



Victoria Government Gazette

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Subordinate Legislation Act 1994

NOTICE OF DECISION

Long Service Benefits Portability Regulations 2020

I, Tim Pallas MP, Minister for Industrial Relations, and Minister responsible for administering the **Long Service Benefits Portability Act 2018** (the Act), give notice under section 12 of the **Subordinate Legislation Act 1994** of my decision to make the proposed Long Service Benefits Portability Regulations 2020 (the proposed Regulations).

The proposed Regulations:

- (a) revoke the Long Service Benefits Portability Interim Regulations 2019;
- (b) prescribe information that employers must include in their quarterly returns;
- (c) prescribe a number of bodies to whom the Portable Long Service Authority may disclose information to;
- (d) define what is ‘community service work’;
- (e) prescribe who is not an employer for the community services sector;
- (f) prescribe who are not employees for the community services sector;
- (g) prescribe how entitlements are to be calculated when an employee leaves the community services sector, or dies;
- (h) prescribe measures for addressing double-dipping, and the reimbursement of employers in the community services sector;
- (i) prescribe who are not employees for the contract cleaning industry; and
- (j) prescribe who are not employees for the security industry.

The Exposure Draft Regulations which form the basis of the proposed Regulations have been the subject of a Regulatory Impact Statement (RIS). The RIS was made available for public comment and submissions from 20 May 2020 until 27 June 2020. Thirty-three submissions were received.

After consideration of these submissions in accordance with section 11 of the Act, I have further considered the proposed Regulations and I give notice of my intention to proceed with the making of the proposed Regulations with five amendments to the published Exposure Draft Regulations. Those amendments are to proposed regulations 8, 10(1), 10(2), 13(1) and 13(2).

My reasons for making these amendments are as follows:

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

Draft regulation 8(1) sets out various functions that are considered to be community services work. I propose 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.

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.

SPECIAL

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 ('manufacturing' will be removed).

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

I also propose 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.

After the proposed Regulations are made, they can be downloaded from www.legislation.vic.gov.au or purchased from the TIMG Bookshop.

Dated 27 August 2020

TIM PALLAS MP
Minister for Industrial Relations

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