



Commissioner for  
Better Regulation  
Red Tape Commissioner

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1 May 2019

Mr Matthew O'Connor  
Deputy Secretary  
Industrial Relations Victoria  
1 Macarthur Place  
EAST MELBOURNE VIC 3002

Dear Mr O'Connor ~~Math~~ *Math*,

## **REGULATORY IMPACT STATEMENT FOR THE LONG SERVICE BENEFITS PORTABILITY REGULATIONS 2019**

I would like to thank your staff at Industrial Relations Victoria, and those in the Department of Health and Human Services, for working with my team on the preparation of the Regulatory Impact Statement (RIS) for the Long Service Benefits Portability Regulations 2019 (the Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and be proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 30 April 2019 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

### **Background and objectives**

The *Long Service Benefits Portability Act* (the Act) was passed by the Victorian Parliament in September 2018. The Act establishes a scheme to allow portability of long service benefits to workers in the community services, contract cleaning and security industries. It will come into effect on 1 July 2019.

The scheme allows for employees to transfer within these industries from one employer to another, and maintain eligibility for a minimum level of long service leave entitlements. This recognises that, in some sectors of the economy, employees may work for several employers and therefore find it difficult to achieve continuous service with one employer.

Entities in the National Disability Insurance Scheme (NDIS) and Early Childhood Education (ECE) sector were excluded from the immediate operation of the Act (on 1 July 2019). The RIS notes this was mainly due to concerns about funding certainty.

The proposed Regulations analysed in this RIS aim to address some residual issues relating to the implementation of the Act, specifically:

- clarifying the definition of employees and employers included in the scheme;
- clarifying the scope of the 'community services sector', and the date that NDIS and ECE workers will be included;
- reducing the risk of double dipping;
- prescribing information that employers must provide to the Portable Long Service Benefits Authority (the Authority); and
- prescribing government entities the Authority may share information with.

### **Options considered, and their assessment**

In the RIS, the Department assesses options to address each issue. Consideration is given to social and economic outcomes for employees, employers, the Authority and the Government.

#### *Definition of Employee and Employer*

The RIS examined definitions of employee and employer used in comparable schemes compared with developing a definition specific to Victoria. The RIS concluded that the former are ill-suited to Victoria because definitions of community services differ and part of the Act could be found to be constitutionally invalid. The Department recommends, therefore, the development of a specific Victorian definition and notes that this will reduce the risk of employees becoming entitled to more than one long service benefit through overlapping Federal awards.

#### *Scope of Community Services Sector*

This section of the RIS considers options for the date on which the scheme will include NDIS and ECE entities. The Department notes that other community services were not considered in this RIS as their inclusion was not a specific objective of the Act.

The RIS finds that 1 January 2020 is the most appropriate date for both NDIS and ECE entities to be included in the scheme, six months after the scheme begins for workers in the security and contract cleaning sectors.

#### *Double Dipping*

As it stands, under the Victorian Act there is the potential for employees to claim long service leave benefits under a Federal Fair Work Instrument as well as under the Victorian Act. The Regulations are therefore designed to prevent this double dipping by requiring employers to pay levies to the Victorian Authority until the employee claims a Fair Work benefit, at which point the employee is reimbursed by the Authority for the amount collected since workers were covered under this Act.

#### *Authority Oversight of Scheme*

This regulation ensures that the Authority is informed when employees leave an employer as part of an employer's regular returns. Without this oversight, the RIS explains the Authority would be required to enquire with individual employers each time an employee ceases to have returns paid for them.

#### *Disclosure of information to other entities and authorities*

This regulation allows the Authority to share information with the Australian Taxation Office and the Labour Hire Licensing Authority.

Without this disclosure power, the RIS notes that the Authority would struggle to determine the tax that should be applied to the payment of benefits, and would need to

request this information from businesses. This disclosure is intended to reduce unnecessary financial and administrative burden for the Authority.

### **Implementation and Evaluation**

As the Long Service Benefits Portability scheme is new to Victoria, the implementation, monitoring and evaluation strategies are important. The Department notes that ensuring that affected employers are fully informed about their new obligations is vital. A comprehensive communications program is planned.

The Act contains provisions requiring its review at three and seven-year periods after the its commencement. Evaluation of the Regulations will occur at the same time. The RIS outlines the matters specific to these Regulations that will be investigated as part of the broader review. These include:

- rates of uptake of the scheme among NDIS and ECE organisations;
- the appropriateness of the scope of employers and employees;
- the financial impacts of the scheme on businesses; and
- the risk of double-dipping.

Given that this is a new scheme, and there is interaction with Commonwealth policy, these reviews will be important and useful.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin

**Commissioner for Better Regulation**