

Long Service Benefits Portability Regulations 2019

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 2019 (Regulations) and Regulatory Impact Statement (RIS). The Exposure Draft Regulations were published for comment on 3 May 2019. Submissions closed on 31 May 2019.

The Exposure Draft Regulations cover four key themes and members of the public were asked to comment on seven questions:

Quarterly returns

1. Is the prescribed additional information appropriate?
2. Will employers be in a position to provide this additional information?

Disclosure of information

3. Are there any specific matters about privacy of information that you wish to raise as part of this proposed regulation?

Community services sector

4. Do the Exposure Draft Regulations provide clarity as to the scope of the community services sector, what is community service work, and who is an employer, and an employee for the sector?
5. Is the list of awards and agreements at clause 9 of the Exposure Draft Regulations comprehensive? Should any of those awards or agreements be excluded? Should any other awards or agreements be included?
6. Whilst it is proposed that the Regulations operate on and from 1 July 2019, the Regulations bringing children's services, and disability services within the scope of the scheme only operate on and from 1 January 2020. This will enable businesses in those sectors adequate time to prepare for the legislation. Are these appropriate commencement dates?

No double-dipping

7. Does the proposed Regulation adequately address any risk of double-dipping?

The consultative process

Thirty-six written submissions were received. In addition to formal written submissions, the Department met with unions and industry stakeholders, and responded to a number of phone calls. Many of the submissions did not comment specifically on the draft Regulations or RIS, but made general observations, or posed questions of a general nature. Where possible (many submissions were made anonymously) and appropriate, the Department

responded directly to these questions. As these submissions did not relate to the Regulations, they are not reflected in the table below.

Matters outside the scope of the Regulations

Some issues arising in the submissions need specific clarification:

- Some submissions provided a 'yes' or 'no' response to the questions, with no further comment that could be specifically addressed.
- In some instances, submissions contained misunderstandings about the legal operation and application of the Act and the Regulations. This is understandable given the newness of the scheme and the technical nature of these documents. Further information about the operation of the portable long service benefits scheme can be found on the Portable Long Service Benefits Authority (the Authority) website – www.plsa.vic.gov.au. Practice and guidance material is also being developed for the commencement of the scheme and the operations of the Authority. This material will progressively be available on this website. In addition, a comprehensive information and education campaign has commenced.
- Some submissions alluded to 'conflict' between the Act and Regulations. For example, on reading the Act in isolation, community health could be argued to be included in the scheme. Draft Regulation 7(4), however, excludes an activity that is health work. This may demonstrate a misunderstanding of how the Regulations operate. The Act specifically allows for Regulations to be made that prescribe an activity to be, or not to be, community service work, as well as prescribing an employer to be, or not to be, an employer for the community services sector. Similar Regulations may be made for the contract cleaning, and security sectors.
- Some submissions sought a later starting date for the scheme. The commencement date of 1 July 2019 is set out in the Act. It cannot be changed by Regulation.
- One submission related to enforcement of the Act, specifically, whether employers would be prosecuted for lodging late quarterly returns. The Act at section 27 provides that penalties apply for the late submission of, or failure to submit, a quarterly return. This is a matter for the Authority and outside the scope of the Regulations.
- Some submissions commented on the overall cost of the scheme to employers, for example, the levy rate (set by the Governing Board). Other submissions sought additional Government funding. These matters are outside the scope of the review of the Regulations.

Matters within the scope of the Regulations

Overall, a number of issues and themes have been raised relating to content or drafting clarity. Responses to issues raised in the submissions are set out in the table below. Not every submission is reflected in the table (for example, many of the submissions made the same comments with respect to Regulation 7(2) and 7(3)), although all the issues raised are included and responded to.

Some of the suggested changes to the Regulations can be effected administratively. For example, one submission requested that employers be notified if one of their employees claimed a benefit from the Authority. These matters will be referred to the Authority for consideration.

Lastly, it is important to note that the Act will be reviewed at the end of three years, and again at the end of seven years. 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.

Summary of changes made to the Exposure Draft Regulations

1. Regulation 5 – Quarterly returns by employers

Employers will be asked to include the name of any other fair work instrument that provides for a long service leave entitlement that applies to a registered worker or workers. This will mean that the Authority is aware that the employer may have future obligations under an award or enterprise agreement, and assist in identifying when double-dipping provisions may come into play.

2. Regulation 7 – What is community service work?

Schedule 1, clause 2 of the Act already defines some functions as ‘community services work’ and allows additional functions to be prescribed in Regulations. It is intended to include a more comprehensive list of functions that are considered to be within scope of ‘community services work’. Specific roles will be described as covered (Regulation 7(1)), including:

- social work, welfare work and youth work services;
- emergency material relief;
- custodial or supportive care and social welfare;
- crisis counselling;
- assessment of individual or family needs;
- social and community development, education and advocacy;
- family support services;
- youth services, housing and homelessness services;
- family violence prevention and response;
- neighbourhood houses;
- drug and alcohol services;
- home care support (if in a private residence); and
- migrant and refugee support services.

The inclusion of these functions will provide further clarity as to the scope of the scheme relating to the community services sector.

It is also intended to delete Regulation 7(6)(c), which lists a number of Commonwealth program names. The inclusion of the list may be potentially confusing, and in addition, program names are constantly changing. The intention of the Regulations is to clarify that home care in a private residence, irrespective of the client’s age, is included within the scheme, but aged care delivered in an aged care facility setting is not included. The other provisions of Regulation 7 make this clear.

3. Regulation 9(1) – Who is not an employee for the purposes of the community services sector?

In Regulation 9(1) delete the 'Health Professionals and Support Services Award' and 'Nurses Award', and add the 'Educational Services (Schools) General Staff Award 2010'.

Regulation 9(1) lists a number of awards, and employees employed under these awards are excluded from coverage under the Scheme. Advice has been received that some workers engaged under the Health Professionals and Support Services Award and Nurses Award, who are intended to be covered, could have been accidentally excluded.

Workers employed by schools are intended to be excluded by Regulation 7(3). The inclusion of the Educational Services Award will ensure that any school that is not registered under the Education and Training Reform Act will also be excluded.

In Regulation 9(1) delete (h), (i), (j), and (k). These refer to industrial instruments other than awards. It is arguable that the scope of these instruments is unclear, and do not help to further clarify the intended scope of the community services sector.

A new Regulation 9(2) is added to the effect that an employee employed under a prescribed award is still considered to be engaged under that award even if an enterprise agreement applies to that workplace. This will provide clarity to users whilst maintaining the intent of the Regulation.

4. Regulation 9(3) – Who are not community services employees? (predominance test)

Amend Regulation 9(3) to read:

For the purposes of clause 4(2)(e) of Schedule 1 to the Act, an individual is prescribed not to be an employee for the community services sector if the predominant activity of their substantive role is not the personal delivery of services or the personal performance of activities that are community service work.

Clause 4, Schedule 1 already defines who is and who is not an employee for the community services sector. The original test to exclude other persons proposed in the Exposure Draft was criticised by unions and employers as it referred to persons engaged as a 'manager' or 'executive. These terms are not used in awards, and could potentially mean, for example, that a team leader providing community services work is excluded. The revised wording in contrast focuses on the work the person performs, rather than their title.

5. Regulation 11 – Double-dipping

There are three proposed changes to Regulation 11, identified during the drafting and consultation process.

Firstly, in section 23 of Schedules 2 and 3 of the Act, an employer who is reimbursed is to receive "the amount paid under the law or instrument". In contrast, Regulation 11(5) in the Exposure Draft provides that the levy only is to be reimbursed. In most cases the amount of the levy will be lower than the amount actually paid by the employer to the worker. It is proposed to amend this Regulation so that employers are reimbursed what they actually pay to their employees, not just the levy paid, bringing them into line with payment to reimburse employers in contract cleaning and security.

Secondly, it is proposed to further amend Regulation 11(5) by deleting subclause (b). This will mean that if a worker makes a claim on the Authority, and then makes a claim against the employer for the same period of employment, the Authority will still reimburse the employer. It is noted that the employer must pay a long service leave entitlement under a federal instrument, irrespective of the Act or Regulations.

Thirdly, Regulation 11 as drafted refers to a 'fair work instrument'. As defined, this does not include a National Employment Standard or a Transitional Instrument under the Fair Work Act. It is proposed to add these instruments to the operation of this Regulation.

The Department is of the view that these changes will not add to the regulatory burden, and if they had been proposed in isolation, would not have required the production of a RIS.

6. *New Regulation 12 – Who are not employees for the contract cleaning sector?*

This is an addition to the draft Regulations.

The intention is to exclude employees covered by the following awards from the contract cleaning sector:

- Manufacturing and Associated Industries and Occupations Award 2010
- Vehicle Manufacturing, Repair, Services and Retail Award 2010
- Airline Operations Ground Staff Award 2010
- Waste Management Award 2010.

It was not the intention of the scheme to cover workers employed under these awards, engaged in cleaning plant or equipment, aircraft, vehicles, or in the waste industry.

Contact

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

Summary of submissions

| | Organisation | Submission | Proposed response/change | Reason |
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| 1. | Cleanaway | <p>Varying market forces in the wider contract cleaning industry are not applicable in the industry and market in which Cleanaway operates and that Cleanaway employees who may perform cleaning related services are in no special position of vulnerability. To provide greater certainty, Cleanaway seeks to have the cleaning services it offers excluded from the scope of the legislation via the Regulations.</p> <p>Employees performing the work could be excluded from the definition of an 'employee' under Schedule 2 via the regulations.</p> <p>Alternatively, either the cleaning work described in this submission should be excluded from the definition of 'cleaning work' or employers offering the services described in the submission could be excluded from the definition of an 'employer' under Schedule 2. Employees could be excluded on the basis of award coverage. As such the exclusion could be to 'an individual to whom any of the following awards apply: the Manufacturing and Associated Industries and Occupations Award 2010 or the Waste Management Award 2010.</p> <p>Alternatively, Cleanaway submits that employees could be excluded on the basis of the particular qualifications they require to perform the tasks that would not be typical in commercial cleaning: 'employees who in order to perform industrial cleaning work require specialist licenses and permits including permits relating to one or more of the following: entering</p> | <p>Employees engaged under a number of awards will be excluded, to effectively remove the cleaning of vehicles (including aircraft) and the cleaning of manufacturing equipment. (Manufacturing and Associated Industries and Occupations Award 2010, Vehicle Manufacturing, Repair, Services and Retail Award 2010, and Airline Operations Ground Staff Award 2010). Waste management is already excluded by virtue of clause 2(3) of the Act, but to provide greater clarity, it is also proposed to exclude by Regulation the Waste Management Award 2010. Schedule 2 clause 4(2)(b) of the Act enables the making of such a Regulation.</p> | <p>The scheme was not intended to cover these areas.</p> |

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| | | confined spaces, safe working at heights and using high pressure water jetting equipment.' | | |
| 2. | Cleanaway | Cleanaway has concerns about the double-dipping arrangements as they apply to the cleaning sector (see clauses 22 and 23 of Schedule 2 of the Act). Some of Cleanaway's workforce are covered by the Manufacturing Award. The pre-reform award to the Manufacturing Award is the Metal, Engineering and Associated Industries Award 1998. This pre-reform award contains long service leave provisions and as such our employees have award-derived long service leave entitlements under the National Employment Standards (NES). Cleanaway is unsure how it can comply with the NES entitlement if it is part of the Victorian contract cleaning portable long service leave scheme. | No change. | The Department has previously received advice that no pre-reform awards applied to the employees intended to be covered by the scheme. The exclusion of employees covered by certain awards (see point 1), including the Manufacturing and Associated Industries and Occupations Award 2010, will mean the potential double-dipping issue raised by Cleanaway will not arise. |
| 3. | Unions generally | Employers should be required to advise the Authority if they are subject to a Fair Work Instrument that provides for long service leave entitlements. | Amend Regulation 5 to provide this. | This information will assist the Authority. Employers consulted did not object. |
| 4. | Unions generally | Employees subject to a number of Modern Awards are exempted from the scheme. The list of awards includes the Health Professionals and Support Services Award and the Nurses Award. These two awards should not be excluded. | Amend Regulation 9(1) to remove reference to these awards. | Excluding employees covered by these awards may inadvertently deny some community service workers the benefits of the scheme. |
| 5. | Unions generally | The reference to 'administrative' and 'executive' in the proposed predominance test is confusing as neither of these terms are defined in industry awards. This makes it easier for workers to be excluded from the scheme. | Amend 9(2) to remove these terms and rely instead on whether the predominant activity of the employee's role is the delivery activities that are community service work. The proposed revised provision is: | This revised test is easier to understand and apply, as it focuses on what the employee actually does, rather than their title. |

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| | | | <i>For the purposes of clause 4(2)(e) of Schedule 1 to the Act, an individual is prescribed not to be an employee for the community services sector if the predominant activity of their substantive role is not the personal delivery of services or the personal performance of activities that are community service work.</i> | |
| 6. | Victorian Council of Social Service | Extend the commencement date for NDIS and early childhood to 1 July 2020 (Regulation 7(2) and 7(3).) | <p>Many early learning centres are small, with limited technology and human resources capacity. They will need time to learn about the scheme and their obligations, and to track employee entitlements. The disability sector is transitioning to federal NDIS funding. The NDIS pricing model is placing many disability services under significant pressure, and many are experiencing cash flow issues as funding sources change. Additional time would allow for the transition issues to be further resolved, and workforce changes to settle. It would be preferable to transition these sectors in July 2020, as it is a new financial year. Boards can better plan and budget. For early learning centres in particular, this may require increasing fees to parents, requiring</p> | Extending the commencement date from 1 January 2020 to 1 July 2020, whilst giving those affected providers more time to plan for the scheme, will disadvantage their workers. Workers employed by providers in these areas will already be joining the scheme six months later than other workers in the community services sector. |

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| | | | additional notification time. | |
| 7. | Victorian Council of Social Service | The reference to 'administrative' and 'executive' in the proposed predominance test is confusing. Workers who do not perform community service work, e.g. administrative and reception staff should also be included in the scheme. | As noted in point 5. above the predominance test will be amended. | The revised test is easier to understand and apply, as it focuses on what the employee actually does, rather than their title. |
| 8. | Victorian Council of Social Service | Clarity with respect to peak bodies. VCOSS says that the Act lacks clarity, and some other stakeholders have asked that peak bodies be excluded in toto. | No change required. | The situation with peak bodies is clear – if they perform community service work and they employ at least one individual who performs community service work, then they are in scope. There would also be practical difficulties in agreeing and defining what is a peak body. |
| 9. | Anonymous | All Modern Awards, not just those listed at draft Regulation 9(1) should be excluded. | No change required (but see point 4). | Excluding all awards may inadvertently remove some community service workers from the scope of the scheme. |
| 10. | Anonymous | In draft Regulation 6 – in describing health or aged care work subpoint (c) uses outdated information on describing Commonwealth aged care programs and packages. Suggest the following wording: Work of a kind performed in the delivery of aged care services to which any of the following Commonwealth funded aged care packages or programs applies- (i) Commonwealth Home Support Programme (CHSP) (ii) Home Care Packages Program (HCP) (iii) Transition Care Programme (iv) | Delete Regulation 7(6)(c). | The inclusion of the program names may cause confusion. 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. Further, aged care is intended to be excluded, and this is |

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| | | Short-term Restorative Care Programme (v) Multi-Purpose Services Program (Multi-Purpose Services are allocated flexible aged care places under the Aged Care Act 1998, 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.) | | clear from Regulation 7(4). |
| 11. | Independent Schools Victoria | <p>Supports Regulation 7(3), which makes it clear that an independent school registered, as required, under the <i>Education and Training Reform Act 2006</i>, and providing child care and/or preschool education as a licensed entity under the <i>Children's Services Act 1996</i> or as an approved provider under the Education and Care Services National Law (Victoria), is not defined to be involved in community service work for the purposes of the Act.</p> <p>An independent school might be defined as being involved in the community services sector as it may engage a speech therapist or a psychologist under the <i>Educational Services (Schools) General Staff Award 2010</i> (General Staff Award).</p> | <p>Amend Regulation 9(1) to include the General Staff Award.</p> <p>A note will be added after Regulation 9(1) to the effect that an employee employed under a prescribed award is still considered to be engaged under that award even if an enterprise agreement applies to that workplace.</p> | This will ensure that the policy decision to exclude schools from the operation of the scheme is met. |
| 12. | Latrobe Community Health | The predominance test in Regulations 7-9 is not clear | The draft Regulations will be amended to clarify the application of the predominance test. | This revised test is easier to understand and apply, as it focuses on what the employee actually does, rather than their title. |

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| 13. | bestchance | The scheme should apply equally across the early childhood sector, not just the not-for-profit sector. For-profit providers operate approximately 65% of the sector. | No change | The Act only applies to not-for-profit providers in the community services sector (with the exception of disability services). It is not possible to modify this by way of Regulations. |
| 14. | bestchance | Seek greater clarification with respect to the predominance test. | See point 12. | See point 12. |
| 15. | bestchance | Seek a later (unspecified) commencement date for NDIS and early childhood. | No change. | See reason provided in response to the VCOSS submission at point 6. |
| 16. | bestchance | The Regulations dealing with double-dipping appear to give clarity but should be reviewed after 12 months. | No change. | The Act provides for reviews after three years, and again after seven years. In addition, the Department will continue to engage with the Authority and stakeholders on a regular basis to identify any problems that should be addressed, either through Regulations or administratively. |
| 17. | Confidential | Oppose Regulation 7(2), which will bring NDIS funded services within scope of the scheme from 1 January 2020. | No change. | See point 6. |
| 18. | Victorian Hospitals' Industrial Association | Double-dipping is only partly addressed by the Regulations. Reimbursement of an employer can only occur where the Authority has not already made a payment to the employee under the scheme. Whilst the RIS identifies this as a low risk, VHIA disagrees. To address this, VHIA seeks an amendment to the Regulations to exclude all fair work instruments, all applicable award-derived | Delete subclause (b) of Regulation 11(5). | This will mean that if a worker makes a claim on the Authority, and then makes a claim against the employer for the same period of employment, the Authority will still reimburse the employer. It is noted that legally the |

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| | | entitlements, and any other instrument that has preserved long service leave entitlements as per section 113 of the <i>Fair Work Act 2009</i> . | | employer must pay a long service leave entitlement under a federal instrument, irrespective of any payment of the levy under the state Act or Regulations. |
| 19. | Victorian Hospitals' Industrial Association | The list of excluded awards in Regulation 9(1) should be extended to exclude all modern awards, except those that are specifically intended to be included within the scheme. | No change. | Excluding all awards may inadvertently remove some community service workers from the scope of the scheme. |
| 20. | Victorian Hospitals' Industrial Association | With respect to Regulation 9(1), if there is an enterprise agreement in place, does the nominated award still 'apply'? The <i>Fair Work Act 2009</i> uses the term 'cover' in such situations. | A note will be added after Regulation 9(1) to the effect that an employee employed under a prescribed award is still considered to be engaged under that award even if an enterprise agreement applies to that workplace. | This will provide clarity to users whilst maintaining the intent of the Regulation. |
| 21. | Victorian Hospitals' Industrial Association | The draft Regulations exclude health and aged care work, by reference to the <i>Health Services Act 1988</i> (Regulation 7(5) and 7(6)). It is not clear whether the predominance test still applies if an employer is excluded by this provision. | No change. | The predominance test only applies if the service provider performs more than one function, and a determination must be made as to whether they are a covered employer. If the service provider only offers one service and it comes within the scope of Regulation 7(5), the predominance test is not required. |
| 22. | Victorian Hospitals' Industrial Association | To avoid unintended consequences, the predominance test should be applied at the employer level. | No change. | The test will be applied at the employer level, for the purposes of Regulation 7(5). The |

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| | | | | test will be applied to employees, for the purposes of Regulation 9(2). |
| 23. | Victorian Hospitals' Industrial Association | Clear stand-alone definitions of 'health and aged care work', and 'health services' should be included. | No change. | Regulation 7(6) provides a comprehensive definition of 'health and aged care work'. The term 'health services' does not need to be defined as any service that is a 'health service' is excluded by reference to Awards, legislation, or through Schedules 1 and 2 of the Regulations. |
| 24. | Victorian Hospitals' Industrial Association | There are language inconsistencies between the Act and Regulation, meaning it is difficult to assess who is covered/not covered. | No change. | The Regulations (as revised, when read in conjunction with the Act, provide sufficient clarity. |
| 25. | Centre for Excellence in Child and Family Welfare | The exclusion of clerical and administrative workers is unfair and will create an administrative burden. | No change. | See point 7. |
| 26. | OnCall Group | Regulation 5 prescribes the information to be included in quarterly returns. OnCall believes that the information to be provided is appropriate. However, there will be an additional administrative burden on employers in providing this information. | No change. | |
| 27. | OnCall Group | NDIS should be excluded from the operation of the scheme. Alternatively, if NDIS is not excluded, the implementation date of Regulation 7(2) should be delayed to 1 July 2020. | No change. | See point 6. |
| 28. | Uniting Vic. Tas | The commencement of the scheme should be delayed until 1 July 2020 | No change | The commencement of the scheme is |

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| | | | | legislated to begin on 1 July 2019 and cannot be altered by Regulations. |
| 29. | Uniting Vic. Tas | NDIS and early childhood should not be brought into the scheme until 1 January 2022. | No change | See reason provided in response to the VCOSS submission at point 6. |
| 30. | Uniting Vic. Tas | The scheme should apply to for-profit providers in the early childhood sector. | No change. | See point 13. |
| 31. | Anonymous | Under Regulation 5, on a quarterly basis, employers must advise of any other long service benefits given. This may be difficult if the benefit was given when the worker was in another industry. | No change. | The obligation in the Regulation only applies to benefits provided by the current employer, not to past employers. |
| 32. | Anonymous | There should be greater transparency regarding what information is to be provided to prescribed authorities (e.g. Victoria Police) to protect privacy. | No change. | The only information that will be provided to external bodies will be information necessary to ensure the proper operation of the scheme. The Authority is bound by the Victorian <i>Information Privacy Act 2000</i> and the <i>Public Records Act 1973</i> . |
| 33. | Anonymous | Community service work is not adequately defined. | No change. | The final Regulations, when read in conjunction with the Act, will provide sufficient clarity as regards coverage. It is the responsibility of the Authority to make determinations as to coverage, based on the requirements of the Act and Regulations. |

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| 34. | Cohealth | Regulation 5 prescribes the information to be included in quarterly returns. Cohealth believes that the information to be provided is appropriate. However, the capacity of employers to provide this information is limited. | No change. | |
| 35. | Cohealth | The burden of sharing information with prescribed authorities should lie with the Authority, not with employers. | No change. | The legislation is clear that this responsibility rests with the Authority. |
| 36. | Cohealth | Rather than selectively excluding awards, all awards should be excluded except for the Social Community, Home Care and Disability Services Industry Award 2010, the Supported Employment Services Award 2010, and the Children Services Award 2010. Any enterprise agreement covering workers under any excluded award should also be excluded. | No change. | This could inadvertently exclude community service workers from the coverage of the scheme. |
| 37. | Cohealth | The commencement of the scheme should be delayed until at least 1 January 2020. | | The commencement of the scheme is legislated to begin on 1 July 2019 and cannot be altered by Regulations. |
| 38. | Cohealth | The no double-dipping provisions (Regulation 11) is inadequate. As an alternative, employers who have an obligation under an industrial instrument should not have to pay the levy until the obligation under that instrument no longer applies (for example, if the employee changes employers). Reporting obligations would not be affected. | No change. | This would mean that an employer not bound by a federal instrument that imposes long service obligations would have to pay the levy, but those employers subject to such an instrument would not have to pay. This is inequitable. It would also require the Authority to seek to recover payments from an employer. The whole integrity of the scheme could |

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| | | | | be undermined and would be likely to lead to a higher levy. |
| 39. | Try Australia | The scheme should apply to for-profit providers in the early childhood sector. | No change. | See point 13. |
| 40. | Try Australia | The implementation of the scheme should be delayed until January 2022. | No change. | The commencement of the scheme is legislated to begin on 1 July 2019 and cannot be altered by Regulations. See reason provided in response to the VCOSS submission at point 6. |
| 41. | Early Childhood Management Services | The proposed regulations exclude the private sector and in doing so create a division between the not-for-profit and for-profit sector. This division discourages the movement of staff and also creates financial inequality. ECMS recommends excluding all early childhood services from the scheme until 1 January 2022. | No change. | See reason provided to bestchance at point 13 regarding the private sector. See reason provided in response to the VCOSS submission at point 6 regarding the timing of commencement of scheme for early childhood services. |
| 42. | Australian Services Union | The Regulations do not provide sufficient clarity with respect to the scope of the community services sector, who is an employer and who is an employee. In Regulation 7(1), new subsections (c) and (d) should be inserted to prescribe family support, youth services, housing and homelessness services, community mental health, violence prevention and response, neighbourhood houses, drug and alcohol services, and migrant and refugee support. Further clarity to Regulation 7(1) can be given by including the following: | Agree to proposed new subsection (c). Do not agree to specifically include peak bodies. Agree to include work performed within a community health setting that is typically provided by workers whose employment is covered by the Social, Community, Home Care and Disability Services Award 2010. Do not agree to include to include home care | The proposed new subsection (c) will help clarify the scope of the sector. A number of other stakeholder submissions have also sought greater clarity with respect to the definition of the community services sector. It is not necessary to specifically include peak bodies. Coverage of peak bodies will be |

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| | | <ul style="list-style-type: none"> the collection and provision of information related to client benefits and services; crisis counselling; emergency material relief; custodial or supportive care and social welfare; assessment of individual or family needs; referral to other agencies; social and community development, education and advocacy; and associated clerical and administrative tasks. <p>Home care support should remain within the scope of the scheme.</p> <p>Work performed within a community health setting covered by the Community, Home Care and Disability Services Award 2010 should be specifically included within scope under Regulation 7(1).</p> <p>Further, peak bodies should be prescribed.</p> | support within the scheme, except where the support is provided in a private residence. | <p>covered, or not covered, depending on whether they employ individuals who perform community service work. Further, the reference to peak bodies will require the term to be defined, which would be difficult.</p> <p>Home care support is included within the scheme by virtue of Regulation 7(1)(b), which will be amended to provide greater clarity.</p> <p>See also point 10.</p> |
| 43. | Australian Services Union | The excluded awards in Regulation 9(1) should be removed | No change. | Excluding employees subject to these awards will provide greater clarity. |
| 44. | Australian Services Union | NDIS and children's services should be included in the scheme from 1 July 2019. | No change. | The proposed commencement date for these two sectors of 1 January 2020 is reasonable and balances the needs of employers and employees. |
| 45. | Health and Community Services Union | Concern with Regulation 7(6)(b). Disability workers who provide support to young people (under 65) who because of the nature of their disability reside in a residential aged care facility. These workers | The Act is not intended to apply to the aged care sector (see clause 4(2)(d) of Schedule 1). This is reinforced by Regulation 7. Further, the provision of health | Further investigation is warranted to better understand the issues, and also assess any potential change |

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| | | should not be excluded from the scheme. | care services is also excluded. It may be inconsistent with the intention of the scheme to cover workers who provide non-health related services to persons aged under 65 who have been placed in an aged care facility. There is limited information available about these workers. As such, it is proposed to undertake further consultation with stakeholders. | |
| 46. | Health and Community Services Union | In Regulation 9(1), the Health Professional and Support Services Award 2010 should be removed from the list of excluded awards. | Agree. | Excluding employees covered by this award may inadvertently deny some community service workers the benefits of the scheme. |
| 47. | Health and Community Services Union | Commencement date for NDIS and children's services should be 1 January 2020. | No change | The proposed commencement date for these two sectors of 1 January 2020 is reasonable and balances the needs of employers and employees. |
| 48. | Goodstart Early Learning | Seeks the total exclusion of the children's services from the scheme. If children's services is to come within the scheme, it should not occur until 1 July 2022. | No change | Not agreed. The Victorian Government has given a firm commitment to bring children's services within the scope of the scheme. The proposed date of 1 January 2020 is reasonable and balances the needs of employers and employees. |

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| 49. | Goodstart Early Learning | The provision of quarterly returns must be able to be done automatically. | No change. | The system does provide for this and will allow on-line returns. |
| 50. | Goodstart Early Learning | There is an inconsistency between the Act and the Regulations with respect to the predominance test. | No change. | See point 5. |
| 51. | Goodstart Early Learning | The double-dipping provisions (Regulation 11) will not work unless the Authority provides details of previous payments to workers. | No change (but will be done administratively). | The Act does not specifically allow for the Authority to provide this information; however, it does not prohibit it. This could be done administratively (i.e. without the need to include in the Regulations) |
| 52. | Goodstart Early Learning | Regulation 11 makes no reference to the <i>Long Service Leave Act 2018</i> . | No change. | Any change would require an amendment to the Act, and this is under consideration. |
| 53. | National Disability Services | The scheme should not apply to NDIS until 1 July 2020. | No change. | See point 6. |
| 54. | Carrington Health and healthAbility | Community health must be clearly excluded from the scheme. | No change. | The Regulations clearly exclude community health where this is the predominant activity. |
| 55. | Carrington Health and healthAbility | The no double-dipping provision (Regulation 11) is inadequate. As an alternative, employers who have an obligation under an industrial instrument should not have to pay the levy until the obligation under that instrument no longer applies (for example, if the employee changes employers). Reporting obligations would not be affected. | No change. | See point 38. |

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| 56. | National Employment Services Association | Regulation 9(1) should be extended to exclude the Labour Market Assistance Industry Award 2010, or at the least, this Award should be excluded until 1 July 2020. | No change. | Clause 2(1)(a) of Schedule 1 specifically includes training and employment support and employment placement services for persons with a disability, who are vulnerable, disadvantaged, or in a crisis. The aforementioned Award applies to employees providing work placement, job searching, personal support, vocational training and related services in the welfare sector. |
| 57. | Australian Industry Group | Regulation 9 should also include the Manufacturing and Associated Industries and Occupations Award 2010, the Building and Construction General On-site Award 2010, the Professional Employees Award 2010, and the Electrical, Electronic and Communications Contractors Award 2010. | Agreed as to the Manufacturing and Associated Industries and Occupations Award 2010. Not agreed as regards the other awards. | Regulation 9 specifically applies to the community services sector. However, a new regulation could be drafted with respect to Schedule 2 of the Act (contract cleaning). An amendment to the draft Regulations consistent with this is proposed – see response to the Cleanaway submission at point 1. With respect to the other awards, it is not necessary to exclude them. Employers subject to those awards will not be employers for the purposes of Schedules 1, 2, or 3 of the Act, and by |

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| | | | | virtue of this, none of their workforce will be covered. The building and construction sector is also excluded by virtue of clauses 4(2) and 5(2) of Schedules 2 and 3. |
| 58. | Australian Industry Group | Regulation 11 (double-dipping) should be further clarified by reference to the <i>Long Service Leave Act 2018</i> , a National Employment Standard or Transitional Instrument under the <i>Fair Work Act 2009</i> , or the <i>Construction Industry Long Service Leave Act 1997</i> . | <p>Agree to include a reference to a National Employment Standard or Transitional Instrument under the <i>Fair Work Act 2009</i>.</p> <p>Do not agree to the other proposed changes</p> | <p>Regulation 11 refers to a 'fair work instrument'. This term is defined in section 3 of the Act as having the same meaning as section 12 of the <i>Fair Work Act 2009</i>. The term as used in this Act includes an award, a workplace determination, an enterprise agreement, or a Fair Work Commission order. It does not include the other instruments. It should be noted that at this point in time, there is no National Employment Standard for long service leave, although the Commonwealth Act does provide for one to be enacted.</p> <p>Consideration is being given to the inclusion of the <i>Long Service Leave Act 2018</i> (see also point 52).</p> <p>It is also unnecessary to include a reference to the <i>Construction Industry Long</i></p> |

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| | | | | <i>Service Leave Act 1997</i> as this sector is already excluded (see also point 57). |
| 59. | Anonymous | It is not clear whether Council employed youth workers are covered as they are not explicitly excluded. | No change. | Clause 3((2)(d) of Schedule 1 of the Act provides that a municipal council or other public statutory body is not an employer for the community services sector. Accordingly, any employee of such an entity is not an employee for the sector. |
| 60. | Anonymous | Regulation 7(6) uses outdated terminology with respect to Commonwealth programs. | See point 10. | |
| 61. | Anonymous | It is unclear what happens when a worker has qualifications that may bring them within scope of the scheme, but that worker is predominantly performing work that is outside the scope. | No change. | The test is what work the employee performs. Qualifications they may or may not have are not determinative to this test. |
| 62. | Anonymous | In children's services, some workers are engaged as 'advisor' or 'team leader'. They provide support, mentoring and resourcing to service delivery staff, but are not directly responsible for program delivery. It is unclear whether they are in or out of scope. | See point 7. | The revised test is easier to understand and apply, as it focuses on what the employee actually does, rather than their title. |
| 63. | Australian Community Welfare Workers Association | The term 'welfare worker' is used. The term 'community worker' is preferable. | No change. | The Exposure Draft Regulations refer to 'welfare worker'. This is a term used in the definition of 'social and community services sector' in the Social, Community, Home Care and Disability |

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| | | | | Services Industry Award 2010. |
| 64. | Victorian Trades Hall Council | Supports the submissions of HACSU and ASU. | See points 42-47. | |