



Dear Submitter

### **Review of the Long Service Portability Interim Regulations 2019**

Thank you for your comments on the making of the Long Service Benefits Portability Regulations 2020 (the Regulations). Your views have been carefully considered by the Minister for Industrial Relations, Tim Pallas MP. The Minister has determined that there will be some changes made to the exposure draft Regulations. In summary, these are:

1. Regulation 8 – What is *community service work*?

Draft regulation 8(1) sets out various functions that are considered to be community services work. It is proposed to amend regulation 8(1)(o) so that it now refers to “services that support, supervise or manage the provision of any of the services referred to in paragraphs (a) to (n).” The amendment will clarify that an employee is not excluded from the portability scheme simply because they are engaged in a managerial or supervisory role (however, the employee must still be employed under a prescribed award – see clauses 10(1) and 10(2) of the Regulations).

2. Regulation 10(1) - Who are not *employees* for the purposes of the community services sector?

The exposure draft regulation 10 prescribes four awards. To be eligible for the scheme, an employee must be employed under one of these awards. It is proposed to add the Supported Employment Services Award 2020 to this list. This Award covers employers throughout Australia who operate supported employment services and their employees. It is considered that these employers and their employees were already covered by the scheme, but the decision to provide an exhaustive list of awards in regulation 10(1) requires the express inclusion of the Supported Employment Services Award.

3. Regulation 10(2) – Who are not *employees* for the purposes of the community services sector?

The exposure draft regulation provides that for the purposes of regulation 10(1), an individual is taken to be employed under an award even if an enterprise agreement applies to that individual’s workplace. Recognising that other industrial instruments may also apply, it is proposed to add the words “or an agreement-based transitional instrument within the meaning of the Fair Work Transition Act” and the words “or to the individual” to this regulation.

4. Regulation 13(1) – Who are not *employees* for the purposes of the contract cleaning industry?

The name of the Award previously known as the Vehicle Manufacturing, Repair, Services and Retail Award 2020 is proposed to be updated to reflect its new name. The word 'Manufacturing' will be removed.

5. Regulation 13(2) – Who are not *employees* for the purposes of the contract cleaning industry?

It is proposed to amend draft regulation 13(2) in the same terms as draft regulation 10(2). The exposure draft regulation provides that for the purposes of regulation 13(2), an individual is taken to be employed under an award even if an enterprise agreement applies to that individual's workplace. Recognising that other industrial instruments may also apply, it is proposed to add the words "or an agreement-based transitional instrument within the meaning of the Fair Work Transition Act" and the words "or to the individual" to this regulation.

A summary of submissions, and a response to comments made has now been published on the Engage Victoria website, [www.engage.vic.gov.au](http://www.engage.vic.gov.au). This document sets out the reasons for the aforementioned changes to the exposure draft Regulations.

The proposed Regulations will be presented to the Executive Council for approval on 1 September 2020. After they are approved, the Regulations can be downloaded from [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au). The Regulations will also be available through the Engage Victoria website. The new permanent Regulations, once made by the Executive Council, will operate from 1 October 2020, and the Interim Regulations will expire on that day.

Should you require more information about the scheme, including eligibility for the scheme, please contact the Portable Long Service Authority on 1800 517 158, or check their website at [www.plsa.vic.gov.au](http://www.plsa.vic.gov.au).

If you have any questions about the Regulations themselves, please contact Industrial Relations Victoria, at [irv.info@dpc.vic.gov.au](mailto:irv.info@dpc.vic.gov.au)

Yours sincerely



**MATT O'CONNOR**  
**Deputy Secretary**  
**Industrial Relations Victoria**

27 August 2020