

# Ai GROUP Submission

**Long Service Benefits  
Portability Regulations:  
Exposure Draft**

27 June 2020



## Introduction

The Victorian Government has sought submissions with respect to the *Review of the Long Service Benefits Portability Interim Regulations 2019 (Interim Regulations)*. We understand that the interim regulations will expire on the 6 November 2020 and that new permanent regulations need to be made.

Ai Group welcomes the opportunity to make this submission about the Long Service Benefits Portability Regulations: Exposure Draft (**ED Regulations**).

We refer to our concerns about the Long Service Benefits Portability Bill, forwarded to the Minister for Industrial Relations on 14 May 2018, as well as our submission of 31 May 2019 about the Interim Regulations.

Our position remains unchanged regarding the need for the Regulations to provide enough clarity to employers and workers about the coverage and operational aspects of the portable long service benefits scheme.

## Community Services Sector

### ED Regulation 8

We are concerned that the words in the new subclause (o) are too broad.

The words “Services that support the provision of any of the services referred to in paragraphs (a) to (n)” could mean any type of service. It is quite confusing and appears to extend the scope beyond community service work. This subclause should be removed.

In the alternative, subclause (o) should be redrafted to limit its application. We propose the addition of the following words at the end of the sentence:

*“provided that such service is being conducted by an employee employed by an employer covered by the Act.”*

The removal of clauses 4-6 of the Interim Regulations creates a lack of clarity as to the exclusion of aged care from the provisions of the Act. If the removal was to give effect to maintaining the policy position of including all home care support services, including to the aged, then regulation 4 and 5 could be simply amended to provide for the specific exemption.

In the alternative, the following exclusion should be added to the Regulations:

*“For the purposes of clause 2(2)(c) of Schedule 1 to the Act, an activity that is Aged care work is prescribed not to be community services work. Aged care work is work undertaken in the Aged Care industry as defined by the Aged Care Award 2010. “*

## **ED Regulation 9**

Subclause 9(d)(iii) of the ED Regulations adopts part 3(1)(b)(iii) of the Health Services Act. This has the effect of deeming a person, contractor or employer to be undertaking community services work where that “person, body or organisation. provides, delivers, funds, facilitates access or provides insurance in relation to health services, being services that include, but are not limited to, disability services referred to in clause (b)(iii) of the definition.

The broadness of this definition clearly covers health services and not just disability services. It also provides for an unintended consequence of covering non-community service businesses that may from time to time provide any of the services mentioned, such as facilities access or insurance services to the community services sector.

If the intent is to ensure that specified disability services are included, this should be clearly stated. In its current form, this subsection is likely to cause confusion, particularly if ED Regulation 8(o) is retained.

## **ED Regulation 10**

The amendments provide sufficient clarity as to who is an employee in the community services sector. There are no other awards that would be appropriately included.

## **ED Regulation 12 - Double-dipping**

We reiterate our submissions previously made about the issue of double dipping. Whilst Ed Regulation 12 addresses a number of our concerns, we believe that clarity around double dipping should extend to include:

- a. The Victorian Long Service Leave Act 2018;
- b. The National Employment Standards under the Fair Work Act 2009;
- c. Transitional instruments under the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009; and
- d. The Victorian Construction Industry Long Service Leave Act 1997.

We appreciate that there would need to be amendments to the Act to facilitate this. However, we believe that this is imperative to ensure that employers are not disadvantaged.

## **Contract Cleaning Industry and Security Industry**

We accept that the ED Regulations establishes a predominance test for employers in the Security Industry in order to clarify the coverage of employees in the security industry. Whilst this addresses some of our concerns about the coverage definitions we have raised previously, it does not go far enough to provide clarity.

To that end, we seek to have the following included as a separate clause in section 14 of the exposure draft.

*“For the purposes of clause 4(2)(b) of Schedule 3 of to the Act, an individual is prescribed not to be an employee for the Security Industry, where the individual is covered by any of the following awards or agreements -*

- (i) the Manufacturing and Associated Industries and Occupations Award 2020 or any replacement award.*
- (ii) the Building and Construction General On-site Award 2010 or any replacement award”*

The double dipping provisions in the Regulations should also apply to the Contract Cleaning and Security industries.



## **ABOUT THE AUSTRALIAN INDUSTRY GROUP**

The Australian Industry Group (Ai Group®) is a peak employer organisation representing traditional, innovative and emerging industry sectors. We are a truly national organisation which has been supporting businesses across Australia for more than 140 years.

Ai Group is genuinely representative of Australian industry. Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, the defence industry, civil airlines and ICT.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international) we have the resources and the expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance you need to run your business. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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