

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 people 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 successful in their tender for operation of the formerly NSW Government-operated group homes in the Hunter Region.

The 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 participants 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.

On 3 December 2019, HV Entities will transfer all NDIS participants to Members as HV Entities have decided to not seek re-certification of the HV Entities with the NDIS Commission. 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 began on 28 October 2019.

HV Entities are now proposing to transfer all remaining disability services operations (**Disability Services**) to consortium Members by 5 February 2020 (**the Transfer**).

It is expected your employment will be transferred from the HV Entities to the relevant consortium member on 5 February 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

There has been ongoing consultation for a number of months to allow opportunity for discussion and input from various stakeholders. The general consultation period has now been finalised. However, **by request of the Nurses and Midwives Association [Union], the consultation period for nurses (and NMA representatives) is extended until COB 20 December 2019.**

The proposed remaining timeframe for consultation is as follows (with consultation that has already occurred in *italics*):

- 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 people 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.
- 14/11/19 Transfer of Business JCC Working Party meeting.
- 25/11/19 Consultation period concludes.
- 28/11/19 Transfer of Business JCC Working Party meeting.
- 06/12/19 Updated information & FAQs (this document) distributed to people defining the timeline for the scheduled transfer of operations and employment, reflecting feedback from the consultation period.
- 09/12/19 From this date, Members People & Culture representatives will contact people directly in relation to their new Member-based employment offers over the coming weeks.
- 10/01/20 **If people have not received their new employment offers by this date, they are encouraged to contact info@hvds.org.au**
- 27/01/20 Deadline submit Leave Cash Out form to payroll@hvds.org.au to cash out leave from HVDS (refer to page 5 for more information).
- 04/02/20 **Final day of your employment with HV Entities (HVDS/HVTL).**
- 05/02/20 Transfer of Business complete.
Your employment with Members commence.
- 17/02/20 Final superannuation contribution payments from HV Entities will be made on or around this date.

What happens next?

Initial consultation concluded on 25 November. People & Culture Representatives from the Members are now in receipt of their respective HV Entities staff lists, and are organising your new offers of employment. People who have expressed interest in secondary employment during the consultation period should expect to be contacted by the People & Culture Representative from more than one Member.

Your People & Culture Representatives during this process and for further enquiries are:

- Ability Options:** P&Cteam@abilityoptions.org.au
- ConnectAbility:** peopleandculture@connectabilityaus.org.au
- Finding Yellow:** bianca.simms@findingyellow.org.au

New employment offers will be issued by the Members from 9 December 2019. Due to the large number of employment offers, this process may take a few weeks.

If you have not received your letter of offer by 10 January 2020, please contact info@hvds.org.au

TERMS AND CONDITIONS OF EMPLOYMENT

Confirmation of Terms and Conditions of Employment

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

Award conditions to apply after transfer for a specified period

Copied State Awards (such as the CLA) 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 staff and their representatives. After the 5 year period has lapsed, the Social, Community, Home Care and Disability Services Industry Award 2010 will be the industrial instrument that covers the transferring staff.

Staff currently on Modern Awards will remain on their current Award.

Employment Guarantee

The relevant Employment Guarantee Periods under the Implementation and Sale Agreement (ISA) with FACS 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 people transferring 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. Please note: previous service will be taken into account for the purposes of accrual of future entitlements.

Leave Entitlements

Continuity of service will be recognised for accrued leave entitlements will be transferred to employment with the new consortium employer, consistent with the *Fair Work Act 2009* (Cth). People may choose to cash out some accrued leave entitlements at transfer as follows:

- **Recreation leave** (annual leave) – if a person 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 people 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.
- **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.

Please note: Long Service – Long Service leave cannot be cashed out as part of the 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.

People 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. People 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.

People 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 people 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 people will be provided with equivalent jobs, conditions and continuity of service with their new consortium employer.

Impacted roles

At this stage it is envisaged there is one role that will not directly transfer 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 people 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

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. After the 5 year Employment Entitlement Period has lapsed, the *Social, Community, Home Care and Disability Services Industry Award 2010* will apply unless a new enterprise agreement is entered into.

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.

Will we be provided with a breakdown of our Leave Accruals at date of transfer (this was provided when we transferred from FACS and assisted with leave accrual issues that occurred after transfer)?

The current leave accruals are provided to people on their payslips each fortnight so they will be able to view their final balances on the payslip for 4 February 2020.

The closing leave balances at 4 February 2020 will be the opening leave balance at their commencement with the future employer.

Is there a deadline for when we need to advise Payroll we want to cash out some leave?

All applications to cash out leave with HV Entities would be COB 27 January 2020. People are advised that they can cash out leave at any time within the guidelines of their employment 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 people to voluntarily switch their employment award from the Copied State Award to the *Social, Community, Home Care and Disability Services Industry Award 2010*.

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

Your employment conditions transfer as they are – for people who transferred from FACS this is without salary packaging. However, Salary Sacrificing/novated lease arrangements that are already in place will continue with your future employer. Employees covered by the Copied State Award, who are currently not accessing this Salary Sacrificing can request this as part of their new Terms and Conditions of employment.

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?

People will be offered employment with new consortium employers based on where they have been currently working (see next page). You will be offered employment in the same substantive role you currently have been 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 people 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').

As previously requested, if you have not expressed an interest in secondary employment. Please lodge an expression of interest for 'secondary employment' to info@hvds.org.au as soon as practical. It is envisaged any 'secondary employment' will not be part of the Transfer and the *Social, Community, Home Care and Disability Services Industry 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 of employment with my new consortium employer?

People 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.

Please note that you can express interest in changing your hours of employment at any time directly with your line manager. Approval will be subject to the availability of support hours and participant needs.

FAQs - Consultation period (25 October – 25 November)

Should I lodge an expression of interest?

People are encouraged to submit an expression of interest to info@hvds.org.au to confirm their alignment preference, if you do not employment offer will be auto allocated by the member that they have conducted the majority of their hours over past 12 months.

People who have been splitting their time across two members need to lodge an expression of interest. This should summarise their current working arrangement, and indicate which member they wish to be aligned with.

If people wish to be considered to continue employment across two members, their expression of interest should state which member organisation they would like to be considered for secondary employment.

Upon conclusion of the consultation period on 25 November, the P&C of each consortium organisation will make contact directly with people that have been aligned (by EOI or employment history) regarding the issuance of their new offers of employment.

Is there a specific template or format to be used if I want to submit an expression of interest to transfer employment and engage in employment with an alternate consortium employer?

People who wish to transfer their employment to an alternate consortium employer, should lodge an expression of interest to info@hvds.org.au. Please include your current working arrangements, your intended alternate consortium employer, and the reason for your request.

Requests will be assessed by the relevant consortium members based on employment history and the availability of hours in their units.

I am a casual DSW and have been working across 2 consortium members – do I have a choice which consortium member I will be offered employment with?

If people work with one consortium member they will receive an employment offer with that member.

If people work with two members, people have option to seek employment with both via expression of interest.

Where people work for two and don't submit an expression of interest, they will be auto-aligned to the member where they have conducted the majority of work over the past 12 months. People are encouraged to submit an EOI to info@hvds.org.au to confirm their preference.

Upon conclusion of the consultation period on 25 November, the P&C of each consortium organisation will make contact directly with people that have been aligned (by EOI or employment history) regarding the issuance of their new offers of employment.

Is there a specific template to lodge an expression of interest for a “modified contract”? I am a part time DSW and regularly work additional hours in my home unit, and would like to permanently increase my hours. Will I have to go through a recruitment process to do this?

People should submit an EOI summarising their situation. Their request will then be considered by consortium members for an increase in contracted hours. Requests will be assessed based on employment history and the ongoing availability of hours in their unit.

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

Ability Options-managed units:

Ashtonfield Respite
Austral St
Bendigo St
Bolwarra Group Home
Douglas St
Fennell Cr
Forfar St
Greenwood Group Home
Grevillea Respite
Indra Cl
Marsh Rd
Matfen Cl
Osprey Cl
Raymond Terrace Respite
Reflection Dr
Third Ave
Valley View Group Home
Woodlands Group Home

ConnectAbility-managed units:

Alfred St
Arrowtail St
Cahill Cl
Chisholm Group Home
Columbia Cl
Edward St
Glebe Rd
Hamilton IHSS
Illalung Rd
Lockyer St
McFarlanes Rd
National Park St
Newcastle IHSS
Prince St
Rhodes St
Robb St
Salix Dr
Teralba Rd
Victoria St

Finding Yellow-managed units:

Chidgey St
Wollombi Rd