide a response to the FWC by 16 August 2018 that the CPSU would be voicing a number of very strong objections to the Fair Work Commissioner during the Mention.

At the eleventh hour, HVDS and MNCDS wrote to the FWC and indicated (once again) that they did not oppose the FWC applications made by your union.

On 16 August 2018, FWC Commissioner Johns published his decision in relation to both HVDS and MNCDS and accepted the CPSU NSW legal argument that the CPSU NSW is your union and that we are entitled to cover and represent you in the federal industrial system.

Commissioner Johns exercised a discretion allowed by the Fair Work Act 2009 to make Orders that the CPSU be covered by your NSW state Awards ('the copied State instruments'). For further information on the list of your State Awards, click [HERE](#).

The FWC orders now guarantee coverage by the CPSU NSW of our ADHC members and including that the CPSU NSW be covered by the copied State Instruments.



CPSU NSW and Hunter Valley Disability Services/Mid North Coast Disability Services Joint Consultative Committee (JCC) meeting 1 August 2018

7. Leave without pay - Extended leave calculation

The CPSU NSW once again raised member concerns regarding recent under-calculations of extended leave entitlements for two members.

HVDS asserted that the issues related to individuals and therefore did not fall within the scope of collective or systemic issues which could be raised at the JCC meeting.

The CPSU NSW contended that the issues were clearly legitimate subject matter in accordance with the mandatory Award consultative principles above (which HVDS/MNCDS have refused to acknowledge that they will adhere to as a party to your copied state Awards).

The CPSU NSW wrote separately to HVDS and has since been advised by one of the two members that their leave balances have now accurately reflected. The CPSU NSW is following up with HVDS in respect of the other member affected by the erroneous calculation of their leave entitlements.

8. Next JCC meeting

The next JCC meeting for HVDS is scheduled for Friday 14 September 2018. If you wish to have any w industrial issues raised by the CPSU NSW, please forward details to your delegate or by writing to DisabilityCPSUNSW@psa.asn.au.

What can I do in the meantime?

You can support the work of the PSA/CPSU NSW by asking your colleagues to JOIN their union.

Having your union and its collective strength behind you in the workplace is the only way to make sure you get fair outcomes.

