



AUSTRALIAN SERVICES UNION
Victorian and Tasmanian Authorities & Services Branch

Australian Services Union Submission

Portable Long Service Leave Scheme - Interim Regulations





Contents

- **Key Recommendations**
- **Context for Submission**
- **ASU feedback on proposed regulations**
 - Whole of organisation approach
 - Community health centre workers
 - Further concerns
- **Appendix**

1.0 Key Recommendations

- That Regulation 10(3) in the Long Service Benefits Portability Interim Regulations (the Regulations) is deleted from the regulations in its entirety.
- That Regulations 8(4)(5)(6) be amended to ensure inclusion of community service workers in Community Health Centres (CHCs), all women's health employees, and community service workers providing home support services to older people in private residences.
- That the current exclusion in the Act under Schedule 1, 3 (2)(c) of entities that have governing bodies appointed under an Act of the Commonwealth or the State be resolved to prevent the exclusion of community service employers.
- That these matters be dealt with in the Interim Regulations, rather than being delayed until the permanent Regulations in 2020, given the liability risk for organisations operating under unclear guidelines if they are not covering employees who are later deemed to be included in the scheme.

2.0 Context for Submission

The Australian Services Union Victorian and Tasmanian Authorities and Services Branch (ASU) represents workers throughout the community services sector in Victoria. Members of the Australian Services Union who work for community service organisations have been fighting for a portable long service leave scheme for over fifteen years.



This campaign was prompted by the combination of the precarious nature of the work within individual community service organisations and the commitment to the sector that community service workers show.

Community service organisations have very flat structures making promotional opportunities difficult, and funding for programs is often precarious. Due to the highly feminised workforce (about 75% of the workforce is women) workers often take leave to have children or due to other family obligations.

For these reasons most workers within community service organisations are not able to stay working for an employer long enough to accrue long service leave, and yet more often than not when a worker leaves one community service organisation they go to work for another within the same sector.

The ASU's campaigning on this issue was instrumental in the formulation of the Community Services Long Service Leave Bill 2010. While this Bill was unfortunately not made an Act of Parliament, it has provided an important foundation for discussions surrounding the Long Service Benefits Portability Act 2018 (the Act). This act was introduced and passed in the first term of the Andrews' government, and covers workers in community service organisations, security and contract cleaning. This submission relates specifically to coverage for community services under this Act.

3.0 ASU feedback on proposed regulations

The ASU is aware that the intention of the Interim Regulations is to make no material changes to the Regulations which are to be revoked. Our position is that the issues detailed below fundamentally undermine the operation of the scheme, and will have deleterious consequences for both organisations and workers who are, or should be, covered by the scheme if not immediately addressed. This includes risk of liability if organisations are not covering workers that should be covered for an extended period of time.



3.1 Whole of organisation approach

Summary recommendation: 10(3) of the Long Service Benefits Portability Interim Regulations should be deleted from the regulations. The regulation is ambiguous and difficult to interpret, is causing a high degree of variation across the sector in interpretation and application, excludes vast numbers of workers, and conflicts with the intent of the Act.

There are many attributes of community service organisations that mark them out as being different from other workplaces. One key aspect is that they have very flat structures and have very few resources dedicated to administrative and other like roles. This means that every role within a community service organisation is vital to the provision of frontline services, with many administrative roles (for example) involving direct interaction with service users.

It was for this reason that the Community Services Long Service Leave Bill 2010 took a “whole of organisation” approach to the eligibility of workers within community service organisations for the scheme. Simply put, it has always been understood that if you worked for a community service organisation that was covered by the scheme then you would be covered personally.

Please find attached guidance material produced by the then Department of Human Services and extracts from material produced by Minister Lisa Neville, the responsible Minister at the time confirming this position (Appendices 1 & 2).

Throughout negotiations during the passage of the Act, in all of the discussions that ASU officials held with staff from DHHS, IRV and other state government departments it was understood that the 2018 Act would take a similar “whole of organisation approach”, with the 2010 Bill referenced explicitly. The ASU were also assured on numerous occasions that the 2018 Act would have the same coverage as the portable long service leave scheme in the Australian Capital Territory. Please find attached extracts from the website of the ACT PLSL scheme to show that the ACT scheme does indeed take a similar “whole of organisation” approach to the 2010 Bill (Appendix 3).



It is clear that the Regulations do not take a whole of organisation approach. 10(3) of the regulations states that “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.”

This has led to significant confusion in the sector, with individual organisations having to make decisions as to which of their staff are covered and which are not. The ASU have spoken to representatives of many organisations who are confused due to the lack of clarity about which of their staff they should register with the scheme.

Organisations are also advising that when they contact the PLSL Scheme Authority they get confusing information which is often totally different to the advice they have previously received, indicating that the Regulations as drafted are causing confusion on many fronts.

The failure to apply a whole of organisation approach has led to inconsistent methodologies from employers across the sector as to who they choose to register. For ASU members this means that their employer is being left to determine if they are covered by the scheme or not. The ASU are concerned about the future impact of the current situation as workers enrolled in the scheme start to change employers, when community service organisations are not applying the same practices regarding registration. We believe regulation 10(3) will be a significant impairment to the scheme working as intended.

3.2 Community Health Centres

Summary recommendation: Regulations 8(4)(5)(6) should be amended to ensure inclusion of community service workers in Community Health Centres (CHCs), all women’s health employees, and community service workers providing home support services to older people in private residences.



The ASU represents community service workers employed in CHCs and women's health services, as well as many who work providing home care support services to older Victorians in their residences. The regulations as currently drafted reference the Health Services Act without the qualification provided in Schedule 1, 3, 2 (e) of the Act specifying the exclusion of public health. This conflicts with intent of Act and delivers a range of unintended consequences.

Specifically, it has resulted in the exclusion of community service workers employed in CHCs, which is in conflict both with the Act at Schedule 1,4(b) and in direct conflict to undertakings made by the government in discussion with the ASU prior to the passing of the Act, and in numerous unambiguous mentions made during presentation of the bill¹.

It has also resulted in the exclusion of workers from women's health, which again is in conflict both with the intent of the Act and with Regulations 8(1)(a)(g) and particularly (k) in the same document. This exclusion means that despite the inclusion of "family violence prevention and response" as a scoped in form of community service under 8 (1)(k), significant portions of this important sector are excluded by the later reference to the *Health Services Act 1988*. Further, it has created a conflict with Regulation 8(1)(b) for home care support service workers who provide care in the home, and excluded some workers providing these services. This seems to have resulted as an unintended consequence of the clumsy attempt to carve out community health, against the original intent of the Act.

The ASU is aware that these exclusions have caused further confusion in the community services sector, for both organisations and workers who understood (based on the intent provided prior to passage) that they would be covered by the scheme.

¹ 24 August 2018, retrieved at https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2018/Council_Daily_Extract_Friday_24_August_2018_from_Book_12.pdf and 4 September 2018, retrieved at https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2018/Council_Daily_Extract_Tuesday_4_September_2018_from_Book_13.pdf



3.3 Further concerns

Summary recommendation:

1. That the current exclusion in the Act under Schedule 1, 3 (2)(c) of entities that have governing bodies appointed under an Act of the Commonwealth or the State be resolved to prevent the exclusion of community service employers.
2. That all the matters addressed heretofore be dealt with in the Interim Regulations, rather than being delayed until the permanent Regulations in 2020, given the liability risk for organisations operating under unclear guidelines if they are not covering employees who are later deemed to be included in the scheme.

Schedule 1,3 (2)(c) of the Act excludes entities that have governing bodies appointed under an Act of the Commonwealth or State from being considered as employers for the community services sector. The ASU believes this may have been intended to exclude statutory authorities from the scheme; however it has had the unintended consequence of excluding workers at some of the sectors largest employers, such as the Brotherhood of St Laurence and Uniting, whose governing bodies are appointed under legislation.

The ASU has been indicating our concerns with the Regulations as drafted since prior to their original implementation, in our initial submission (Appendix 4), and have continued to raise these concerns with the Government as problems have inevitably arisen with their implementation (Appendices 5 & 6). These matters have the potential to create a significant liability risk if coverage issues remain unresolved, or if workers who should be included remain outside the scheme until the permanent regulations are put in place in 2020.

4.0 Appendix

- Frequently Asked Questions – 2010 Portable Long Service Leave Scheme
- Community Services Sector Update - 2010



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- Extract from ACT Portable Long Service Leave Scheme Website
- Initial ASU Submission regarding Long Service Benefits Portability Regulations
- ASU correspondence with Treasurer Tim Pallas – 5 September 2019
- ASU correspondence with Treasurer Tim Pallas – 4 October 2019

Questions about this submission should be directed to Leon Wiegard, Assistant Secretary, via [TEXT REDACTED].