

Application seeking consideration of exceptional circumstances

Transfer of disability group homes and respite services to the non-government sector

Context:

On 28 August 2018, the Victorian Government announced that Department of Health and Human Services (DHHS) operated disability group homes and respite services will transfer to five non-government providers.

As part of this process, direct support staff, house supervisors and operations managers will be supported to transfer to the five new providers on fair terms and conditions throughout 2019 with the primary objective of maintaining continuity of support to residents. Transferring staff will be seconded to the five providers in the first instance until 1 January 2021.

Staff directly affected by the transfer may feel aggrieved by specific decisions throughout the transfer process. Staff should raise any issues or concerns with their line managers in the first instance and seek the resolution of work-related concerns at a local level prior to lodging a formal review of actions.

DHHS currently has an existing policy and process for employees requesting a review of departmental action or decision which directly and adversely affects an employee and is considered by the employee to:

- be unfair or unreasonable
- have failed to comply with the *Public Administration Act 2004 (Vic)* (and its related regulations and standards), or
- infringe on the principles of merit and equity.

The policy and the process outlined below are based on the existing DHHS policy and have been modified to respond specifically to issues relating to the transfer that employees may seek consideration of exceptional circumstances, under the review of actions process, in an expeditious and transparent manner.

Who does this policy apply to?

The policy applies to all DHHS transferred employees and staff impacted by the decision to transfer.

Policy statement

DHHS is committed to adhering to the following:

- Dealing with applications for a review of actions in a transparent and timely manner in all circumstances, with as little formality as a proper consideration of the matter allows.
- Applying the rules of natural justice.
- Maintaining appropriate confidentiality by all parties at all times. If confidentiality is breached, those individuals may be subject to disciplinary action and investigation by the Privacy Commissioner.
- All parties involved in the review of the actions process have the right to request support and/or representation. Employees can seek representation from the Health and Community Services Union. (HACSU).

Completing the application for exceptional circumstances or a review of decision:

Employees who are directly affected by the transfer may feel that they have exceptional circumstances in regard to a number of decisions such as:

- allocation of an employee to a particular provider (see allocation methodology below)
- not being allocated to any provider (e.g. employees who work at a mix of locations not subject to transfer and subject to transfer)
- disputes about details recorded in the Employment Certificate that cannot be resolved in the first instance through Payroll Assist.

Please note that **new casuals** who commenced after 1 July 2018 (after the data was drawn for allocation) or **new ongoing staff** who commenced after 2 August 2018 (after the data was drawn for allocation) are yet to be allocated to providers and will receive formal notification from the department shortly.

The attached form is to be completed by employees who consider that they have exceptional circumstances requiring consideration. The form should be submitted following discussion with local DAS or operations manager and staff still feels aggrieved by the decision.

Whilst a request can be made to change provider where an exceptional circumstance is accepted, changes can only be considered if there is a substantive vacant position for an ongoing employee seeking to be allocated to another provider.

In the event a request is granted, it should also be noted that this may lead to changes to an employee's current work arrangements, for example, changes to roster patterns and/or additional distance to travel.

The completed form should be submitted to SILSTAATransfer@dhhs.vic.gov.au

Timelines for Application

For decisions that have already been made (e.g. employee allocation to a particular provider) relating to **direct support staff and house supervisors** the form must be submitted by no later than **7 December 2018**.

The consultation process in relation to the realignment of group homes and respite services managed by operations managers has just been concluded and operation managers will be advised of the outcomes on 12 November. **Operations managers** who wish to submit an exceptional circumstances application requesting to be allocated to a different provider or a variation to their allocation of group homes/respite services where practicable, the form must be submitted by **16 November 2018**.

For other transfer-related decisions that occur **after 7 December 2018**, the form must be submitted within **14 days after being advised of a decision**.

Assessment of the Application:

A state-wide panel has been established to consider these applications, and consists of the Director, Government Services Transfer (DHHS), the Project Director, NDIS Branch (Department of Premier and Cabinet), the relevant divisional Director, Disability and NDIS (DHHS) and an independent person engaged by DHHS. The Assistant Director, Employee Relations (DHHS) will provide advice to the panel.

- The state-wide panel will consider applications within 14 calendar days, wherever possible.
- The panel will consider an application based on the material provided by the employee. However, if additional information is required to support decision making, the employee will be contacted by a member of the panel to provide further comment.

- An employee may be required in some instances to attend in person or by phone, as part of the process.
- The outcome of the application will be confirmed in writing.

An employee may be represented throughout this process, and may seek support completing the application form, either from their manager or through HACSU.

Methodology for staff allocation to a provider:

Employees who are subject to transfer to one of the five non-government service providers have been allocated to a provider on the following basis:

- Operations managers were allocated to a particular provider based on the majority of houses they currently manage, that will transfer to the provider.
- Ongoing house supervisors and direct care staff will transfer based on their ongoing DDSO position that is assigned to a particular house.
- Casual staff were allocated to a particular provider based on their work patterns between January and June 2018 (six month period) with regard to the majority of hours they worked.