

Long Service Benefits Portability Regulations 2020

Response to Public Submissions on the Exposure Draft Regulations

Introduction

The Department of Premier and Cabinet (Department) would like to thank persons and organisations for making submissions as part of the public consultation process for the Exposure Draft Long Service Benefits Portability Regulations 2020 (Regulations) and Regulatory Impact Statement (RIS). The Exposure Draft Regulations cover five key themes and members of the public were asked to comment on seven questions:

What is community service work?

1. Is the list of services in Regulation 8 sufficient to capture the work performed in this sector?
2. Should any other services be included? Conversely, should any be excluded?

Who is not an employer for the purposes of the community services sector?

3. Does Regulation 9 now provide sufficient clarity as to which health or related services, and which for-profit entities, are excluded from the scheme?

Who are not employees for the purposes of the community services sector?

4. Do the Exposure Draft Regulations provide sufficient clarity with respect to who is an employee for the community services sector?
5. Should any additional awards be included in clause 9(1) of the Exposure Draft Regulations?

Double-dipping in the community services sector

6. Does draft Regulation 12(3) clearly set out an employer's obligations, and rights, where an employee has taken an entitlement under a fair work instrument?

Who are not employees for the purposes of the security industry?

7. Does the proposed Regulation 14, when read in conjunction with Schedule 3 to the *Long Service Benefits Portability Act 2018* (the Act), provide sufficient clarity as to who is, and who is not, an employee for the security industry?

Members of the public were also advised that the Exposure Draft Regulations differed from the current Interim Regulations, by:

- clarifying that home care support services in a private residence is considered to be community service work irrespective of the age of the client, and not aged care work (which would otherwise be outside the scope of the scheme) – subregulation 8(1)(b);
- including youth work and youth work services work as a discrete function - subregulation 8(1)(i);
- including a new subregulation 8(1)(o) – “services that support the provision of any of the services referred to in paragraphs (a) to (n)” in order to clarify that all award covered workers in the community services sector, who are performing community services work, either directly or indirectly, are eligible for the portability scheme;
- updating wording in regulation 8(2) and (3) in recognition of the inclusion of the National Disability Insurance Scheme (NDIS) and not for profit children’s services functions commencing within the scheme from 1 January 2020;
- deleting subregulations 8(4)-(6), which had the effect of excluding health services, subject to an employer predominance test that applied to health or aged care related services (this issue is now dealt with in draft regulation 9);
- making changes to the double dipping provisions applicable to the community services sector (regulation 12); and
- including a new regulation 14 – who are not employees for the security industry.

The consultative process

The Exposure Draft Regulations were published for comment on 20 May 2020. Notice was given on that day in the Victorian Government Gazette and on that day and the following days in major metropolitan, regional, and community language newspapers. The Exposure Draft Regulations and RIS were published on the Engage Victoria website, as was a summary of the draft Regulations and information on how to make a submission.

Any identifiable organisation or individual who had made a submission with respect to the original 2019 Regulations, or the Interim Regulations, were also contacted by email and invited to make a submission. Submissions closed on 27 June 2020.

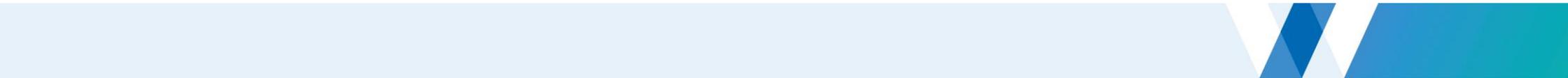
Interested stakeholders were invited to provide detailed feedback on any aspects of the draft Regulations; that is, they were not restrained to answering the seven questions posed. Stakeholders were also invited to comment on the RIS.

Thirty-three detailed written submissions were received. Two of those were marked confidential and will not be published. This response covers all public submissions received and will be made available to all submitters.

Key matters outside the scope of the review

Some issues arising in the submissions need specific clarification or comment.

- As a general note, some submissions requested changes to the Regulations that would require an amendment to the Act, and in some cases, a subsequent amendment to the Regulations. In accordance with section 74 of the Act, the legislation must be reviewed by the Minister as soon as possible after the third anniversary of the commencement of the Act (that is, 1 July 2022). This review will provide an opportunity for those matters to be raised. The Act will be reviewed at the end of three years, and again at the end of seven years, as required under the Act. This monitoring process will consider and evaluate any changes that may need to be made as the scheme continues to operate and information becomes available.
- Some submissions requested that the double dipping provisions as they apply to the community services sector (Regulation 12) be expanded to encompass the *Long Service Leave Act 2018* (LSL Act 2018). As explained in the RIS, this will require an amendment to the Act, which is being considered. Following that amendment, the Regulations can also be updated.
- A number of submissions from community services sector stakeholders raised the issue of ongoing funding for the sector to cover the increased costs, particularly regarding application to community health centres and neighbourhood houses. This is outside the scope of the review and of the legislation.
- Some submissions called for an expansion of the scheme to cover for-profit children's service providers. Again, this would require an amendment to the Act and is outside the scope of this review. However, the issue of for-profit providers could be raised when the Act is reviewed. Some early childhood sector submissions maintained the concerns about the cost of the scheme.
- Some submissions requested that employers be reimbursed the levy when an employee leaves the sector without qualifying for a benefit. This is outside the scope of the review, and would require an amendment to the Act. Requiring the Portable Long Service Authority (PLSA) to reimburse employers on this basis would mean that a higher levy overall would need to be set to cover these additional costs. Further, the portable long service leave scheme is partly aimed at encouraging workers to remain in the sector, which if successful should reduce the incidence of them leaving prior to their long service leave entitlements crystallising.

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- Some submissions wanted the scheme to be an opt in/opt out scheme. This is outside the scope of the review and would require legislative change. It would also undermine the intent and objectives of the Act and the financial viability of the scheme. No other Australian portable long service scheme operates this way.
 - Some submissions discussed what would happen if previously eligible employees became ineligible. The Regulations have been drafted in such a way that any employee who was previously eligible should still be eligible.
 - Some submissions asked for more information and clarity about the operation of the scheme to be provided to users. This request has been passed on to the PLSA.
 - One submission sought the repeal of the Act. The Victorian Government maintains its strong support for the scheme and does not intend to repeal the Act.

Key matters within the scope of the Regulations' review

Overall, a number of issues and themes have been raised relating to content or drafting clarity. All but one submission dealt primarily with issues relating to the community services sector, which is not surprising given that the Regulations focus mainly on this sector.

- There was general support for the replacement of the current predominance test for employees with an award-based test. The Australian Services Union recommended the addition of two further awards, the Aboriginal Community Controlled Health Services Award 2020, and the Supported Employment Services Award 2020. The Australian Education Union supported the inclusion of the latter award. The Aboriginal Community Controlled Health Services Award 2020 is a health award and outside the scope of the Act. The Supported Employment Services Award 2020 has been included.
- The Health and Community Services Union submission recommended prescribing three pre-modern awards, the Disability Services Award (Victoria) 1999, the Residential and Support Services (Victoria) Award 1999, and the Attendant Care – Victoria Award 2004. Those awards are not included due to a lack of evidence that they have application for the intended workforce.
- The Neighbourhood Houses Victoria submission recommended that the Tutors and Teachers (Educational Services (Post-Secondary Education)) Award 2010 be explicitly proscribed, so that a person employed under that award would not be an employee for the purposes of the scheme. However, due to the regulations now listing applicable awards, this is not necessary.
- Some submissions welcomed the clarification that employers for community health centres and women's health centres are included in the scheme for employees engaged under the Social, Community, Home Care and Disability Services Industry Award 2010 (the SCHADS Award). However, other submissions retained their opposition to coverage of community health centres.
- A number of submissions queried how changes to the Interim Regulations would impact agencies who were not yet registered. Submitters sought assurance that the scheme will not be applied retrospectively once the permanent Regulations are made and that businesses would not be considered non-compliant to the scheme during the period of the operation of the Interim Regulations.
- There was no opposition to the proposed commencement date of the Regulations – 1 October 2020, although VCOSS recommended delaying the implementation of the changes as long as possible, until at least late 2020.

Summary of changes made to the Exposure Draft Regulations

The Exposure Draft Regulations differed from the current Interim Regulations in a number of ways, as set out in the introduction above.

In addition, below is a summary of changes made following the current consultation process for the proposed permanent Regulations.

1. Regulation 8 – What is community service work?

Draft Regulation 8(1)(o) reads:

services that support the provision of any of the services referred to in paragraphs (a) to (n).

It is proposed to amend Regulation 8(1)(o) to read:

services that support, supervise or manage the provision of any of the services referred to in paragraphs (a) to (n).

This amendment clarifies that an employee is not excluded from the portability scheme solely because they are engaged in a managerial or supervisory role. It is noted that all of the Awards prescribed in draft Regulation 10(1) encompass such roles.

2. Regulation 10(1) – Who are not employees for the purposes of the community services sector?

The draft Regulation prescribes four awards:

- the Social, Community, Home Care and Disability Services Industry Award 2010;
- the Children's Services Award 2010;
- the Educational Services (Teachers) Award 2010; and
- the Labour Market Assistance Industry Award 2020.

To be eligible for the scheme, an employee must be employed under one of these awards.

It is proposed to add a fifth award to this list: the Supported Employment Services Award 2020 (the SES Award).

This Award covers employers throughout Australia who operate supported employment services and their employees. The award does not cover employers in respect of other activities that are covered by the Aged Care Award 2010, the Health Professionals and Support Services Award 2020, or the SCHADS Award. This award does not cover employees who hold executive and management positions not covered by the classification structure contained within this award.



Supported employment services is defined in section 7 of the Commonwealth *Disability Services Act 1986* to mean services to support the paid employment of persons with disabilities, for whom competitive employment at or above the relevant award wage is unlikely, and because of their disabilities, need substantial ongoing support to obtain or retain paid employment.

It is considered that these employers and their employees were already covered by the scheme, but the decision to provide an exhaustive list of awards in regulation 10(1) requires the express inclusion of the SES Award. The PLSA has advised that some employers likely to be covered by the SES Award have registered for the scheme.

3. Regulation 10(2) and Regulation 13(2) – Who are not employees for the purposes of the community services sector/contract cleaning sector?

This Regulation clarifies that a person is still considered to be employed under an award, even if an enterprise agreement applies to their workplace. It is proposed that this provision be broadened to include agreement-based transitional instruments as defined by the *Fair Work (Transitional and Consequential Provisions) Act 2009*. Agreement-Based Transitional Instruments are defined to include the following type of agreements, that were made prior to 30 June 2009:

- Collective agreements
- Workplace determinations
- Individual Transitional Employment Agreements
- Australian Workplace Agreements.

This will provide greater certainty if there are any employees still employed under these instruments.

A similar amendment is proposed to be made to Regulation 13(2), which is phrased in the same terms.

4. Regulation 13(1) – Who are not employees for the contract cleaning industry?

The name of the Award previously known as the Vehicle Manufacturing, Repair, Services and Retail Award 2020 will be updated to reflect its new name ('manufacturing' has been removed).

Contact

For any queries please contact: Industrial Relations Victoria, Department of Premier and Cabinet at irv.info@dpc.vic.gov.au

Summary of submissions and proposed responses

	Submitter	Submission	Proposed response/ change	Reason
1.	Neville Braybrook	Employees carrying out typical activities of community work within a community health setting and being employed under the Social, Community, Home Care and Disability Services Award 2010 should be included in the scheme.	No action needed.	The Exposure Draft Regulations already provide for this.
2.	Merinda Park Learning and Community Centre	I think the concept is very good that it especially caters for female workers, however for the employer it is not the best system. It is a huge burden to the Community Sector – e.g. Neighbourhood Houses, Community Centres who have limited budget/funding in the first place and have accounting practices in place to allow for long service leave. I agree that if a person moves from one community sector employer to another that the long service leave should be portable but maybe it should be a transaction initiated by the employee when they commence with a new employer to apply to the old employer for a transfer of funds. What I don't like about this current system is that if you subscribe funds for an employee and they leave and not go back into the work then the funds paid into the PLSA should be returned to the employer. It is not government funds to hold onto and I see this as almost illegally gaining money that should go back to the Community provider. Neighbourhood Houses cannot afford this as an ongoing liability. Currently long service leave is accounted for in the balance sheet as a liability so that when employers are eligible for long service leave the funds have been committed but if they don't	No proposed change. Matters that would require amendment of the Act can be raised for consideration in the scheduled three-year legislative review.	The proposed change to the scheme would require an amendment to the Act itself, which is outside the scope of the review of the Regulations. A refund model would undermine the financial viability of the scheme unless an increased levy payment was imposed on all employers.

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	stay long enough in the industry then the Neighbourhood House can reclaim the funds.		
3. WHISE (Women's Health in the South East)	The organisation supports the inclusion of Women's Health Centres as eligible employers. The organisation supports replacing the employee predominance test with a modern award coverage test, as this option clarifies that managerial, administrative and support staff are covered by the scheme. Failing to include managerial staff would send the wrong message around career advancement in the sector. The organisation also seeks an increase in funding to cover the cost of the scheme.	No action needed.	Funding issues are outside the scope of this review. The organisation has endorsed the proposed Regulations and not sought further changes.
4. Women's Health in the North	The organisation supports the inclusion of Women's Health Centres as eligible employers. The organisation supports the replacement of the predominance test with an award-based test.	No action needed.	The submitter supports the proposed Regulations.
5. Early Learning Association Australia and Community Child Care Association (joint submission)	The proposed regulations provide greater clarity about which employees are included in the scheme, but fail to address the Early Childhood and Education (ECEC) sector's concerns about its broader scope and the financial and administrative impacts. Previously, providers had access to monies set aside for long service leave, but were not accessed because the employee left before qualifying for an entitlement. These monies are no longer available. Further costs are incurred due to the four-year allowable break in service. Quarterly reporting also imposes an administrative burden, particularly given	No proposed change. Matters that would require amendment of the Act can be raised for consideration in the scheduled three-year legislative review.	Funding issues are outside the scope of this review. Extending the scheme to for-profit providers would require an amendment to the Act and is outside the scope of this review. Changing the reporting arrangements (other than the content of quarterly reports) would require an amendment to the Act and is outside the scope of this review. The proposed inclusion of the Victorian Early Childhood Teachers and Educators Agreement (VECTEA) 2016 in clause 10(1) of the Regulations, is not necessary. The VECTEA is an enterprise agreement, (mistakenly referred to as an award in

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	<p>the reliance of the sector on volunteers. The RIS did not adequately account for this.</p> <p>Consistent with the disability sector, the scheme should be extended to for-profit providers to improve portability arrangements, access to services in disadvantaged areas and competition in the ECEC sector. The current scheme only covers 35% of employees in the ECEC sector.</p> <p>There is a limitation of the awards included in the draft regulations. The Victorian Early Childhood Teachers and Educators Agreement (VECTEA) 2016 should be included; it covers teachers and educators in early childhood education in a diversity of settings including stand-alone kindergartens and integrated services. The Agreement is currently being renegotiated and VECTEA 2019 is expected to be ratified in the coming months.</p>		<p>the submission). The applicable Award for all early childhood employees covered by VECTEA is the Children's Services Award, which is listed in 10(1). Clause 10(2) makes it clear that "an individual is taken to be employed under an award even if an enterprise agreement applies to the individual's workplace", so there is no doubt that early childhood employees covered by the VECTEA are in scope of the scheme.</p> <p>Services do not mirror Awards with an enterprise agreement. A few community based services have their own "local" enterprise agreements, but regardless of this, the Children's Services Award is still the applicable federal instrument for these employees.</p>
6.	Aged and Community Services Australia (ACSA)	<p>ACSA supports the replacement of the predominance test.</p> <p>ACSA seeks to have all aged care workers as well as home care support services for aged persons excluded from the scheme.</p> <p>ACSA proposes that the wording of Regulation 8 be amended to read: (b): home care support services provided in a private residence but excluding work of a kind performed in the delivery of aged care services to which any of the following Commonwealth</p>	<p>No proposed change.</p> <p>The intention of the Regulations is to clarify that home care work in a private residence is intended to be covered by the scheme, irrespective of the client's age. Apart from home care, aged care is intended to be excluded, and this is already made clear.</p> <p>The inclusion of program names would be inconsistent with this coverage and may cause confusion, particularly as programs and their names are constantly changing.</p> <p>Setting an arbitrary age limit is unfair and would be difficult and costly to administer for both services and the PLSA.</p>

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	<p>funded aged care packages or programs applies:</p> <ul style="list-style-type: none"> (i) Commonwealth Home Support Programme (CHSP) (ii) Home Care Packages Program (HCP) (iii) Transition Care Programme (iv) Short-term Restorative Care Programme (v) Multi-Purpose Services Program (Multi-Purpose Services are allocated flexible aged care places under the <i>Aged Care Act 1998</i>, which are designated as either residential (high care or low care) or home care places.) (vi) National Aboriginal and Torres Strait Islander Flexible Aged Care Program (Flexible aged care services can deliver a mix of residential and home care services in accordance with the needs of the community. Services funded under the Program are located mainly in rural and remote areas.) 		<p>In regard to possible non-compliance, these issues are a matter for the PLSA. However, uncertainty about application of the scheme will be considered pursuant to the PLSA compliance and enforcement policy principles including fairness, proportionality and transparency.</p>
	<p>Alternative wording to Regulation 8 (1) (b) could be replaced with: "home care support services provided in a private residence excluding home care work involving 'aged' persons (65 years and older - or 55 years and older for Aboriginal and Torres Straits Islanders).</p>		
	<p>ACSA seeks assurance that the scheme will not be applied retrospectively once the permanent Regulations are made and that aged-care home</p>		

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	care providers would not be considered non-compliant to the scheme during the period of the operation of the Interim Regulations.		
7. Victorian Council of Social Services (VCOSS)	<p>Supports the purpose of the scheme and the changes that provide better clarity and consistency but is concerned about the significantly increased costs for the sector, in conjunction with other factors resulting in an underfunded sector and consequently, reduced support for vulnerable community members. Government funding is not meeting the true cost of providing the services, and there is reduced capacity to fund raise and gain donations and to meet increased wage costs through rises under the Annual Wage Review and superannuation.</p> <p>Supports inclusion of the awards test, and broader application to managers and CEOs but argues some organisations employ staff outside the award coverage creating inequities within workplaces. Raises concern about the interaction of the scheme with other schemes under enterprise agreements, and seeks clearer guidance and advice from the PLSA and the Government.</p> <p>Does not support inclusion of the community health sector.</p> <p>VCOSS recommends delaying the implementation of the changes as long as possible, until at least late 2020, to give the sector time to prepare and adapt and understands the scheme will not operate retrospectively.</p>	<p>No change proposed.</p> <p>Matters that would require amendment of the Act can be raised for consideration in the scheduled three-year legislative review.</p>	<p>Funding issues are outside the scope of this review.</p> <p>With respect to reimbursements for ineligible employees, this is a matter for the PLSA, in accordance with its statutory powers and obligations.</p> <p>Requests for more information and clarity about the operation of the scheme have been passed on to the PLSA.</p> <p>The new Regulations are proposed to operate from 1 October 2020.</p>

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	<p>The changes will broaden the scope of the scheme with some members claiming an additional 25% of staff will be covered.</p> <p>VCOSS also asks whether organisations will be reimbursed if they register an employee who is later found to be ineligible.</p>			
8.	National Disability Services	<p>The scheme is costly, difficult to administer and is affecting the financial viability of disability services. There is a lack of evidence that portable long service leave is an effective workforce intervention. Victorian providers are disadvantaged as the funding model does not account for state-based cost variations. Continues opposition to coverage of disability services.</p> <p>Within this context, NDS acknowledges amendments to the draft regulations provide greater clarity around the coverage and operational aspects of the scheme and supports the changes. It is expected that there will be an increase in the number of eligible employees as administrative and managerial staff become covered, although we note that the cost of this is somewhat offset by improved clarity and equity. NDS also welcomes changes to the regulations that appear to clarify that double dipping cannot occur.</p>	No change needed.	The submitter broadly supports the proposed Regulations in the context they provide greater clarity.
9.	Queenscliffe Neighbourhood House	<p>The one concern about the scheme is what happens to funds that Neighbourhood Houses contribute to the PLSA that are not drawn upon by our employees? We would like assurances within the Regulations that those funds be returned to Neighbourhood Houses and not to state revenue.</p>	No change proposed.	A refund model would undermine the financial viability of the scheme unless an increased levy payment was imposed on all employers.
		Matters that would require amendment of		

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		the Act can be raised for consideration in the scheduled three-year legislative review.	The funds are retained by the PLSA for the benefit of all registered eligible employees and do not go to consolidated revenue.
10. Neighbourhood Houses Victoria	<p>Represents over 400 neighbourhood houses and submits that the Victorian State Government should abolish the scheme. Supports the concept of portable long service but says it already has portability in the sector.</p> <p>If scheme is not abolished, submits that -</p> <p>Regulation 12 should be amended to ensure an employee cannot double dip, and amended to provide for the reimbursement of employers.</p> <p>Employers should be able to opt in/out of the scheme and students should be excluded from the scheme.</p> <p>The Tutors and Teachers (Educational Services (Post-Secondary Education)) Award 2010 is not referenced in Regulation 10.</p> <p>Will create discrimination against employees who have portable long service leave liabilities attaching to them.</p> <p>The scheme exposes employers to increased costs and there are conflicts between other state and</p>	<p>No change proposed.</p> <p>Matters that would require amendment of the Act can be raised for consideration in the scheduled three-year legislative review.</p>	<p>Regulation 12 prevents double dipping to the extent possible under state government legislation. Victoria cannot deny an employee an entitlement they have under a federal industrial instrument. Irrespective of the situation, an employer who pays an entitlement under the Act and under a federal instrument will be reimbursed.</p> <p>The scheme would not be viable under an opt in/out arrangement. Irrespective, this would require an amendment to the Act, which is outside the scope of the review.</p> <p>A student on work placement is not considered to be an employee and need not be registered for the scheme.</p> <p>The scheme is not intended to cover the education sector (except for children's services) and therefore it is not intended to prescribe the Tutors and Teachers (Educational Services (Post-Secondary Education)) Award 2010.</p>

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	federal legislation. Seeks further consultation and information on a range of matters.		Requests for more information and clarity about the operation of the scheme have been passed on to the PLSA.
11. Victorian Healthcare Association (VHA) and collaborating Community Health Centres -	<p>VHA in collaboration with 27 community health centres.</p> <p>The nine agencies named made separate submissions including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.</p> <p>Recommendation 1: If community health centres are to be included, that comprehensive funding be paid to providers to cover the net cost impact and initial change management costs as they transition into the scheme. This funding would assist providers to maintain vital programs and services to serve vulnerable communities in greater need due to the effects of coronavirus (COVID-19). Recommendation 2: If community health centres are to be included in the scheme, after the first 12 months an audit is conducted of the administrative costs paid in compliance with the scheme, and the sector is reimbursed. This funding would assist to reimburse community health centres as they comply with the scheme and outlay significant administrative costs (such as software systems, staff training, personnel for processing and reporting, and auditing) associated with efficient, prompt and ongoing compliance.</p> <p>Recommendation 3: There should be immediate clarification and fairness of implementation of overlapping long service leave entitlements, changes to the employers covered, definition of 'community</p>	<p>No proposed change.</p> <p>Matters that would require amendment of the Act can be raised for consideration in the scheduled three-year legislative review.</p>	<p>The estimate of the additional cost in the RIS was based on data provided by the sector.</p> <p>Funding issues are outside the scope of this review.</p> <p>There is sufficient clarity as to how the Act interacts with any long service leave obligations under Fair Work instruments.</p> <p>The other issues raised are operational matters for the PLSA and are therefore outside the scope of this review. Those matters have been referred to the PLSA.</p>

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	<p>service work', and application of the double dipping clause in practice.</p> <p>Recommendation 4: To address the lack of clarity provided by the A PLSA on how the day-to-day operation of the scheme will function, the VHA recommends that clear directives and training for all employers be delivered to assist providers to embed the scheme as 'business as usual' within workplace practice.</p> <p>Recommendation 5: Strongly opposes any retrospective backdating of the proposed Regulations and recommends that, in consideration of the substantial financial impact on the sector, only prospective payment of the levy is applied from the date of implementation of the permanent Regulations. This would assist providers to maintain vital programs and services to serve vulnerable communities in greater need due to the effects of coronavirus (COVID-19).</p>			
12.	Bendigo Community Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.	As above.
13.	Carrington Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.	As above.
14.	Connect Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the	As above.	As above.

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	PLSA scheme imposes a significant financial and administrative burden.		
15.	EACH	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.
16.	Gateway Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.
17.	Gippsland Lakes Complete Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.
18.	Grampians Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.
19.	Northern District Community Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.

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20.	Your Community Health	Separate submission setting out relevant information about the operation of the service, including the same recommendations as VHA and noting that the PLSA scheme imposes a significant financial and administrative burden.	As above.	As above.
21.	Star Health	<p>Supports portable long service leave concept but opposes inclusions of community health centres and already has portability in the sector across 30 community health centres under the Community Health Centre (Stand Alone Services) Social and Community Service Employees Multi Enterprise Agreement 2017.</p> <p>Is seeking guidance on complexities and ambiguities.</p> <p>Concerned about increased costs and decreased capacity to provide services. Current payroll system will not be able to manage the complexities generated by draft regulations. Anticipate the implementation of a replacement system will be in the vicinity of \$200,000 for an organisation of our size with an ongoing annual fee of \$30,000.</p> <p>Recommendation 1(a): Star Health are seeking clarity on how the PLSA wish us to manage the potential detrimental impact on employees.</p> <p>Recommendation 1(b): Star Health are seeking further guidance and clarification on managing this conflict.</p> <p>Recommendation 2: Star Health are seeking consideration of this additional cost impact and guidance on managing this cost burden without impacting on the sustainability of the service.</p> <p>Recommendation 3: Star Health requests that additional funding be considered to cover both the</p>	No proposed change.	<p>Funding issues are outside the scope of this review.</p> <p>Operational matters for the PLSA are outside the scope of this review but have been referred to the PLSA. Assistance in implementing the scheme is available from the PLSA.</p>

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22.	Victorian Hospitals' Industrial Association	<p>transition and ongoing cost burden of the scheme on community health that will be running multiple arrangements. Recommendation 4: Star Health seeks training for all employers be delivered to assist providers to embed the scheme as 'business as usual' within workplace practice.</p> <p>Oppose the inclusion of community health centres within the scheme and state that 87% of employees in community health have access to existing portability arrangements (but only within the community health sector as opposed to portability across the legislated scheme) and 79% of employees would fall within scope of the PLSA scheme</p> <p>If they are to be included, additional funding should be provided.</p> <p>Aged care services, palliative care services, pharmaceutical services, ambulance services, health services in association with correctional services and residential care were previously included in the definition of 'health or aged care work'. They are no longer excluded as a result of Regulation 9(d)(iii).</p> <p>The interim Regulation 8(1)(b) excludes aged care services from falling within the definition of home care support services. This is consistent with previous drafts of the regulations which excluded several Commonwealth aged care funding packages. The proposed variation removes the existing exclusion notwithstanding the change is being categorised as 'further clarification'. This will result in additional costs for employers.</p>	<p>No change proposed.</p> <p>Matters that would require amendment of the Act can be raised for consideration in the scheduled three-year legislative review.</p>	<p>It is intended to include community health centres in the scheme, in relation to eligible employees.</p> <p>Funding issues are outside the scope of this review.</p> <p>Aged care is clearly excluded from the scheme by virtue of clause 4(2)(d) of Schedule 1. Employers who provide health services only will also be excluded as they will not be employing persons under the prescribed Awards. The removal of Regulation 9(d)(iii) does not affect this.</p> <p>The proposed variation to Regulation 8(1)(b) clarifies that a service provided to clients in a private residence is considered to be community service work, not aged care work.</p> <p>Provided the work being performed in the home is community service work as defined in the Act and Regulations, it comes within scope of the scheme. It is not considered necessary to further define 'health services'.</p> <p>The Regulations clarify the coverage of the scheme, pursuant to and within the scope provided by the Act.</p>

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	<p>Some employees perform health-like work in the private home, such as personal care.</p> <p>Regulation 8(1) will exclude employees currently covered by the scheme under clause 2(1)(a-j) of Schedule 1 of the Act.</p> <p>Multiple awards sometimes cover the same roles, for example, support services. Consistency across the sector is therefore unlikely.</p> <p>The Regulations do not prevent double dipping; they only provide for reimbursement.</p> <p>Employers should be able to opt out in order to avoid double dipping.</p>		<p>The potential for multiple award coverage is addressed in awards themselves – for example, clause 4.8 of the SCHADS Award states:</p> <p><i>Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.</i></p> <p>Regulation 12 prevents double dipping to the extent possible under state legislation. Victoria cannot deny an employee an entitlement they have under Commonwealth legislation.</p> <p>The scheme would not be viable under an opt in/out arrangement. Irrespective, this would require an amendment to the Act, which is outside the scope of the review.</p>
23. Australian Industry Group (AIG)	<p>Regulations need to provide clarity to workers and employers about coverage and operational aspects of the scheme.</p> <p>Concerned that Regulation 8(1)(o) is too broad. Recommend adding the words “provided that such service is being conducted by an employee employed by an employer covered by the Act.”</p> <p>Believe that the changes with respect to home care do not sufficiently exclude aged care work, and recommend the addition of “For the purposes of clause 2(2)(c) of Schedule 1 to the Act, an activity that is aged</p>	<p>No change required.</p> <p>Matters are already covered by drafting.</p>	<p>The proposed additional words to Regulation 8(1)(o) are not appropriate because in this instance the coverage of employers and employees is a matter dealt with in the Act.</p> <p>The changes with respect to aged care are not considered necessary. Clause 4(2)(d) of Schedule 1 of the Act already excludes persons employed under the Aged Care Award 2010.</p> <p>Regulation 9 relies on existing definitions in the <i>Health Services Act</i> that have an accepted meaning.</p>

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	<p>care work is prescribed not to be community services work. Aged care work is work undertaken in the aged care industry as defined by the Aged Care Award 2010”.</p> <p>Subclause 9(d)(iii) adopts part 3(1)(b)(iii) of the <i>Health Services Act</i>. The broadness of this definition clearly covers health services and not just disability services. It also provides for an unintended consequence of covering non-community service businesses that may from time to time provide any of the services mentioned, such as facilities access or insurance services to the community services sector. If the intent is to ensure that specified disability services are included, this should be clearly stated. In its current form, this subsection is likely to cause confusion, particularly if ED Regulation 8(o) is retained.</p> <p>Regulation 10 provides sufficient clarity as to who is an employee in the community services sector. There are no other awards that would be appropriately included.</p> <p>Regulation 12 addresses a number of our concerns, but AIG believes that clarity around double dipping should extend to include:</p> <ol style="list-style-type: none"> a. The <i>Long Service Leave Act 2018</i>; b. The <i>National Employment Standards under the Fair Work Act 2009</i>; c. Transitional instruments under the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>; and d. The <i>Victorian Construction Industry Long Service Leave Act 1997</i>. 		<p>With respect to double dipping, the issue regarding the LSL Act 2018 was addressed in the RIS. The other instruments listed by AIG are already encompassed by the double dipping regulations.</p> <p>There is no need to extend Regulation 12 to the contract cleaning and security sectors as double dipping arrangements are already set out in the Act itself (see clause 22 of Schedule 2 and 3).</p> <p>The scope of the scheme with respect to the contract cleaning and security sectors is already sufficiently defined in the Act and Regulations and no further changes are considered necessary.</p>

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	<p>With respect to contract cleaning and security, AIG seeks to exclude employees employed under the Manufacturing and Associated Industries and Occupations Award 2020 or any replacement award or the Building and Construction General On-site Award 2010 or any replacement award from the scheme.</p> <p>The double dipping provisions in the Regulations should also apply to the Contract Cleaning and Security industries.</p>			
24.	Victorian Trades Hall Council	General support for the submissions made by its affiliated unions and the objectives of portable long service.	No change needed.	General comments only.
25.	United Workers Union	The scheme should be extended to cover the for-profit early childhood sector which covers about half of the Victorian ECEC sector. Portable long service is important for groups such as transient, project based, low paid and feminised workforces.	<p>No change proposed.</p> <p>Matters that would require amendment of the Act can be raised for consideration in the scheduled three-year legislative review.</p>	This would require an amendment to the Act and is outside the scope of this review.

Submitter	Submission	Proposed response/ change	Reason
26. Australian Services Union	<p>Health promotion services should be added to the list of work in Regulation 8.</p> <p>Work by peak bodies in the community service sector should be added to the list of work in Regulation 8.</p> <p>Sub-regulation 8(1)(o) of the Proposed Regulations should be amended such that it reads: “services and work that support, supervise or manage the provision of any of the services referred to in paragraphs (a) to (n)”.</p> <p>Sub-regulation 9(d)(iii) of the Proposed Regulations should be amended such that it reads: “a person, body or organisation that provides, delivers, funds, facilitates access to or provides insurance in relation to health services, being services that include but are not limited to aged care services, palliative care services or disability services, referred to in paragraph (b)(i)–(iii) and (b)(vii) of that definition”.</p> <p>Regulation 9 does not provide sufficient clarity as to which employers are excluded from the scheme. It excludes employers from the scheme that should be included.</p> <p>It remains the ASU’s position that the Act should be amended to ensure that entities whose governing bodies are appointed by statute should be included in the scheme. The current exclusion leaves some of the community service sector’s largest employers, like the Brotherhood of St Laurence, exempt from the scheme.</p>	<p>Amend Regulation 8(1)(o) to read: “services that support, supervise or manage the provision of any of the services referred to in paragraphs (a) to (n)”.</p> <p>Add a new clause 10(1)(e) prescribing the Supported Employment Services Award 2020.</p>	<p>Adding the words “supervise or manage” to Regulation 8(1)(o) will help clarify that supervisory employees are performing community service work, even if they do not engage directly with clients. However, the words “and work” cannot be included as this is outside the scope of what the Act allows to be prescribed for the purposes of cl 2(1)(j).</p> <p>It is noted that the Community Services Long Service Leave Bill 2010 did not specifically include peak bodies, nor were they excluded. It was assumed that a peak body that met the test of employer for the sector would be included. The same situation applies with the current Act. As long as a peak body qualifies as an employer for the scheme, they and their employees will be covered. There is no need to specifically include them. The ASU cites the case of <i>Mental Health Australia Ltd v Registrar, ACT Long Service Leave Authority</i> [2019] ACTSC 188. The facts in that case were unique as the work of the peak body in question had changed over time and it was found to no longer be providing the requisite service. However, reference is made to proposed clause 8(1)(o) in the draft Regulations, which will apply to peak bodies.</p> <p>It is noted that the Brotherhood of St Laurence has registered for the scheme. No otherwise eligible employers are known to have been excluded from the scheme by virtue of the operation of clause 3(2)(d) of Schedule 1 of the Act.</p> <p>The proposed change to Regulation 9(d)(iii) is not appropriate. The scheme is not intended to apply to aged care.</p>

Submitter	Submission	Proposed response/ change	Reason
	<p>The list of awards set out in draft Regulation 10(1) should be retained and the following awards be added:</p> <ul style="list-style-type: none"> - Aboriginal Community Controlled Health Services Award 2020; and - Supported Employment Services Award 2020. <p>A new Regulation 10(3) be added to the Proposed Regulations, which provides:</p> <p>“Despite paragraph (1), an individual may be an employee for the community services sector if their role includes the support, supervision or management of the work of employees covered or employed under one of the awards specified in paragraph (1)”</p> <p>Due to ambiguous wording of the interim regulations and subsequent misinterpretations, some workers were not given access to the scheme. For the avoidance of doubt, the ASU anticipates that anyone who was not given access for these reasons will have their entitlements honoured backdated to scheme commencement. Others previously excluded are also now scoped in due to the Proposed Regulations rectifying the recognised drafting issues in previous versions of the Regulations.</p>	<p>It is not proposed to include the Aboriginal Community Controlled Health Services Award 2020 within the scope of the scheme. It is clear from the Award, and from looking at the website of the peak body for the services, the National Aboriginal Community Controlled Health Organisation, that these are health services, not community services. For example, according to the website, these organisations are “delivering holistic, comprehensive and culturally competent primary healthcare services”. Further, “they came into being because of the inability of mainstream health services to engage Aboriginal communities with their services.”</p> <p>It is agreed that the scheme should apply to persons employed under the Supported Employment Services Award 2020, being persons with a disability. The Award is stated to apply to employers who operate supported employment services.</p> <p>It should be noted that this would only apply to not-for-profit employers.</p> <p>The proposed new Regulation 10(3) is not appropriate. This would potentially have the effect of significantly broadening the scheme, by bringing in employees who are not carrying out community services work.</p>	

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27. Australian Education Union (AEU)	<p>The AEU does not consider that the services prescribed in Regulation 8(1) squarely capture disability day services. The AEU has understood that disability day services were intended to be included in the Long Service Benefits Scheme. For the avoidance of doubt, Regulation 8(1) should specifically refer to:</p> <p>a. “disability day services;” and b. “training and instructing disabled persons”.</p> <p>The AEU supports the prescription of activities that are funded by the National Disability Insurance Scheme (within the meaning of the <i>National Disability Insurance Scheme Act 2013</i> (Cth)) for the purpose of clause 2(2)(a) of Schedule 1 to the Act for the reasons given in the Regulatory Impact Statement.</p> <p>The AEU also supports the abolition of the “employer predominance test” and the introduction of a test based on coverage of modern awards. The “employer predominance test” would introduce a new test that does not cohere with existing norms under industrial laws that have evolved to deal with overlapping coverage.</p> <p>The Supported Employment Services Award 2020 should also be referred to in Regulation 10.</p> <p>AEU also seek further changes to the wording of Regulation 10(1) and 10(2).</p>	<p>Agree to the inclusion of “disability day services”, and “training and instructing disabled persons” in Regulation 8(1).</p> <p>Agree to including the Supported Employment Services Award 2020 in Regulation 10.</p>	<p>As the scheme clearly applies to disability support services, the descriptors of what is community service work should reflect this and wording has been added to clarify this.</p> <p>The wording in the Exposure Draft Regulations has been drafted on the advice of Parliamentary Counsel to ensure consistency with the intent of the Act.</p>
28. Health and Community Services Union (HACSU)	<p>HACSU requests disability work to be defined either in regulations and/or legislation ‘the provision of disability services including the provision of personal care and domestic and lifestyle support to a person with a disability in a community and/or residential setting and/or any other setting including respite centre and day services’ as a separate category under community services work in regulation 8(1).</p>	<p>No change proposed/ needed.</p> <p>Matters that would require amendment of the Act can be</p>	<p>Including the new services suggested would be to duplicate the provisions of the Act, which is not necessary.</p> <p>Adding the words “by any means” with reference to the NDIS may cause conflict with the Act.</p> <p>The addition of “or any successor” is unnecessary.</p>

Submitter	Submission	Proposed response/ change	Reason
<p>Any activity that is funded by any means and/or the National Disability Insurance Scheme or any successor within the meaning of the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth should be prescribed to be community service work’.</p>	<p>In regard to regulation 10, include further categories of awards specifically pre-modern awards: Disability Services Award (Victoria) 1999 [AP778738CRV] Residential and Support Services (Victoria) Award 1999 Attendant Care – Victoria Award 2004</p>	<p>raised for consideration in the scheduled three-year legislative review</p>	<p>The addition of a reference to pre-modern awards is not necessary. The union has clarified that it is concerned that workers still on Australian Workplace Agreements may not be covered by one of the awards specified in Regulation 10. This is not the case – the award will still apply.</p>
<p>HACSU supports the proposal that employers compulsorily pay into the fund for all eligible employees regardless if an employee is entitled to long service leave under a federal workplace instrument and/or the LSL Act (Vic) as the employer may recover as per regulation 12 (5) and if changes are made to the LSBP Act.</p>	<p>HACSU seeks confirmation that where an employer is enrolled in the long service portability scheme the employer and scheme notify the employee they are enrolled and how they can access this benefit.</p>		<p>All workers registered for the scheme are notified by the PLSA. Entitlements and records are accessible to workers through the on-line portal at any time. The PLSA will provide all employees with an annual statement, as soon as possible after the end of the financial year.</p>
	<p>Where an employee is entitled to long service leave as per 1 week as of 30 weeks of service in an existing industrial instrument this is recognised by the portability scheme and is transferable.</p>		<p>Where an employee is eligible for an entitlement under a fair work instrument, their employer is required to pay that entitlement, irrespective of any obligations under the Act.</p> <p>The levy is set by the Governing Board, based on independent actuarial advice.</p> <p>Extending the scheme to for-profit providers will require an amendment to the Act and is therefore outside the scope of this review.</p> <p>A number of comments are already covered by the Act and Regulations.</p>

Submitter	Submission	Proposed response/ change	Reason
	<p>HACSU seeks to know why the levy rate is only 1.65 percent of ordinary wages for each eligible employee and/or contract worker for the community services sector whereas the contract cleaning industry and security sectors is higher at 1.80 percent of ordinary wages.</p> <p>HACSU supports that a certificate of service of long service leave entitlements is issued to an employee within 30 days of the end of each financial year.</p> <p>HACSU does not support the predominance test as it is problematic to put into practice whether an employee predominantly works in disability and/or position descriptions could be re-defined to exclude coverage.</p> <p>HACSU supports that all employers covered by the scheme are identified and provided in a list accessible to employees and unions within 30 days of the end of each financial year.</p> <p>HACSU supports the abolition of the employer predominance test that applies to all services and this would mean employers employing at least one covered employee who undertakes community service work would be required to register with the PLSA and pay a levy on their employees' behalf.</p> <p>HACSU supports the definition of employers to include for profit and not for profit and any other person who is prescribed to be an employer.</p>		

Submitter	Submission	Proposed response/ change	Reason	
	<p>HACSU wants all categories of employees and/or workers included in the scheme including but not limited to: casual, part-time, contract worker, flexible part-time and full-time employees.</p> <p>HACSU supports that all employees paid long service leave under the scheme are paid superannuation for these entitlements.</p> <p>HACSU supports all period of service is counted whichever is the greater of the LSL Act and the LSBP Act.</p> <p>HACSU supports all periods of absence from work taken to be days of service for crediting service whichever is the greater of the LSL Act and the LSBP Act.</p> <p>Where employers are not lodging quarterly reports on time there is a timely mechanism for enforcement by the PLSA and unions and employees.</p>			
29.	National Employment Services Association (NESA)	<p>Believes the scheme has merit but the impacts on cash flow and administrative complexity outweigh potential benefits to employees. The sector does not experience the same levels of short-term and casual employment and staff transitioning mostly do not go to other community service roles so is unlikely to improve long service benefits. NESA members tender for Commonwealth contracts for employment and labour assistance programs and have no opportunity to renegotiate to cover the costs of the scheme. The coronavirus (COVID-19) situation means that payment on performance sectors are</p>	No change proposed.	<p>The intent of the scheme is to cover persons engaged in work placement programs in the community services sector, on behalf of not-for-profit providers. The proposed amendment would exclude such employees, contrary to this intent.</p>

Submitter	Submission	Proposed response/ change	Reason
	<p>significantly impacted and this is a different funding model than most community services.</p> <p>Clause 10(1) of the Draft Regulations should exclude employees to whom the Labour Market Assistance Industry Award 2010 applies. This will overcome the definitional uncertainty recognised in the RIS applicable to the employment services sector. The definition of the labour market assistance industry in the Award provides a convenient definition for the purpose of exclusion.</p>		
30.	<p>Consumer Action Law Centre</p> <p>The main concern is that the scheme appears to needlessly disrupt community organisations' existing employment arrangements as the double-dipping provisions do not recognise the terms of individual employment agreements. Despite previously raising this issue with the PLSA and Industrial Relations Victoria, neither the Exposure Draft Regulations nor the RIS appears to deal with this problem.</p> <p>It might be suggested that organisations could seek to formalise their employment agreements through fair work arrangements, so that they are considered fair work instruments. While this is indeed possible, it is an impost on organisations and it is hard to understand the benefit in doing so for organisations or staff, where the organisation is committed to strong employment standards and conditions. Furthermore, it was not the policy intent of the scheme to require this or, at least, not overtly.</p> <p>Notes that the RIS suggests that legislative changes are required to allow employers who pay entitlements under the LSL Act 2018 to be entitled to</p>	No change proposed.	<p>The reimbursement arrangements apply only to fair work instruments and not to common law contracts. The wording of cl 15(1) of Schedule 1 to the Act determines the circumstances in which entitlements and obligations are to be determined in accordance with the regulations: when a registered active worker has an entitlement "under a fair work instrument".</p> <p>Therefore, there is no power for regulation 12 to deal with entitlements under common law contacts and if there is a desire for this to be dealt with in the regulations that would require an amendment to the Act.</p> <p>Whilst the organisation's reluctance to formalise their common law arrangements in fair work instruments is noted, the option is available for them to do so, if they want the full protection of Regulation 12.</p>

Submitter	Submission	Proposed response/ change	Reason
	<p>reimbursement from the PLSA for any levy paid once an employee accesses an entitlement under the LSL Act 2018. We urge that amendments are also made in relation to employers who pay entitlements under provisions of individual employment agreements, separately to entitlements under the LSL Act 2018.</p> <p>Supports the changes to Regulation 10.</p>		
31. JobWatch Inc	<p>JobWatch is concerned that employees of CLCs currently covered by the “predominant activity” test in the Interim Regulations may no longer be covered under the Proposed Regulations because of uncertainty about SCHADS coverage.</p> <p>JobWatch is concerned that levies paid for employees covered under the Interim Regulations will not be recoverable if those employees ceased to be covered under the Proposed Regulations.</p> <p>JobWatch is satisfied that the amendment to regulation 12(3) clarifies the requirement to pay levies in respect of employees covered by fair work instruments.</p> <p>JobWatch is concerned about the impact of double-dipping under the LSL Act.</p> <p>JobWatch is concerned about the impact of double-dipping under employment contracts that provide for long service leave entitlements.</p> <p>JobWatch notes uncertainty about whether reimbursements under regulation 12(5) are expressed as pro-rata.</p>	No action needed.	<p>The SCHADS Award does cover legal professionals employed in community legal centres. It is noted that the Legal Services Award 2020 does not apply to community legal centres.</p> <p>The Regulations have been drafted in such a way that any employee who was previously eligible should still be eligible. Therefore, the issue of reimbursement for ineligible employees should not arise.</p> <p>As regards the reimbursement of employers, the Regulations provide that the employer is reimbursed what they paid the employee (for the period the employee was employed under the Act), not the levy paid. In most if not all cases, the reimbursed amount will be greater than the levy paid, particularly where the fair work instrument provides for a greater entitlement than the entitlement under the Act.</p> <p>The reimbursement arrangements apply only to fair work instruments and not to common law contracts.</p> <p>The wording of clause 15(1) of Schedule 1 to the Act determines the circumstances in which</p>

Submitter	Submission	Proposed response/ change	Reason
	<p>JobWatch notes the potential for disparities between amounts reimbursed under regulation 12(5) and levies paid under the scheme.</p>		<p>entitlements and obligations are to be determined in accordance with the Regulations: when a registered active worker has an entitlement "under a fair work instrument".</p> <p>Therefore, there is no power for regulation 12 to deal with entitlements under common law contracts and if there is a desire for this to be dealt with in the regulations that would require an amendment to the Act.</p>
<p>20/5983</p>			