

Submission

Portable Long Service Benefits Scheme (Victorian Government) Exposure Draft: Long Service Benefits Portability Regulations

Independent Schools Victoria

1. Independent Schools Victoria has 219 Member Schools, which educate more than 99.9 per cent of students enrolled in Victorian independent schools.

Legal status of independent schools

2. Independent schools are not-for-profit entities. Independent schools are usually incorporated associations under the *Associations Incorporation Reform Act 2012* (Vic) or companies limited by guarantee under the *Corporations Act 2001* (Cth), although there are some variations to these arrangements. For example, a couple of small schools operate as co-operatives under the *Co-operatives Act 1996* (Vic).

Provision of educational services

3. Independent schools are registered under the *Education and Training Reform Act 2006* (Vic) to provide educational services to primary and secondary students.
4. Many independent schools will be licensed under the *Children's Services Act 1996* (Vic) or will be approved providers under the Education and Care Services National Law (Victoria) for the provision of child care, preschool education and outside school hours care services.

Long Service Benefits Portability Scheme Information Forum

5. A representative of Independent Schools Victoria attended the Information Forum held on Tuesday, 7 May 2019. The Information Forum was hosted by Industrial Relations Victoria, the Department of Education and Training (**DET**) and the Department of Health and Human Services (**DHHS**) in respect of the *Long Service Benefits Portability Act 2018* (**Portability Act**).
6. As it our understanding that it is not proposed to define non-government schools, which includes independent schools, as being involved in community services work, this submission is confined to the operation of Regulations 7(3) and 9(1) of the Exposure Draft of the Long Service Benefits Portability Regulations (**Regulations**).

Proposed Regulation 7(3)

7. This Regulation makes it clear that an independent school:
 - registered, as required, under the *Education and Training Reform Act 2006* (Vic), and
 - providing child care and/or preschool education as a licensed entity under the *Children's Services Act 1996* (Vic) or as an approved provider under the Education and Care Services National Law (Victoria),

is not defined to be involved in community service work for the purposes of the Portability Act.
8. On this understanding of Regulation 7(3), Independent Schools Victoria, on behalf of its Member Schools, supports Regulation 7(3).

Proposed Regulation 9

9. At the Information Forum (7 May 2019), concern was expressed that an independent school might be defined as being involved in the community services sector as it may engage a speech therapist or a psychologist under the *Educational Services (Schools) General Staff Award 2010* (**General Staff Award**).
10. [REDACTED] from Industrial Relations Victoria took the question on notice.
11. [REDACTED] [REDACTED] undertook to provide feedback to the participants at the Information Forum on the questions taken on notice.
12. Feedback was provided in writing on 16 May 2019. The feedback provided on 16 May 2019 was that consideration was being given to listing the General Staff Award in Regulation 9(1).
13. Regulation 9(1) prescribes such awards and agreements for the purposes of clause 4(2)(d)(i) of Schedule 1 of the Portability Act. Clause 4(2)(d)(i) of Schedule 1 of the Portability Act provides that an employee will not be an "employee for the community services sector" if a prescribed award or agreement applies to that employee.
14. The proposal to exclude employees to whom the General Staff Award applies is supported, on the basis that such proposal excludes employees such as a speech therapist, psychologist, youth/social worker and first aid officer employed by an independent school from being defined as a community services employee under the Scheme.
15. However, the proposal raises a question regarding its effect given that there are enterprise agreements in place that replace the operation of modern awards, including the General Staff Award.
16. Many independent schools have established enterprise agreements which have the effect of replacing the operation of the General Staff Award. Such enterprise agreements are only approved by the Fair Work Commission if they comply with the National Employment Standards of the *Fair Work Act 2009* (Cth) (**FW Act**) and pass the better off overall test (BOOT) when compared to the General Staff Award.
17. Accordingly, and pursuant to ss 47 and 57 of the FW Act, the General Staff Award does not "apply" to those independent schools which are covered by an enterprise agreement.

18. Similar issues will arise in respect of other employees to whom the listed awards in Regulation 9(1) would apply if it were not for the existence of an enterprise agreement.
19. Independent Schools Victoria accordingly proposes the following additions be made to Regulation 9(1) at subregulation (1)(h), with subsequent renumbering:
 - (h) the Educational Services (Schools) General Staff Award 2010;
 - (i) an enterprise agreement (within the meaning of the Fair Work Act 2009 of the Commonwealth), in respect of any employee who is also covered by any of the awards in subregulation (1)(a) to (h);
20. Independent Schools Victoria submits that such amendments would improve the effective and intended operation of clause 4(2)(d)(ii) of the Portability Act and Regulation 9(1).