LONG SERVICE BENEFITS PORTABILITY SCHEME

Regulatory Impact Statement

Department of Health and Human Services Victoria

—

April 2019

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ABBREVIATIONS AND TERMS

|  |  |
| --- | --- |
| 1992 Act | *Long Service Leave Act 1992* (Vic)  |
| ATO | Australian Taxation Office |
| The Authority | The Portable Long Service Benefits Authority |
| DHHS (Vic) | Department of Health and Human Services Victoria |
| Double Dipping | Double dipping refers to situations where an employer might have or accrue an entitlement to a long service benefit under both the 2018 Bill and under a Fair Work Instrument and where the service that gives rise to the entitlements overlap. |
| ECE | Early Childhood Education |
| LS | Long Service |
| LSB | Long Service Benefits |
| NDIA | National Disability Insurance Agency |
| NDIS | National Disability Insurance Scheme  |
| 2018 Bill | Long Service Benefits Portability Bill 2018 |
| LSBP Act | *The Long Service Benefits Portability Act 2018* (Vic) |
| LSL | *Long Service Leave* |
| LSL Act | *Long Service Leave Act 2018* (Vic) |
| PLS | Portable Long Service |
| PLSB  | Portable Long Service Benefits  |
| RIS | Regulatory Impact Statement  |

EXECUTIVE SUMMARY

The Long Service Benefits Portability Act (LSBP Act) was passed by the Victorian Parliament on 4 September 2018. The LSBP Act provides portability of long service benefits to workers in the community services (CSS), contract cleaning and security industries.

This portability has been provided in order to increase retention and attraction for the covered workforces by:

* Improving access for workers to periods of rest and rejuvenation or financial recompense for long service, for which eligibility is often limited due to the nature of the industry; and
* Improving access to entitlements that increase equity in sectors with comparable work.

The LSBP Act recognises that workers in these industries are often missing out on LSL because of the nature of their industry and other factors which are beyond their control. These factors tend to be the contracted nature of these industries, which often see workers continuing to work in the same position with the same responsibilities, but having a new employer.

This Regulatory Impact Statement (RIS) analyses the implementation of the portable long service benefits (PLSB) scheme for the proposed *Long Service Benefits Portability Regulations 2019* (the Regulations).

This RIS is prepared in accordance with the Victorian Guide to Regulation (2016), which provides a step-by-step guide to preparing RISs.

The problems and objectives of the Regulations

Options considered in this RIS seek to address the primary objectives of the LSBP Act, to increase retention and attraction for the covered workforces by:

* Improving access for workers to periods of rest and rejuvenation or financial recompense for long service, for which eligibility is often limited due to the nature of the industry; and
* Improving access to entitlements that increase equity in sectors with comparable work.

In addition to meeting these primary objectives each residual problem (outlined below) also has a distinct set of objectives to address.

The five residual problems that the Regulations seek to address and their specific objectives are outlined below.

Lack of clarity on covered employees and employers

There are two key issues with the present drafting of the Act in relation to the definition of employee and employer: potential coverage of unintended workers and potential constitutional invalidity.

*Potential coverage of unintended workers* refers to the possibility that the LSBP Act may provide portable long service (LS) benefits to workers who do not fit within the intended definition of the Act. The lack of clarity on these matters has the capacity to result in unnecessary cost implications for businesses who may spend time and money registering and paying levies into the scheme for workers who are out of scope.

*Potential for constitutional invalidity* refers to the possibility that aspects of the scheme’s coverage may be invalid due to inconsistency with the federal *Fair Work Act 2009*. This is a technical legal point which is explained in section 2.2.1.

In clarifying the definition of ‘employer’ and ‘employee’ the Regulations should aim to achieve the following objectives:

* Provide certainty to businesses on which employees will need to have levies paid to the Authority on their behalf;
* Provide certainty to businesses on which employers will not be covered by the scheme; and
* Clarify matters with regards to the constitutionality of the LSBP Act.

Scope of the ‘community services sector’

The definition of community services work explicitly excludes from the coverage of the LSBP Act activities funded under the NDIS, and services provided by entities licensed under the *Children’s Services Act 1996*.

However, these two aspects of the CSS are able to be reincorporated into the coverage of the LSBP Act by Regulations.[[1]](#footnote-1) Indeed it was the intention of Parliament when the sub-sectors were initially excluded that they would be incorporated into scope of the scheme at a later date, once they had had an appropriate amount of time to adjust to federal reforms.[[2]](#footnote-2)

Options for introducing NDIS funded entities and the early childhood sector into the coverage of the LSBP Act will need to give effect to the following objectives:

* Ensuring employees of ECE and NDIS businesses have fair and equitable access to LS benefits;
* Minimising financial uncertainty for ECE and NDIS businesses; and
* Minimising the risk of ECE and NDIS businesses becoming financially unviable.

Potential for double dipping

Depending on their employment relationship and length of service, employees in the CSS may have existing entitlements to long service leave under a Federal Fair Work instrument. The nature of this benefit will differ depending on its source, however there is the capacity for the non-PLS benefit to overlap with the benefit accruing under the PLS scheme. This leaves open the possibility of employees being entitled to claim two separate benefits relating to the same period of service. This is described in the LSBP Act as ‘double dipping’ and schedule 1 states that this outcome is to be avoided. An explanation of key double dipping concepts is included in section 2.2.3.

According to the LSPB Act, Regulations made to prevent double dipping must give effect to the following principles:

* A worker is not to be entitled to both long service leave under a Fair Work instrument and payment of a long service benefit under the LSBP Act in respect of the same service period;
* An employer is not to be required to pay a worker for long service leave under a Fair Work instrument and to pay a levy under the LSBP Act for the worker in respect of the same service period; and
* The Authority is not to be required to pay a long service benefit to a worker under the LSBP Act and to reimburse an employer for long service leave granted to the worker under a Fair Work instrument in respect of the same service period.

Deficiencies in Authority oversight of the scheme

The LSBP Act stipulates a number of matters which businesses must disclose in their quarterly returns to the Authority. Other prescribed information may be needed to support the effective and efficient operation of the Authority, for example, when an employee leaves an employer.

Options to ensure that the Authority has effective oversight of the scheme should ensure that the Authority is informed when employees leave employers.

Deficiencies in list of organisations to whom the Authority can disclose information

The LSBP Act allows the Authority to disclose information to certain Victorian Government entities and Commonwealth Government entities. Opportunities exist to include further organisations.

Firstly, the Authority is required to deduct tax from any benefit paid. It will need advice from the Australian Taxation Office (ATO) with respect to the payment of benefits, which it is currently unable to obtain due to inability to share information with the ATO.

Secondly, from 29 April 2019 the Labour Hire Licensing Authority will require that providers of labour hire services obtain a licence from that Authority. Host employers will be required to use only a licensed provider. Providers may only be licensed when they comply with workplace laws insofar as they relate to the business applying for a license. The Labour Hire Licensing Authority will therefore require information from the LSBP Authority as to the compliance of certain providers with the provisions of the LSBP Act.

Options to increase the coverage of the allowable disclosures of information from the Authority should:

* Allow the Authority to gain the required taxation information to accurately deduct tax from PLS benefits; and
* Ensure the Authority is able to assist other Victorian Government agencies in their regulatory processes.

Options for addressing the problems

In line with the problem statements outlined, options in each area have been identified to deliver on the objectives identified. For each option identified, the likely social and economic outcomes for employees, employers, the Authority and the government have been considered. These impacts have then been appraised against the base case for each residual problem according to an analysis framework which classifies and rates impacts based on their impact on equity for employees, costs to business and government, and level of risk they generate for the Authority. This section outlines the options identified, results of analysis, and the preferred options.

Definition of Employee and Employer

**Options** for addressing the lack of clarity in the definition of employer and employee (discussed in section 2.2.2) include:

* Relying on a definition from a comparable scheme (Option 1); and
* Developing a definition tailored to the Victorian scheme (Option 2).

**Analysis** of the definitions found in the *Long Service Leave (Portable Schemes) Act 2009* (ACT) shows that these definitions are inappropriate for the LSBP Act. Adopting the ACT Act’s definitions would likely not have any practical effect on the experience under the base case, as employees would still be defined by reference to the definition of ‘community service work’ in schedule 1 of the LSBP Act.

Without the definition of community service work changing, there remains the risks that are identified under the base case.

The definition that is tailored to the Victorian scheme, on the other hand, will more comprehensively address the residual problems of potential coverage of unintended workers as well as the identified need to avoid constitutional invalidity. The exclusions it adds to the existing definitions gives them a greater likelihood of increasing equity in the community services sector (CSS), reducing administrative and financial impact on businesses, government and the Authority.

The **preferred option** is therefore option 2, developing a definition of employee and employer that is tailored to the Victorian PLS scheme. This definition is located in Regulations 8 and 9 in the exposure Regulations.

Scope of Community Services Sector

*Introducing NDIS entities*

**Options** for including NDIS entities in the scheme include:

* Introducing NDIS entities when the scheme commences operation on 1 July 2019 (Option 1);
* Introducing NDIS entities six months after the scheme commences operation on 1 January 2020 (Option 2); and
* Introducing NDIS entities 12 months after the scheme commences operation on 1 July 2020 (Option 3).

**Analysis** shows that option 1, introducing NDIS entities on 1 July 2019, is considered to be beneficial for employees in that they will most readily be afforded equity with other (sub-) sectors. However this option is also considered to carry a high risk for businesses, who would have little time to implement the changes required under the LSBP Act, and still be adapting to the full scheme NDIS. This is considered to produce unnecessary risk for both businesses and the Authority, which is not outweighed by the equitable benefit to employees.

Option 2, introducing NDIS entities on 1 January 2020, involves a slight delay in providing equity to ECE employees, but is considered to strike a fair balance with the needs of employers, reducing the financial pressures on them by allowing more time to prepare for the scheme, and adjust to operating under the NDIS. This will in turn help minimise risk for the Authority.

Option 3, introducing NDIS entities on 1 July 2020, involves a significant delay in providing equity to NDIS employees. This option is, however, considered to provide the greatest financial certainty to businesses, reducing the risk for them, and subsequently the Authority.

Option 2 is the **preferred option,** due to the way it balances the competing needs of employees and employers**,** and is located in Regulation 7(2) in the exposure Regulations.

*Introducing the early childhood sector*

**Options** for including the early childhood sector in the scheme include:

* Introducing the early childhood sector when the scheme commences operation on 1 July 2019 (Option 1);
* Introducing the early childhood sector six months after the scheme commences operation on 1 January 2020 (Option 2); and
* Introducing the early childhood sector 12 months after the scheme commences operation on 1 July 2020 (Option 3).

**Analysis** shows that option 1, introducing ECE entities on 1 July 2019, is considered to be beneficial for employees in that they will most readily be afforded equity with other (sub-) sectors. However this option is also considered to carry a high risk for businesses, who would have little time to implement the changes required under the LSBP Act, and may still be adapting to the Federal Government’s July 2018 childcare package. This is considered to produce unnecessary risk for both businesses and the Authority, which is not outweighed by the equitable benefit to employees.

Option 2, introducing ECE entities on 1 January 2020, involves a slight delay in providing equity to ECE employees, but is considered to strike a fair balance with the needs of employers, reducing the financial pressures on them by allowing more time to prepare for the scheme, and adjust to the Federal Government’s July 2018 child care package. This will in turn help minimise risk for the Authority.

Option 3, introducing ECE entities on 1 July 2020, involves a significant delay in providing equity to ECE employees. This option is, however, considered to provide the greatest financial certainty to businesses, reducing the risk for them, and subsequently the Authority.

Option 2 is the **preferred option,** due to the way it balances the competing needs of employees and employers**,** and is located in Regulation 7(3) in the exposure Regulations.

Double Dipping

**Options** for preventing double dipping include:

* Employer pays levies until the employee *claims* a Fair Work benefit (Option 1);
* Employer pays levies until the employee becomes *entitled to claim* a Fair Work benefit (Option 2); and
* Employer does not pay levies at all for employees who *accrue* service towards a Fair Work benefit (Option 3).

**Analysis** shows that due to the complex interactions between state and federal law each of the options identified for preventing double dipping has deficiencies.

The primary issue with option 1 is the requirement for employers to monitor employees who have claimed Fair Work benefits and to report these to the Authority. In addition this option will require increased administrative work for employers who will need to make adjustments to their balance sheets. Under this option it is possible for certain employees to claim either Fair Work LS benefits or PLS benefits. Without the balance sheet adjustments which have been designed employers would need to provision for two separate benefits for these employees. The balance sheet adjustments have been designed to minimise the need for employers to provision for two separate LS benefits. They allow employers to write off most of their Fair Work entitlement provisioning by creating an asset to the value of their PLS accrual.

In addition to the balance sheet adjustments detailed in option 1, the primary issue with option 2 is the potential for there to be a shortfall in levies if an employee becomes entitled to a PLS benefit before a Fair Work benefit, and then later becomes entitled to a Fair Work benefit which they do not claim until some years later. For example if an employee gains a PLS entitlement in year 7 but does not claim it, the employer would pay levies up until year 10 when that employee became entitled to a Fair Work benefit. If the employee continued not to claim either of these benefits, and then wished to claim their PLS benefit in year 13, there would be a shortfall of three years of PLS funds, from years 10 to 13. As a consequence, this option would likely require an increase in the overall levy rate, in order to create a ‘buffer’ of funds for situations like this. This will impact both businesses and the Authority.

The primary issue with option 3 is that it runs the risk of precluding employees from ever accruing a LS benefit if they leave the sector or change employers before accruing the required service to take their Fair Work benefit. This defeats the primary objective of the Act.

DHHS notes that changes to the *Fair Work Act 2009* may provide the most comprehensive way to solve the problems associated with double dipping. However, such amendments may take significant time to be implemented and are beyond the control of the Victorian Government. Furthermore, the Act specifies that double dipping be addressed in regulations.

The **preferred option** to prevent double dipping is option 1. Employers will be required to pays levies for all employees, until an employee claims a Fair Work benefit. This rule is found in Regulation 11 in the exposure Regulations.

Authority Oversight of Scheme

Due to the specific nature of the residual problem, there is only one **option** aside from the base case so that the Authority has effective oversight of the scheme. This is to require employers to inform the Authority of the date when employees leave (if any) during the quarter.

**Analysis** shows this option is considered preferable to the base case. This **preferred option** is found in Regulation 5(b) in the exposure Regulations.

Disclosure of information to other entities and authorities

Due to the specific nature of the residual problem, there is only one **option** aside from the base case to allow the Authority to gain the required taxation information and assist other Victorian Government agencies in their regulatory processes. This is to allow the Authority to share information with the ATO and the Labour Hire Licensing Authority.

**Analysis** shows this option is considered preferable to the base case. This **preferred option** is found in Regulation 6 in the exposure Regulations.

Implementation and evaluation plans

The key requirement for the successful implementation of the proposed Regulations will be to provide quality information to the affected employers as to their new obligations. It is expected that information be compiled and sent to affected employers covering the following:

* The dates on which employers become covered, and take on obligations under the LSBP Act;
* The nature of those obligations (which employees are covered, what the levy rate is, punishments for non-compliance);
* How employers can meet their obligations, particularly in relation to providing quarterly returns; and
* Where they can go for any questions regarding their obligations, or the scheme generally.

Evaluation of the Regulations should be tied to the review periods mandated in the LSBP Act. This will allow streamlined and comprehensive review, including a full understanding of the interactions between the Regulations and the LSBP Act, as well as their combined impact on the sector. This means evaluation should be conducted as close as possible to the three and seven year anniversaries of the PLSB Act’s commencement.

The year three evaluation will be an ‘implementation review’ which covers the experience of the sector in the first phase of implementation of the scheme and Regulations. Its focus should be on matters such as financial and administrative concerns of businesses and the uptake of the scheme.

The year seven review will focus on measuring the extent to which the Regulations have met the objectives stated in section three of this RIS.

Summary of questions to stakeholders

Throughout this RIS there are a number of questions for stakeholders to consider. The below table provides a summary of these questions.

Table 1: Summary of questions to stakeholders

| **Questions for stakeholders** |
| --- |
| **S.1** When do NDIS employers consider they will have greater clarity over the level of funding that they will receive from the NDIA?**S.2** Have ECE employers adjusted to the Federal Government’s July 2018 childcare package?**S.3** How widely applied is the informal scheme in the ECE sector?**S.4** Which option provides employers with the greatest clarity in relation to when they are in-scope?**S.5** Which option provides employers with the greatest clarity in relation to when employees are in-scope?**S.6** Are there any other viable options to address the problems of coverage of unintended workers?**S.7** Are there any other viable options to address the problems associated with double dipping?**S.8** Does the preferred option best balance the objective of achieving equity for employees against the cost impacts of the scheme?**S.9** Do employers anticipate any issues with administering the preferred option for double dipping? |

# INTRODUCTION

## Scope of this RIS

This Regulatory Impact Statement (RIS) analyses the implementation of the portable long service benefits (PLSB) scheme for the proposed *Long Service Benefits Portability Regulations 2019* (the Regulations).

The purpose of this RIS is to:

* establish the nature and extent of the problems that would exist in the absence of the Regulations;
* articulate the desired objectives of addressing the identified problem;
* identify a set of viable options to address the established problem;
* assess the impacts of these options, and the expected effectiveness of each option in addressing the problem;
* identify and describe a preferred option to achieve the desired objectives;
* develop an implementation plan and evaluation strategy for the preferred option; and
* summarise the consultations and work which has already been undertaken in preparation for the introduction and commencement of the LSBP Act.

This RIS is prepared in accordance with the Victorian Guide to Regulation (2016), which provides a step-by-step guide to preparing RISs.

## Long Service Leave Schemes

Long service leave is one of the 10 National Employment Standards under the *Fair Work Act 2009* to which all Australian employees are entitled. In Victoria, workers who complete at least seven years of continuous employment with one employer are able to apply for long service leave. The *Long Service Leave Act 2018 (Vic)* (LSL Act) sets out arrangements for long service leave. The Act replaces the *Long Service Leave Act 1992* (Vic) (1992 Act).

On 4 September 2018, the Victorian Government passed the Long Service Benefits Portability Bill 2018. *The Long Service Benefits Portability Act 2018* (the LSBP Act) will come into effect on 1 July 2019. See Figure 1 below for a brief history of portable long service benefit schemes in Victoria.

The LSBP Act has been introduced to enable Victorian workers in the contract cleaning, security and community services industries to retain their entitlement to long service leave when they change employers. Workers in the security and contract cleaning sectors rarely qualify for long service leave due to the contract and project nature of the sectors they work in. Workers in the community services sector (CSS) face a similar issue however it is due to the high levels of mobility in the sector driven by pressures on wages and a highly casualised workforce.[[3]](#footnote-3) The LSBP Act requires employers in these sectors to contribute a percentage of employee’s pay on a quarterly basis to a consolidated fund. The fund then pays out long service leave, equivalent to 1/60th of an employee’s service, after seven years, upon application from an eligible employee. Under the scheme, an employee qualifies for long service leave based on their service across the industry, rather than service to one employer.

Figure 1: A Brief History of Portable Long Service Leave in Victoria

|  |
| --- |
| In 2010, the then Victorian Government introduced legislation for a CSS portable long service scheme, however, the legislative process was not completed, with government changing later that year. In 2015, the Victorian Parliamentary Economic, Education, Jobs and Skills Committee (“Parliamentary Committee”) commenced an inquiry into employer schemes that provide portability of long service entitlements for workers as they move between jobs in the same or similar industries. In the course of its inquiry, the Parliamentary Committee received more than 50 written submissions from stakeholders and interested parties and heard witness’ evidence from more than 30 organisations and individuals, including with respect to portable service leave in the CSS. The Parliamentary Committee tabled its Report in the Victorian Parliament in June 2016.[[4]](#footnote-4) The Report contained recommendations that feasibility studies be conducted into portable long service leave schemes for the contract cleaning and security industries and a finding that there was merit in further examining a portable long service leave scheme for the CSS. In November 2016, the Victorian Government tabled its response to the Parliamentary Committee Report accepting the Report’s recommendations and its finding with respect to the merit of considering a portable long service scheme for the CSS.[[5]](#footnote-5) The government committed to conducting a feasibility study into portable long service leave in the CSS. In March 2018, following the completion of the feasibility studies, the Minister for Industrial Relations introduced the 2018 Bill to Parliament. The main purpose of the 2018 Bill was to provide portability of long service benefits across the contract cleaning, security, and community services industries. On 24 August 2018, following a number of amendments proposed by the Legislative Council, the Long Service Benefits Portability Bill 2018 received Royal Assent on 18 September 2018.  |

## How PLSB Schemes Work

PLSB schemes allow for employees to transfer from one employer to another without losing long service entitlements or service towards such entitlements already accrued, provided both employers are within the covered industries. The schemes recognise that, in some sectors of the economy, an employee may find it difficult to achieve continuous service with one employer. Under these schemes, an employee qualifies for long service leave based on their service across one industry, rather than service to one employer.

There are a number of portable long service leave schemes in operation, across a range of industries in Australia. Of note are Victoria’s CoINVEST[[6]](#footnote-6), the Australian Capital Territory (ACT) Leave scheme[[7]](#footnote-7) (including for the CSS), as well as QLeave[[8]](#footnote-8) for Queensland’s contract cleaning sector. The following table provides a summary of some of the existing PLS schemes in Australia. A more detailed version of this table can be found in Appendix C.

Table 2: Summary of existing PLS schemes

| Portability Scheme | Covered Sectors | Year Established | Employee entitlement |
| --- | --- | --- | --- |
| **CoINVEST** | Construction | 1976 | Employees accrue one day of long service leave for every 40 calendar days of continuous service recorded on or after 1 July 2002 (13 weeks for every 10 years worked), and one day of leave for every 60 calendar days of continuous service on or prior to 30 June 2002 (8.76 weeks for every 10 years worked).[[9]](#footnote-9) Once employees have worked for a combined 7 years in the industry they may apply to the fund to have their long service awarded pro-rata.  |
| **ACT Leave** | Building & Construction Contract CleaningCommunity ServiceSecurity | 2009 | Employees accrue one day of long service leave for every 60 calendar days of continuous service (8.76 weeks for every 10 years worked), except for in the construction industry where workers accrue one day of long service leave for every 33.85 days worked (13 weeks for every 10 years worked).Employees apply to their employer to take long service leave, and it is an offence for employers to not provide this within 6 months of the leave becoming available.Employees may pro rata their entitlement after the following years of continuous service: 10 years (building and construction industry), 7 years (contract cleaning industry, security industry), and 5 years (community sector industry). |
| **QLeave**  | Contract CleaningBuilding & Construction | 1992 | Employees accrue one day of long service leave for every 60 calendar days of continuous service (8.76 weeks for every 10 years worked). When 10 years of service has been recorded, an employee is entitled to claim long service leave from QLeave. |
| **NSW Contract Cleaning** | Contract Cleaning | 2011 | Employees accrue one day of long service leave for every 60 calendar days of continuous service (8.76 weeks for every 10 years worked). Each additional 5 years of continuous service grants an additional 4.33 weeks of leave. Employees may claim this from their employer once they have 10 years of continuous service. |

## Overview of the Long Service Benefits Portability Act 2018

As can be seen from Table 2, PLS schemes currently operating across Australia have similar compositions and employee entitlements, with definitions for each feature differing between the schemes. This equally applies to the LSBP Act.

The LSBP Act covers three sectors: contract cleaning, community services, and security. A separate fund will be established for each sector, each of which is to be collected and administered by the Portable Long Service Benefits Authority (the Authority). The funds raised will be invested with the Victorian Funds Management Corporation. The levy rate may differ by sector and, according to the LSBP Act, must not exceed 3 per cent of the employee’s ordinary pay. The Authority is yet to announce the levy rates for each sector.

Registered active employers must provide the Authority with a return each quarter which includes:

* the name of each of the employer's workers who performed work for the employer during the quarter; and
* for each of the employer's workers:
* the total ordinary pay paid or payable by the employer to the worker for work performed during the quarter; and
* the number of days or part days during the quarter to which the pay relates; and
* any other prescribed information.

At the time of the quarterly return the employer must also pay the levy that is due for each employee.

Employees accrue 1 day of ‘recognised service’ for each calendar day during the time in which they are employed (except for certain types of leave not specified in clause 14 of schedule 1).[[10]](#footnote-10) After 7 years of recognised service the employee is entitled to request long service *leave* from their employer, or in the case of the CSS, a *payment* of long service from the Authority, equal to 1/60th of the worker's total period of recognised service less any long service benefit paid during that period (8.76 weeks for every 10 years of service). The payment rate is based on the employee’s ordinary pay at the time of the application for payment.[[11]](#footnote-11)

Eligibility for the scheme differs by sector. For example, the community services sector is defined as the sector in which community services work is performed. The schedule then defines community services work and stipulates that ‘employers’ for the sector are those who employ people to perform community services work, while ‘employees’ are anyone employed by an employer for the sector – meaning that the definitions of ‘employers’ and ‘employees’ are also relevant in a multi-factorial test of eligibility. This same method for defining the sector by reference to the work undertaken in it is mirrored for the contract cleaning industry. The security industry, on the other hand, is defined by reference to the *Private Security Act 2004* (Vic).

### The covered sectors

The following table outlines the sectors covered by the LSBP Act, including the composition of the sectors and how the work within them is defined by the LSBP Act.

Table 3: Sectors covered by the LSBP Act

| Industry | Estimated composition | LSBP Act Definition |
| --- | --- | --- |
| Community Services  | More than 100,000[[12]](#footnote-12)  | Community service work is work that provides various types of services and/or support to people who are experiencing disadvantaged, vulnerability or a crisis. This includes community services such as advocacy, fundraising for community groups, and community legal advice and information. Notably community service work does not include activities funded by the NDIS, or provided by an entity licensed or approved to conduct Early Childhood Education. These exclusions are subject to any Regulations which may be made to include those sectors in the scope of community services work. Separate provisions also grant the power to explicitly include services, and to explicitly exclude activities, from the scope of the CSS through Regulations.  |
| Contract cleaning | 18,200 workers[[13]](#footnote-13) | Cleaning work is work that has, as its only or main function, cleaning, or maintaining the cleanliness of premises. This includes pool cleaning. It does not include commercial waste disposal, gardening, or cleaning undertaken on construction sites.  |
| Security | 30,000 workers[[14]](#footnote-14) | The security industry is defined as the industry where security activities are undertaken by people licensed to do so under the Private security Act 2004 (Vic), or under corresponding legislation in other jurisdictions. Certain activities such as cutting keys, selling self-install security systems, installing locks and operating prisons are explicitly excluded from the definition. |

## The Long Service Benefits Portability Regulations 2018

Section 79 of the LSBP Act prescribes that Regulations may be made:

‘for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.’

Specifically, Regulations may provide that the LSBP Act applies to individuals who perform work in the CSS for another person for fee or reward on the individual's own account, or classes of such individuals, and, for that purpose, the Regulations may:

* define those individuals or classes of individuals as contract workers; and
* modify the operation of the other provisions of this Act in their application to contract workers in the CSS.

In addition to supporting implementation, the Victorian Government has drafted Regulations that provide clarity on the operation of the scheme specifically for the **community services sector**. These include:

* confirming in-scope employers and employees;
* providing greater clarity in relation to the definition of the ‘community services sector’; and
* addressing the potential for double dipping on LS benefits.

There are also two scheme-wide matters covered by the Regulations:

* providing the Authority with effective oversight of the scheme; and
* allowing the Authority to gain the required taxation information and assist other Victorian Government agencies in their regulatory processes.

At this time, the proposed Regulations only pertain to scheme-wide and CSS matters. The Victorian Government’s position is that no clarifying or specific Regulations are required to operationalise the LSBP Act with respect to the contract cleaning and security sectors.

As can be seen from the quantification undertaken in section 5.2.2 these Regulations are likely to impose a burden greater than $2 million on the CSS and therefore a RIS is required, in accordance with the provisions of the *Subordinate Legislation Act 1994* and the Commissioner for Better Regulation’s Victorian Guide to Regulation.

By issuing the RIS, the government provides the CSS with the opportunity to assess the proposed Regulations in terms of their objectives and effect, as well as alternative approaches to achieving the stated objectives, and an assessment of the costs and benefits of the Regulations and the alternatives.

# THE NATURE OF THE PROBLEM

## Primary Problem

In industries where certain types of employment relationships are prevalent, workers are unlikely to accrue enough years of continuous service with one employer to qualify for long service benefits. Existing research and stakeholder consultation suggests that these pockets of the workforce are missing out on LS benefit because of the nature of their industry and other factors which are beyond their control.

For example, the average turnover rate for the community-managed housing and support workforce was 25 per cent in 2007.[[15]](#footnote-15) In comparison, a survey undertaken by Australian Human Research Institute for employees across all sectors and industries in Australia found that in 2008 there was an average turnover rate of 18.5 per cent in the preceding 12 months.[[16]](#footnote-16) Equally, the 2015 Royal Commission into Family Violence heard evidence through consultations that there were retention challenges caused by instability in employment from short-term contracts and funding insecurity, limited career development opportunities, lack of ongoing professional development and vicarious trauma and stress.[[17]](#footnote-17)

**This results in an inequitable situation where workers are denied their right to long service benefits due to no fault of their own. It is also considered to be a key contributor to the difficulty that these industries have in attracting and retaining talent.**

According to existing studies and stakeholder consultations, the main causes of this situation are non-traditional forms of employment such as: fixed term contract work, casual employment and independent contract work.[[18]](#footnote-18) Industries where these employment relationships have been found to be prevalent include: community services, security, cleaning and the building and construction industry.

As discussed above in section 1.4, the LSBP Act has been introduced to address the problems of inequity, and attraction and retention in the community services, security and, cleaning industries, by providing for the portability of long service benefits for workers within these industries, regardless of changes in their employer. The construction industry already has a similar scheme operating in Victoria, CoINVEST.

## Residual Problems

While the LSBP Act has sought to address the primary problem, residual problems remain. During parliamentary debate on the LSBP Bill, key aspects of schedule 1 – which outlines how the LSBP Act operates in regard to the CSS – were removed, and/or deferred to Regulations.

NDIS and Early Childhood Education (ECE) entities were excluded from the immediate operation of the CSS due to concerns raised about funding certainty (in the context of federal legislative changes),[[19]](#footnote-19) with additional concerns being raised regarding potential overlap with existing informal schemes in the ECE sector.[[20]](#footnote-20) As can be seen in the definition above in Table 3 for community services work, these sectors may be prescribed to be community services work by Regulations.

In addition to these exclusions, the schedule left open to the Regulations how a prohibition on ‘double dipping’ would operate. This prohibition would prevent workers claiming both Federal and State based long service benefits for the same period of service. The definitions of employer and employee were also drafted to allow for further refinement through Regulations which are now required to address a lack of clarity over which employees and employers are in-scope.

Finally, two minor matters in the LSBP Act require modifications to respond to issues which have arisen since the passage of the LSBP Act. Firstly, there is the need for the Authority to have greater oversight of the scheme by knowing when employees leave employers. Secondly, there are certain functions of the LSBP Act Authority, as well as other statutory authorities which require information disclosure that is currently not permitted.

As such, there are five residual problems that are in the scope of this RIS, each of which relates specifically to the CSS:

* The lack of clarity on covered employees and employers;
* The scope of the ‘community services sector’;
* The potential for double dipping;
* Deficiencies in Authority oversight of the scheme; and
* Deficiencies in list of organisations to whom the Authority can disclose information.

It is understood that there is an interrelationship between the first two items above under the multi-factorial test of eligibility to participate in the PLS scheme.

**The purpose of this RIS is to consider regulatory options to support the LSBP Act to address these residual problems.**

### Definition of Employee and Employer

The way employees and employers are defined in schedule 1, in combination with the definition of community services work, determines the bounds of who is covered by the LSBP Act. Any lack of clarity in these definitions has the capacity to result in unnecessary cost implications for businesses who may spend time and money registering and paying levies into the scheme for workers who are out of scope. At the same time, employees may be disadvantaged if lack of clarity around their eligibility to participate in the PLS scheme precludes them from accessing – or otherwise limiting the value of – an LS benefit.

Under the LSBP Act as it presently stands, an employer is a not-for-profit, or for profit entity that employs one or more individuals to perform community services work, or a person who is prescribed to be an employer.

The following are not employers under the LSBP Act:

* the Commonwealth;
* the State;
* entities with governing bodies appointed under an Act of the Commonwealth or State;
* a municipal council or other statutory body;
* a public health service or a public hospital under the *Health Services Act 1988;* and
* a person prescribed not to be an employer.

The current definition of an employee is an individual employed by an employer in the sector and includes those employed on a casual basis.

The following are not employees:

* those who care for children or coordinate the care of children for a business licensed under the *Children’s Services Act 1996*;
* employees whose employer is a community health centre registered under section 48 of the *Health Services Act 1988* (unless their role is to carry out community service work);
* individuals employed by employers who provide services to persons with a disability but whose primary role is to provide health services to those persons;
* individuals employed under the *Aged Care Award 2010* or other prescribed awards; and
* individuals prescribed not to be employees.

The LSBP Act leaves the definition of which employers and employees are considered in-scope of the PLSB scheme open to refinement through Regulations.

#### Potential coverage of unintended workers

Due to the definition of community services work being quite broad, the present drafting of the employer and employee definitions in the LSBP Act leaves open room for debate as to whether certain employees and employers are in scope of the LSBP Act. Without clarification, this has the potential to reduce the ability of the LSBP Act to assist in retaining and attracting talent in the CSS, and in turn produce unnecessary costs for businesses. This is the case within individual roles and also across organisations.

For example, an individual’s role may require them to perform both personal care for members the general public, as well as for disabled people. Equally, an individual may work for an employer who provides services to people with a disability, but as a financial controller, or in some other administrative or management role. As providing support services for persons with a disability is considered community services work, the employees and employers in these examples could be either in or out of scope.

Considering the primary problems that the legislation seeks to address, it seems unreasonable that a personal carer or management employee should be covered by the scheme as they are not in an employment relationship where they are likely to lose LSL benefits due to no fault of their own, and providing PLS to them is unlikely to attract and retain talent in the CSS. Without clarity over the status of these classes of employers and employees, the LSBP Act damages its ability to further equity and attract and retain talent in the CSS.

This situation also creates a circumstance where businesses are likely to incur unnecessary costs. Without clarity, businesses are likely to be cautious in their LS reserving and set aside funds for employees who are ultimately not within the scope of the scheme.

In order to meet the objectives of the LSBP Act and reduce the chance of unnecessary costs to businesses, there are therefore three matters which need to be clarified:

* What further information can be provided to identify ‘employers’ and ‘employees’ for the purposes of the LSBP Act;
* Whether employees with overlapping roles are in-scope for the purposes of the LSBP Act; and
* Whether administrative and management staff are considered ‘employees’ for the purposes of the LSBP Act.

#### Potential constitutional invalidity

In addition to the potential inclusion of unintended workers, the current composition of schedule 1 of the LSBP Act leaves open the possibility of aspects of the scheme’s coverage becoming invalid due to inconsistency with the *Fair Work Act 2009*.

The current definition of ‘employee’ provides coverage for employees by reference to the types of work they do. The implication of this is that the LSBP Act is purporting to provide long service benefits to some workers on federal awards. This is acceptable for federal awards which **do not** cover long service leave (which is most modern awards – those created after 2009).[[21]](#footnote-21) However for certain enterprise agreements which **do** provide for long service leave, the LSBP Act is invalid to the extent of inconsistency with those instruments. Depending on the legal construction of this situation, the ‘extent of inconsistency’, may not only be those federal instruments which cover long service leave, but also those which do not do so directly but may be subject to the transitional provisions of the *Fair Work Act 2009* where those provisions act to preserve LS benefits from pre-reform instruments (if the LSBP Act does not define which instruments it is limited to).

The proposed Regulations seek to address the above problems through providing a more comprehensive definition of who is (and isn’t) an *employer*, who is (and isn’t) an *employee*, and what *community services work* is (and isn’t).

### Scope of Community Services Sector

The community services sector has been defined in the LSBP Act as work that provides the following for persons who have a disability or other persons who are vulnerable, disadvantaged or in crisis:

* Training and employment support;
* Financial support or goods;
* Accommodation, or accommodation-related support services;
* Home-care support services; and
* Other support services.

In addition, the LSPB Act also includes work that provides the following:

* Community and legal services, community education and information services, or community advocacy services;
* Community development services;
* Fundraising assistance for community groups; and
* Services providing assistance to particular culture or linguistically diverse communities.

Notably, the definition of community services work **explicitly excludes from the immediate coverage of the LSBP Act activities funded under the NDIS, and services provided by entities licensed under the *Children’s Services Act 1996*.**

These two aspects of the CSS are, however, able to be reincorporated into the coverage of the LSBP Act by Regulations.[[22]](#footnote-22) Indeed it was the intention of Parliament when the sub-sectors were initially excluded that they would be incorporated into scope of the scheme at a later date, once they have had an appropriate amount of time to consider relevant federal reforms.[[23]](#footnote-23)

The reasons for the initial exclusion of both NDIS and ECE sectors differed slightly:

* **NDIS entities** were excluded from the initial operation of the LSBP Act because the level of funding service providers could expect to receive from the NDIA was unclear, which inhibited planning and a clear view of organisational financial stability. In this context of uncertainty, it was unclear how the introduction of the scheme would add to the financial uncertainty of relevant organisations. It was considered that once the NDIS pricing was clearer it would be possible for organisations to effectively plan and prepare for the introduction of the scheme. NDIS entities were therefore excluded from the immediate coverage of the PLS scheme to allow more time for these issues to be considered. The below section 2.2.2.1 discusses the key milestones for NDIS pricing and operation that will impact this decision.
* **Early childhood services** were initially excluded from the LSBP Act due to concerns about the implementation of the Federal Government’s new child care package. Additional concerns were also raised regarding the impact of the LSBP Act on existing informal PLS schemes and a lack of information as to the impact of the scheme on ECE businesses costs.
* Letters and data provided to Parliament by peak ECE bodies suggested that the combined effect of new compliance and funding arrangements, along with a new IT system required by the Federal Government’s new childcare package, meant that implementation of that package was not smooth in all cases. As a result there was significant financial pressure on ECE businesses.
* According to the 2016 inquiry, the informal schemes in the sector are the legacy of a failed portable long service leave scheme that was intended to begin operation in 1984.[[24]](#footnote-24) While it never began (due to administrative issues) a network of employers was connected who suggest that they currently operate a PLS scheme, albeit informally. Within this informal scheme, there is no legal obligation for former employers to honour accrued entitlements when requested to do so by the current employer. There is also no legal obligation for current employers to seek contributions from former employers when a worker seeks to access the long service leave they have accrued across the sector.
* Discussion in Parliament at the time the early childhood sector was removed from the initial scope of the LSBP Act also focused on the need for further assessment of the merits and costs of the PLS scheme in the ECE sector before it was introduced.

In both cases, the need for further time for these sub-sectors to consider financial impacts of participating in the PLS scheme must be weighed against the strong desire on the part of employees and unions for fair and equitable treatment of their service compared with other (sub-)sectors.

While the LSBP Act also provides a general power to prescribe additional services to be included as part of the CSS,[[25]](#footnote-25) this RIS does not consider the use of this power, as there has been no indication from Parliament, nor the sector, that there is the need for further broadening of the scope of the sector beyond the NDIS and ECE inclusions.

The residual problem is therefore *when* these sub-sectors will be brought back into the definition of the sector, and consequently, the coverage of the scheme.

The following sections outline the scale and nature of the excluded industries, contextualising and explaining the key NDIS rollout dates, and the nature of the informal scheme operating in the early childhood sector.

| **Questions for stakeholders** |
| --- |
| **S.1** When do NDIS employers consider they will have greater clarity over the level of funding that they will receive from the NDIA?**S.2** Have ECE employers adjusted to the Federal Government’s July 2018 childcare package?**S.3** How widely applied is the informal scheme in the ECE sector? |

#### NDIS entities

The NDIS is a national insurance scheme being progressively introduced across Australia to provide support to people with intellectual, physical, sensory, cognitive and psychosocial disabilities. The scheme is jointly funded by the Federal and State Governments. It seeks to drive a system with end-users at its core. This will result in greater individual choice and control of services and service delivery for people living with a disability.[[26]](#footnote-26)

The scheme is currently in the final stages of rollout in Victoria, having reached all regions in the state on 1 January 2019. The full roll out (with initial participants in all regions signed up) in Victoria is expected to be completed by 1 July 2019.[[27]](#footnote-27) As of 30 December 2018 there were 54,893 participants in the state with an approved plan.[[28]](#footnote-28)

Estimates on the size and profile of the disability workforce are varied and employ inconsistent definitions to inform their research sample and methodology. However, according to a 2015 report published by the Department of Social Services, it is anticipated that the disability sector workforce will need to more than double in size as a result of the NDIS. This would be an increase from approximately 73,600 full-time equivalent (FTE) workers in 2015, to an estimated 162,000 FTE workers in 2019.[[29]](#footnote-29) In Victoria, the NDIS workforce is estimated to grow from 19,550-23,900 FTE in 2016 to 34,000-42,000 in 2019.[[30]](#footnote-30)

Additionally, data from a range of sources suggests that notable features of the sector include a higher median age than the broader workforce, a low average age of retirement, high turnover and a predominance of female workers.[[31]](#footnote-31)

There is a high prevalence of part-time and casual work in the sector with 43 per cent of workers employed part-time and 41 per cent employed casually.[[32]](#footnote-32) Turnover rates are high and frequent for casual staff, and 70 per cent of the workforce is made up of women.[[33]](#footnote-33)

The number of jobs in the disability services sector is growing at approximately three per cent a year, with growth expected to increase as the NDIS continues to roll out across Australia. However, there is some uncertainty in the sector in relation to job and financial security for people who work in the sector.[[34]](#footnote-34) The direct allocation of funds to consumer instead of provider, and the flexibility of the consumer to switch between service providers in the NDIS market is creating a climate of uncertainty for those who work in the disability services sector.[[35]](#footnote-35)

In Victoria, the NDIS reaches full scheme from July 2019. The NDIS market of supports and services is driven by demand. The market is reporting a range of challenges in the transition including:

* providers citing a difficult operating environment with 13 per cent having discussed closing in the past 12 months (4% more than in 2017);
* organisations continued frustrations with NDIS systems and processes with almost three of four service providers stating that NDIS systems and processes are not working well; and
* workforce challenges are top of mind for providers with 63 per cent stating it was difficult to recruit disability support workers (an increase from 42% in 2017).[[36]](#footnote-36)

While there are planned improvement measures to assist an efficient and effective market and workforce to growth, as outlined in the Federal Government’s *Growing the NDIS Market and Workforce Strategy[[37]](#footnote-37)*, the market is not expected to mature for some years.

The below table summarises key dates for the rollout of the NDIS in Victoria.

Table 4: Selected key NDIS rollout dates

| NDIS rollout item | Year  |
| --- | --- |
| Composition of in-kind services between Victoria and the Commonwealth determined for launch and transition | 2018 (1 July) |
| NDIS transition commences in remaining regions | 2019 (1 January) |
| NDIS Quality and Safeguards Framework commences in Victoria for providers | 2019 (1 July) |
| Annually reviewed 2019/20 Price guide comes into effect | 2019 (1 July) |
| Full scheme  | 2019 (1 July) |
| Annually reviewed price schedule to come into effect  | 2020 (1 July) |
| Proposed: single national price guide | 2021 |
| Transition complete to NDIS Quality and Safeguards framework  | 2021 |

Based on the above, it should be noted that since the 2018 Bill was passed by the Parliament, the 2019-20 price guides have come into operation and that by early 2020 (and possibly by late 2019), NDIS employers will have an understanding of the updated price guide. These price guides provide valuable information to the sector that was not available while the 2018 Bill was under debate in Parliament.

#### Early childhood sector

The Early Childhood Education (ECE) sector is comprised of not-for-profit childcare centres and pre-school services who provide services under the *Children’s Services Act 1996* (Cth). ‘Children’s service’ is defined as providing care or education for five or more children under the age of six years in the absence of their parents or guardians.[[38]](#footnote-38)

The 2017 ‘Early Childhood Education and Care National Workforce Census’ prepared by the Social Research Centre for the Federal Department of Education and Training collected information from 13,505 child-care services and a collective 194,994 employees around Australia over one week, capturing 94.9 per cent of all services nationally.[[39]](#footnote-39) Making up over one-quarter (26 per cent) of Australia’s children’s services workforce, the study found the size of the Victorian children’s services workforce to be 50,646. The average years of tenure for paid staff at their current child care service was 3.3 years nationally.[[40]](#footnote-40)

As noted above, there has reportedly been an informal portable long service leave scheme operating in the ECE sector since the mid to late 1980s. While this may be useful for some employees in the sector, the uptake of this scheme is unclear, and it is relatively unknown outside of the sector so thus may not be effective in attracting new workers to the sector. This means that the informal scheme is unlikely to deliver on the primary objective of the LSBP Act. Additionally, within this informal scheme, there is no legal obligation for former employers to honour accrued entitlements when requested to do so by the current employer. There is also no legal obligation for current employers to seek contributions from former employers when a worker seeks to access the long service leave they have accrued across the sector.

In and of itself, the coming into operation of the PLS scheme does not override or displace the existing informal scheme. However, it is a complicating factor that participating employers need to consider and will inform their decisions on ongoing participation in that informal scheme.

### Double Dipping

Depending on their employment relationship and length of service, employees in the CSS may have existing entitlements to long service leave under a Fair Work Instrument (or at least have accrued some service towards such an entitlement).[[41]](#footnote-41) The nature of this benefit will differ depending on its source, however there is the capacity for the non-PLS benefit to overlap with the benefit accruing under the PLS scheme.

This leaves open the possibility of employees being entitled to claim two separate benefits relating to the same period of service. This is described in the LSBP Act as ‘double dipping’[[42]](#footnote-42) and Schedule 1 states that this outcome is to be avoided. In other sectors covered by the LSBP Act, federal Fair Work instruments are much less prevalent, and a similar issue has been overcome in the other PLS schemes by requiring employees to nominate between Victorian LSL entitlements and the PLS scheme.[[43]](#footnote-43) This approach is unworkable in the CSS as state legislation cannot purport to allow an employee to choose to forgo a benefit deriving from a Fair Work Instrument.[[44]](#footnote-44)

Figure 2: Explanation of key double dipping concepts

|  |
| --- |
| Key concepts: double dippingDHHS recognises that double dipping is a complex concept. The information in this box is intended to clarify key concepts in relation to double dipping.**Definitions***Long service benefit* – A long service benefit is either a grant of leave, or a payment of funds to an employee, to honour that employee’s long service in a job. *Accruing* – Accruing refers to the process whereby an employee’s time at work is recorded and counted toward the earning of a long service benefit. For example, an employee who has been working with an employer for five years will have accrued five years of long service credit and will continue accruing until they claim their long service benefit. *Accrual period* – the accrual period is the time during which an employee is accruing service toward a long service leave benefit. Accrual periods are tied to the legal instrument which grants long service benefits. These may be an agreement under the federal *Fair Work Act* *2009*, an employment relationship covered under the Victorian LSL Act, or a benefit granted from the LSBP Act. Once the LSBP Act comes into effect, some employees will have two accrual periods – one stemming from the LSBP Act, and one stemming from a Fair Work instrument or the LSL Act. *Entitlement* – Once an employee has accrued the amount of service required by the legal instrument granting them a right to a long service benefit, they gain an entitlement to that benefit. This means they are entitled to claim that benefit from that point onwards. *Claimed benefit* – Once an employee elects to receive their long service benefit, and is granted monies, or time off for all or part of the amount of that benefit, they are considered to have claimed all or part of that benefit. **Example double dipping scenario**The below timeline illustrates a circumstance in which double dipping may be a problem under the base case. Assume the employee has a single employer the whole time. \*Indicates a decision made by the employeeThis is not the only circumstance where double dipping can occur (as the scenarios below detail), but it demonstrates the key design issue for preventing double dipping, which is the existence of an overlapping accrual period. The following indicate the actions required by employers in each period (under the base case). **Fair Work benefit accrual period** – the employer sets aside funds (internally) to pay for the Fair Work benefit.**LSBP Act benefit accrual period** – the employer pays funds to the Authority for portable long service. **Overlapping service period** – the employer sets aside funds internally **and** pays funds to the Authority. The employee can later claim these funds, gaining a double benefit for the overlapping period – one payment from the employer when they claim the Fair Work benefit, and one benefit from the Authority when they claim their LSBP Act benefit. The options for this residual problem focus on the treatment of the overlapping service period, and in particular:* Whether, and when, employers are required to pay funds to the Authority during that period; and
* Whether, and for what period, employers are able to be refunded funds paid to the Authority.

It is important to note that if an employer is not paying funds to the Authority, an employee is not accruing service under the LSBP Act during that period. This means that if they move to another employer (negating any previous Fair Work benefit accrual or entitlement) they do not have any recognised accrual of a benefit under the LSBP Act, therefore not gaining the benefit of the LSBP Act.  |

Specific examples of where double dipping presents unique problems in the CSS are:

* **Scenario 1:** An employee becomes entitled to long service leave under a Fair Work instrument before they become entitled to a long service benefit under the LSBP Act, but there is overlap between the two benefit accrual periods.
* **Scenario 2:** An employee becomes entitled to payment under the PLS scheme but has already taken all or part of a Fair Work benefit, including for service that overlaps.
* **Scenario 3:** An employee becomes entitled to a benefit under the PLS scheme and another benefit, the second benefit being of higher value.

The following outlines the specific problems these scenarios would cause in the *base case*:

* **Problem in scenario 1:** The employer has paid levies to the Authority for a benefit accrual period which overlaps with a Fair Work benefit. The employer will end up having to pay two benefits for the one period of overlap – one at the time of Fair Work claiming, and one later when the PLS benefit accrues.
* **Problem in scenario 2:** The employer has paid levies to the Authority for a benefit accrual period which overlaps with a Fair Work benefit. The employer will end up having to pay two benefits for the one period of overlap – one already paid at the time of Fair Work claiming, and one now for the PLS benefit.
* **Problem in scenario 3:** The employee can claim their PLS benefit and then claim their Fair Work benefit (due to the dual operation of sections 51(xx) and 109 of the *Constitution* the employer cannot deny a claim for a federal benefit based on the earlier receipt of state benefit)[[45]](#footnote-45)

Each of these scenarios could result in a situation where an employee is able to ‘double-dip.’ If double dipping were to occur the equitable intent of the LSBP Act would be negated. Employees, rather than being in a position of disadvantage compared to their peers in other industries (as they are without the scheme), would in fact be in a position of advantage, due to the ability to receive a double long service leave benefit. This situation is equally as undesirable as employees being disadvantaged, considering the LSBP Act intends to produce equity. Furthermore, such a situation would result in employers paying levy fees into the fund unnecessarily, driving up the overall costs of the scheme for in-scope organisations. As of 2017, approximately 27 per cent of Australian workers reported working in their current job for more than 10 years.[[46]](#footnote-46) Were this to hold for CSS workers, there could be approximately 20 percent of workers in seven years from now who would qualify for both a federal and state based benefit, and therefore capable of double dipping. This is a conservatively adjusted estimate.

It should be noted that double dipping has not been identified as an issue in other PLS schemes, as it primarily pertains to the community services sector, due to a high prevalence of workers employed under federal Fair Work instruments. The only other scheme to cover the CSS, the ACT scheme, has not raised this as an issue, nor addressed it. The reasons for this differing treatment are not clear.

### Authority Oversight of Scheme

The current drafting of the LSBP Act stipulates a number of matters which businesses must disclose in their quarterly returns to the Authority. These include:[[47]](#footnote-47)

* The name of each of the employer's workers who performed work for the employer during the quarter; and
* For each of the employer's workers—
* the total ordinary pay paid or payable by the employer to the worker for work performed during the quarter; and
* the number of days or part days during the quarter to which the pay relates; and
* Any other prescribed information.

Other prescribed information may be need needed to support the effective and efficient operation of the Authority for example, when an employee leaves an employer.

### Disclosure of information to other entities and authorities

The current drafting of the LSBP Act allows the Authority to disclose information to Victorian Government entities and Federal Government entities. Victorian Government entities currently include the Victorian WorkCover Authority, the Victoria Police and any prescribed entities. Federal Government entities currently include the Fair Work Ombudsman and any prescribed entities.

Aside from the Victorian police, the entities included in the Act will either help the Authority perform their functions by receiving information, or vice versa. Opportunities exist to include further organisations which also fit within these categories.

Firstly, as the Authority is required to deduct tax from any benefit paid it will need advice from the ATO with respect to the payment of benefits. Secondly, the Labour Hire Licensing Authority will, from 29 April 2019, require that providers of labour hire services obtain a licence from that Authority. Host employers will be required to use only a licensed provider. The labour hire licensing scheme will operate across all industry sectors. An exchange of information between the two Authorities will aid in compliance with both schemes. It is envisaged that the information that the Authority provides to the labour hire body would be confined to the existence of a business and what it does. The Authority would not provide information on particular workers engaged by that business.

# OBJECTIVES

Options for each of the residual problems should address the primary objective of the LSBP Act, to increase retention and attraction for the covered workforces by:

* Improving access by workers to periods of rest and rejuvenation or financial recompense for long service, for which eligibility is often limited due to the nature of the industry; and
* Improving access to entitlements that increase equity in sectors with comparable work.

In addition to meeting these primary objectives each residual problem also has a distinct set of objectives to address.

## Definition of Employee and Employer

In clarifying the definition of ‘employer’ and ‘employee’ the Regulations should aim to achieve the following objectives:

* Provide certainty to businesses on which employees will need to have levies paid to the Authority on their behalf;
* Provide certainty to workers and businesses on which employers will not be covered by the scheme; and
* Clarify matters with regards to the constitutionality of the LSBP Act.

## Scope of Community Services Sector

In order to effectively address the problem outlined in the previous section, options for reintroducing NDIS funded entities and the early childhood sector into the coverage of the LSBP Act will need to give effect to the following objectives:

* Ensuring employees of ECE and NDIS businesses have fair and equitable access to LS benefits;
* Minimising financial uncertainty for ECE and NDIS businesses; and
* Minimising the risk of ECE and NDIS businesses becoming financially unviable.

## Double Dipping

According to the LSPB Act, Regulations made to prevent double dipping must give effect to the following principles:

* A worker is not to be entitled to both long service leave under a Fair Work instrument and payment of a long service benefit under the LSBP Act in respect of the same service period;
* An employer is not to be required to pay a worker for long service leave under a Fair Work instrument and to pay a levy under the LSBP Act for the worker in respect of the same service period; and
* The Authority is not to be required to pay a long service benefit to a worker under the LSBP Act and to reimburse an employer for long service leave granted to the worker under a Fair Work instrument in respect of the same service period.

## Authority Oversight of Scheme

Options to ensure that the Authority has effective oversight of the scheme should:

* Ensure that the Authority is informed when employees leave employers so that investigations need not be made.

## Disclosure of information to other entities and authorities

Options to increase the coverage of the allowable disclosures of information from the Authority should:

* Allow the Authority to gain the required taxation information to accurately deduct tax from PLS benefits; and
* Ensure the Authority is able to assist other Victorian Government agencies in their Regulatory processes.

# OPTIONS

In line with the problem statements outlined above, there are five primary areas in which options have been identified:

* The definition of employee and employer;
* The scope of the community services sector;
* Double dipping;
* Authority oversight of the scheme; and
* Disclosure of information to other entities and authorities.

It is understood that there is an interrelationship between the first two items above under the multi-factorial test of eligibility to participate in the PLS scheme.

Options in each area have been identified by reference to the objectives and the nature of the problem outlined above.

Options have not been progressed to impact analysis where there are expected to be unworkable technical difficulties in their implementation.

Options determined to be feasible are subjected to a consistent impact analysis framework in section 5.

The following subsections detail the options identified for each residual problem.

## Definition of Employee and Employer

As noted in section 2.2.1 of this RIS the present definition of an employer is a not-for profit, or (in specific circumstances) for profit entity that employs one or more individuals to perform community services work, or a person who is prescribed to be an employer.

The following are not employers:

* the Commonwealth;
* the State;
* entities with governing bodies appointed under an Act of the Commonwealth or State;
* a municipal council or other statutory body;
* a public health service or a public hospital under the *Health Services Act 1988; and*
* a person prescribed not to be an employer.

The current definition of an employee is an individual employed by an employer for the sector, and includes those employed on a casual basis.

The following are not employees:

* those who care for children or coordinate the care of children for a business licensed under the *Children’s Services Act 1996*;
* employees whose employer is a community health centre registered under section 48 of the *Health Services Act 1988* (unless their role is to carry out community service work);
* individuals employed by employers who provide services to persons with a disability but whose primary role is to provide health services to those persons;
* individuals employed under the *Aged Care Award 2010* or other prescribed awards; and
* individuals prescribed not to be employees.

Options for addressing the lack of clarity in the definition of employer and employee (discussed in section 2.2.2) include:

Relying on a definition from a comparable scheme; and

* Developing a definition tailored to the Victorian scheme.

###### Option 1 – Relying on a definition from a comparable scheme

As the only other PLSL scheme in the country to cover the CSS, this option would utilise the definitions found in the *Long Service Leave (Portable Schemes) Act 2009* (ACT) (the ACT Act). The definitions provided in the ACT Act are tied to the definition of the community services industry, and are similar to those in the LSBP Act as it currently stands.

In the ACT Act, employers are defined as ‘a person engaged in the industry…who employs someone else to carry out work in the industry or is declared to be an employer for the industry.’[[48]](#footnote-48)

In the ACT Act, employees are defined as ‘an individual employed by an employer for the industry or declared to be an employee for the industry.’[[49]](#footnote-49)

Despite the similarity of these definitions with the current Victorian definitions, the ACT Act definition results in a different outcome, due to the way that community services work (or ‘community sector industry’ in the ACT Act) is defined.

* **The LSBP Act** definitions tend to be in two parts, describing a service (e.g. ‘training and employment support, or employment placement’ or ‘financial support or goods for the assistance of persons’) and then the groups of people who that service is delivered to, which (apart from a few exceptions) is, ‘persons with a disability or other persons who are vulnerable, disadvantaged or in crisis.’
* **The ACT Act**, on the other hand, is less uniform in its definitions, and tends to single out services specific to individual populations (e.g. ‘the industry of providing residential aged care services’ or ‘residential corrective services for young offenders’).

As both the LSBP Act, and the ACT Act’s definitions of employee and employer refer to the definition of the sector, similar drafting of these definitions results in different outcomes.

Furthermore, there are significant contextual differences between the ACT and Victorian CSSs which make the ACT Act’s definitions problematic to use. First and foremost, the ACT scheme incorporated aged care services some years after its commencement. This is not possible in Victoria, as a high proportion of aged care services are delivered through public sector organisations, whose employees have existing portability of LS entitlements in the Fair Work instruments they are employed under. Double dipping was also not raised as an issue in the ACT. These factors help explain the drafting of option 2.

###### Option 2 – Developing a definition tailored to the Victorian scheme

This option will develop and rely upon definitions of employee and employer, which are tailored to the Victorian scheme. For the definition of an employer, a tailored definition would be one which prescribes under the definition of employer in schedule 1[[50]](#footnote-50) that:

* Aged care services operating under section 3 of the *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015* are excluded from the definition of employer; and
* Certain specified bush nursing hospitals and bush nursing centres are excluded.

These exclusions will address the possibility of employers being captured by the scheme who do not experience the primary problem and are therefore not intended to be covered by the PLSB Act.

A tailored definition of employee for the Victorian scheme would be one which prescribes the definition of employee in schedule 1 to:

* Exclude the following federal awards, which present the risk of unintended employees being granted access to PLS:
* The Ambulance and Patient Transport Industry Award 2010;
* The Amusement, Events and Recreation Award 2010;
* The Fitness Industry Award 2010;
* The Health Professionals and Support Services Award 2010;
* The Medical Practitioners Award 2010;
* The Nurses Award 2010; and
* The Pharmacy Industry Award 2010.
* Exclude executive and management roles where the role is wholly administrative or its predominant activity is not the personal delivery of services or activities that are community service work. This reduces the risk of unintended employees being granted access to PLS.
* Exclude the following classes of awards, which present a risk of meaning the LSBP Act is constitutionally invalid:
* A modern enterprise award (within the meaning of the *Fair Work Act 2009* (Cth));
* An enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth));
* A State reference public sector modern award (within the meaning of the *Fair Work Act 2009* (Cth));
* A state reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)).

The exclusions for both employee and employer detailed here have not been adopted in the ACT due to the contextual and constitutional factors discussed above.

| **Questions for stakeholders** |
| --- |
| **S.4** Which option provides employers with the greatest clarity in relation to when they are in-scope?**S.5** Which option provides employers with the greatest clarity in relation to when employees are in-scope?**S.6** Are there any other viable options to address the problems of coverage of unintended workers? |

## Scope of Community Services Sector

As noted in section 2.2.2 it was the intention of *Parliament* when NDIS and ECE entities were initially excluded that they *could* be incorporated into scope of the scheme at a later date.[[51]](#footnote-51) The *Government* at the time intended that these sub-sectors *would* be incorporated into scope of the scheme at a later date.[[52]](#footnote-52) As a consequence, only timing options have been considered for this residual problem, and not whether or not to include these sectors.

### Inclusion of NDIS Entities

Options for including NDIS entities in the scheme include:

* Introducing NDIS entities when the scheme commences operation on 1 July 2019;
* Introducing NDIS entities six months after the scheme commences operation on 1 January 2020; and
* Introducing NDIS entities 12 months after the scheme commences operation on 1 July 2020.

###### Option 1 – Introduce on 1 July 2019

This option will introduce NDIS entities into the scheme when the Act commences operation on 1 July 2019. This would mean that NDIS employers would be required to commence paying levies into the scheme for applicable employees in the first quarter of the Act’s operation.

This date has been proposed as it is the earliest possible time at which NDIS entities can be brought into the coverage of the LSBP Act, consistent with the start date for businesses covered in the original drafting of the LSBP Act.

###### Option 2 – Introduce on 1 January 2020

This option will introduce NDIS entities into the scheme six months after the Act commences operation on 1 January 2020. This would mean that NDIS employers would be required to commence paying levies into the scheme for applicable employees after the first two quarters of the Act’s operation.

This date has been proposed as it is after the conclusion of the NDIS rollout in Victoria and allows NDIS entities six months to prepare for the implications of the LSBP Act. It also comes after the 2019-20 price guide comes into operation and at a time when information should be available as to the further price guide update that comes into operation in February 2020. This information should be useful to NDIS entities in considering financial risks.

###### Option 3 – Introduce on 1 July 2020

This option will introduce NDIS entities into the scheme 12 months after the Act commences operation on 1 July 2020. This would mean that NDIS employers would be required to commence paying levies into the scheme for applicable employees after the first four quarters of the Act’s operation.

This date has been proposed as it allows close to the same amount of time for NDIS entities to prepare for the obligations imposed upon them by the LSBP Act, as the businesses who were included in the original coverage of the Act. While businesses who were included in the original scope of the scheme had 14 months to prepare (from May 2018 to July 2019) that timeframe would not be workable here as it would mean that NDIS businesses would not join the scheme at the start of a quarterly return period - making the first quarterly return unique, and thus unnecessarily increasing the difficulty of implementation.[[53]](#footnote-53)

In addition, this date allows further time to adjust after the expected NDIS price guide change in February 2020.

### Inclusion of the Early Childhood Sector

Options for including the early childhood sector in the scheme include:

* Introducing the early childhood sector when the scheme commences operation on 1 July 2019;
* Introducing the early childhood sector six months after the scheme commences operation on 1 January 2020; and
* Introducing the early childhood sector 12 months after the scheme commences operation on 1 July 2020.

###### Option 1 – Introduce on 1 July 2019

This option will introduce ECE into the scheme when the LSBP Act commences operation on 1 July 2019. This would mean that ECE would be required to commence paying levies into the scheme for applicable employees in the first quarter of the LSBP Act’s operation.

This date has been proposed as it is the earliest possible time at which ECE businesses can be brought into the coverage of the LSBP Act.

###### Option 2 – Introduce on 1 January 2020

This option will introduce ECE into the scheme six months after the LSBP Act commences operation on 1 January 2020. This would mean that ECE employers would be required to commence paying levies into the scheme for applicable employees after the first two quarters of the LSBP Act’s operation.

This date, along with that in option 3 has been proposed as it represents the start of a reporting quarter for the purpose of the LSBP Act and represents a significant gap when compared to the only shorter option for staged dates, which would be gaps of three months between options.

###### Option 3 – Introduce on 1 July 2020

This option will introduce ECE into the scheme 12 months after the LSBP Act commences operation, on 1 July 2020. This would mean that ECE employers would be required to commence paying levies into the scheme for applicable employees after the first four quarters of the LSBP Act’s operation.

This date has been proposed (as above) as it represents the start of a reporting quarter for the purpose of the LSBP Act and represents a significant gap when compared to the only shorter option for staged dates, which would be gaps of three months between options.

## Double Dipping

Based on the discussion in section 2.2.3, options for addressing double dipping are necessarily focused only on the treatment of employees who are accruing service toward both a Fair Work and PLS based LS benefit. For this reason, references to an ‘employee’ in this section, are references to an employee who is accruing overlapping benefits.

Options for preventing double dipping include:

* Employer pays levies until the employee claims a Fair Work benefit;
* Employer pays levies until the employee becomes entitled to claim a Fair Work benefit; or
* Employer does not pay levies at all for employees who accrue service towards a Fair Work benefit.

As was noted above, in section 2.2.3, double dipping has not been identified as an issue in other PLS schemes and so this is a novel problem with imperfect options.

###### Option 1 – Employer pays levies until the employee *claims* a Fair Work benefit

This option regulates so that employers are required to pay levies into the scheme for employees who are accruing both PLS and Fair Work based long service.

The Authority is not required to pay PLS benefits to employees who have *claimed* a Fair Work benefit, where the claim for PLS benefits overlaps with the period of service that earned that employee their Fair Work benefit.

Employers may be reimbursed for levies paid for any period of overlap between the period to which the *claimed* Fair Work benefit relates and for which PLS levies have been paid, provided these levies have not already been paid to the employee by the Authority.

Under this option, employees with overlapping benefits would be able to claim a PLS benefit if they became entitled to a PLS benefit at a time where they had not already claimed a Fair Work benefit, or if they left the industry without claiming their Fair Work benefit and make no subsequent claim on their Fair Work benefit prior to, or simultaneously with, making a claim for a PLS benefit.

###### Option 2 – Employer pays levies until the employee becomes *entitled to claim* a Fair Work benefit

This option regulates so that employers *are* required to pay levies into the scheme for employees who are accruing both PLS and Fair Work based long service, but only until those employees become *entitled to claim* their Fair Work benefit – that is, the employee has accrued sufficient service under the Fair Work Instrument to have become entitled to claim a Fair Work benefit.

The Authority is not required to pay PLS benefits to employees who are *entitled* to claim a Fair Work benefit.

Employers may be reimbursed levies paid for any period of overlap between the period to which the Fair Work entitlement relates and for which PLS levies have been paid, provided these levies have not been paid to the employee by the Authority.

Under this option, employees with overlapping benefits would be able to claim a PLS benefit if they became entitled to a PLS benefit at a time where they were not also entitled to a Fair Work benefit, or if they left the industry without claiming their Fair Work benefit and make no subsequent claim on their Fair Work benefit prior to, or simultaneously with, making a claim for a PLS benefit.

###### Option 3 – Employer does not pay levies at all for employees who *accrue* service towards a Fair Work benefit

This option regulates so that employers are not required to pay levies into the scheme for employees who are accruing both PLSL and Fair Work based long service.

The Authority is not required to pay PLS benefits to employees who are *accruing* service under a Fair Work benefit.

If employers do inadvertently pay levies to the Authority for employees accruing overlapping PLS they will be able to be reimbursed for these levies, provided they have not yet been paid to the employee.

Under this option, employees with overlapping benefits would not be able to claim a PLS benefit from the Authority.

| **Questions for stakeholders** |
| --- |
| **S.7** Are there any other viable options to address the problems associated with double dipping? |

## Authority Oversight of Scheme

Due to the specific nature of the residual problem, there is only one option aside from the base case so that the Authority has effective oversight of the scheme:

* Require employers to inform the Authority of the date when employees (if any) leave during the quarter.

This option will ensure that the Authority is provided with information on employees who leave during a quarterly return period, saving them time chasing up information on missing employees.

## Disclosure of information to other entities and authorities

Due to the specific nature of the residual problem, there is only one option aside from the base case to allow the Authority to gain the required taxation information and assist other Victorian Government agencies in their regulatory processes:

* Allow the Authority to share information with the ATO and the Labour Hire Licensing Authority.

## Options Not Progressed to Impact Analysis

As well as those options detailed above, there are options that were considered but not progressed to impact analysis, due to unworkable technical difficulties in their implementation.

### Inclusion of NDIS Entities

The first option was to prescribe only certain types of NDIS entities to be included in the scheme. This would require very technical wording to achieve the desired effect, which the Department considers would create greater confusion for employers, which is not required, nor desirable. This option would therefore not help meet the primary objective of the LSBP Act, to encourage the attraction and retention of staff.

### Double Dipping

There were two options to prevent double dipping which were not progressed to impact analysis.

The first option was to alter the LSBP Act to allow for the authority to claim back monies paid to employees under the LSBP Act if the employee claims LS benefits under another instrument. This was not progressed to impact analysis as it would require extensive administrative effort from the LSBP Authority to investigate cases of double dipping, which they are not equipped for.

The second option was to explore the possibility of amendments to the federal *Fair Work Act 2009.* These changes would align the intent of that Act with the LSBP Act, removing the chance that the LSBP Act would be invalid due to inconsistency with the *Fair Work Act 2009*. While this course of action would be highly effective, changes to Commonwealth legislation are outside of the Victorian Government's control.

DHHS notes that changes to the *Fair Work Act 2009* may provide the most comprehensive way to solve the problems associated with double dipping. However, such amendments may take significant time to be implemented and are beyond the control of the Victorian Government. Relying on such changes to occur would reqiure a delay of unknown duration to the implementation of the LSBP Act in the CSS. Furthermore, the Act specifies that double dipping is to be addressed in regulations.

# IMPACT ANALYSIS

## Introduction and Analysis Framework

The purpose of this section is to identify and analyse the impacts of the options identified in section 4. For each option, the likely social and economic outcomes for employees, employers, the Authority and the government have been considered. For consistency of analysis, these impacts have been appraised according to the analysis framework outlined below which classifies and rates impacts based on their impact on equity for employees, costs to business and government, and level of risk they generate for the Authority. Impacts have been assessed relative to the base case. The section concludes by indicating the preferred options for addressing the residual problems identified in section 2.

The following framework outlines the criteria which have been used to assess the impacts of each feasible option. Each criteria has been assigned a weighting based on its importance. The primary benefit of the proposed Regulations, equity, has been provided with a higher weighting than the other two criteria due to its close link to the primary objectives of the LSBP Act. The main costs of the proposed Regulations, impacts on businesses, the government and the Authority, have been weighted at 25 per cent each, to balance a measurement of the costs and benefits of the proposed Regulations. For each option, scores are assigned against each criteria, ranging from minus three to three, with three representing a high alignment to the criteria. The analysis framework has a limited scale (three points in the positive and negative scale) in order to not give the analysis a sense of false precision, as there are difficulties in quantifying much of the impact discussed here. For this reason, it is especially important that the evaluation framework in section 8 is implemented, in order to measure the actual impact of the proposed Regulations.

Table 5: Analysis framework and criteria

| Criteria | Assessment against the base case  | Weight | Score  |
| --- | --- | --- | --- |
| Equity | Options should ensure equity of long service leave entitlements within the CSS, and between the covered workers and those in other sectors of the workforce. This should help attract and retain talent in the CSS.  | 50% | A score is provided between minus 3, and 3. **Minus three** – a score of minus three will be provided where the option is highly misaligned with the criteria.**Minus two** – a score of minus two will be provided where the option is mostly misaligned with the criteria.**Minus one** – a score of minus one will be provided where the option is partially misaligned with the criteria.**Zero** – a score of zero will be provided where the option does not meet the criteria.**One** – a score of one will be provided where the option is only partially aligned with the criteria.**Two** – a score of two will be provided where the option is mostly aligned with the criteria.**Three** – a score of three will be provided where the option is highly aligned with the criteria. |
| Financial impact on business  | Options should minimise unnecessary financial and administrative cost and uncertainty on businesses covered by the scheme. | 25% |
| Risk to the Authority and government  | Options should reduce the risk of unnecessary financial and administrative burden on the Authority. Options should ensure that the Government’s policy objectives are being met in the best way possible, the scheme is consistent with Commonwealth legislation and is constitutionally valid. | 25% |

## Analysis of options

This section uses the above analysis framework to assess the base case for each residual problem, and then appraises each option.

### Definition of Employee and Employer

As discussed in section 2.2.1, options for the definition of employee and employer should address the potential for a lack of clarity on ‘in-scope’ employees, as well as the potential for constitutional invalidity.

A summary of the options for defining employees and employers, along with their relative scores compared to the base case, is as follows:

Table 6: Summary of definition of employee and employer impact analysis

|  |  |
| --- | --- |
| **Option** | **Scores** |
| Equity (50%) | Financial (25%) | Risk (25%) | **Weighted score** |
| Base case | 0 | 0 | 0 | **0** |
| Option 1 – Relying on a definition from a comparable scheme | 0 | 0 | 0 | **0** |
| Option 2 – Developing a definition tailored to the Victorian scheme  | 3 | 3 | 3 | **3.0** |

The rationale for these scores is summarised for each option in the following sub-sections.

###### Base case analysis

The base case is analysed to provide a point of comparison for the options which follow. For this residual problem, the base case is a ‘do nothing’ option, which would leave the definitions as they currently stand in the LSBP Act (as detailed in section 4.1).

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 0 | The base case allows ‘crossover’ employees[[54]](#footnote-54) to become entitled to more than one LS benefit. This produces inequity of long service leave entitlements between CSS workers and those in other sectors of the workforce, by allowing certain members of other sectors to gain an additional LS benefit, placing CSS workers at a disadvantage.  |
| Financial impact on business | 0 | Businesses bare risk under the base case, namely that they will be cautious in their PLS reserving, and incur unnecessary financial costs by setting aside funds for employees who are ultimately not within the scope of the scheme.  |
| Risk to the Authority and government | 0 | The base case leaves open the potential that part of the LSBP Act will be found to be constitutionally invalid. This would result in significant unnecessary costs for the Victorian Government on legal and/or legislative efforts to rectify the extent of the invalidity. The base case also leaves open the chance that businesses incorrectly register, and pay levies for, out of scope employees, requiring the Authority to chase up and refund levies, costing them time and money. This fails to reduce the risk of unnecessary financial and administrative burden on the Authority. |

###### Option 1 – Relying on a definition from a comparable scheme

As the only other PLS scheme in the country to cover the CSS, this option would utilise the definitions found in the *Long Service Leave (Portable Schemes) Act 2009 (ACT)*. The definitions provided in the Act are tied to the definition of the community services industry, and are similar to those in the LSBP Act as it currently stands.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 0 | Adopting the ACT Act’s definitions would likely not have any practical effect on the level of equity experienced under the base case, as employees would still be defined by reference to the definition of ‘community service work’ in schedule 1 of the LSBP Act. Without the definition of community service work changing, there remains the same risk of inequity as in the base case. Namely, there is the possibility that some workers with overlapping roles may gain access to an additional LSB, furthering the imbalance between those in the CSS and those outside of the sector. As was discussed in section 4.1 there are significant differences in the scope of the CSS in the Victorian and ACT schemes due to contextual differences between these locations. |
| Financial impact on business | 0 | Considering the lack of practical change emanating from the ACT Act’s definitions, the same financial risks to business remain. Businesses retain the risk that they will be cautious in their PLS reserving, and incur unnecessary financial costs by setting aside funds for employees who are ultimately not within the scope of the scheme.  |
| Risk to the Authority and government | 0 | This option does not reduce the risk of unnecessary financial and administrative burden for the government or the Authority. The government still faces the potential that part of the Act will be found to be constitutionally invalid. This would likely result in significant unnecessary costs for legal and/or legislative efforts to rectify the extent of the invalidity.There is also still the chance that businesses incorrectly register, and pay levies for, out of scope employees, requiring the Authority to chase up and refund these payments, costing them time and money.  |

###### Option 2 – Developing a definition tailored to the Victorian scheme

This option would exclude certain federal Fair Work awards that may bring unintended employees into the coverage of the scheme, exclude other Fair Work awards that risk the LSBP Act being deemed constitutionally invalid, and introduce a test to preclude executive and management staff from being covered by the LSBP Act.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 3 | Developing the definition outlined in section 2.2.1 of this RIS will help ensure equity of long service leave entitlements within the CSS, and between the covered workers and those in other sectors of the workforce.This option will significantly reduce the risk that exists under the base case of crossover employees becoming entitled to more than one LS benefit, which would further the imbalance between those in the CSS and those outside of the sector. By preventing this from occurring, this option demonstrates commitment to producing equity for the CSS, which should also help attract and retain talent in the sector. Nevertheless, by preventing one inequity from occurring, this option also risks creating a new inequity. There is the possibility that a small minority of *legitimate* community services workers are employed on the excluded awards. This option would return these workers to a position where they are experiencing one of the primary problems that the LSBP Act addresses. That is, these workers would be in a position of struggling to accrue long service leave due to no fault of their own. Nevertheless, this risk is negligible, and as such the option is still highly aligned with the criteria. |
| Financial impact on business | 3 | This option significantly reduces unnecessary financial and administrative costs for businesses.By excluding aged care services in hospitals, and certain bush hospitals and nursing centres from the definition of employer, this option reduces the risk of unnecessary financial and administrative cost to these businesses, that otherwise may have registered and paid levies for their employees under the base case.The exclusion of federal awards which are likely to cover crossover employees, and the exclusion of staff whose role is wholly or predominantly administrative, or does not involve the personal delivery of community service work, equally reduces the risk of unnecessary financial and administrative costs to businesses that employ these types of workers. The savings from these exclusions will be avoided costs, both from incorrectly registering and paying levies for out of scope employees, and in time spent updating payroll systems to reflect the required changes to LS reserving.  |
| Risk to the Authority and government | 3 | This option reduces the risk of unnecessary financial and administrative burden for the Authority and government compared to the base case. The enterprise and state reference awards excluded by this option are the most likely federal instruments to still provide LS entitlements under their terms. By explicitly excluding coverage of these awards, this option removes the possibility that the definition of “employee” results in part of the LSBP Act being deemed constitutionally invalid. Due to the reasons outlined above, there is a significantly lower chance of businesses incorrectly registering and paying levies into the scheme for out of scope employees. This will, in turn, lower the need for the Authority to spend time and money rectifying these errors.  |

### Scope of Community Services Sector

As was noted in section 2.2.2, cost impacts and the financial viability of NDIS and ECE businesses were key considerations in the decision to delay their introduction to the scheme.

|  |
| --- |
| In 2018, KPMG consulted employers to identify the potential cost impacts on community services organisations from the introduction of the LSBP Act. A sample of organisations across the CSS with different characteristics and employee compositions were consulted. A cash flow projection model was then built in accordance with actuarial principles, based on the information gathered from consultations. The model reflects the time value of money and the assumed individual behaviour dynamics. Key inputs for determining the cost of LS *under current arrangements* were:* discount rates based on a yield curve;
* expected salary increases;
* long service leave taking behaviour;
* turnover rates;
* accrual rates; and
* employee profiles.

Costs *under the LSBP Act* were separated into two components:* the total levy payments made by the organisation under the portable long service scheme; and
* the additional cost of long service benefits expenses for organisations that provide entitlements above that of the PLSB scheme.

Costs were demonstrated at an individual and aggregate level. The modelling determined that, for the CSS as a whole, the LSBP Act will increase overall costs by 0.3 per cent of salary costs, with a financial impact of $55.0m (over three years) and $191.0m (over 10 years).Information detailing the cost impact for the NDIS and ECE sub-sectors is provided below.**This information has been drawn on below to understand the financial impacts associated with the inclusion of the NDIS and ECE sub-sectors.**  |

#### Inclusion of NDIS Entities

The cost impact of the LSBP Act, along with the timing of the NDIS rollout, (discussed in section 2.2.2), are the key determinants of when NDIS entities should be included in the scheme.

A summary of the feasible options for including NDIS entities in the LSBP Act, along with their relative scores compared to the base case, is as follows:

Table 7: Summary of inclusion of NDIS entities impact analysis

| **Option** | **Scores** |
| --- | --- |
| Equity (50%) | Financial (25%) | Risk (25%) | **Weighted score** |
| Base case | 0 | 0 | 0 | **0** |
| Option 1 – Introduce on 1 July 2019 | 2 | -2 | -2 | **0** |
| Option 2 – Introduce on 1 January 2020 | 3 | -1 | -1 | **1.0** |
| Option 3 – Introduce on 1 July 2020 | 1 | 0 | 0 | **0.5** |

The rationale for these scores is summarised for each option in the following sub-sections.

Before turning to this analysis, however, it is pertinent to provide some contextual information on cost impacts of the scheme for NDIS businesses, as well as key NDIS rollout dates. This information will help inform the analysis of each option.

**Information on NDIS Cost Impacts**

In Victoria, as of 30 December 2018, there were 7,850 NDIS registered providers providing Core Support Services (see Appendix D for breakdown) and 419 NDIS registered providers providing Support Coordination.

In relation to the NDIS sub-sector, two disability providers were consulted to prepare the cost impact analysis. The following table outlines their key characteristics.

Table 8: Summary of NDIS case studies

| **Organisation** | 1 | 2 |
| --- | --- | --- |
| Size | Medium (non-profit) | Medium (non-profit) |
| Services | Accommodation, day services and supported employment programs to people with intellectual disabilities. | Manages and maintains services for the education, employment, training and support of people with disabilities. |
| Est. in-scope employees | 100 | 190 |
| Employee turnover rate | 5 per cent | 24 per cent |
| Impact over 3 years(% of salary costs) | 1 | 0.7 |

Cost impacts differed for the organisations, primarily due to differences in their current provisioning methods.[[55]](#footnote-55) The first organisation only began accruing leave after an employee had been working for five years, whereas the second organisation began from their commencement.

Actuarial modelling determined that, for the first organisation, the LSBP Act will increase overall costs by 1 per cent of salary costs over three years. The second organisation, on the other hand, will increase overall costs by 0.7 per cent of salary costs over three years.

Aggregated for the NDIS sub-sector, these results indicate that the sub-sector would experience cost impacts greater than the rest of the CSS, at 0.85 per cent of salary costs over three years. However, noting the small sample size and the CSS-wide average, the actual figure is likely somewhere between 0.3 per cent and 0.85 per cent over three years as a percentage of salary costs.

The following table provides an estimate of what this figure means for cost increases for the sub‑sector as a whole. Due to the disparity in cost impacts detailed above, a high and a low estimate have been provided.

Table 9: Estimated NDIS sub-sector cost impacts

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| NDIS average employee salary | Approximate number of FTE | Percentage cost increase (low) | Percentage cost increase (high) | **Approximate sub-sector cost increase per year[[56]](#footnote-56) (low, $m)** | **Approximate sub-sector cost increase per year[[57]](#footnote-57) (high, $m)** |
| $56,000[[58]](#footnote-58) | 38,000[[59]](#footnote-59) | 0.30% | 0.85% | **$6.4** | **$18.1** |

###### Contextual information on NDIS rollout dates

The below table has been reproduced from section 2.2.2 for readability.

Table 10: Selected key NDIS rollout dates

| **NDIS rollout item** | **Year**  |
| --- | --- |
| Composition of in-kind services between Victoria and the Commonwealth determined for launch and transition | 2018 (1 July) |
|  NDIS transition commences in remaining regions | 2019 (1 January) |
| NDIS Quality and Safeguards Framework commences in Victoria for providers | 2019 (1 July) |
| Annually reviewed 2019/20 price guide comes into effect | 2019 (1 July) |
| Full scheme  | 2019 (1 July) |
| Annually reviewed price schedule to come into effect  | 2020 (1 July) |
| Proposed: single national price guide | 2021 |
| Transition complete to NDIS Quality and Safeguards Framework  | 2021 |

Based on the above, it should be noted that since the 2018 Bill was passed by the Parliament, the 2019-20 price guides have come into operation and that by early 2020 (and possibly by late 2019), NDIS employers will have an understanding of the updated price guide. These price guides provide valuable information to the sector that was not available while the 2018 Bill was under debate in the Parliament. This contextual information has been drawn on to understand the financial impact of the scheme on NDIS businesses.

###### Base case analysis

The base case is analysed to provide a point of comparison for the options which follow. For this residual problem, the base case is a ‘do nothing’ option, which would leave the NDIS sub-sector excluded from the LSBP Act.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 0 | The base case will mean that employees of entities in the NDIS market of supports and services will not accrue PLS, despite facing the primary problem of being unable to accrue sufficient LS to claim a LS benefit, due to no fault of their own. The base case will therefore fail to ensure equity of long service leave entitlements within the CSS, or between NDIS workers and those in other sectors of the workforce. |
| Financial impact on business | 0 | As the base case places no obligation on employers in the NDIS market of supports and services, it neither increases nor minimises unnecessary financial and administrative costs and uncertainty for businesses covered by the scheme. |
| Risk to the Authority and government | 0 | As the base case places no obligation on employers in the NDIS market of supports and services, it neither increases nor minimises unnecessary financial and administrative burden on the Authority. The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

###### Option 1 – Introduce on 1 July 2019

1 July 2019 is the expected date for the completion of full scheme NDIS rollout in Victoria. It is also the scheduled commencement date for the provisions of the LSBP Act, from which NDIS entities were originally excluded.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 2 | Introducing NDIS entities into the scheme on 1 July 2019 would most readily bring equity to NDIS workers, ensuring that they are able to begin accruing leave when other community services workers do, when the scheme first commences operation. This option will most readily bring equity within, and between, sectors. Nevertheless, these benefits would likely be jeopardised by the financial stresses and uncertainty placed on NDIS businesses (discussed below), resulting in a decrease in employment opportunities. This may ultimately be detrimental to the attraction and retention of talent. It is unclear if this impact on employment would be major or minor.  |
| Financial impact on business | -2 | Introducing registered providers in the NDIS market of supports and services into the scheme on 1 July 2019 would provide these businesses with very little time to prepare for the obligations imposed on them. Having been previously excluded from the scheme, businesses will not have plans in place for introduction of the scheme. In addition, some businesses will only just have begun operating under the NDIS, with the full scheme rollout expected to be completed in Victoria on the same date. The dual impact of these regulatory changes would place significant unnecessary financial pressures on NDIS businesses as they adjust their operating models to the NDIS and are required to make alterations to their payroll systems.  |
| Risk to the Authority and government | -2 | This option has a moderate risk of producing unnecessary financial and administrative burden for the Authority. The main risk would be that certain NDIS businesses are unable to familiarise themselves with and implement the required changes within the timeframe required to deliver their first quarterly return to the Authority. This could result in administrative time spent following up returns, as well as the potential for levies to never be recovered.The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

###### Option 2 – Introduce on 1 January 2020

1 January 2020 is six months after the expected date for the completion of full scheme NDIS rollout in Victoria. It is also six months after the scheduled commencement date for the provisions of the LSBP Act, from which NDIS entities were originally excluded. In addition to these factors, 1 January 2020 is one month before the updated NDIS price schedule is expected to come into effect.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 3 | Introducing NDIS entities into the scheme on 1 January 2020 would bring equity to NDIS workers, but after a delay of six months, during which time all other community services workers would be accruing LSL. This option will therefore increase equity within, and between, sectors but in a delayed manner. This will somewhat negate the equitable outcome as the NDIS workforce will be delayed by six months in being able to accrue, and therefore claim, LS. There is some risk that these benefits may be jeopardised by the financial stresses and uncertainty placed on NDIS businesses (discussed below), resulting in a decrease in employment opportunities. It is unclear if this impact on employment would be major or minor. However, sufficient pricing information should be available by this time to mitigate such risk. |
| Financial impact on business | -1 | Introducing providers in the NDIS market of supports and services into the scheme on 1 January 2020 would provide these businesses with six months to prepare for the obligations imposed on them by the LSBP Act. In isolation, this is a reasonable amount of time, which should allow businesses to effectively plan and implement any required changes. However, while this option minimises financial uncertainty in regard to the operation of the LSBP Act, it does not provide such guarantees with relation to NDIS changes. As the full scheme, Regulation and pricing changes commence in July 2019, this will necessarily be a time of operational stress, requiring businesses to transform their operating models. The uncertainty generated will in turn impact the ability of NDIS entities to plan for the changes required by the LSBP Act. The impact of the NDIS roll out, in combination with the imposition of the LSBP Act one month beforehand, would therefore produce limited unnecessary financial uncertainty, and a small chance of businesses becoming financially unviable.  |
| Risk to the Authority and government | -1 | This option carries a modest risk of producing unnecessary financial and administrative burden for the Authority. The main risk would be that certain NDIS businesses are unable to familiarise themselves and implement the required changes within the timeframe required to deliver their first quarterly return to the Authority due to the co-occurring stresses of the LSBP Act and NDIS price changes. This could result in administrative time spent following up returns, as well as the potential for funds due with returns to never be recovered.The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

###### Option 3 – Introduce on 1 July 2020

1 July 2020 is 12 months after the expected date for the completion of full scheme NDIS rollout in Victoria. It is also 12 months after the scheduled commencement date for the provisions of the LSBP Act, from which NDIS entities were originally excluded. 1 July 2020 is also five months after the expected NDIS price schedule change on 1 February 2020.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 1 | Introducing NDIS entities into the scheme on 1 July 2020 would bring equity to NDIS workers, but after a delay of 12 months, during which time all other community services workers would be accruing LSL. This option will therefore increase equity within, and between sectors, but in a fairly delayed manner. This will somewhat negate the equitable outcome as NDIS workers will be delayed by 12 months in being able to accrue, and therefore claim, LS. Unlike previous options, however, these benefits are unlikely to be jeopardised by financial stresses and uncertainty placed on NDIS businesses. However, this may be an over-cautious approach that risks unnecessarily delaying fair and equitable access to benefits for affected employees. |
| Financial impact on business | 0 | Introducing NDIS entities into the scheme on 1 July 2020 would provide these businesses with 12 months to prepare for the obligations imposed on them by the LSBP Act. In isolation, this is a reasonable amount of time, which should allow businesses to effectively plan and implement any required changes. This option will also allow businesses five months to adjust to NDIS changes. This is a reasonable amount of time. This option will therefore neither increase nor minimise unnecessary financial uncertainty, and the chance of businesses becoming financially unviable, when compared to the base case.  |
| Risk to the Authority and government | 0 | This option carries little risk of producing any unnecessary financial and administrative burden for the Authority. Businesses will have had a reasonable amount of time to prepare for the introduction of the LSBP Act, and to adjust to the NDIS price schedule change. This will reduce the risk of non-compliance due to the impacts of these factors. The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

#### Inclusion of Early Childhood Sector

As discussed in section 2.2.2, concerns over the implementation of the Federal Government’s new child care package, of potential overlap of the PLS scheme with informal PLS schemes operating in the ECE sector, and a lack of clarity over the merits and costs of the PLS scheme in the ECE sector, led to its initial exclusion from the coverage of the LSBP Act.

A summary of the feasible options for including the ECE sector in the LSBP Act, along with their relative scores compared to the base case, is as follows:

Table 11: Summary of inclusion of ECE sector impact analysis

|  |  |
| --- | --- |
| **Option** | **Scores** |
| Equity (50%) | Financial (25%) | Risk (25%) | **Weighted score** |
| Base case | 0 | 0 | 0 | **0** |
| Option 1 – Introduce on 1 July 2019 | 2 | -2 | -1 | **0.25** |
| Option 2 – Introduce on 1 January 2020 | 3 | -1 | -1 | **1.0** |
| Option 3 – Introduce on 1 July 2020 | 1 | 0 | 0 | **0.5** |

The rationale for these scores is summarised for each option in the following sub-sections.

Before turning to this analysis, however, it is pertinent to provide some contextual information on cost impacts of the scheme for ECE businesses, as well as the informal schemes operating in the sector. This information will help inform the analysis of each option.

###### Contextual Information on ECE Cost Impacts

In relation to the ECE sub-sector, ECE providers were consulted in preparing the cost impact analysis. The following table outlines their key characteristics.

Table 12: Cost impacts for the ECE sector

| **Organisation** | 1 | 2 |
| --- | --- | --- |
| Size | Large | Small  |
| Services | Provides early learning services across Australia. | Provides education and care to children from 6 weeks to school age |
| In-scope employees | 3,500 | 50 |
| Employee turnover rate | 14.5 per cent | 2 per cent |
| Impact over 3 years (% of salary costs) | 0.3 | 0.2 |

Cost impacts differed for the organisations, primarily due to the differing turnover rates, which meant that the larger organisation was less likely to begin setting aside leave from the commencement of an employee’s tenure. Smaller organisations generally assumed that employees would remain with the company for some time and therefore began setting aside funds for leave from the commencement of their employment.

Actuarial modelling determined that, for the larger organisation, the LSBP Act will increase overall costs by 0.3 per cent of salary costs over three years. The smaller organisations, on the other hand, will increase overall costs by 0.2 per cent of salary costs over three years.

Aggregated for the ECE sub-sector, these results indicate that the sub-sector would likely experience cost impacts in line with the rest of the CSS, at no more than 0.3 per cent of salary costs over three years. The following table provides an estimate of what this figure means for cost increases for the sub-sector as a whole.

Table 13: Estimated cost increases for the ECE sub-sector

|  |  |  |  |
| --- | --- | --- | --- |
| ECE average employee salary | Approximate number of employees | Percentage cost increase | **Approximate sub-sector cost increase per year ($m)[[60]](#footnote-60)** |
| $52,000[[61]](#footnote-61) | 50,646[[62]](#footnote-62) | 0.30% | **$7.9** |

###### Contextual Information on Informal ECE PLS Schemes

In addition to the cost information that is now available, it is the position of DHHS that the formal scheme constituted by the LSBP Act (and not the existing informal scheme) is the best way of guaranteeing equity of access to long service benefits for workers in the early childhood sector, in a way which attracts and retains talent for the sector. As noted in section 2.2.2 of this RIS, within the informal scheme, there is no legal obligation for former employers to honour accrued entitlements when requested to do so by the current employer. There is also no legal obligation for current employers to seek contributions from former employers when a worker seeks to access the long service leave they have accrued across the sector. The lack of legal guarantees means that an effectively retrospective equity cannot be guaranteed for workers in the sector. In addition, there is no clarity on whether all workers in the sector are gaining access to this scheme, and without a public face, the scheme is incapable of helping to attract and retain talent in the sector. For these reasons, it is considered that the informal scheme operating in the ECE sector does not justify the exclusion of this sector from the coverage of the LSBP Act. Further, in and of itself, the coming into operation of the PLS scheme does not override or displace the existing informal scheme. However, it is a complicating factor that participating employers need to consider and will inform their decisions on ongoing participation in that informal scheme.

Therefore, it is a matter for the sector as to whether they wish to distribute any existing funds set aside for the informal schemes to: the employees for whom they were reserved, or to employers, in order to help fund formal levies going forward.

The below impact analysis integrates this reasoning on cost impacts and informal schemes and considers the impact of these factors at the three dates proposed for the introduction of the ECE sector into the coverage of the LSBP Act.

###### Base case analysis

The base case is analysed to provide a point of comparison for the options which follow. For this residual problem, the base case is a ‘do nothing’ option, which would leave the ECE sub-sector excluded from the LSBP Act.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 0 | The base case will mean that employees of ECE entities will not accrue PLS, despite facing the primary problem of being unable to accrue sufficient LS to claim a LS benefit, due to no fault of their own. The base case will therefore fail to ensure equity of long service leave entitlements within the CSS, or between ECE workers and those in other sectors of the workforce. |
| Financial impact on business | 0 | As the base case places no obligation on ECE employers, it neither increases nor minimises unnecessary financial and administrative cost and uncertainty on businesses covered by the scheme. |
| Risk to the Authority and government | 0 | As the base case places no obligation on ECE employers, it neither increases nor minimises unnecessary financial and administrative burden on the Authority. The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

###### Option 1 – Introduce on 1 July 2019

1 July 2019 is the scheduled commencement date for the provisions of the LSBP Act, from which ECE businesses were originally excluded. It is also one year after the initial introduction of the Federal Government’s new childcare package.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 2 | Introducing ECE businesses into the scheme on 1 July 2019 would most readily bring equity to ECE workers, assuring that they are able to begin accruing leave when other community services workers do, when the scheme first commences operation. This option will most readily bring equity within, and between, sectors. Nevertheless, these benefits may be jeopardised by the administrative and financial stresses placed on ECE businesses (discussed below), resulting in a decrease in employment opportunities. This may ultimately be detrimental to the attraction and retention of talent. It is unclear if this impact on employment would be major or minor. |
| Financial impact on business | -2 | Introducing ECE businesses into the scheme on 1 July 2019 would provide these businesses with very little time to prepare for the obligations imposed on them. Having been previously excluded from the scheme, businesses will not have plans in place for its introduction. In addition, this option represents the shortest gap between the introduction of the Federal Government’s new childcare package and LSBP Act inclusion. This option would therefore place a significant level of unnecessary financial pressure on ECE businesses as they must rapidly design and implement changes to their payroll systems.  |
| Risk to the Authority and government | -1 | This option has a moderate risk of producing unnecessary financial and administrative burden for the Authority. The main risk would be that certain ECE businesses are unable to familiarise themselves and implement the required changes within the timeframe required to deliver their first quarterly return to the Authority. This could result in administrative time spent following up returns, as well as the potential for levies to never be recovered.The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

###### Option 2 – Introduce on 1 January 2020

1 January 2020 is six months after the scheduled commencement date for the provisions of the LSBP Act, from which ECE businesses were originally excluded. It is also 18 months after the initial introduction of the Federal Government’s new childcare package.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 3 | Introducing ECE businesses into the scheme on 1 January 2020 would bring equity to ECE workers, but after a delay of six months, during which time all other community services workers would be accruing LSL. This option will therefore increase equity within, and between sectors, but in a delayed manner. This will somewhat negate the equitable outcome as ECE workers will be delayed by six months in being able to accrue, and therefore claim, LS. |
| Financial impact on business | -1 | Introducing ECE businesses into the scheme on 1 January 2020 would provide these businesses with six months to prepare for the obligations imposed on them by the LSBP Act. In addition, this option represents a moderate gap between the introduction of the Federal Government’s new childcare package and LSBP Act inclusion. This is a reasonable amount of time, which should allow businesses to effectively plan and implement any required changes. This option will therefore only slightly increase unnecessary financial pressure on ECE businesses when compared to the base case.  |
| Risk to the Authority and government | -1 | This option carries little risk of producing any unnecessary financial and administrative burden for the Authority. ECE businesses will have had a reasonable amount of time to prepare for the introduction of the LSBP Act. This will reduce the risk of non-compliance.The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

###### Option 3 – Introduce on 1 July 2020

1 July 2020 is 12 months after the scheduled commencement date for the provisions of the LSBP Act, from which ECE businesses were originally excluded. It is also two years after the initial introduction of the Federal Government’s new childcare package.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 1 | Introducing ECE businesses into the scheme on 1 July 2020 would bring equity to ECE workers, but after a delay of 12 months, during which time all other community services workers would be accruing LSL. This option will therefore increase equity within, and between sectors, but in a fairly delayed manner. This will somewhat negate the equitable outcome as ECE workers will be delayed by 12 months in being able to accrue, and therefore claim, LS.With 1 January 2020 being the proposed date for the introduction of the NDIS entities into the coverage of the LSBP Act, this option would also create differing levels of equity between these two groups of excluded workers. As noted with respect to the NDIS sub-sector, this date may also represent an over-cautious approach that risks unnecessarily delaying fair and equitable access to benefits for affected employees. |
| Financial impact on business | 0 | Introducing ECE businesses into the scheme on 1 July 2020 would provide these businesses with 12 months to prepare for the obligations imposed on them by the LSBP Act. In addition, this option represents the largest gap between the introduction of the Federal Government’s new childcare package and LSBP Act inclusion. In isolation, this is a generous amount of time, which will allow businesses to effectively plan and implement any required changes.  |
| Risk to the Authority and government | 0 | This option should not produce any unnecessary financial and administrative burden for the Authority. Businesses will have had a generous amount of time to prepare for the introduction of the LSBP Act. This will reduce the risk of non-compliance.The options discussed for this residual problem are unlikely to have an impact on government and this therefore has not been considered in scoring. |

### Double Dipping

As previously discussed in sections 2.2.3, 3.3 and 4.3, options for addressing double dipping are focused on defining how employees who accrue both PLS scheme and Fair Work benefits are prevented from claiming two LS benefits for the same period of service.

Section 2.2.3 in particular raised a number of scenarios which represented opportunities for double dipping, and design challenges for any Regulations proposed to prevent double dipping. The implication of each option on the outcome of these scenarios is explained at the beginning of the analysis of each option, and they are therefore reproduced here for convenience.

* **Scenario 1:** An employee becomes entitled to long service leave under a Fair Work instrument before they become entitled to a long service benefit under the LSBP Act, but there is overlap between the two benefit accrual periods.
* **Scenario 2:** An employee becomes entitled to payment under the PLS scheme but has already taken all or part of a Fair Work benefit.
* **Scenario 3:** An employee becomes entitled to a benefit under the PLS scheme and another benefit, the second benefit being of higher value.

A summary of the feasible options for preventing double dipping, along with their relative scores compared to the base case, is as follows:

Table 14: Summary of double dipping impact analysis

| **Option** | **Scores** |
| --- | --- |
| Equity (50%) | Financial (25%) | Risk (25%) | **Weighted score** |
| Base case | 0 | 0 | 0 | **0** |
| Option 1 – Employer pays levies until the employee *claims* a Fair Work benefit | 2 | 2 | 0 | **1.5** |
| Option 2 – Employer pays levies until the employee becomes *entitled to claim* a Fair Work benefit | 2 | 1 | -1 | **1.0** |
| Option 3 – Employer does not pay levies at all for employees who *accrue* service towards a Fair Work benefit | 0 | 3 | 1 | **1.0** |

The rationale for these scores is summarised for each option in the following sub-sections.

Base case analysis

The base case is analysed to provide a point of comparison for the options which follow. For this residual problem, the base case is a ‘do nothing’ option, which would not prevent double dipping in any way. The base case would result in the following outcomes in each of the scenarios raised (reproduced from section 2.2.3):

* **Problem in scenario 1:** The employer has paid levies to the Authority for a benefit accrual period which overlaps with a Fair Work benefit. The employer will end up being required to pay two benefits for the one period of overlap – one at the time of Fair Work claiming, and one later when the PLS benefit accrues.
* **Problem in scenario 2:** The employer has paid levies to the Authority for a benefit accrual period which overlaps with a Fair Work benefit. The employer will end up being required to pay two benefits for the one period of overlap – one already paid at the time of Fair Work claiming, and one now for the PLS benefit.
* **Problem in scenario 3:** The employee can claim their PLS benefit and then claim their Fair Work benefit. They can also do this in the reverse order (due to the dual operation of sections 51(xx) and 109 of the *Constitution,* the employer cannot deny a claim for a federal benefit based on the earlier receipt of state benefit).

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 0 | The base case will mean that employees with overlapping accrual towards LS benefits are able to claim each of these when they arise. These employees will therefore become entitled to two LS benefits, advantaging them in comparison to other workers. The base case will therefore fail to ensure equity of long service leave entitlements within the CSS, or between CSS workers and those in other sectors of the workforce. |
| Financial impact on business | 0 | The base case will mean that employers are still required to provide for two separate LS benefits for employees with overlapping entitlements. The base case neither increases nor minimises unnecessary financial costs on businesses.  |
| Risk to the Authority and government | 0 | The base case neither increases nor minimises unnecessary financial burden on the Authority. The base case will require the Authority to pay PLS benefits to employees who are already entitled to other benefits. The base case means that the Authority can pay PLS benefits to any registered worker who accrues the required service, without considering overlapping benefits. It neither increases nor minimises administrative burden. The government does not stand to bear any unnecessary financial or administrative cost and uncertainty under any of the double dipping options and this therefore has not been considered as a determinant of scoring for these options. |

Option 1 – Employer pays levies until the employee *claims* a Fair Work benefit

Option 1 would result in the following outcomes in each of the scenarios raised above:

* **Scenario 1:** The employer has paid levies to the Authority for a benefit accrual period which overlaps with a Fair Work benefit. If the employee claims the benefit under their Fair Work Instrument, the employer is able to be reimbursed levies paid for any period of overlap between the period to which the *claimed* Fair Work benefit relates and for which PLS levies have been paid, provided these levies have not already been paid to the employee by the Authority.
* **Scenario 2:** The Authority is not permitted to pay the employee for any period which overlaps with their Fair Work claim. The employer is able to be reimbursed levies paid for any period of overlap between the period to which the *claimed* Fair Work benefit relates and for which PLS levies have been paid, provided these levies have not already been paid to the employee by the Authority.
* **Scenario 3:** The employee can claim whichever benefit they choose. If they claim the Fair Work benefit, then the Authority is not permitted to pay their PLS benefit, and the employer is able to be reimbursed levies paid for any period of overlap between the period to which the *claimed* Fair Work benefit relates and for which PLS levies have been paid, provided these levies have not already been paid to the employee by the Authority. There is however a risk that employees may claim a Fair Work benefit after a PLS benefit has been paid.

| **Criteria** | **Score** | **Description**  |
| --- | --- | --- |
| Equity | 2 | This option will only allow double dipping in scenarios which take a long time to eventuate. It will prevent double dipping in all other cases. This option will therefore ensure a moderate level of equity of long service leave entitlements within the CSS, and between CSS workers and those in other sectors of the workforce. |
| Financial impact on business | 2 | This option should require employers to provide for two separate LS benefits for employees with overlapping entitlements. Accounting advice, however, suggests employers can write off most of their Fair Work entitlement provisioning by creating an asset to the value of their PLS accrual. This is possible because if the employee claims their Fair Work benefit, the employer is entitled to be reimbursed the funds for their PLS accrual, which can then be used to cover most of the cost of the Fair Work benefit. This option would therefore reduce unnecessary financial cost on businesses. It would, however, slightly increase the amount of administrative work required to make these balance sheet adjustments and monitor employees who have claimed Fair Work benefits to report to the Authority.  |
| Risk to the Authority and government | 0 | This option will only allow double dipping in scenarios which take a long time to eventuate. It will prevent double dipping in all other cases. It therefore mostly reduces unnecessary financial burden on the Authority. The option will not prevent unnecessary administrative burden, however, as the Authority will be required to receive and record information on which employees have claimed Fair Work benefits. The government does not stand to bear any unnecessary financial or administrative cost and uncertainty under any of the double dipping options and this therefore has not been considered as a determinant of scoring for these options. |

Option 2 – Employer pays levies until the employee becomes *entitled to claim* a Fair Work benefit

Option 2 would result in the following outcomes in each of the scenarios raised above:

* **Scenario 1:** The employer has paid levies to the Authority for a benefit accrual period which overlaps with a Fair Work benefit. Once the employee *becomes entitled* to the benefit under their Fair Work instrument, the employer is able to be reimbursed levies paid for any period of overlap between the period to which the *claimed* Fair Work benefit relates and for which PLS levies have been paid, provided these levies have not already been paid to the employee by the Authority.
* **Scenario 2:** The employer will have paid levies into the scheme up until the point that the worker was *entitled to claim* their Fair Work benefit; they will not have paid during any gap between when the employee became entitled to their Fair Work benefit and when they claimed it. When the employee claimed that Fair Work benefit, the employer would have been able to be reimbursed levies paid for the period while the employee was still accruing their Fair Work benefit. Once the employee returned from their Fair Work leave, their PLS accrual will have started from zero years again. As such, there will be no issue for employers or employees.
* **Scenario 3:** The employee can claim whichever benefit they choose. If they claim the Fair Work benefit, then the Authority is not permitted to pay their PLS benefit, and the employer is able to be reimbursed levies paid for any period of overlap between the period to which the *claimed* Fair Work benefit relates and for which PLS levies have been paid, provided these levies have not already been paid to the employee by the Authority. There is, however, nothing stopping the employee from claiming the PLS benefit first, and then returning to work and claiming their Fair Work benefit (due to the dual operation of sections 51(xx) and 109 of the *Constitution* the employer cannot deny a claim for a federal benefit based on the earlier receipt of state benefit).

| Criteria | Score | Description  |
| --- | --- | --- |
| Equity | 2 | This option will only allow double dipping in scenarios which take a long time to eventuate. It will prevent double dipping in all other cases. This option will therefore ensure a moderate level of equity of long service leave entitlements within the CSS, and between CSS workers and those in other sectors of the workforce. |
| Financial impact on business | 1 | This option should require employers to provide for two separate LS benefits for employees with overlapping entitlements. Accounting advice, however, suggests that employers can write off most of their Fair Work entitlement provisioning by creating an asset to the value of their PLS accrual. This is possible because if the employee claims their Fair Work benefit, the employer is entitled to be reimbursed the funds for their PLS accrual, which can then be used to cover most of the cost of the Fair Work benefit. Nevertheless, under this option, there is the potential for there to be a shortfall in levies if an employee becomes entitled to a PLS benefit before a Fair Work benefit, and then later becomes entitled to a Fair Work benefit which they do not claim until some years later. For example if an employee gains a PLS entitlement in year 7 but does not claim it, the employer would pay levies up until year 10 when that employee became entitled to a Fair Work benefit. If the employee continued not to claim either of these benefits, and then wished to claim their PLS benefit in year 13, there would be a shortfall of three years of PLS funds, from years 10 to 13. As a consequence, this option would likely require an increase in the overall levy rate, in order to create a ‘buffer’ of funds for situations like this. This option would therefore not reduce unnecessary financial costs on businesses.In addition, Fair Work benefits with portability of entitlements would create administrative issues for businesses under this option. Businesses would need to be aware of how many years of service an employee had accrued under their portable Fair Work benefit, in order to cease paying levies to the Authority when that employee became entitled to claim their Fair Work benefit. It would therefore increase the amount of administrative work required for businesses, both by making these balance sheet adjustments and monitoring employee’s accrual under portable Fair Work benefits.  |
| Risk to the Authority and government | -1 | This option will only allow double dipping in scenarios which take a long time to eventuate. It will prevent double dipping in all other cases. As discussed above, it would also require complex tracking of employees with portable Fair Work entitlements, of which the Authority would bear some of the administrative burden. It therefore mostly reduces unnecessary financial burden on the Authority, but increases unnecessary administrative burden. The government does not stand to bear any unnecessary financial or administrative cost and uncertainty under any of the double dipping options and this therefore has not been considered as a determinant of scoring for these options. |

Option 3 – Employer does not pay levies at all for employees who *accrue* service towards a Fair Work benefit

Option 3 would result in the following outcomes in each of the scenarios raised above:

* **Scenario 1:** The employer will not have been paying levies or recognising service for the employee. This situation is impossible.
* **Scenario 2:** The employee will only have been able to take the Fair Work benefit while they were not accruing service under the LSBP Act. To have accrued a PLS benefit, they must no longer be employed under a Fair Work Instrument. There will be no issue with them now taking the PLS benefit.
* **Scenario 3:** This situation is impossible. Employers will not have been accruing two benefits and thus the employee could not have accrued both benefits.

| Criteria | Score | Description  |
| --- | --- | --- |
| Equity | 0 | This option will not allow double dipping in any of the scenarios.It will however, run the risk of precluding employees from ever accruing a LS benefit if they leave the sector or change employers before accruing the required service to take their Fair Work benefit. This defeats the primary objective of the Act. This is especially so in the case of an employee who stays in the sector for the required seven years but spent (for example) five of those working under a Fair Work instrument. This option will therefore not ensure equity of long service leave entitlements within the CSS, and between CSS workers and those in other sectors of the workforce. |
| Financial impact on business | 3 | This option will not require any duplicate provisioning of LS entitlements, nor will it require any of the associated administrative work for employers. This option will therefore minimise unnecessary financial and administrative cost and uncertainty on businesses covered by the scheme. |
| Risk to the Authority and government | 1 | This option will not expose the Authority to any risk of duplicate payments as it prevents all cases of double dipping. Depending on the construction of this option, however, the Authority may incur risk where employees leave a job after five years where they were covered by a Fair Work instrument, and then go on to another job not covered by that instrument for the remainder of the seven year PLS service period, and expect to be paid their PLS benefit. The option therefore somewhat reduces the risk of unnecessary financial and administrative burden on the Authority.The government does not stand to bear any unnecessary financial or administrative cost and uncertainty under any of the double dipping options and this therefore has not been considered as a determinant of scoring for these options. |

### Authority Oversight of Scheme

As discussed in section 4.4, options for Authority oversight of the scheme should ensure that the Authority is informed when employees leave an employer. Options for providing authority oversight of the scheme, along with their relative scores compared to the base case, is as follows:

Table 15: Summary of Authority oversight of the scheme impact analysis

|  |  |
| --- | --- |
| Option | Scores |
| Equity (50%) | Financial (25%) | Risk (25%) | Weighted score |
| Base case | 0 | 0 | 0 | **0** |
| Option 1 – Require employers to inform the Authority of the date when employees leave | 0 | 3 | 3 | **1.5** |

The rationale for these scores is summarised for each option in the following sub-sections.

Base case analysis

The base case is analysed to provide a point of comparison for the options which follow. For this residual problem, the base case is a ‘do nothing’ option, which would leave the information required on quarterly returns as it currently stands (as detailed in section 2.2.4). This would mean that the Authority is required to enquire individually to businesses when registered workers do not have recurring quarterly returns.

| Criteria | Score | Description  |
| --- | --- | --- |
| Equity | 0 | This residual problem has no impact on equity. |
| Financial impact on business | 0 | The base case will mean that businesses are required to spend time following up on employee returns when the Authority requests this information. This will neither increase nor minimise unnecessary financial and administrative costs for businesses.  |
| Risk to the Authority and government | 0 | The base case leaves the Authority in a position where they are unable to have clear oversight of whether an employee has left an organisation when there is no recurring quarterly return provided for that employee. This will mean that the Authority is required to enquire with individual employers each time an employee ceases to have returns paid for them. The base case neither increases nor minimises unnecessary financial and administrative burden on the PLSL Authority.This residual problem has no impact on government. |

Option 1 – Require employers to inform the Authority of the date when employees leave

This option will require businesses to inform the Authority of the date when employees leave the business, if any, in their quarterly returns.

| Criteria | Score | Description  |
| --- | --- | --- |
| Equity | 0 | This residual problem has no impact on equity. |
| Financial impact on business | 3 | Under this option, businesses will still be required to take action to inform the Authority of employees’ movements, however this will be done in the course of the regular reporting for quarterly returns, and should add little time to this process. In comparison, the base case means that businesses will need to return to a previously filed document, determine why the employee did not have a return submitted, and then get back in contact with the Authority. Compared to the base case, this option will therefore minimise the financial and administrative costs on businesses.  |
| Risk to the Authority and government | 3 | Under this option, businesses will provide the Authority with information on the movement of staff to the Authority, removing any need for them to follow up on employees who do not have recurring quarterly returns.This option will therefore reduce the risk of unnecessary financial and administrative burden for the Authority. This residual problem has no impact on government. |

### Disclosure of information to other entities and authorities

As discussed in section 3.2.5, options to increase the coverage of the allowable disclosures of information from the Authority should allow the Authority to gain the required taxation information to accurately deduct tax from PLS benefits and ensure the Authority is able to assist other Victorian Government agencies in their regulatory processes. Options to increase the coverage of the allowable disclosures of information from the Authority, along with their relative scores compared to the base case, is as follows:

Table 16: Summary of allowable disclosures of information from the Authority impact analysis

|  |  |
| --- | --- |
| Option | Scores |
| Equity (50%) | Financial (25%) | Risk (25%) | Weighted score |
| Base case | 0 | 0 | 0 | **0** |
| Option 1 – Allow the Authority to share information with the ATO and the Labour hire Licensing Authority | 2 | 3 | 3 | **2.5** |

The rationale for these scores is summarised for each option in the following sub-sections.

Base case analysis

The base case is analysed to provide a point of comparison for the options which follow. For this residual problem, the base case is a ‘do nothing’ option, which would not add any additional allowable disclosures of information from the Authority (as detailed in section 2.2.5).

| Criteria | Score | Description  |
| --- | --- | --- |
| Equity | 0 | The base case has no impact on helping to ensure equity of long service leave entitlements within the covered sectors, and between the covered workers and those in other sectors of the workforce.  |
| Financial impact on business | 0 | The base case means that the Authority will have difficulty in determining the tax that should be applied to the payment of benefits. The likely workaround for this problem would be for the Authority to request this information from businesses. This would mean that businesses would be required to provide taxation information to the Authority along with their quarterly returns. While possible (and potentially a minimal inconvenience once automated) this is unnecessary. The base case therefore fails to minimise unnecessary financial and administrative costs for businesses.  |
| Risk to the Authority and government | 0 | The base case means that the Authority will have difficulty in determining the tax that should be applied to the payment of benefits. The likely workaround for this problem would be for the Authority to request this information from businesses. While workable, this would be more time consuming than a formal and ongoing arrangement with the ATO which is much better equipped to provide this information. Without this arrangement, there is a risk that the Authority will pay incorrect benefits, costing the scheme levies which should have remained in the fund. The base case does not minimise unnecessary financial and administrative burden on the Authority.This residual problem has no impact on government. |

Option 1 – Allow the Authority to share information with the ATO and the Labour hire Licensing Authority.

This option will allow the Authority to share information with the ATO and the Labour hire Licensing Authority.

| Criteria | Score | Description  |
| --- | --- | --- |
| Equity | 2 | By providing an effective investigation mechanism to the Labour Hire Licensing Authority to ensure compliance with workplace laws, this option should incentivise providers to correctly register and pay levies for covered employees. This will help ensure equity of long service leave entitlements within the covered sectors, and between the covered workers and those in other sectors of the workforce.  |
| Financial impact on business | 3 | Under this option, businesses will not need to provide taxation information directly to the Authority. Compared to the base case, this option will therefore minimise the financial and administrative costs on businesses.  |
| Risk to the Authority and government | 3 | Under this option, the Authority will have clarity on the tax required to be deducted from benefits. This will reduce the incidence of incorrect payments. This option will therefore reduce the risk of unnecessary financial and administrative burden for the Authority. This residual problem has no impact on government. |

# PREFERRED OPTION

This section summarises the preferred options for solving the residual problems identified in section 2 of this RIS.

## Summary of the Proposed Regulations

The analysis conducted in section 2 of this RIS demonstrates the merit in regulating aspects of the LSBP Act that cover the community services sector. Sections 3, 4 and 5 of this RIS have established means for the appraisal of options for this purpose, and the following Regulations are now proposed.

### Definition of Employee and Employer

It is proposed that a definition of employee and employer will be developed that is tailored to the Victorian PLS scheme. This definition is located in Regulations 8 and 9 in the exposure Regulations.

As regards **employees**,this will:

* Exclude the following federal awards, without which there exists the risk of unintended employees being granted access to PLS:
* The Ambulance and Patient Transport Industry Award 2010;
* The Amusement, Events and Recreation Award 2010;
* The Fitness Industry Award 2010;
* The Health Professionals and Support Services Award 2010;
* The Medical Practitioners Award 2010;
* The Nurses Award 2010; and
* The Pharmacy Industry Award 2010.
* Exclude executive and management roles where the role is wholly administrative or its predominant activity is not the personal delivery of services or activities that are community service work. Without this exclusion, there is a chance of unintended employees being granted access to PLS.
* Exclude the following classes of awards, without which there exists the risk of the LSBP Act being constitutionally invalid:
* A modern enterprise award (within the meaning of the *Fair Work Act 2009* of the Commonwealth);
* An enterprise instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth);
* A State reference public sector modern award (within the meaning of the *Fair Work Act 2009* of the Commonwealth); and
* A State reference public sector transitional award (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth).

As regards **employers**,this will:

* Exclude aged care services operating under section 3 of the Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015; and
* Exclude specified bush nursing hospitals and bush nursing centres.

Compared to the base case, both of the employer exclusions reduce the risk that unintended employees will be granted access to PLS, unnecessarily costing employers who adjust payroll systems and pay levies into the scheme for out of scope employees.

### Scope of Community Services Sector

It is proposed that the scheme will apply to **NDIS entities from 1 January 2020**. This will readily provide equity to employees, while also allowing NDIS businesses reasonable time to adjust to operating under the NDIS, as well as time to prepare for the obligations imposed by the LSBP Act.

It is proposed that the scheme will apply to the **early childhood sector from 1 January 2020**. This will readily provide equity to employees, while also balancing the cost implications of the scheme for early childhood businesses (which have been discussed in section 5 of this RIS). This date will allow the sub-sector sufficient time to prepare for the obligations imposed by the LSBP Act, and to implement the Federal Government’s July 2018 childcare package.

While the impact of different introduction dates on business’ ability to adapt to the NDIS/ECE changes is unquantifiable, the Government considers this to be a prudent timeframe for each sector based on the analysis in section 5.2.2 above.

These changes are found in subsections (2) and (3) of Regulation 7 in the exposure Regulations.

Without the Regulations, these sub-sectors would not be included in the coverage of the LSBP Act, and those working for NDIS and ECE employers would continue to face the primary problem without a remedy.

| **Questions for stakeholders** |
| --- |
| **S.8** Does the preferred option best balance the objective of achieving equity for employees against the cost impacts of the scheme? |

### Double Dipping

It is proposed that, to prevent double dipping, employers will be required to pay levies for all employees, **until an employee claims a Fair Work benefit**. This rule is found in Regulation 11 in the exposure Regulations.

This means that employers are required to pay levies into the scheme for employees who are accruing both PLS and Fair Work based long service.

The Authority is not required to pay PLS benefits to employees who have claimed a Fair Work benefit, where the claim for PLS benefits overlaps with the period of service that earned that employee their Fair Work instrument.

Employers may be reimbursed levies paid for any period of overlap between the period to which the claimed Fair Work benefit relates and for which PLS levies have been paid, provided these levies have not already been paid to the employee by the Authority.

Under this option, employees with overlapping benefits would be able to claim a PLS benefit if they became entitled to a PLS benefit at a time where they had not already claimed a Fair Work benefit, or if they left the industry without claiming their Fair Work benefit and make no subsequent claim on their Fair Work benefit prior to, or simultaneously with, making a claim for a PLS benefit.

To ensure the Authority is able to effectively monitor and implement this Regulation, changes have also been proposed to the information required in employer’s quarterly returns. This is found in subsection (a) of Regulation 5.

As can be seen from the impact analysis undertaken in section 5.2.3 each of the options for preventing double dipping are preferable to the base case, however they each have their own issues. The Regulation proposed here leaves open the potential that an employee claims their PLS benefit, and some time after this makes a claim for their Fair Work benefit, which the employer is unable to refuse. This is due to the dual operation of sections 51(xx) and 109 of the Australian *Constitution* which mean that State laws cannot purport to alter rights under Federal laws where the matter is reserved for the Commonwealth (as workplace relations law is). The full impact of the constitutional limitation could only be resolved through legislative amendments to the *Fair Work Act 2009* by the Commonwealth. Nevertheless, as discussed previously, there is a requirement to make Regulations to address double dipping, and this is the best option when compared to the base case.

| **Questions for stakeholders** |
| --- |
| **S.9** Do employers anticipate any issues with administering the preferred option for double dipping? |

### Authority Oversight of Scheme

It is proposed that the Regulations require employers **to inform the Authority of the date when employees leave** (if any) during the quarter so that the Authority has effective oversight of the scheme. This is reflected in Regulation 5(b).

### Disclosure of information to other entities and authorities

It is proposed that the Regulations **allow the Authority to share information with the ATO and the Labour hire Licensing Authority** to allow the Authority to gain the required taxation information and assist other Victorian Government agencies in their regulatory processes. This is reflected in Regulation 6.

## Impact on Small Business

The purpose of this section is to analyse the proposed Regulations and assess whether any elements of the proposed Regulations impose a disproportionate burden on small businesses operating in the community services sector.

There have previously been concerns raised by stakeholders in the sector and across different industries of the impact of a portable long service leave scheme on small businesses and organisations.

The 2016 Inquiry considered the following key impacts: [[63]](#footnote-63)

* **The capacity of small organisations to absorb costs** as a result of smaller profit margins. As a result, smaller organisations managed their cash flow in a different way, and would not set aside long service leave entitlements as they accrue, rather they would be set aside upon vesting.
* **The capacity of small organisations to cover the absence of employees** for when they take long service leave. This is because employees under a portable scheme may have a shorter period of time from commencement to the period when the leave is taken.
* **The capacity of small organisations to manage the administrative burden** as they do not employ administrative staff who can undertake the additional administrative burden created by a portable long service leave scheme.

Based on available evidence, the Parliamentary Inquiry found that the ‘impacts on (small businesses and organisations) would not be so great and that portable long service leave could benefit some small businesses (and organisations)’. There is no evidence to suggest that these findings have changed over the past three years or would not equally apply to the sub-sectors discussed here.

This sub-section considers the extent of small organisations in the community services sector (including a specific focus on the NDIS and ECE sub-sectors), and the number of employees at small organisations, to assess the expected impacts of a scheme on this segment of the sector.

### Structure of the Community Services Sector

The definition used for small organisations in the sector is based on the ABS definition that a small business has less than 20 employees.[[64]](#footnote-64)

Table 17 below provides an overview of the proportion of small organisations in the sector using this definition.

Table 17: Overview of the proportion of small organisations in the community services sector, and the number of employees

| Types of organisations | Number of organisations (% of all organisations) | Number of employees (% of all organisations or employees) |
| --- | --- | --- |
| Full-time | Part-time | Casual | Total |
| All organisations | 3,617 | 42,664 | 36,906 | 23,253 | 102,823 |
| Small organisations (less than 20 employees) | 3,086(85.3%) | 2,231(5.2%) | 3,263(8.8%) | 1,823(7.8%) | 7,317(7.1%) |
| Medium and large organisations (20 or more employees) | 531(14.7%) | 40,433(94.8%) | 33,463(91.2%) | 21,430(92.2%) | 95,506(92.9%) |

Source: Australian Charities and Not-for-profits Commission, ‘2016 Annual information statement data’ 2016.

Analysis of the data indicates that the majority of organisations in the sector (85 per cent) are defined as small organisations. However, the majority of employees (93 per cent) are employed at medium or large organisations. This initial analysis suggests that small businesses are likely to make up the majority of employers affected by the scheme.

The number of small businesses in the ECE sector in Victoria is 625, or 27.6 per cent of all ECE businesses in the state.[[65]](#footnote-65)

The ACNC annual reporting data from 2016 suggests that the proportion of total NDIS charities which can be classified as small is approximately 36 per cent.[[66]](#footnote-66) This is based on reported numbers of Victorian charities servicing people with disabilities who also provided support/services funded by NDIS, and Victorian charities servicing people with disabilities who also intend to provide support funded by NDIS. This is reflected in the table below.

Table 18: ACNC data on NDIS funded charities

| Group | Number of businesses  | Number of small businesses (less than 20 employees across casual/part time/full time) | Percentage of businesses that are small businesses  |
| --- | --- | --- | --- |
| Victorian charities servicing people with disabilities who also provided support/services funded by NDIS  | 64 | 23 | 35.9% |
| Victorian charities servicing people with disabilities who also intend to provide support funded by NDIS  | 184 | 67 | 36.4% |

Source: Australian Charities and Not-for-profits Commission, ‘2016 Annual information statement data’ 2016.

The high proportions of small businesses across the CSS demonstrate the importance of considering the impact of the proposed Regulations on small businesses specifically.

### Impact on small businesses

#### Definition of Employee and Employer

The changes being made to the definitions of employee and employer exclude businesses and workers from the coverage of the scheme. They therefore reduce the overall number of employees that a small business will have to provision for under the scheme. As these exclusions are not highly technical, for businesses with a payroll officer, the new definitions should not present an implementation burden that is above and beyond the preparation required generally for the Act. The setup is also a one off exercise, while the benefits of the exclusions will remain while the Regulations are in force. For these reasons, this Regulation should have an overall net positive impact on small businesses.

#### Scope of Community Services Sector

Introducing NDIS and ECE businesses into the coverage of the LSBP Act will bring the whole-of-scheme impacts to these sectors. As was indicated earlier, these impacts may be a benefit for some small businesses. A small number of case studies regarding cost impacts (discussed above in section 5.2.2) indicate that small businesses may incur lower costs as a percentage of total salary expenses from the scheme, when compared to larger businesses. It is suggested that this is due to smaller organisations’ lower staff turnover rates. As a result of low staff turnover, small businesses generally assume that employees will remain with the company for some time and begin setting aside funds for leave from the commencement of their employment. Considering the cost impact information detailed in section 5.2.2, the below table indicates the likely cost of the scheme on small businesses in the NDIS and ECE sub-sectors.

Table 19: Estimated cost impacts of LSBP Act on NDIS and ECE businesses

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sub-sector | Average employee salary | Assumed number of employees in each business | Estimated percentage cost increase | Approximate cost increase per year |
| NDIS | $56,000[[67]](#footnote-67) | 15 | 0.30%[[68]](#footnote-68) | $2,520 |
| ECE | $52,000[[69]](#footnote-69) | 15 | 0.30%[[70]](#footnote-70) | $2,340 |

In addition to the direct cost impact from the levies of the scheme, it can be expected that small businesses will require administrative time (and associated cost) to implement the scheme internally, and to comply with it in an ongoing manner. While these costs are not expected to be insignificant, they are not expected to be a greater burden to small businesses in these sub-sectors than larger ones.

#### Double Dipping

The Regulations to prevent double dipping require businesses to be aware of, and report to, the Authority when employees claim a Fair Work benefit. It is expected that this will result in a minimal amount of additional administrative work. Businesses will now be required to ensure this information is filed for the purposes of quarterly returns as well as their own payroll purposes. This is not expected to disproportionately impact small businesses. Any administrative burden should be seen to be offset by the reduced likelihood of a double-dipping scenario and its attendant costs.

### Statement of Compliance with National Competition Policy

The National Competition Policy agreements set out specific requirements arising out of new legislation adopted by jurisdictions which are party to those agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle which must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

‘The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

1. *The benefits of the restriction to the community as a whole outweigh the costs; and*
2. *The objectives of the regulation can only be achieved by restricting competition.’*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

*‘Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).’*

Therefore, all RISs must provide evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations. The Organisation for Economic Co-operation and Development (OECD) Competition Assessment Toolkit provides a checklist for identifying potentially significant negative impacts on competition in the RIS context. This is based on the following four questions:

* Does the proposed regulation limit the number or range of suppliers?
* Does the proposed regulation limit the ability of suppliers to compete?
* Does the proposed regulation limit to the incentives for suppliers to compete?
* Does the proposed regulation limit the choices and information available to consumers?

According to the OECD, if all four of these questions can be answered in the negative, it is unlikely that the proposed Regulations will have any significant negative impact on competition and further investigation of competition impacts is not likely to be warranted.

#### Analysis of impact on competition

The proposed Regulations do not limit the number or range of suppliers, nor do they limit incentives to compete, or the choices and information available to consumers.

The Regulations may limit the ability of certain suppliers to compete. As noted in section 5.2.2, the costs of the scheme, particularly in combination with Federal legislative changes, may have the potential to jeopardise some NDIS and ECE businesses’ financial viability. This risk was recognised when those sub-sectors were originally excluded from the operation of the LSBP Act. It has also been considered in the development of these exposure Regulations. Both NDIS and ECE businesses have been granted six months to calibrate their operating models with Federal legislative pressures, and to prepare for the implementation of the LSBP Act. While it is difficult to say exactly what the financial pressures will be on organisations at 1 January 2020 (when they are introduced to the scheme), it is considered that these costs have been minimised insofar as is possible and that the benefits to employees likely outweigh any costs.

# IMPLEMENTATION PLAN

Following the public comment period, DHHS and IRV will consider all submissions and comments made by stakeholders on the proposed Regulations. Following this review, any necessary changes to the proposed Regulations will be made. Once the final Regulations have been prepared, the following implementation plan will commence.

## Industry Information

The primary impact of the proposed Regulations is to alter the composition of those who are covered by the PLS scheme. This alteration necessarily carries the risk that affected businesses will not be aware of their new legal obligations and fail to meet them, costing both the Authority and businesses time and money.

The key requirement for the successful introduction of the proposed Regulations will therefore be to provide quality information to the affected employers as to their new obligations. A comprehensive communication campaign has been developed and will shortly be put to the Authority’s Board for review and approval. The campaign should commence some time in the second half of May. The campaign will include newspaper advertising and the release of on-line tutorials. Information for unions and industry groups to send directly to their members is being prepared.

Specifically the information campaign will cover the following:

* The dates on which employers become covered, and take on obligations under the LSBP Act;
* The nature of those obligations (which employees are covered, what the levy rate is, punishments for non-compliance);
* How employers can meet their obligations, particularly in relation to providing quarterly returns; and
* Where they can go for any questions regarding their obligations, or the scheme generally.

Once the Regulations are finalised, the information should also be provided to the following employers:

* Employers who are likely to have employees excluded due to the new employee definition;
* Employers who are now in scope: NDIS and ECE businesses; and
* Employers who are now out of scope: Bush nursing centres and bush hospitals, aged care services operating within hospitals.

*Table 20: Overview of key actions to support the implementation of the Regulations*

|  |  |  |  |
| --- | --- | --- | --- |
| Action | Description | Responsibility | Expected timeframe |
| General sector awareness and education | As described above, launch a comprehensive information campaign – noting this will primarily cover the sectors in the Act.  | IRV and the Authority | Expected to commence in May and will be ongoing |
| Consult on the Regulations | Undertake consultation on the Regulations with key stakeholders. | IRV and DHHS  | By early June |
| Finalise Regulation | Respond to stakeholder feedback and make any necessary changes to the Regulations. | IRV and DHHS | By June |
| Transition preparation – general awareness | Drawing on the information developed for the awareness campaign, further raise the awareness of the scheme to NDIS and ECE sectors. This could include continuing to work with the implementation working group, direct consultation with peak bodies and/or individual providers as required.  | The Authority | July 2019 to January 2020 |
| Transition preparation – actuarial review | The levy rates may need to be reviewed prior to the introduction of the NDIS and ECE sectors. Based on actuarial advice and the broader experience of the Authority at the time of transition, the Authority may revise the levy rates (if required). | The Authority | By January 2020 |

## Monitoring

Industrial Relations Victoria, along with the Authority and DHHS, will be responsible for monitoring the implementation of the proposed Regulations. These bodies will be assisted by the Working Party that has been established by DHHS and IRV which includes unions, employer groups, and community organisations.

## Risk assessment

There are risks associated with implementing the regulations. These risks relate to both implementation risks and ongoing risks associated with the schemes operation.

The Authority is currently finalising a risk management framework which will provide an overarching approach to manage these (and other) risks. Risk management will be the responsibility of the Authority, which will be overseen by the Board. Prior to 1 July, the implementation team is responsible for risk management tasks and is overseen by a project control board.

Like most risk management frameworks, each risk will be assessed against its likelihood and consequence (summarised in the table below). Such an approach enables each identified risk to be assigned a risk rating of either ‘low’, ‘medium’ or ‘high’ on the basis of the consequence of the risk, and the likelihood of the risk occurring.

Table 21: Risk rating matrix

|  |  |  |
| --- | --- | --- |
|  |  | Consequences |
| Minor | Moderate | Major |
| **Likelihood** | **Likely** | Medium | High | High |
| **Possible** | Low | Medium | High |
| **Unlikely** | Low | Low | Medium |

As part of the risk assessment for implementation of the regulations, a number of specific risks have been identified, and mitigation strategies proposed. These are found in Table 22 below.

Table 22: Potential risks and mitigation strategies

|  |  |  |  |
| --- | --- | --- | --- |
| Risk | Description | Risk rating | Mitigation strategy |
| Some CSS workers become unintentionally out-of-scope | As discussed in option 2 of section 5.2.1, there is the potential that some CSS workers may be wrongly excluded from the coverage of the scheme.  | **Overall risk rating: Medium****Consequences:** If this occurs, workers may be denied a long service benefit. Considering the likely small number of workers in this category this risk is **moderate.** **Likelihood:** This risk is **possible.**  | The Authority will work closely with the implementation working group and be responsive to wider stakeholder concerns regarding this matter. If the risk *is* identified through these channels, then the Regulations should be modified as required.  |
| Double dipping is not successfully addressed | There is a risk under the Regulations that individuals may still be able to double dip, depending on their circumstances.  | **Overall risk rating: Low****Consequences:** Depending on the number of individuals who double dip the Authority stands to lose levies which were not anticipated, and potentially require actuarial work to ensure the fund is able to pay future benefits. Considering the likely small number of workers in this category, and the time that it will take to occur, this risk is **minor.** **Likelihood:** This risk is **possible.** | Double dipping only becomes possible seven years after the commencement of the scheme. It is proposed that the Authority and IRV will continue to consider approaches to prevent double dipping throughout this period, and work with employers to monitor and deter cases of double dipping.  |
| Employers do not correctly understand their obligations to pay levies | Due to changes to the definition of employee and employer, and the scope of the CSS, there is the potential that employers do not pay levies into the fund where they are required to.  | **Overall risk rating: Medium****Consequences:** Depending on the number of employers who incorrectly understand their obligations there will be the potential for the funds in the scheme to be less than the liability of the scheme. This risk is **major.** **Likelihood:** Considering the significant education campaign which is to be undertaken by theAuthority this risk is **unlikely.** | As detailed above, the Authority will be undertaking an information and awareness campaign to alert businesses to their responsibilities. In addition to this the Authority should work closely with the working group as well as broader stakeholders to recognise and address any emerging trends in incorrect or missing payments.  |
| The Authority is not adequately prepared for the introduction of the NDIS and ECE sectors | The initial operation of the scheme from 1 July 2019 until 1 January 2020 (when NDIS and ECE businesses are proposed to be incorporated) may reveal issues with the fund’s viability. These may be exacerbated by the introduction of the NDIS and ECE sectors. For example the fund may not be receiving enough levies to be on track to meet its initial liabilities when workers start claiming LS benefits in year seven.  | **Overall risk rating: Medium****Consequences:** There is the potential for the funds in the scheme to be less than the liability of the scheme. This risk is **major.** **Likelihood:** Considering the existing actuarial work undertaken, and the recognition of this risk this risk is **unlikely.** | As noted above, the levy rates may need to be reviewed prior to the introduction of the NDIS and ECE sectors. Based on actuarial advice and the broader experience of the Authority at the time of transition, the Authority may then revise the levy rates, if required. |

The risks outlined above will be continually monitored and assessed through the risk rating matrix and any new risks identified will equally be subject to this matrix. Actions will be taken as required to mitigate risks.

# EVALUATION STRATEGY

Evaluation is critical to measuring, and supporting, the success of regulations.

The LSBP Regulations are made under the LSBP Act, which contains provisions requiring review of the LSBP Act at three and seven year periods after the LSBP Act’s commencement. Evaluation of the Regulations should also be tied to these mandated review periods. This will allow streamlined and comprehensive review, including a full understanding of the interactions between the Regulations and the LSBP Act, as well as their combined impact on the sector.

The focus of the evaluation in this RIS, however, will be on establishing and detailing those aspects of the evaluation which are not already covered by the legislative impact statement. As the Regulations pertain to the CSS, businesses consulted pursuant to this section should only be those operating in the CSS, as defined by the LSBP Act.

## Year three review

The first review of these Regulations will occur as soon as possible after the three year anniversary of the LSBP Act, on 1 July 2022.[[71]](#footnote-71) This will be an ‘implementation review’ which covers the experience of the sector in transitioning to the Regulations. It should include information such as financial and administrative concerns of businesses and the proportion of employees who have been registered in the scheme. This will coincide with the actuarial investigation of funds which is statutorily required every three years. As such, the focus of this review will be on employers and employees rather than the Authority.

### Proposed Approach

#### Who will conduct the review?

The primary responsibility for the evaluation process will rest with the Minister for Industrial Relations. It is proposed that they will establish a review body to organise and undertake the review. In addition to their coordination, the following stakeholders will also be involved in varying capacities:

* The Authority – will provide data on the uptake of the scheme and the nature of their interactions with employers and employees; and
* Employers – particularly those in the NDIS and ECE sub-sectors – will be consulted to provide feedback on various aspects of the Regulations, as detailed below in Table 23.

#### How will the review be conducted?

The review will require synthesis of secondary data sources with stakeholder input to address the objectives of review. This will require significant consultation with a broad range of employers to gather data on their experience of the implementation of the scheme and to inform the analysis and results of the review.

It is proposed that the review body establish a working group of employers who can be used on an ongoing basis to provide feedback and steering throughout the development of the review. It is proposed that the group be composed of 10-12 employers, with approximately half of those operating in the NDIS and ECE sub-sectors. Overall, the working group should be composed of employers covering the following characteristics:

* Small, medium and large businesses;
* Businesses with employees who have overlapping roles as described in section 2.2.1 of this RIS;

Businesses that previously used a nominal LSL reserving methodology and those who used an actuarial LSL reserving methodology; and

* Businesses with employees of varying tenures.

### Content

This will be an ‘implementation review’ which covers the experience of the sector in the first phase of implementation of the scheme and Regulations. Its focus should be on matters such as financial and administrative concerns of businesses and the uptake of the scheme.

Key objectives of the review, proposed measures, and potential data sources are summarised in the table below.

Table 23: Content of the year three review

| Review objective | Measure | Data sources |
| --- | --- | --- |
| Determine if there is appropriate uptake of the scheme. | Number of employees registered at the end of the 12th quarter compared to the number of workers considered to be in-scope at that point. | * The Authority’s internal data, particularly the registers established under section 7 of the LSBP Act.
* 2021 ACNC Annual Information Statement.
* Consultation with employers.
 |
| Whether there was a downturn in employment in the NDIS sector during the six months from 1 July 2019 (the commencement of the LSBP Act, and a time during which there is expected to be operational challenges for NDIS businesses). |
| Measure the ease with which businesses have been able to implement the scheme.  | Attitudinal satisfaction of employers with the implementation processes required by the LSBP Act.  | * Consultation with employers.
 |
| Attributive satisfaction of employers with the implementation processes required by the LSBP Act. |
| Determine if the cost of the scheme is threatening the financial viability of NDIS and ECE employers.  | Number of NDIS and/or ECE businesses that have experienced financial difficulties or are in financial distress as a result of the scheme. | * Consultation with employers in the NDIS and ECE sub-sectors.
* Comparison of the costs of complying with overall revenue and costs of NDIS and ECE employers.
 |

## Year seven review

The second review of these Regulations will occur as soon as possible after the seven year anniversary of the LSBP Act, on 1 July 2026.[[72]](#footnote-72) This date has been chosen as it is the first year from which employees can claim benefits under the scheme. This will be a ‘whole-of-scheme evaluation’ which undertakes a broader assessment of the extent to which the scheme is meeting the objectives of the LSBP Act and Regulations.

### Proposed Approach

#### Who will conduct the review?

The primary responsibility for the evaluation process will rest with the Minister for Industrial Relations. It is proposed that the review body that was established at the year three review will again conduct this review. In addition to their coordination, the following stakeholders will also be involved in varying capacities:

* The Authority – will provide data on the scheme; and
* Employers and workers, particularly those in the NDIS and ECE sub-sectors – will be consulted to provide feedback on various aspects of the Regulations, as detailed below in Table 24.

#### How will the review be conducted?

The review will require synthesis of secondary data sources with stakeholder input to address the objectives of review. This will require significant consultation with a broad range of employers to gather data on their experience of the implementation of the scheme and to inform the analysis and results of the review.

It is proposed that the review body seek input from the working group established at the year three review on an annual basis following that review, to build an appropriate evidence base which responds to the below objectives, to inform the year seven review. In addition, the review body will need to undertake further secondary data analysis and another round of consultations and workshop sessions with the working group to develop the detail required to evaluate the extent to with the Regulations have met their objectives.

### Content

The focus of the review will be on measuring the extent to which the Regulations have met the objectives stated in section 3 of this RIS. These objectives, suggested measures, and potential data sources are summarised in the table below.

Table 24: Content of the year seven review

| Regulation element | Objectives | Measure(s) | Data Sources |
| --- | --- | --- | --- |
| Definition of employer and employee | * Provide certainty to businesses on which employees will need to have levies paid to the Authority on their behalf;
* Provide certainty to businesses on which employers will not be covered by the scheme; and
* Clarify matters with regards to the constitutionality of the LSBP Act.
 | Quantum of levies paid to the Authority in error.Number of employees incorrectly registered with the Authority.Number of High Court cases regarding the LSBP Act. | The Authority’s internal data, particularly the registers established under section 7 of the LSBP Act.Consultation with employers who have employees with overlapping roles, as defined in section 2.2.1 of this RIS. Consultation with workers who have overlapping roles. |
| Scope of the community services sector – inclusion of NDIS entities  | * Minimising financial uncertainty for NDIS businesses; and
* Minimising the risk of NDIS businesses becoming financially unviable.
 | Number of ECE businesses that experienced financial difficulties or are in financial distress as a result of the scheme. | ASIC Series 1A – Companies entering external administration – by industry.Consultation with working group and any businesses identified to have failed due to the LSBP Act. |
| Scope of the community services sector – inclusion of ECE | * Minimising financial uncertainty for ECE businesses; and
* Minimising the risk of ECE businesses becoming financially unviable.
 | Number of ECE businesses that experienced financial difficulties or are in financial distress as a result of the scheme. | ASIC Series 1A – Companies entering external administration – by industry.Consultation with working group and any businesses identified to have failed due to the LSBP Act. |
| Double dipping | * A worker is not to be entitled to both long service leave under a Fair Work instrument and payment of a long service benefit under the LSBP Act in respect of the same service period;
* An employer is not to be required to pay a worker for long service leave under a Fair Work instrument and to pay a levy under the LSBP Act for the worker in respect of the same service period; and
* The Authority is not to be required to pay a long service benefit to a worker under the LSBP Act and to reimburse an employer for long service leave granted to the worker under a Fair Work instrument in respect of the same service period.
 | Number of instances of double dipping | Consultation with working group and any businesses that have experienced double dipping.  |
| Authority oversight of scheme | * Ensure that the Authority is informed when employees leave employers.
 | Number of follow ups required for employees who do not have recurring quarterly returns | Consultation with Authority |
| Disclosure of information to other entities and authorities | * Allow the Authority to gain the required taxation information to accurately deduct tax from PLS benefits; and
* Ensure the Authority is able to assist other Victorian Government agencies in their Regulatory processes.
 | Number of taxation errors made | Consultation with Authority |

1. : SCHEDULE 1 OF THE LSBP ACT

In order to cover all three sectors in a coherent manner, the LSBP is organised into two key sections. Firstly, the provisions which apply to all three sectors (or the scheme generally) are included in the main text of the Act. Secondly, there are three schedules, each of which provides the details of the scheme in a covered sector. Schedule 1 covers the community services sector. Aside from the coverage of Authority oversight of the scheme and disclosure of information, this RIS focuses exclusively on the community services sector. For this reason, a simple summary is provided here of the key provisions in that schedule which are referenced in the RIS.

Table 25: Summary of schedule 1 of the LSBP Act

| Clause and heading | Explanation |
| --- | --- |
| 1. *What is the community services sector?*
 | The community services sector is where community services work is performed. This applies to Victoria as well as other states and territories. Community services work is defined in clause 2.  |
| 1. *What is community service work?*
 | The community services sector has been defined in the LSBP Act as work that provides the following for persons who have a disability or other persons who are vulnerable, disadvantaged or in crisis:* Training and employment support;
* Financial support or goods;
* Accommodation, or accommodation-related support services;
* Home-care support services; and
* Other support services.

In addition, the LSPB Act also includes work that provides the following: * Community and legal services, community education and information services, or community advocacy services;
* Community development services;
* Fundraising assistance for community groups; and
* Services providing assistance to particular culture or linguistically diverse communities.

Notably, the definition of community services work explicitly excludes from the coverage of the LSBP Act activities funded under the NDIS, services provided by entities licensed under the *Children’s Services Act 1996*, and anything that the government may stipulate to be excluded. |
| 1. *Who is an employer?*
 | An employer is a not-for profit, or for profit entity that employs one or more individuals to perform community services work, or a person who is prescribed to be an employer. The following are not employers: * the Commonwealth;
* the State;
* entities with governing bodies appointed under an Act of the Commonwealth or State;
* a municipal council or other statutory body;
* a public health service or a public hospital under the *Health Services Act 1988; and*
* a person declared by the government not to be an employer.
 |
| 1. *Who is an employee?*
 | The definition of an employee is an individual employed by an employer for the sector, and includes those employed on a casual basis. The following are not employees: * those who care for children or coordinate the care of children for a business licensed under the *Children’s Services Act 1996*;
* employees whose employer is a community health centre registered under section 48 of the *Health Services Act 1988* (unless their role is to carry out community service work);
* individuals employed by employers who provide services to persons with a disability but whose primary role is to provide health services to those persons;
* individuals employed under the *Aged Care Award 2010* or other prescribed awards; and
* individuals declared by the government not to be employees.
 |
| 1. *What is recognised service?*
 | Recognised service is the amount of time an employee has recorded under the scheme for the purposes of accessing a PLS benefit. This is all recorded days minus any days taken off for LS. 365 days of recognised service is considered one year of recognised service.  |
| 1. *Crediting service*
 | A worker is credited one day of service for every day that they are employed, regardless of if they work that day. Workers are not able to accrue more than 365 days of service in a year.  |
| 1. *What is a service period?*
 | A service period is a continuous period starting when the LSBP Act comes into effect, and for workers starting after that date, when they commence employment in the sector. The service period ends when the worker leave the sector. An employee stops being employed when there is no ordinary pay recorded on their quarterly returns for any employers they worked for during that quarterly reporting period. A service period is not taken to end if the worker takes workers compensation leave or if they are fired by an employer who wishes to ensure that the worker is not entitled to long service benefits from them.  |
| 1. *Entitlement to long service benefit payment*
 | Once a worker has 7 years of recognised service they can take a LS payment equivalent to 1/60th of their total recognised service. This equates to 8.76 weeks of pay for each 10 years worked. The payment is calculated based on the worker’s ‘ordinary pay’ at the time of claiming.  |
| 1. *What is ordinary pay?*
 | Ordinary pay is the salary or wages due to an employee for their work. This includes any workers compensation payments. It does not include:* Overtime;
* Expenses;
* Equipment provided to the worker (including a car);
* Allowances;
* Any payments associated with termination; and
* Superannuation.
 |
| 1. *Determination and payment of long service benefit*
 | Workers may apply to the Authority to find out if they are entitled to a payment under the scheme, or to have this payment processed.The Authority must respond by determining the workers right to payment, informing the worker, and paying their benefit (if applicable).  |
| 1. *Entitlement to payment of benefit on leaving the community services sector or death*
 | If a worker dies or leaves the sector before claiming a benefit, they may apply to the Authority to have this benefit paid. The Authority must pay the worker any benefits owed in accordance with the regulations. |
| 1. *Payment by Authority on reciprocal authority's behalf*
 | Workers registered under the Victorian scheme who have an entitlement to a benefit under the Victorian, and another PLS scheme, may apply to the Victorian Authority to have that benefit payed in accordance with the other schemes rules.  |
| 1. *Payment by reciprocal authority on Authority's behalf*
 | If an Authority from another PLS scheme pays a benefit that otherwise would have been due by the Victorian Authority, the Victorian Authority is to pay the other scheme the amount owed. This will remove the workers entitlement under the Victorian scheme.  |
| 1. *Periods of absence from work taken to be days of service for crediting service*
 | Many periods of leave are considered to still be recognised service under the LSBP Act. These are:* a period of paid leave;
* a period of unpaid leave that is less than or equal to 52 weeks;
* if a period of unpaid leave is more than 52 weeks, the initial 52 weeks;
* periods of leave greater than 52 weeks if they are in accordance with an employment agreement, or were agreed in writing to be employment periods, or is taken due to illness;
* interruptions instigated by employers to avoid their duties under the LSBP act;
* interruptions based on the transfer of assets which helped constitute a workers duties; and
* any other agreed period between the employer and employee.

All other absences are not counted as recognised service.  |
| 1. *No double-dipping*
 | Where a worker has overlapping entitlements to LS benefits from a Fair Work instrument and the LSBP Act, regulations are to be made to ensure that:* A worker is not entitled to both benefits;
* An employer does not need to pay PLS levies into the scheme for the overlapping period; and
* The Authority is not required to pay a benefit for the overlapping period.
 |
| 1. *Annual statement*
 | Within 30 days of the end of financial year the Authority must provide registered active workers with a statement setting out:* The amount of levy paid for them;
* Their current entitlement (if any); and
* Any information prescribed by Regulations.
 |

1. : CONSULTATION SUMMARY

| Report | Stakeholder  | Nature of input | Role (if representative known) |
| --- | --- | --- | --- |
| **Parliament of Victoria Economic, Education, Jobs and Skills Committee – Inquiry into portability of long service leave entitlements** June 2016 Stakeholders provided evidence as witnesses at various hearings held in Melbourne and Sydney, and/or via written submissions to the inquiry. Stakeholders were consulted on a wide range of issues, and their inputs helped inform the following aspects of the report:* The costs and benefits of a PLS scheme, including industry specific concerns; and
* The implementation and operation of a PLS scheme.

Extensive consultations were undertaken for the inquiry report, which have not been reproduced here for the sake of readability.  |
| **ACIL Allen – Legislative Impact Assessment prepared for Industrial Relations Victoria on Portable Long Service Leave**20 October 2017-Stakeholders were consulted in the course of ACIL Allen’s previous work writing design studies for the long service leave scheme. Those consultations focused on the best design for a scheme, however most stakeholders also provided their views on the benefits, costs and effects of a PLS scheme. Those comments were utilised to inform the LIA.  | ACT Leave | Consultation |  |
| Armaguard Group | Consultation AND submission |  |
| Australian Industry Group | Submission |  |
| Australian Security Industry Association Ltd | Consultation AND submission |  |
| Australian Workers Union | Consultation |  |
| BSCAA Vic | Consultation |  |
| Central Vic Cleaning | Consultation |  |
| CFMEU Mining Division | Consultation |  |
| CoINVEST | Consultation |  |
| Excalibur Cleaning | Consultation |  |
| GJK Facility Services | Consultation |  |
| Health Workers Union | Consultation |  |
| Ironwood Security Bendigo | Consultation |  |
| NSW Long Service Corporation | Consultation |  |
| National Protective Services | Consultation |  |
| Prosegur | Consultation AND submission  |  |
| QLeave | Consultation |  |
| Sebastian Group | Consultation |  |
| The Bendigo Cleaning Company | Consultation |  |
| United Voice (***multiple***) | Consultation AND submission |  |
| Victorian Chamber of Commerce and Industry (***multiple***) | Consultation AND submission |  |
| Victorian Trades Hall Council (***multiple***) | Consultation AND submission  |  |
| **Portable long service leave scheme 2018: Final Legislative Impact Assessment** 15 March 2018-Stakeholders were consulted to analyse the start-up costs and implementation requirements of the scheme.  | ACT Leave | Consultation |  |
| CoINVEST | Consultation  |  |
| Industrial Relations Victoria  | Consultation |  |
| Victorian Department of Premier and Cabinet | Consultation |  |
| Victorian Department of Treasury and finance | Consultation  |  |
| **KPMG – Long service benefits scheme: Analysis of the cost impacts on organisations of a portable long service benefits scheme** 2 November 2018**Stakeholder list is commercial in confidence** A broad range of stakeholders across the child and family services; community health; disability services; diverse community services; and early childhood learning were consulted. These included different sizes of organisations (including self-managed individuals), funding arrangements, entitlements and awards. Stakeholders were consulted to identify the potential cost impacts on community services organisations from the introduction of the *Long Service Benefits Portability Act 2018*. For each stakeholder the consultation took the form of one face-to-face interaction and a follow up survey. Questions focused on the composition and performance of organisations, their funding arrangements as well as their approaches to long service leave provisioning.This engagement also produced the Portable Long Service Leave Working Group – a collection of organisations who helped to discuss the approach to measuring impacts, test assumptions and confirm output findings. KPMG worked collaboratively with eight organisations over a three to four week period. This included consulting with key representatives from each organisation to talk through the implications of Bill and outline the purpose of the engagement. HR/Finance managers were then consulted to obtain relevant data. In addition, 29 online survey responses were received. |

1. : SUMMARY OF EXISTING SCHEMES IN AUSTRALIA

| Portability Scheme | Covered Sectors | Levy Rate | How does it work? – Employers | How does it work? – Employees | Who is an employer? | Who is eligible? | Who is not eligible? |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **CoINVEST** | Construction | 2.7% (or 1.8% when scaled to be equivalent to the proposed entitlement)  | CoINVEST keeps a record of how many days of eligible service a worker accrues in Victoria. This information is provided on a quarterly basis by employers, who pay a contribution fee into the Long Service Leave Fund to ensure CoINVEST is sufficiently funded to be able to pay out claims to all eligible workers. | Once employees have worked for a combined 7 years in the industry they may apply to the fund to have their long service leave payed out.  | Employer means a person (not being the Crown in right of the Commonwealth of Australia or the State of Victoria or any public statutory body constituted under the law of the Commonwealth or of that State) who:(a) employs Workers under a contract of employment; or(b) being a principal contractor, engages other Employers or Working Sub-Contractors by contract, not being a contract of employment, and includes:(c) a Working Sub-Contractor who employs a Worker; and(d) for the purpose of any Rule entitling the Trustee to recover any charge or any amount from a Corporation described in paragraph (a), (b) or (c) above, includes an Associated Corporation of that Corporation.  | Every worker employed by an employer to perform construction work in the construction industryA working sub-contractor working in the construction industry.  | Workers who spend less than two thirds of their employed time performing construction work.  |
| **ACT Leave** | Construction; Contract Cleaning; Community Services Sector; Security | Construction: 2.1%Cleaning: 1.2%Community services: 1.2%Security: 1.07% | This scheme is administered by the ACT Long Service Leave Authority, who maintain records of workers’ service and employers’ contributions to the scheme. Employers are required to register with the Authority and declare wages and days worked for all employees via quarterly returns, at which point a levy is paid on employees’ gross ordinary wages. | Employees accrue different amounts of leave depending on their industry:Construction: 13 weeks leave for every ten years worked;Cleaning: 8.67 weeks leave for every ten years worked;Community services: 8.67 weeks leave for every ten years worked; andSecurity: 8.67 weeks leave for every ten years worked.Employees apply to their employer to take long service leave, and it is an offence for employers to not provide this within 6 months of the leave becoming available. Leave may not be claimed until ten years of service has been reached.  | An "employer", for a covered industry, is a person engaged in the industry in the ACT who— (a) employs someone else (whether in the ACT or elsewhere) to carry out work in the industry; or (b) is declared to be an employer for the industry under section 12 (Declarations by Minister—additional coverage of Act).Also, a person is an employer for a covered industry if— (a) the person employs or engages someone else (a worker ) to carry out work in the industry for another person engaged in the industry in the ACT for a fee or reward; and (b) there is no contract to carry out the work between the worker and the person for whom the work is carried out. | An individual is an employee for a covered industry if the individual is employed by an employer for the industry (whether in the ACT or elsewhere).The covered industries are defined separately in schedule one to four of the Act.[[73]](#footnote-73)  | Administrative and executive staff.  |
| **QLeave**  | Contract Cleaning  | 0.75% | * Employers are required to register their employees’ hours with QLeave.
* Employers must give details to QLeave about their workers’ service each quarter.
 | When 10 years of service has been recorded, an employee is entitled to claim 8.67 weeks of long service leave from QLeave.  | An employer is anyone who engages one or more workers to perform cleaning work for other people. (An employer does not include the Cwlth, State, or local Government). | Includes cleaners and supervisors (who perform cleaning and supervision work) in Queensland. | * People operating as a partner in a partnership;
* Trustees of a trust;
* Company directors;
* Federal, state and local Government workers;
* Subcontractors who provide principal materials or significant plant as part of the contract;
* Individuals who are paid to achieve a stated result;
* Individuals from whom a personal services business determination is in effect for the individual performing the work under the Income Tax Assessment Act 1997 (Cwlth), Section 87-60;
* Professional and managerial staff; and
* Clerical staff.
 |
| **QLeave**  | Building & Construction  | 0.25% | *Same as above.*  | *Same as above.* | An employer is anyone who engages one or more workers in the building and construction industry.  | Eligible workers include tradespersons, trades assistances and labourers who perform building and construction work in Queensland. Some company directors who perform building and construction work may also be eligible to join QLeave. | * People operating as a partner in a partnership;
* Trustees of a trust;
* Sole traders working direct for the public;
* Company directors on other than wages;
* Subcontractors who provide principal materials (such as carpenter-timber or bricklayer-bricks) or significant plant (such as a bobcat) as part of the contract;
* Individuals who are paid to achieve a stated result;
* Employees of Mt Isa Mines;
* Persons whose work falls within the type covered by wage groups C1, C2(a), C2(b), C3 or C4 of the Engineering Award – State;
* Individuals from whom a personal services business determination is in effect for the individual performing the work under the Income Tax Assessment Act 1997 (Cwlth), Section 87-60;
* Professional and managerial staff; and
* Clerical staff;
* Ancillary staff (such as storeman, delivery drivers, mechanics, estimators); and
* Safety officers.
 |
| **NSW Contract Cleaning** | Contract Cleaning | 1.7% | The Act is administered by the Long Service Leave Corporation, who holds levy funds. Every three months employers must lodge a return to the Corporation advising: 1) the period employees were employed for; 2)when employees started or finished employment; and 3) the total ordinary wages paid that period to an employee for cleaning work, 1.7% of which must then be paid to the Corporation.  | Employees accrue 8.67 weeks of long service for every 10 years of recognised service days recorded (i.e. 3650 days). They may claim this from their employer once they accrue the leave.  | Someone who employs one or more persons to perform cleaning working in that industry, or is otherwise prescribed to be an employer.  | A person who is engaged by an employer under a contract of service to perform cleaning work in the industry, or is a contractor who performs cleaning work in the industry. This includes a person who is engaged both to perform cleaning work and to supervise other workers in the contract cleaning industry, whether or not the person is known as a supervisor, leading hand or another title. | A person who performs work in the contract cleaning industry:(a) whose only or main duties are managerial or clerical, or(b) under a contract of service with a partnership if the person is a partner and participates in the management of the partnership or shares the profits, or(c) under a contract of service with the Commonwealth, the State or a Territory or a local government authority, or(d) under a contract, whether or not the contract is a contract of service, with a corporation of which the person is a director, or(e) under a contract, whether or not the contract is a contract of service, with a trust of which the person is a trustee. |

1. : OVERVIEW OF VICTORIAN NDIS REGISTERED PROVIDERS[[74]](#footnote-74)

| **Support category** | **Registration group** | **Number of providers providing core supports\*#**  |
| --- | --- | --- |
| Core – Daily Activities | Household Tasks | 1,800 |
| Accommodation/Tenancy | 703 |
| Assist Personal Activities | 468 |
| Personal Activities High | 431 |
| Daily Tasks/Shared Living | 248 |
| Core – Social and Civic | Participate community | 529 |
| Group/Centre Activities | 448 |
| Core Transport | Assist – Travel/Transport | 1,421 |
| Core Consumables | Assistive Products -Personal Care/Safety | 1,046 |
| Assistive Products -Household Task | 756 |

Note, these numbers include both organisation and sole traders (2,425 organisations and 3,602 sole traders).

**#** As of 30 December 2018, there were a total of 6,027 NDIS registered providers in Victoria but some providers are registered to provide multiple NDIS services so they would be registered more than once across the groups.

1. *Long Service Benefits Portability Act 2018* (Vic) sch 1 cl 2(a),(b). [↑](#footnote-ref-1)
2. Victoria, *Parliamentary Debates,* Legislative Council, 24 August 2018, 4459. [↑](#footnote-ref-2)
3. Victoria, *Parliamentary Debates,* Legislative Assembly, 6 October 2010, 4004. [↑](#footnote-ref-3)
4. Parliament of Victoria, Economic, Education, Jobs and Skills Committee, ‘Inquiry into portability of long service leave entitlements’, 8 June 2016. Available from: [www.parliament.vic.gov.au/images/stories/committees/eejsc/EEJSC\_58-01\_Text\_WEB.pdf](http://www.parliament.vic.gov.au/images/stories/committees/eejsc/EEJSC_58-01_Text_WEB.pdf). [↑](#footnote-ref-4)
5. Victorian Government response to the Victorian Parliamentary Economic, Education, Jobs and Skills Committee inquiry into portability of long service leave entitlements, 23 November 2016. Available from: [www.parliament.vic.gov.au/images/stories/committees/eejsc/Victorian\_Government\_response\_to\_the\_Economic\_\_Education\_\_Jobs\_and\_Skills\_Committee\_inquiry\_into\_portability\_of\_long\_service\_leave\_entitlements\_0mPbGwfN.pdf](http://www.parliament.vic.gov.au/images/stories/committees/eejsc/Victorian_Government_response_to_the_Economic__Education__Jobs_and_Skills_Committee_inquiry_into_portability_of_long_service_leave_entitlements_0mPbGwfN.pdf). [↑](#footnote-ref-5)
6. CoINVEST covers the Victorian construction sector. The levy rate is 2.7 percent. Available from: www.coinvest.com.au. [↑](#footnote-ref-6)
7. ACT *Leave covers the construction*, contract cleaning, community services, and security sectors. The levy rate is 1.2 percent. Available from: [www.actleave.act.gov.au](http://www.actleave.act.gov.au). [↑](#footnote-ref-7)
8. QLeave covers the building and construction and contract cleaning sectors. The levy rate is 1.0 percent. Available from: [www.qleave.qld.gov.au](http://www.qleave.qld.gov.au). [↑](#footnote-ref-8)
9. CoINVEST, *Rules of The Construction Industry Long Service Leave Fund as at 4 July 2017* (2017), Available at: <https://www.coinvest.com.au/media/W1siZiIsIjIwMTcvMDcvMTcvMDlfNTNfNTNfNTU1X0NvSU5WRVNUX1J1bGVzX0p1bHlfMjAxNy5wZGYiXV0/CoINVEST%20Rules%20July%202017.pdf> [↑](#footnote-ref-9)
10. **Note:** ‘Recognised service’ refers to all days that occur while the person is employed (i.e. all calendar days) and not days worked. A person cannot receive more than 365 days of recognised service per year. [↑](#footnote-ref-10)
11. *Long Service Benefits Portability Act 2018* (Vic) sch 1 cl 8(2). [↑](#footnote-ref-11)
12. Based on KPMG analysis of data obtained from Australian Charities and Not-For-Profits Commission, ‘2015 Annual Information Statement Data’ (2015). [↑](#footnote-ref-12)
13. 2011 Australian Bureau of Statistics Census. [↑](#footnote-ref-13)
14. Victoria Police Licensing and Regulation Division, Based on the number of individual private security licences issues as at 30 June 2018, (unpublished). [↑](#footnote-ref-14)
15. State of Victoria, *Royal Commission into Family Violence: Summary and Recommendations* (2016), Available at: <http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Vol-VI.pdf> [↑](#footnote-ref-15)
16. Australian Human Research Institute, *AHRI Pulse Survey: Turnover and Retention*, Available at: <http://docplayer.net/37029526-Hr-pulse-ahri-pulse-survey-turnover-and-retention-turnover-and-retention-1.html> [↑](#footnote-ref-16)
17. State of Victoria, *Royal Commission into Family Violence: Summary and Recommendations* (2016), Available at: <http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Vol-VI.pdf> [↑](#footnote-ref-17)
18. Parliament of Victoria Economic, Education, Jobs and Skills Committee, *Inquiry into portability of long service leave entitlements* (2016), available at: <https://www.parliament.vic.gov.au/images/stories/committees/eejsc/EEJSC\_58-01\_Text\_WEB.pdf> [↑](#footnote-ref-18)
19. Victoria, *Parliamentary Debates,* Legislative Council, 24 August 2018, 4459. [↑](#footnote-ref-19)
20. Victoria, *Parliamentary Debates,* Legislative Council, 24 August 2018, 4430. [↑](#footnote-ref-20)
21. *Fair Work Act 2009* (Cth) ss 29(2)(b), 27(1)(d)(iii), 27(2)(g), 113(2)(b). [↑](#footnote-ref-21)
22. *Long Service Benefits Portability Act 2018* (Vic) sch 1 cl 2(a),(b). [↑](#footnote-ref-22)
23. Victoria, *Parliamentary Debates,* Legislative Council, 24 August 2018, 4459. [↑](#footnote-ref-23)
24. Parliament of Victoria, Economic, Education, Jobs and Skills Committee, ‘Inquiry into portability of long service leave entitlements’, 8 June 2016. Available from: [www.parliament.vic.gov.au/images/stories/committees/eejsc/EEJSC\_58-01\_Text\_WEB.pdf](http://www.parliament.vic.gov.au/images/stories/committees/eejsc/EEJSC_58-01_Text_WEB.pdf). [↑](#footnote-ref-24)
25. *Long Service Benefits Portability Act 2018* (Vic) sch 1 cl 2(1)(j). [↑](#footnote-ref-25)
26. Roberts and Wallace, ‘NDIS: Shaping the future of South Australia’ 20 December 2017. Available from: https://home.kpmg/au/en/home/insights/2017/12/ndis-shaping-the-future-of-south-australia.html [↑](#footnote-ref-26)
27. Australian Department of Human Services, ‘The NDIS rollout: Victoria’ 12 February 2019. Available from: <https://www.ndis.gov.au/understanding/ndis-rollout/victoria#government-agreement-for-transition-to-the-ndis-in-victoria> [↑](#footnote-ref-27)
28. National Disability Insurance Agency, VIC Dashboard as at 31 December 2018’ 12 March 2019. Available from https://www.ndis.gov.au/about-us/publications/quarterly-reports [↑](#footnote-ref-28)
29. Department of Social Services ‘National Disability Insurance Scheme Integrated Market, Sector and Workforce Strategy’ June 2015, Available from https://www.dss.gov.au/sites/default/files/documents/07\_2015/ndis\_integrated\_market\_sector\_and\_workforce\_strategy\_june\_2015.pdf [↑](#footnote-ref-29)
30. National Disability Insurance Agency, ‘ VIC Market Position Statement’, April 2016, Available from https://www.ndis.gov.au/providers/market-information/market-position-statements [↑](#footnote-ref-30)
31. KPMG, ‘Long service benefits scheme: Analysis of the cost impacts on organisations of a portable long service benefits scheme’ 2018. [↑](#footnote-ref-31)
32. National Disability Services, ‘Australian Disability Workforce Report’ 2017. Available from: <https://www.nds.org.au/news/australian-disability-workforce-report-first-edition-released> [↑](#footnote-ref-32)
33. *Ibid.*  [↑](#footnote-ref-33)
34. National Disability Services, ‘NDS Australian Disability Workforce Report’ 2017. Available from: https://www.nds.org.au/pdf-file/78a11708-b35f-e711-909e-0050568e2189 [↑](#footnote-ref-34)
35. Fiona McDonald, ‘New risks for disability care workers under NDIS’ 22 August 2016. Available from: https://theconversation.com/new-risks-for-disability-care-workers-under-the-ndis-63812 [↑](#footnote-ref-35)
36. National Disability Services, ‘State of the Disability Sector Report 2018’ 19 November 2018, Available from https://www.nds.org.au/news/state-of-the-disability-sector-report-2018-now-available [↑](#footnote-ref-36)
37. Commonwealth of Australia, ‘ Growing the NDIS Market and Workforce’ 23 March 2019, Available from https://www.dss.gov.au/sites/default/files/documents/03\_2019/220319\_-\_ndis\_market\_and\_workforce\_strategy\_acc-\_pdf-.pdf [↑](#footnote-ref-37)
38. *Children Services Act 1996* (Vic) [↑](#footnote-ref-38)
39. Social Research Centre ‘2016 Early Childhood Education and Care National Workforce Census’ 2017.Available from: https://www.education.gov.au/2016-early-childhood-education-and-care-national-workforce-census [↑](#footnote-ref-39)
40. *Ibid.* [↑](#footnote-ref-40)
41. A federal Fair Work instrument is an employment award governed by the *Fair Work Act 2009* (Cth). [↑](#footnote-ref-41)
42. *Long Service Benefits Portability Act 2018* (Vic) Sch 1, cl 15. [↑](#footnote-ref-42)
43. See, for example: *Long Service Benefits Portability Act 2018* (Vic) Sch 3, cl 22. [↑](#footnote-ref-43)
44. Due to the dual operation of sections 51(xx) and 109 of the *Constitution.*  [↑](#footnote-ref-44)
45. This is the same as the issue explained further in section 2.2.1 under the heading ‘Potential constitutional invalidity’. [↑](#footnote-ref-45)
46. ABS, ‘6226.0 - Participation, Job Search and Mobility, Australia, February 2017 – Labour Mobility’ 6 September 2017. Available from: http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6226.0Main%20Features4February%202017?opendocument&tabname=Summary&prodno=6226.0&issue=February%202017&num=&view= [↑](#footnote-ref-46)
47. *Long Service Benefits Portability Act 2018* (Vic) s 27(2). [↑](#footnote-ref-47)
48. *Long Service Leave (Portable Schemes) Act 2009* (ACT) s 7. [↑](#footnote-ref-48)
49. *Long Service Leave (Portable Schemes) Act 2009* (ACT) s 9. [↑](#footnote-ref-49)
50. Appendix A provides a summary of the Schedule 1 of the LSBP Act. [↑](#footnote-ref-50)
51. See: Victoria, *Parliamentary Debates,* Legislative Assembly, 24 August 2018, 4430. [↑](#footnote-ref-51)
52. *Ibid.*  [↑](#footnote-ref-52)
53. Note: Quarterly returns are tied to, and required at the end of reporting quarters. [↑](#footnote-ref-53)
54. Those workers who perform both in and out of scope activities in their work, as detailed in section 2.2.1. [↑](#footnote-ref-54)
55. Note: A provisioning method is the way that a business goes about deciding how to measure how much money to set aside for long service leave. Provisioning methods can broadly be categorised as follows: actuarial reserving, nominal balance and tenure-based provisioning. [↑](#footnote-ref-55)
56. Rounded to nearest 100,000. [↑](#footnote-ref-56)
57. Rounded to nearest 100,000. [↑](#footnote-ref-57)
58. Indeed, ‘Disability Support Worker Salaries in Melbourne, VIC’ 2019. Available from: [https://au.indeed.com/salaries/Disability-Support-Worker-Salaries,-Melbourne-VIC](https://au.indeed.com/salaries/Disability-Support-Worker-Salaries%2C-Melbourne-VIC) [↑](#footnote-ref-58)
59. This is a mid-point of the data on page 31 of: NDIS, ‘Market Position Statement: Victoria’ 2016. Available from: <https://www.ndis.gov.au/providers/market-information/market-position-statements> [↑](#footnote-ref-59)
60. Rounded to nearest 100,000. [↑](#footnote-ref-60)
61. This number is based on triangulation of the two ECE case studies discussed above, and survey data collected from a broader number of ECE organisations by KPMG during preparation of the 2018 Cost Impact Report. [↑](#footnote-ref-61)
62. Social Research Centre ‘2016 Early Childhood Education and Care National Workforce Census’ 2017.Available from: https://www.education.gov.au/2016-early-childhood-education-and-care-national-workforce-census [↑](#footnote-ref-62)
63. Victorian Government response to the Victorian Parliamentary Economic, Education, Jobs and Skills Committee inquiry into portability of long service leave entitlements, 23 November 2016. Available from: [www.parliament.vic.gov.au/images/stories/committees/eejsc/Victorian\_Government\_response\_to\_the\_Economic\_\_Education\_\_Jobs\_and\_Skills\_Committee\_inquiry\_into\_portability\_of\_long\_service\_leave\_entitlements\_0mPbGwfN.pdf](http://www.parliament.vic.gov.au/images/stories/committees/eejsc/Victorian_Government_response_to_the_Economic__Education__Jobs_and_Skills_Committee_inquiry_into_portability_of_long_service_leave_entitlements_0mPbGwfN.pdf). [↑](#footnote-ref-63)
64. Australian Bureau of Statistics, ‘Small Business in Australia’ (Catalogue No 1321.0, 23 October 2002). [↑](#footnote-ref-64)
65. ABS, ‘8165.0 Counts of Australian Businesses, including Entries and Exits, Jun 2014 to Jun 2018’ (2019). Available at: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8165.0June%202014%20to%20June%202018?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs%40.nsf/DetailsPage/8165.0June%202014%20to%20June%202018?OpenDocument) [↑](#footnote-ref-65)
66. Australian Charities and Not-for-profits Commission, ‘2016 Annual information statement data’ 2016. [↑](#footnote-ref-66)
67. Indeed, ‘Disability Support Worker Salaries in Melbourne, VIC’ 2019. Available from: [https://au.indeed.com/salaries/Disability-Support-Worker-Salaries,-Melbourne-VIC](https://au.indeed.com/salaries/Disability-Support-Worker-Salaries%2C-Melbourne-VIC) [↑](#footnote-ref-67)
68. 0.3% has been chosen instead of the 0.6% used above due to the expected lower costs on small business from the scheme, as discussed above the table. [↑](#footnote-ref-68)
69. This number is based on triangulation of the two ECE case studies discussed above, and survey data collected from a broader number of ECE organisations by KPMG during preparation of the 2018 Cost Impact Report. [↑](#footnote-ref-69)
70. This figure was determined based on KPMG cost impact analysis, discussed in section 5.2.2. [↑](#footnote-ref-70)
71. As per *Long Service Benefits Portability Act 2018* (Vic) s 74(2). [↑](#footnote-ref-71)
72. As per *Long Service Benefits Portability Act 2018* (Vic) s 74(2). [↑](#footnote-ref-72)
73. Available at: <https://www.legislation.act.gov.au/a/2009-25> [↑](#footnote-ref-73)
74. NDIS, ‘Transcript for Victoria Public Dashboard as at 31 December 2018’ 2018. Available from: <https://www.ndis.gov.au/about-us/publications/quarterly-reports> [↑](#footnote-ref-74)