

Transition to “PHN land” Employment Issues

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Scope of presentation

- **Headline Issues**
- **Potential scenarios & Implications**
- **Employment Issues to be considered**
- **Risk Management & strategy**
- **Actions to take**
- **Questions & Discussion**

Headline Issues

- Cancellation of Funding for ML's
- Establishment of PHN
- Options for ML's -
 - Wind up and cease
 - Transfer business to PHN
 - Subcontract to PHN
- Implications and risks
- Issues and management

Potential Scenarios & Implications

1. Wind up/cease

- Redundancies unless:
 - Excluded, or
 - Transfer of employment, or
 - Contractual arrangement?
- Where redundancies occur
 - How to manage? –
 - Terminate?
 - Allow contract to run term?

Potential Scenarios & Implications

2. Transfer of business (Reinvent)

- ML, either individually or jointly, transfers the business to a PHN.
- FWA rules apply re –
 - Transfer of employees,
 - Transfer of instrument,
 - Continuity of service -
 - The Commonwealth is likely to require the PHNs to recognise prior service with MLs
 - Impact of transition.
- Redundancy may be avoided.

Potential Scenarios & Implications

3. **Subcontracting to PHN**

- May be on a interim, temporary or ongoing basis,
- Avoids redundancy situation arising in the short term,
- Need to consider longer term strategies and funding issues.

Employment Issues to be considered

- National System employers & employees.
- Various employment arrangements
 - Full/part time & casual,
 - Open ended contracts, maximum period & fixed term.
- Various employment instruments/laws
 - Common law contracts,
 - Modern Awards (including pre-reform entitlements),
 - Enterprise Agreements,
 - National Employment Standard.
- Transition to Modern Awards.

Employment Issues to be considered

- Redundancy – What is it?
 - Role no longer required.
 - e.g Restructure.
- Relates to the role not the person.
- May result in retrenchment and severance pay.
- Since 1 January 2010 NES includes severance.
- Must be “genuine”.
- May give rise to a defence to unfair dismissal.
- Severance may be reduced if unable to pay.

Risk Management & Strategy

- Redundancy pre 31 December 2014
 - Consider whether Transition applies.
- Consider instrument coverage
 - Award, Agreement, NES, etc.
- Is employee excluded?
- Consider whether to terminate or run term.

Risk Management & Strategy

- Consultation obligations
 - Redeployment.
- Transfer of employment
 - Recognition of service by new employer.
- Alternative employment.
- Ability to pay.

Actions to Take

- Preparation the key
- Understand options re
 - Organisation structure, eg. transfer business, etc.
 - Types of employees, eg. fixed term v ongoing.
- Understand instrument, eg. contract, award.
- Understand obligations re
 - Consultation, redeployment, transfer of employment
- Understand significance of 31 December
- Future Contracts – getting them right

Questions & discussion

- Thank you