

Authorised Version No. 001
Long Service Benefits Portability Interim
Regulations 2019

S.R. No. 110/2019

Authorised Version as at
20 November 2019

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Part 1—Preliminary

1 Objective

The objective of these Regulations is to prescribe matters authorised to be prescribed by, and to ensure the effective implementation of, the **Long Service Benefits Portability Act 2018**.

2 Authorising provision

These Regulations are made under section 79 of the **Long Service Benefits Portability Act 2018**.

3 Commencement

These Regulations come into operation on 20 November 2019.

Note

See regulation 8(2) and (3) in relation to certain requirements applying on and from 1 January 2020.

4 Revocation

The Long Service Benefits Portability Regulations 2019¹ are **revoked**.

5 Definition

In these Regulations—

the Act means the **Long Service Benefits Portability Act 2018**.

Part 2—Quarterly returns

6 Quarterly returns by employers

For the purposes of paragraph (c) of the definition of *required information* in section 27(2) of the Act, the prescribed information is—

- (a) for each of the employer's workers, any long service benefits given to the worker under a fair work instrument during the quarter, including—
 - (i) long service leave granted to, or taken by, the worker; and
 - (ii) payments for, or in lieu of, long service leave made to the worker; and
 - (iii) any other long service benefits paid or given to the worker; and
 - (iv) the time at which the benefits were given; and
 - (v) the service period to which the benefits relate; and
 - (vi) the name of any other fair work instrument that provides for a long service leave entitlement that applies to a worker or workers; and
- (b) for each worker who ceased to be employed by the employer during the quarter, the date the worker ceased employment.

Part 3—Administration

7 Disclosure of information to other entities and authorities

- (1) For the purposes of paragraph (b) of the definition of *Commonwealth government entity* in section 51(3) of the Act, the Australian Taxation Office is a prescribed entity.
- (2) For the purposes of paragraph (c) of the definition of *Victorian government entity* in section 51(3) of the Act, the Labour Hire Licensing Authority established by section 50 of the **Labour Hire Licensing Act 2018** is a prescribed entity.

Part 4—Community services sector

Division 1—Community services sector

8 What is *community service work*?

- (1) For the purposes of clause 2(1)(j) of Schedule 1 to the Act, the provision of any of the following services is prescribed to be community service work—
- (a) social work, welfare work and youth work services;
 - (b) home care support services provided in a private residence (other than health or aged care work);
 - (c) crisis counselling;
 - (d) emergency material relief;
 - (e) custodial or supportive care and social welfare;
 - (f) assessment of individual or family needs;
 - (g) social and community development, education and advocacy;
 - (h) family support services;
 - (i) youth services;
 - (j) housing and homelessness services;
 - (k) family violence prevention and response;
 - (l) neighbourhood houses;
 - (m) drug and alcohol services;
 - (n) migrant and refugee support services.

- (2) On and from 1 January 2020, for the purposes of clause 2(2)(a) of Schedule 1 to the Act, an activity that is funded by the National Disability Insurance Scheme within the meaning of the National Disability Insurance Scheme Act 2013 of the Commonwealth is prescribed to be community service work.
- (3) On and from 1 January 2020, for the purposes of clause 2(2)(b) of Schedule 1 to the Act, a service provided by an entity that is a licensed children's service under the **Children's Services Act 1996** or an approved provider under the Education and Care Services National Law (Victoria) (except an entity that is also a registered school within the meaning of the **Education and Training Reform Act 2006**) is prescribed to be community service work.
- (4) For the purposes of clause 2(2)(c) of Schedule 1 to the Act, an activity that is health or aged care work is prescribed not to be community service work.
- (5) For the purposes of subregulation (4), if a service provides activities that are health or aged care work and activities that are not health or aged care work, the service provided is not community service work if the health or aged care work is the predominant activity provided by the service.
- (6) In this regulation—
health or aged care work means—
 - (a) a health or related service within the meaning of section 3(1) of the **Health Services Act 1988** (except disability services referred to in paragraph (b)(iii) of that definition); or
 - (b) work of a kind performed in the delivery of residential aged care.

9 Who is an *employer*?

For the purposes of clause 3(2)(f) of Schedule 1 to the Act, the following persons and classes are prescribed not to be employers for the community services sector—

- (a) an aged care service operated by a hospital within the meaning of section 3 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015**;
- (b) a bush nursing centre specified in Schedule 1;
- (c) a bush nursing hospital specified in Schedule 2.

10 Who are not *employees* for the purposes of the community services sector?

(1) For the purposes of clause 4(2)(d)(ii) of Schedule 1 to the Act, the following awards are prescribed—

- (a) the Ambulance and Patient Transport Industry Award 2010;
- (b) the Amusement, Events and Recreation Award 2010;
- (c) the Educational Services (Schools) General Staff Award 2010;
- (d) the Fitness Industry Award 2010;
- (e) the Medical Practitioners Award 2010;
- (f) the Pharmacy Industry Award 2010.

(2) An employee employed under an award referred to in subregulation (1) is considered to be engaged under that award even if an enterprise agreement applies to the employee's workplace.

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

11 Calculation of benefit on leaving the community services sector or death

For the purposes of clause 11(2) of Schedule 1 to the Act, the amount payable to the worker or representative is—

- (a) if the worker has completed 7 years or more of recognised service, an amount equal to 1/60th of the worker's total period of recognised service less any long service benefit paid during that period; and
- (b) an amount calculated on the basis of the worker's ordinary pay at the date the worker left the sector or died.

Division 2—No double-dipping

12 No double-dipping

- (1) For the purposes of clause 15 of Schedule 1 to the Act, a reference in section 5 of the Act to a worker in a covered industry does not include a registered active worker referred to in clause 15(1) of Schedule 1 to the Act.
- (2) For the purposes of clause 15 of Schedule 1 to the Act, a registered active worker referred to in clause 15(1) of Schedule 1 to the Act is entitled to long service leave under a fair work instrument but not payment of a long service benefit under the Act in respect of the same service period.

- (3) For the purposes of clause 15 of Schedule 1 to the Act, if a registered active worker referred to in clause 15(1) of Schedule 1 to the Act has an entitlement to long service leave under a fair work instrument, the employer of that worker is not required to pay a levy under the Act for that worker in respect of the same service period to which the fair work instrument and the Act apply.
- (4) For the purposes of clause 15 of Schedule 1 to the Act, the Authority is not required to pay a long service benefit to a registered active worker referred to in clause 15(1) of Schedule 1 to the Act in respect of the same service period to which an entitlement to long service leave under a fair work instrument applies.
- (5) For the purposes of clause 15 of Schedule 1 to the Act, if an employer of a registered active worker referred to in clause 15(1) of Schedule 1 to the Act is required to pay the worker for long service leave under a fair work instrument in relation to the same, or part of the same, service period, the employer may recover from and be reimbursed by the Authority any amount paid under the fair work instrument for the worker.
- (6) In this regulation, a reference to a registered active worker includes a personal representative for the purposes of clause 11(2) of Schedule 1 to the Act.
- (7) In this regulation, a reference to a fair work instrument includes—
 - (a) a National Employment Standard; or
 - (b) a transitional instrument under the Fair Work Act.

Part 5—Contract cleaning sector

13 Who are not *employees* for the purposes of the contract cleaning industry?

- (1) For the purposes of clause 4(2)(b) of Schedule 2 to the Act, an individual is prescribed not to be an employee for the contract cleaning industry if employed under one of the following awards—
 - (a) the Manufacturing and Associated Industries and Occupations Award 2010;
 - (b) the Vehicle Manufacturing, Repair, Services and Retail Award 2010;
 - (c) the Airline Operations Ground Staff Award 2010;
 - (d) the Waste Management Award 2010.
- (2) An employee employed under an award referred to in subregulation (1) is considered to be engaged under that award even if an enterprise agreement applies to the employee's workplace.
- (3) For the purposes of clause 4(2)(b) of Schedule 2 to the Act, an individual is prescribed not to be an employee for the contract cleaning industry if the predominant activity of the individual's substantive role is not the personal delivery of services or the personal performance of activities that are cleaning work.

Part 6—Expiry

14 Expiry

These Regulations expire on 6 November 2020.

Schedule 1—Bush nursing centres

Regulation 9(b)

Balmoral Bush Nursing Centre
Buchan Bush Nursing Centre
Cann Valley Bush Nursing Centre
Dargo Bush Nursing Centre
Dartmoor & District Bush Nursing Centre
Dingee Bush Nursing Centre
Elmhurst Bush Nursing Centre
Ensay Bush Nursing Centre
Gelantipy District Bush Nursing Centre
Harrow Bush Nursing Centre
Lake Bolac Bush Nursing Centre
Lockington & District Bush Nursing Centre
Swifts Creek Bush Nursing Centre
Walwa Bush Nursing Centre
Woomelang & District Bush Nursing Centre

Schedule 2—Bush nursing hospitals

Regulation 9(c)

Ballan and District Soldiers' Memorial Bush Nursing Hospital

Euroa Health

Heyfield Hospital Incorporated

Nagambie HealthCare

Neerim District Health Service

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Long Service Benefits Portability Interim Regulations 2019, S.R. No. 110/2019 were made on 19 November 2019 by the Governor in Council under section 79 of the **Long Service Benefits Portability Act 2018**, No. 44/2018 and came into operation on 20 November 2019: regulation 3.

The Long Service Benefits Portability Interim Regulations 2019 will expire on 6 November 2020: see regulation 14.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before

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1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

There are no amendments made to the Long Service Benefits Portability Interim Regulations 2019 by statutory rules, subordinate instruments and Acts.

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ Reg. 4: S.R. No. 52/2019.