

Submission: Review of the *Long Service Benefits Portability Act 2018* (Vic)

We welcome the opportunity to provide feedback on the review of the Portable Long Service Benefits Scheme (Scheme) under the *Long Service Benefits Portability Act 2018* (Vic) (Act). Community Legal Centres are registered Employers under the Scheme and are part of the community services sector in Victoria, a covered sector under the Act.

The Scheme has unfortunately placed a significant administrative and financial burden on the operation of Community Legal Centres—with limited benefits realised by workers in return. Broadly, Community Legal Centres critically question whether the Scheme is beneficial to the sector (for both workers and employers), despite its intent to do so. In addition to the payment of levies, the processes for reporting and record keeping are extremely time consuming and onerous for Community Legal Centres.

This submission has been compiled following a consultation with financial, human resource and senior management from: Barwon Community Legal Service, the Federation of Community Legal Centres (Vic), Fitzroy Legal Service, Human Rights Law Centre, South-East Monash Legal Service, The Sexual Assault and Family Violence Centre (working in partnership with Emma House Domestic Violence Services), Whittlesea Community Connections, and Good Financials (the registered agent for several Community Legal Centres who are registered Employers of the Scheme). It highlights key experiences of Community Legal Centres under the Scheme and outlines steps towards reform.

About the Federation

The Federation of Community Legal Centres (Vic) is the peak body for Victoria's 47 Community Legal Centres. Our members are at the forefront of helping those facing economic, cultural, or social disadvantage and whose life circumstances are severely affected by their legal problem.

For 50 years Community Legal Centres have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy. We want a community that is fair, inclusive, and thriving: where every person belongs and can learn, grow, heal, participate and be heard.

Summary of recommendations

Set out below is a summary of our recommendations:

- **Recommendation 1:** The Act should be reformed to streamline administrative arrangements. At minimum, key reforms should focus on:
 - establishing a direct and immediate reimbursements process for Employer claims made under the Scheme;
 - reducing the information required to support a claim for reimbursement to relevant information and proof of payment only;

- minimising the reporting requirements placed on organisations wherever possible.
- **Recommendation 2:** The Authority should consider ways to reimburse registered employers who:
 - incurred additional costs due to the retrospective application of the Act; and
 - pay levies for workers that subsequently retire or leave the Scheme prior to claiming the benefit.
- **Recommendation 3:** Centrelink payments, including parental leave paid by the government to the employer to pass onto the worker, should be excluded from the definition of ordinary pay.
- **Recommendation 4:** The Portable Long Service Leave Authority (Authority) should evaluate data on the number of registered workers from the Community Legal Centre sector that have benefited from the Scheme against the financial costs incurred by registered Community Legal Centre employers across a three-year period. The Authority should make this data publicly available and report on key findings to the Minister of Industrial Relations Victoria to inform further reform to the Scheme.
- **Recommendation 5:** The Authority should complete a feasibility assessment of processes under comparable schemes to redesign, streamline and achieve a non-universal application of the Scheme.

Streamlining Administrative arrangements under the Act

Significant administrative burden for Community Legal Centres

Community Legal Centres experience challenges in navigating the scheme for workers that fall under different awards within one centre. It is also common for staff in the sector to move between awards, in particular, the SCHADS award for community legal services that operate in health settings such as hospitals. This often causes a significant administrative burden on Community Legal Centres who experience difficulty monitoring movements of workers and across awards to ensure accurate reporting under the Scheme. Community Legal Centres also observe that the Scheme inhibits the sector's ability to facilitate constructive secondment arrangements, noting the loss of accrued long service leave hours under the Scheme for workers who pursue secondments with unregistered Employers.

Some key contributing factors of administrative burden under the Scheme include:

- the difficulty in sourcing information from payroll systems on a quarterly basis that covers all registered worker's ordinary hours and earnings instead of a broader calculation of average hours worked over a year;
- the challenge of monitoring and explaining workers' movements across a quarter in practices that involve outreach services and the need for changing and non-routine service provision to meet demand. Areas such climate and health justice services are key examples; and

- time consuming amendment and explanation processes are required to accurately capture resignations or other changes in pay that occur after a payroll period has been completed.

We endorse the submission provided by Good Financials, the registered agent for several Community Legal Centres who are registered Employers of the Scheme, that provides options on how quarterly reporting could be streamlined using payroll reports that are readily available and in alignment with payroll compliance reporting.

Reimbursement processes

Community Legal Centres advise that the reimbursement processes under the Scheme are extremely labour intensive. Community Legal Centres are adversely impacted by the lack of direct reimbursement, often waiting a long time before receiving a reimbursement payment. Some Community Legal Centres noted that the recent changes to the reimbursement form have been positive, however despite this, the process requires a large amount of information to justify claims, including documenting all leave undertaken and information not directly relevant to the claim.

Given the tight resourcing landscape that Community Legal Centres operate under, the simplification of these processes will be extremely beneficial for the sector. We suggest the reimbursement process be overhauled and redesigned to leverage other compliance and regulatory processes that Community Legal Centres participate in wherever possible towards a simpler process that ensures direct and immediate reimbursement.

RECOMMENDATION 1

The Act should be reformed to streamline administrative arrangements. At minimum, key reforms should focus on:

- establishing a direct and immediate reimbursements process for Employer Claims made under the Scheme;
- reducing the information required to support a claim for reimbursement to relevant proof of payment only;
- minimising the reporting requirements placed on organisations wherever possible.

Financial burden on Community Legal Centres

Non recoupable costs

Community Legal Centres have incurred significant additional costs due to the change in law and retrospective application of the Act.

Community Legal Centres are concerned about not being reimbursed by the Scheme for the full costs of long service leave. In particular, the Scheme does not reimburse the full long service leave entitlements payable to employees pursuant to the Community Legal Centre Multi-Business Agreement¹ (which applies to 18 Community Legal Centres in Victoria), or which arise from employers choosing to pay salaries above the Social, Community, Home Care and Disability Services (SCHADS) Award or Multi-Business Agreement rates.

The retrospective application of the Act adds to this burden because it created significant unplanned costs for Community Legal Centres on accruals of long service leave. This is even more so for Community Legal Centres that pay above Award rates.

"We have 20 full-time equivalent staff and incurred an additional expense of over \$30,000 as a result of the retrospective change, which we had not budgeted for."

– Community Legal Centre CEO

Community Legal Centres also incurred additional costs for backdating levy payments for workers who were not previously included when the Scheme changed on 1 October 2020 to include all staff. Many of these payments were made for workers that left the Scheme shortly after the backdated payment being made.

Payment of levies for people who have retired, left the sector and/or are unlikely to remain in the sector

An overarching theme for Community Legal Centres is the payment of levies for workers who leave the sector or who are unlikely to remain in the sector —workers in transient roles, close to retirement or workers in regional Community Legal Centres. Some key examples cited by members include:

- Community Legal Centre workers, particularly legal staff, who live in regional and rural locations are less likely to continue employment with another organisation that is covered by the scheme (that is, move to a job at another Community Legal Centre) due to the more limited services operating in regional Victoria. Frequently, their employment at their current Community Legal Centre is the only such organisation within hundreds of kilometres;
- drivers that distribute foods to and from warehouses who were onboarded during the pandemic and subsequently left the sector within 6 months of commencing;
- corporate staff that do not have strong ties to the community service, have no or limited direct engagement with the community or case management responsibilities and have a background outside of the sector; and
- language tutors engaged under a labour marker assistance award.

This review provides a good opportunity to better understand the diverse staffing arrangements across organisations that influence the regulatory and financial burden experienced under the Scheme. We recommend the Authority consider ways to reimburse registered Employers for additional costs due to the retrospective application of the Act and for levies paid for workers that subsequently leave the Scheme prior to claiming the benefit. In considering options for

¹ Community Legal Centre Multi-Business Agreement 2006-2009, s 40.1

reimbursement, we recognise the government's priority to ensure the Scheme is adequately funded. Learnings may be drawn from the WorkSafe scheme, in particular the options currently being considered towards advancing the scheme's financial sustainability.² We have identified some approaches that could be explored to ensure the Scheme is appropriately funded to provide reimbursements for levies paid for workers that subsequently leave the Scheme, including:

- limiting the reimbursement to registered Employers from the community services sector;
- delivering the reimbursement payment in instalments over time as opposed to a lump sum reimbursement; and
- implementing a tiered approach to levy payments where for-profit sectors such as the security and cleaning sectors pay a higher levy payment, resulting in more money funding the Scheme from organisations who have the ability to command a profit (rather than those dependent on grant funding).

RECOMMENDATION 2

The Authority should reimburse registered Employers who:

- incurred additional costs due to the retrospective application of the Act; and
- pay levies for workers that subsequently retire or leave the Scheme prior to claiming the benefit.

Payment of levies on Centrelink parental leave payments

We strongly recommend the removal of Centrelink payments in the definition of ordinary pay under the Scheme and further call on Industrial Relations Victoria to consider reimbursing Community Legal Centres for costs incurred due to this inclusion.

"Late last year, one of our staff was on maternity leave. At the end of the paid maternity leave offered by our Community Legal Centre, the staff member nominated us to receive their Paid Parental Leave from Centrelink to be paid via our payroll system. When I rang the Authority to seek clarity if Centrelink Paid Parental Leave is excluded from the Ordinary Pay, I was told to include Centrelink Paid Parental Leave in our Quarterly returns, as the Authority considers the Centrelink Paid Parental Leave payments as Ordinary Pay. Although I argued that it is not our payment, the Authority advised that because the employer is receiving the funds from Centrelink and passing them onto the worker, it is considered Ordinary Pay. However, if Centrelink pays directly to our employee, then we don't have to pay anything."

– Community Legal Centre Finance Manager.

We flag concern with the interpretation of ordinary pay including Centrelink parental leave payments as it appears inconsistent with the definition under section 3 of the Act that states:

² Kieren Rooney, 'Worksafe Premium hike on the cards to support 'fundamentally broken' system', *Herald Sun* (online, 7 March 2023 <<https://www.heraldsun.com.au/news/victoria/worksafe-premium-hike-on-the-cards-to-support-fundamentally-broken-agency/news-story/56adfb4f594ed5c5b25b5d792ce40073>>

ordinary pay, of a worker for a covered industry, has the meaning given in covered industry schedule for that industry. In this regard, we note that the schedule for industry awards applicable to the Community Legal Centre sector do not reference Centrelink parental leave payments.

Further, the provision of Centrelink payments is a purely administrative task that Community Legal Centres undertake in passing payment from the government on to the worker and there is no evidence base cited in support of it being included in ordinary pay. We draw attention to the definition of 'ordinary earnings' and 'current weekly earnings' under section 152 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic); and the Worksafe Victoria Claims Manual³ that excludes payments such as JobKeeper and Centrelink paid parental from calculations of weekly pay. We encourage a similar approach be applied to the Scheme.

RECOMMENDATION 3

Centrelink payments including parental leave paid by the government to the employer to pass onto the worker should be excluded from the definition of ordinary pay.

Evaluating the benefits against costs of the Scheme for the Community Legal Centre sector

The help that Community Legal Centres provide is critical in many aspects of Victorians' daily lives, including for those facing eviction and homelessness, incarceration, family breakdown and violence, crippling debts and fines, discrimination, exploitation at work and unfair dismissal. Community Legal Centres are uniquely placed to assist Victorians who are experiencing hardship with pressing legal issues, and often do this by providing tailored wrap-around and holistic support.

The high demand for legal assistance continues to significantly outstrip available resources. Without additional resourcing, thousands of people will not be able to get the support they need from Community Legal Centres. This unmet demand will continue to escalate as the impacts of the pandemic, disasters and widening inequality continue to be felt.

Now more than ever, Community Legal Centres must find ways to expand their capacity to meet the needs of the Victorian community – and they need resources to do this.

In reviewing the effectiveness of the Scheme, Community Legal Centres critically questioned whether the Scheme benefits the sector to deliver its important work.

"We have not had one person benefit from the Scheme. It has not helped the sector but has instead resulted in extra funds being provided to the government from centres."

– Community Legal Centre CEO.

³ Worksafe Victoria Claims Manual 3.5.3 Current Weekly Earnings, accessed at: https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims_Manual/3-weekly-payments/3-5-impacts-on-weekly-payments/3.5-3.5.3.htm?Highlight=JobKeeper

We recommend that the Authority conduct an evaluation of the numbers of people leaving the sector, costs incurred by Community Legal Centres and benefits claimed to provide a clearer evidence base to assess the effectiveness of the Scheme. It is important that data across these parameters be analysed and be made transparent to inform reform.

RECOMMENDATION 4

The Portable Long Service Leave Authority (Authority) should evaluate data on the number of registered workers from the Community Legal Centre sector that have benefited from the Scheme against the financial costs incurred by registered Community Legal Centre employers across a three-year period. The Authority should make this data publicly available and report on key findings to the Minister of Industrial Relations Victoria to inform further reform to the Scheme.

While Community Legal Centres share common operational frameworks, their service delivery is uniquely influenced by the community served. Regional, specialist and generalist Community Legal Centres all have differing staffing compositions, opportunities to progress employment within the community services sector and are covered by different industry awards. Consequently, the Scheme impacts each centre differently. We recommend the Authority assess options to move away from a 'one size fits all' approach and consider establishing a non-universal application of the Scheme. This may include the creation of different processes for regional organisations and or different levies for certain employees and/or circumstances. This difference lends to a non-universal application of the Scheme that would ensure Community Legal Centres are more easily able to meet requirements.

Community Legal Centres also engage with a range of comparable reporting processes including the Workcover scheme and the Superannuation Guarantee Levy payment—these serve as good examples to inform a redesign of the Scheme to minimise the existing regulatory burden experienced.

RECOMMENDATION 5

The Authority should complete a feasibility assessment of processes under comparable schemes to redesign, streamline and achieve a non-universal application the Scheme.

Conclusion

This submission highlights key concerns from the Victorian Community Legal Centres about the Scheme's effectiveness in supporting and providing benefits to the sector. While the submission focuses on five key recommendations towards reforming the Scheme, the Federation is pleased to engage in further consultation on the Review of the Scheme.