



27 June 2020

Industrial Relations Victoria  
Department of Premier and Cabinet  
1 Spring Street, Melbourne Victoria 3000

## Review of the Victorian Long Service Benefits Portability Interim Regulations 2019

### Submissions of the Australian Education Union (Victorian Branch)

#### Introduction

1. The Australian Education Union (Victorian Branch) (**AEU**) welcomes the opportunity to comment on the Long Service Benefits Portability **Interim Regulations** 2019 and the making of “permanent regulations” in the form proposed in the **Exposure Draft** of the Long Service Benefits Portability Regulations dated 20 May 2020.
2. The AEU considers that the opportunity provided to comment on the Exposure Draft is not an opportunity to revisit the scheme as a whole. The AEU has, for example, been approached by one industry participant, alleging that the “scheme is a lemon”. The portable long service benefits scheme under the *Long Service Benefits Portability Act 2018* (Vic) that is, in part, given effect to, and proposed to be implemented by, the Exposure Draft (**LSB Scheme**) will provide for benefits that the AEU and trade unions have long campaigned to be provided. Further, the Parliament has enacted legislation that contemplates the implementation of the LSB Scheme and so revisiting the scheme would require the legislation.
3. The AEU wishes to provide some feedback on the terms of the LSB Scheme. In general, the AEU considers that the revised approach to coverage is to be welcomed. The AEU proposes some technical amendments to the Exposure Draft. The AEU also considers that there is some further clarification of coverage in relation to disability instructors and trainers/instructors in supported employment services.

## Response to questions regarding Exposure Draft

A -What is community service work?

1. *Is the list of services in Regulation 8 sufficient to capture the range of work performed in the community services sector?*
  2. *Should any other services be included? Conversely, should any be excluded?*
4. Clause 2(1)(J) of Schedule 1 to the Act allows a service, or a service of a class, to be prescribed to be community service work. The AEU covers work performed in disability day services throughout Victoria. The AEU does not consider that the services prescribed in paragraphs (a) to (n) of Regulation 8(1) squarely capture disability day services. The AEU has understood that disability day services were intended to be included in the LSB Scheme. For the avoidance of doubt, the AEU believes that Regulation 8(1) should specifically refer to:
    - a. "disability day services;" and
    - b. "training and instructing disabled persons".
  5. The AEU supports the prescription of activities that are funded by the National Disability Insurance Scheme (within the meaning of the *National Disability Insurance Scheme Act 2013* (Cth)) for the purpose of clause 2(2)(a) of Schedule 1 to the Act for the reasons given in the Regulatory Impact Statement.
  6. The AEU also supports the abolition of the "employer predominance test" and the introduction of a test based on coverage of modern awards. The "employer predominance test" would introduce a new test that does not cohere with existing norms under industrial laws that have evolved to deal with overlapping coverage.
  7. The AEU considers, however, that the Supported Employment Services Award 2020 should also be referred to in Regulation 10. The AEU has members who work as trainers and supervisors in the supported employment services industry, which employs disabled persons. Their work is clearly community service work but is not squarely captured in the Exposure Draft.

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

4. *Do the exposure draft Regulations provide sufficient clarity with respect to who is an employee for the community services sector?*
  5. *Should any additional awards be included in clause 9(1) of the exposure draft Regulations?*
8. As stated above, the AEU supports the abolitions of the “predominance test” and the introduction of the award coverage test. However, the AEU considers that reference should also be made to the Supported Employment Services Award 2020 so as to include trainers and supervisors of disabled persons in the supported services industry.
  9. The AEU considers that in the interests of clarity and the coherence of norms as between the Act, the LSB Scheme and the provisions of the *Fair Work Act 2009* (Cth), regulation 10 should be drafted as follows (underlined text are additions to the current clause; strikethrough text are deletions):

- “(1) 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 unless the individual’s employment is covered by ~~is employed under~~ one of the following awards—
- (a) the Social, Community, Home Care and Disability Services Industry Award 2010;
  - (b) the Children’s Services Award 2010;
  - (c) the Educational Services (Teachers) Award 2010;
  - (d) the Labour Market Assistance Industry Award 2020;
  - (e) the Supported Employment Services Award 2020.
- (2) For the purposes of subregulation (1), an individual’s employment is covered by ~~is taken to be employed under~~ an award even if an employment agreement (within the meaning of section 3 of the Act) applies to the individual’s employment ~~enterprise agreement applies to the individual’s workplace.”~~

10. If the above comments need clarification or elaboration, please contact the AEU.

**MARTEL MENZ, Deputy Secretary of the Australian Education Union (Victorian Branch)**