

HV Transfer and HV Disability Services

Information for Staff on Transfer of Business and FAQs

Information for Staff

Background

The following information is relevant to staff that transferred from Family and Community Services (FACS) to Hunter Valley Transfer Ltd (HVTL) or Hunter Valley Disability Services (HVDS) on 1 December 2017.

As you are aware, HVTL and HVDS (**HV Entities**) were established as part of a consortium (inclusive of member organisations Ability Options, ConnectAbility, Finding Yellow (**Members**)) that were ultimately successful in their tender for operation of the formerly NSW Government-operated group homes in the Hunter Region.

It was always the intention of the Members that this consortium would be time-limited and ultimately that HV Entities business operations would transfer in their entirety to the Members.

On 1 July 2018, all former NSW Government-funded group home clients became funded under the NDIS as Supported Independent Living (SIL) participants. At the same point in time, operational devolution of the HV Entities commenced with the closure of the Regional Office and the initiation of operational oversight by the Members aligned with each SIL property (including IHSS and Respite services). This removed an unnecessary administrative layer, allowing a more sustainable and financially-viable SIL service to operate under the NDIS funding.

As of 3 December 2019, HV Entities will be transferring all NDIS participants to Members as HV Entities have decided to not seek re-certification of the HV Entities with the NDIS Commission. As all Members are registered NDIS providers, the cost of HV Entities registration renewal is an unnecessary expenditure that would be best spent on focussing on front-line service delivery. Communications on the transfer of participants to the Members will begin on 28 October 2019.

HV Entities are now proposing to transfer all remaining disability services operations (**Disability Services**) to consortium Members by 29 January 2020 (**the Transfer**).

It is expected that your employment will be transferred from the HV Entities to the to the relevant consortium member on 29 January 2020.

It is proposed the employment of each staff member working in Disability Services will be transferred to the relevant consortium Member. Impacted staff will not need to reapply for their current roles.

Consultation

A consultation process will be implemented to allow opportunity for discussion and input from stakeholders. The proposed timeframe is as follows:

- 18/09/19 – Pre-consultation introductory discussion between HVDS and CPSU at the JCC.
- 04/10/19 – Proposed Transfer Plan provided to JCC and CPSU for feedback.
- 21/10/19 – Feedback period closes with the JCC and CPSU. CPSU and delegates to provide feedback on the proposed Transfer of Business outline (this document).

- 25/10/19 – Feedback considered from the consultative processes conducted to date and communications on the Transfer will be distributed to staff. A 4-week (31-day) consultation period will commence to provide staff with the opportunity for feedback on the Transfer.
 - The FAQs consultation will be open for 4 weeks, via the HVDS ‘info’ inbox. FAQs will be updated weekly to reflect questions and concerns raised.
 - Throughout this period, discussions will occur at team meetings with Member representatives present to respond to any questions relating to the Transfer.
- 25/11/19 – Consultation period concludes.
- 18/11/19 – Additional communications defining timeline for scheduled transfer of operations and employment reflecting discussions from consultation period will be distributed to staff. This will represent a 10 week period for the completion of employment contracts, inductions, and systems training.
- 28/01/20 – Final day of staff employment with HV Entities (HVDS/HVTL).
- 29/01/20 – Transfer of Business complete. Staff employment contracts with Members commence.
- In addition to the above, it is proposed the JCC will be available to meet, and meet on a more frequent basis to discuss the Transfer and any issues arising. HVDS will meet with the JCC Working Party as required during the consultation period.

TERMS AND CONDITIONS OF EMPLOYMENT

Confirmation of Terms and Conditions of Employment

An individual letter to all transferring employees will be provided. This letter confirms terms and conditions of employment and entitlements following Transfer.

Award conditions to apply after transfer for a specified period

Copied State Awards that currently apply will continue to apply after the Transfer in accordance with the transfer of business provisions under the *Fair Work Act 2009* (Cth).

Under the *Fair Work Act 2009* (Cth), Copied State Awards may continue to apply for up to 5 years (from when employment with FACS ceased) or until they are replaced by a new enterprise agreement with the new consortium employer, negotiated with employees and their representatives.

Employment Guarantee

The relevant Employment Guarantee Periods under the Implementation and Sale Agreement (ISA) with FACS will have lapsed on 1 December 2019. The Employment Guarantee period will not apply to employment with the new consortium employers. Continuity of service and conditions of employment (i.e. Copied State Awards) will continue to apply in accordance with the *Fair Work Act 2009* (Cth).

Continuity of Service

The *Fair Work Act 2009* (Cth) preserves continuity of service for transferring staff from HV Entities to the new consortium employer. Past service with FACS, HV Entities and any previous continuous service will be recognised by the new consortium employer.

Previous service will be taken into account for the purposes of accrual of future leave entitlements.

Leave Entitlements

Continuity of service will be recognised so that accrued leave entitlements will be transferred to employment with the new consortium employer. Staff may choose to cash out some accrued leave entitlements at transfer as follows:

- **Recreation leave** (annual leave)– if a staff member has more than 20 days accrued recreation leave, they can cash out that leave as long as 20 days accrued recreation leave is retained to be transferred to the new consortium employer.
- **Additional, Public Holiday and Extra Leave** – Some employees may have accrued additional recreation leave as the result of additional, public holiday or extra leave provisions in their Award. There is no restriction of the leave that can be cashed out (and that leave does not form part of the "20 days" referred to for the purposes of cashing out other recreation leave accruals. You can cash out some of or all of your additional, public holiday or extra leave.

Long Service or Extended leave – After 7 years for permanent or temporary employees (after 10 years' service for casual employees), a staff member may choose to cash out some or all of the accrued leave at Transfer. Untaken, accrued leave will transfer to the new consortium employer.

Tax Treatment of Cashed Out Leave

Cashed out leave will not be taxed at a lower Employment Termination Payment (ETP) rate.

Staff who are considering cashing out significant amounts of leave, should seek independent financial advice on the full tax implications for their personal circumstances.

Superannuation

There will be no change to superannuation arrangements. Staff will continue to be members of, and contribute to, the same defined benefit or accumulation scheme as they currently do. Consortium entities will continue to make the same contributions to superannuation schemes.

State Authorities Superannuation Scheme (SASS), State Superannuation Scheme (SSS) and State Authorities Non-Contributory Superannuation Scheme (SANCS) members will continue their contributory membership of these schemes and existing legislation and benefits of these schemes will apply until the end of your employment with the new consortium employer.

Staff will continue to have the option to salary sacrifice additional superannuation contributions from your salary.

For accumulation scheme members:

- new consortium employers will become a contributor to existing accumulation scheme (e.g. First State Super); and
- superannuation arrangements will not change as a result of the Transfer.

For defined benefit scheme members:

- new consortium employers will become contributors to existing defined benefit scheme - i.e., State Superannuation Scheme (SSS), State Authorities Superannuation Scheme (SASS) and State Authorities Non-Contributory Superannuation Scheme (SANCS); and superannuation arrangements will not change as a result of the Transfer.

Transfer Payments

HV Entities recognise former FACS employees were provided with a transfer payment when they commenced employment with the HV Entities. Transfer payments will not be provided for this Transfer.

This is because there is no requirement for Transfer payments (or any other payment) to be made in circumstances where staff will be provided with equivalent jobs, conditions and continuity of service with their new consortium employer.

Impacted roles

At this stage it is envisaged that there is only one role that won't be directly transferred to a new consortium employer, and HVDS will consult directly with the impacted employee and their representatives about the Transfer.

FAQs

What is the Employment Guarantee? Will only some or all staff that transfer be covered by this guarantee?

The previous Employment Guarantee will not apply to the Transfer. This means your employment with a new consortium employer may cease in ordinary employment circumstances. For example, termination for misconduct, poor performance or redundancy.

The new consortium employers are committed to continuing to provide Disability Services to participants and redundancies following the Transfer are not foreshadowed. If your employment ends, at a later time, due to redundancy, entitlements from the Copied State Awards will apply.

Despite the previous Employment Guarantee period not applying, your terms and conditions under the Copied State Awards will continue to apply in accordance with the *Fair Work Act 2009* (Cth).

What is the difference between the Employment Guarantee (2 years) and employee entitlements (5 years)?

An employment Guarantee of 2 years applied to the transfer from FACS to the HV Entities in 2017. This 2 year period was set in the transfer agreement between the NSW Government/FACS and the HV Entities and will lapse in December 2019.

The Employment Entitlement Period is the period, under the *Fair Work Act 2009* (Cth), that the Copied State Award will still apply after this Transfer. It means your employment entitlements under the NSW state public sector awards (Copied State Award) would be protected for up to 5 years, unless a new enterprise agreement is reached with the new consortium employer.

As the Employment Entitlement Period is still applies, and won't expire until December 2022, the Copied State Awards will continue to apply when you transfer to the new consortium employer.

Will my leave and other entitlements transfer to the new consortium employer with me?

Continuity of service will be recognised so that accrued leave entitlements will be transferred to employment with the new consortium employer. If you are part of the transfer process you will have the option to cash out a portion of accrued leave or transfer all accrued annual and extended or long service leave.

The conditions around cashing out leave are as follows:

Annual (Recreation) leave:

A minimum balance of 20 days annual leave must be retained. You may opt to cash out all accrued annual or recreation leave above the retention limit of 20 days. If you have less than 20 days of accrued annual leave, this will all be transferred to the new consortium employer and you will not be able to cash out any annual leave. Staff who choose to cash out some of their accrued annual leave will be granted payment of a proportionate amount of annual leave loading for the current leave year.

Where the accrued annual leave is not cashed out, annual leave loading will carry across to the new employer to be consistent with the *Fair Work Act 2009* (Cth).

Extended (long service) leave:

You may be able to cash out some or all of your extended (long service) leave at transfer. There is no limit on how much extended (long service) leave you can cash out. All accrued annual leave and extended leave that is not cashed out will be transferred to the new employer.

Other leave:

There will not be the option to cash out any other leave entitlements and any accruing leave not cashed out, including accrued sick leave and family and community services leave, will also transfer to the new consortium employer.

Will I have the same leave entitlements (e.g. flex leave and maternity leave) when I transfer to the new consortium employer?

Your transfer of employment is at the current rate of pay and conditions, including access to maternity leave and flex leave, as defined by the Copied State Award.

What will happen to my superannuation when I transfer?

There will be no change to your superannuation arrangements. Your superannuation transfers with you.

All your superannuation benefits and entitlements will remain the same after the transfer; irrespective of the super scheme you are presently in.

What happens to my rate of pay and entitlements when the Copied State Award ceases to apply?

Any transferred accrued leave entitlements will continue to apply regardless of expiration of the Copied State Award.

Each new consortium employer will need to evaluate the implications of continuing to apply the Copied State Award and give consideration to their particular operations. Continued application of the Copied State Award will also be impacted if a new enterprise agreement is negotiated before the end of the 5 year employment entitlement period.

As part of this process can I choose to change my Award from the CLA to SCHADS?

No. The legislation does not allow transferring employees to voluntarily switch their employment Award from the Copied State Award to SCHADS.

Will I be able to use the salary packaging benefits offered to SCHADS employees when I transfer?

Your employment conditions transfer as they are – for staff who transferred from FACS this is without salary packaging.

What if I don't want to transfer my employment?

It is proposed all Disability Services staff will have their employment transferred to a new consortium employer. If you do not want to transfer your employment, you may elect not to do so, however:

- There are no other redeployment opportunities foreshadowed
- Redundancy payments are unlikely to be provided as suitable redeployment opportunities have been provided (but refused). However other entitlements payable on termination of employment will be provided
- Your employment will effectively cease.

How do I know which consortium employer I will transfer to? Do I get a choice?

Staff will be offered employment with new consortium employers based on where they have been currently working (see next page). That is, you will be offered employment in the same substantive role as you currently have providing services. This means you will be transferred to the new consortium employer currently responsible for service provision where you have been currently working.

E.g. If you currently work providing Disability Services to participants at locations managed by Finding Yellow, your employment will be transferred to Finding Yellow.

Expressions of interest to 'transfer employment' and engage in employment with an alternate consortium employer can be lodged during the consultation period to info@hvds.org.au

Can I still work for other consortium Members?

There is a small number of staff currently working across more than one Member. You may still elect to pick up additional shifts with other consortium Members after the Transfer. However, these additional shifts are not part of your substantive role and a separate employment relationship with the other Member will need to be negotiated (e.g. 'secondary employment').

You are welcome to continue this employment arrangement by lodging an expression of interest for 'secondary employment' during the consultation period to info@hvds.org.au. However, it is envisaged that any 'secondary employment' will not be part of the Transfer and the SCHADS Award will apply.

It will be a matter for each consortium Member whether 'secondary employment' opportunities are provided and under what terms (e.g. casual employment).

I currently work 20 hrs per week with one Member (Ability Options/ConnectAbility/Finding Yellow), can I have additional hours added to my contract with my new consortium employer?

Staff will be offered employment with new consortium employers based on their current employment arrangement. Additional hours within your new consortium employer will not be counted as 'secondary employment'. If you would like to modify your employment arrangements including additional contracted hours, please lodge an expression of interest for a 'modified contract' during the consultation period to info@hvds.org.au.

Which Member entity is my Group Home/s aligned to?

Ability Options-managed units:	ConnectAbility-managed units:	Finding Yellow-managed units:
Ashtonfield Respite	Alfred St	Chidgey St
Austral St	Arrowtail St	Wollombi Rd
Bendigo St	Cahill Cl	
Bolwarra Group Home	Chisholm Group Home	
Douglas St	Columbia Cl	
Fennell Cr	Edward St	
Forfar St	Glebe Rd	
Greenwood Group Home	Hamilton IHSS	
Grevillea Respite	Illalung Rd	
Indra Cl	Lockyer St	
Marsh Rd	McFarlanes Rd	
Matfen Cl	National Park St	
Osprey Cl	Newcastle IHSS	
Raymond Terrace Respite	Prince St	
Reflection Dr	Rhodes St	
Third Ave	Robb St	
Valley View Group Home	Salix Dr	
Woodlands Group Home	Teralba Rd	
	Victoria St	