PLA Analysis Report

Program Level Agreement (PLA) Analysis

Please find below a table of comparison between the documents currently available regarding the old and new Program Level Agreement (PLA). Please note that the new documents appear to be more extensive than the documents that were provided. It would be beneficial if any members can find any more documents to assist with a more comprehensive review.

It is important to note that it our understanding some agencies have already signed the PLA. We presume they have all signed the same document without any variation to its wording, but without seeing copies of each of them, we cannot know if that is the case.

The main points to be highlighted:

1. The abatement regime and its effect on financial modelling undertaken by parties in signing on to the contract (i.e. have agencies factored in a level of abatement in their budgets?);

2. The KPI / reporting regime, which leads to abatements; and

3. The unilateral variation power of the Department.

Table of Comparison:

Comparison	Old Program Level Agreement (PLA)	Draft Program Level Agreement (PLA)
Documents	The old Agreement consists of: 1. PLA; 2. Funding Deed 3. Special Conditions for 1 July to 30 September 2017 for PLA for Out of Home care (OOHC) Service Providers (Special Conditions); and 4. Service Delivery Schedule (SDS).	The draft PLA consists of: 1. PLA; 2. Funding Deed; 3. Schedule 1- Permanency Support (Out of Home Care) Program- Service Requirements; 4. Schedule 2- Performance and Outcomes Data Reporting; 5. Schedule 3- Payment Provisions; 6. Schedule 4- Implementation Plan; and 7. Schedule 5- Legislations and Policies.

© ACWA/CCWT August 2017

Services	The Service Provider must provide the services outlined in the PLA (limited) as well as in the Funding Deed, Program Guidelines, Practice Guidelines, any Implementation Plan and the Service Delivery Schedule. (NB SL has not been provided with Program Guidelines or Practice Guidelines).	The Service Provider must perform the services as set out in Item 2 of the Contract Particulars as well as in accordance with Schedule 1 and 2. Schedule 1 sets out in details the Service Provider's obligations. The obligations include the working with Birth Families, case management and case work, health and education, and information exchange. There are separate clauses for Foster Care and ITC requirements.
Transition Period and Implementation Plan	No mention of a Transition Period.	The Implementation Plan (Schedule 4) applies specifically to the Transition Period. The Implementation Plan will be negotiated separately with each Service Provider and inserted into clause 3 of Schedule 4. The Transition Period, if applicable, allows the Service Provider additional time to develop the necessary capacity and capabilities to deliver the Service Requirements prior to the Start Date of the PLA. Once the Transition Period ceases, the Service Provider must then perform the services in accordance with Schedules 1 and 2 of the PLA.
Additional Obligations	According to the Special Conditions (clause 3.1.1) referral refusals will be reviewed by FACS and the PLA and SDS may be amended to reduce the number of contracted places. The documents provided to Salvos Legal do not disclose an abatement regime as specified in the draft PLA.	According to clause 4.1 – FACS will record each occasion where the Service Provider rejects a referral and may provide a notice to the Service Provider of each referral refusal which will then be raised in the monthly review meeting with the FACS manager. The Service Provider may provide FACS with any justification for the referral refusal and at its sole discretion FACS may elect not to record the referral refusal.

© ACWA/CCWT August 2017

		If FACS does record the referral refusals, according to Schedule 3, clause 4.7 if in a given month the Service Provider has an actual vacancy and undertakes a referral refusal for that month, the following quarterly payment will be abated by the placement capacity payment service cost amount and multiplied by the average monthly vacancy rate for the applicable month. Furthermore, the abatement will continue to apply in following months, until the Service Provider demonstrates remediation of the issue that resulted in the referral refusal. The same abatement process will apply where FACS has suspended the Service Provider's placements as a result of a default event.
Payments	Both PLA's provide a process of FACS preparing a reconciliation of the Services actually performed by the Service Provider for a quarter. The old PLA relies on the Funding Deed.	Reference must be made to Schedule 3 – Payment Provisions. According to clause 5, for the Transition Period, Service Providers will be paid once every two months. In addition to the Unit Payment Price, a Service Provider may be eligible for a Case Plan Direction Supplement or an Immediate Placement Supplement. Service Providers may be subject to an abatement regime during and following the Transition Period for the life of the contract. Once the Transition Period has ceased, payments every quarter will be recommenced. Schedule 3 also provides provisions for abatements based on KPIs set out

© ACWA/CCWT August 2017

		in Appendix A of Schedule 2 and for refusing a referral as well as the process for referral and acceptance of cases. The Service Provider will be required to accept referrals up to its Contracted Volume set out in Appendix B of Schedule 3. Appendix B of Schedule 3 is a more detailed version of the Service Levels outlined in clause 2 of the old PLA. The process of FACS preparing a reconciliation of the Services actually performed by the Service Provider for a quarter still stands. Furthermore, under clause 4.7 multiple abatements will apply where the same event causes more than one type of performance failure. The old PLA appears to fall silent on the indexation of payments. Clause 5.7 of the draft PLA provides that FACS will develop an annual indexation mechanism during the first year of the term of the Agreement which will apply to payments made to be made to the Service Provider in the second and subsequent years of the term of the Agreement. Please note that the annual indexation mechanism will be determined by FACS in its absolute discretion and can change from time to time.
Quality and Performance	Clause 6 – the Service Provider must report in accordance with the Program Guidelines and contract and performance frameworks. Special Condition 5 – the Service Provider must	Clause 7 (Quality and Performance) must be read with reference to Schedule 2 – Performance and Outcomes Data Reporting. The Service Provider must collect the data set out in Schedule 2 and prepare an Annual Performance

© ACWA/CCWT August 2017

	complete the minimum data set and update and complete information as required on the Referral Management System. FACS is to provide a quarterly performance report to the Service Provider. All relevant data and information must be disclosed to FACS upon request unless restricted to do so by law.	Report which requires the Service Provider to report against the Key Performance Indicators (KPIs). The Service Provider obligations also include developing an appropriate methodology to collate information ascertained directly from a child or young person and ensuring that all documents that may be disclosed to the Office of the Children's Guardian or NSW Ombudsman are also disclosed to FACS. The Service Provider must also participate in evaluation and research activities with FACS. Item 4 of the Contract Particulars also lists how often the Service Provider will have to meet with the Contract Manager to review their performance (e.g. monthly). Schedule 3, clause 4.6(a) provides an abatement regime will apply to the provision of services based on the KPI's set out in Appendix A, Schedule 2.
Variations	According to clause 11 of the PLA, a provision of the PLA can only be varied by a later written document which could include but is not limited to a SDS which is to be executed by both parties.	According to clause 9 of the PLA, FACS may increase, decrease or change the quantity or types of Services or Transition Period Services to be delivered by the Service Provider. The clause does not provide a provision for the Service Provider to be consulted nor negotiate the variation. FACS may request in writing the variation to any provision of the PLA and Schedules by way of a Variation Notice.

© ACWA/CCWT August 2017

		However, the Service Provider does have the ability to decline an increase to the Contracted Volume. With regard to a proposed decrease of the Contracted Volume, the Service Provider may terminate the PLA pursuant to clause 19 of the Funding Deed however there is no express provision for the payment of any termination costs by FACS in this instance.
Termination	The PLA does not make reference to termination.	The procedure for termination is set out in clause 19 of the Funding Deed. Clause 10 of the PLA provides further rights to FACS to terminate the Agreement and makes reference to a 'Default Event' as defined in the Definitions section of the PLA. In the event that the Service Provider commits a Default Event, a Performance Improvement Plan may be prepared with the intent of remedying the Default event.

© ACWA/CCWT August 2017