## Long Service Benefits Portability Regulations Exposure Draft

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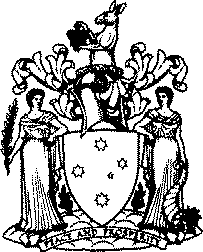
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### Victoria

**Long Service Benefits Portability Regulations Exposure Draft**

**Part 1—Preliminary**

* 1. **Objective**

The objective of these Regulations is to prescribe matters authorised to be prescribed by, and to ensure the effective implementation of, the **Long Service Benefits Portability Act 2018**.

### Authorising provision

These Regulations are made under section 79 of the **Long Service Benefits Portability Act 2018**.

### Commencement

These Regulations come into operation on 1 October 2020.

### Revocation

The Long Service Benefits Portability Interim Regulations 20191 are **revoked**.

### Definition

In these Regulations—

***the Act*** means the **Long Service Benefits Portability Act 2018**.

# Part 2—Quarterly returns

### Quarterly returns by employers

For the purposes of paragraph (c) of the definition of ***required information*** in section 27(2) of the Act, the prescribed information is—

* + 1. for each of the employer's workers, any long service benefits given to the worker under a fair work instrument during the quarter, including—
       1. long service leave granted to, or taken by, the worker; and
       2. payments for, or in lieu of, long service leave made to the worker; and
       3. any other long service benefits paid or given to the worker; and
       4. the date on which the benefits were paid or given; and
       5. the service period to which the benefits relate; and
       6. the name of any other fair work instrument that provides for a long service leave entitlement that applies to a worker or workers; and
    2. for each worker who ceased to be employed by the employer during the quarter, the date the worker ceased employment.

# Part 3—Administration

### Disclosure of information to other entities and authorities

1. For the purposes of paragraph (b) of the definition of ***Commonwealth government entity*** in section 51(3) of the Act, the Australian Taxation Office is a prescribed entity.
2. For the purposes of paragraph (c) of the definition of ***Victorian government entity*** in section 51(3) of the Act, the Labour Hire Licensing Authority established by section 50 of the **Labour Hire Licensing Act 2018** is a prescribed entity.

# Part 4—Community services sector

## Division 1—Community services sector

* 1. **What is *community service work*?**

1. For the purposes of clause 2(1)(j) of Schedule 1 to the Act, the provision of any of the following services is prescribed to be community service work—
   1. social work or welfare work;
   2. home care support services provided in a private residence, irrespective of the age of the client;
   3. crisis counselling;
   4. emergency material relief;
   5. custodial or supportive care and social welfare;
   6. assessment of individual or family needs;
   7. social and community development, education or advocacy;
   8. family support services;
   9. youth work or youth services;
   10. housing and homelessness services;
   11. family violence prevention and response;
   12. neighbourhood houses;
   13. drug and alcohol services;
   14. migrant and refugee support services;
   15. services that support the provision of any of the services referred to in paragraphs (a)

to (n).

1. For the purposes of clause 2(2)(a) of Schedule 1 to the Act, an activity that is funded by the National Disability Insurance Scheme within the meaning of the National Disability Insurance Scheme

Act 2013 of the Commonwealth is prescribed to be community service work.

**Note**

These activities were prescribed to be community service work under the Long Service Benefits Portability Interim Regulations 2019 on and from 1 January 2020.

1. For the purposes of clause 2(2)(b) of Schedule 1 to the Act, a service provided by an entity that is an approved children's service under the **Children's Services Act 1996** or an approved provider under the Education and Care Services National Law (Victoria) (except an entity that is also a registered school within the meaning of the **Education and Training Reform Act 2006**) is prescribed to be community service work.

**Note**

These services were prescribed to be community service work under the Long Service Benefits Portability Interim Regulations 2019 on and from 1 January 2020.

### Who is not an *employer* for the purposes of the community services sector?

For the purposes of clause 3(2)(f) of Schedule 1 to the Act, the following persons and classes are prescribed not to be employers for the community services sector—

* + 1. an aged care service operated by a hospital within the meaning of section 3 of the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015**;
    2. a bush nursing centre specified in Schedule 1;
    3. a bush nursing hospital specified in Schedule 2;
    4. a health or related service within the meaning of section 3(1) of the **Health Services Act 1988**, except for—
       1. a registered community health centre, referred to in paragraph (ab) of that definition; and
       2. a women's health service, referred to in paragraph (ac) of that definition; and
       3. a person, body or organisation that provides, delivers, funds, facilitates access to or provides insurance in relation to health services, being services that include but are not limited to disability services, referred to in paragraph (b)(iii) of that definition;
    5. an entity for profit that is an approved children's service under the **Children's Services Act 1996** or an approved provider under the Education and Care Services National Law (Victoria).
  1. **Who are not *employees* for the purposes of the community services sector?**

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 is employed under one of the following awards—
   1. the Social, Community, Home Care and Disability Services Industry Award 2010;
   2. the Children's Services Award 2010;
   3. the Educational Services (Teachers) Award 2010;
   4. the Labour Market Assistance Industry Award 2020.
2. For the purposes of subregulation (1), an individual is taken to be employed under an award even if an enterprise agreement applies to the individual's workplace.

### Calculation of benefit on leaving the community services sector or death

For the purposes of clause 11(2) of Schedule 1 to the Act, the amount payable to the worker or representative is, if the worker has completed at least 7 years of recognised service, an amount—

* + 1. equal to 1/60th of the worker's total period of recognised service, less any long service benefit paid during that period; and
    2. calculated on the basis of the worker's ordinary pay at the date the worker left the sector or died.

## Division 2—No double-dipping

### No double-dipping

1. For the purposes of clause 15 of Schedule 1 to the Act, a reference in section 5 of the Act to a worker in a covered industry does not include a registered active worker referred to in clause 15(1) of Schedule 1 to the Act.
2. For the purposes of clause 15 of Schedule 1 to the Act, a registered active worker referred to in clause 15(1) of Schedule 1 to the Act is entitled to long service leave under a fair work instrument but not payment of a long service benefit under the Act in respect of the same service period.
3. For the purposes of clause 15 of Schedule 1 to the Act, if a registered active worker referred to in clause 15(1) of Schedule 1 to the Act has an

entitlement to long service leave both under a fair work instrument and under the Act in respect of the same service period, and the worker has chosen to take an entitlement to long service leave under the fair work instrument, the employer of that worker is only required to pay the entitlement under the fair work instrument.

1. For the purposes of clause 15 of Schedule 1 to the Act, the Authority is not required to pay a long service benefit to a registered active worker referred to in clause 15(1) of Schedule 1 to the

Act in respect of the same service period to which an entitlement to long service leave under a fair work instrument applies.

1. For the purposes of clause 15 of Schedule 1 to the Act, if an employer of a registered active

worker referred to in clause 15(1) of Schedule 1 to the Act is required to pay the worker for long service leave under a fair work instrument in relation to the same, or part of the same, service period, the employer may recover from and be reimbursed by the Authority any amount paid under the fair work instrument for the worker.

1. In this regulation, a reference to a registered active worker includes a personal representative for the purposes of clause 11(2) of Schedule 1 to the Act.
2. In this regulation, a reference to a fair work instrument includes—
   1. a National Employment Standard within the meaning of the Fair Work Act; or
   2. a transitional instrument under the Fair Work Transition Act.

# Part 5—Contract cleaning industry

### Who are not *employees* for the purposes of the contract cleaning industry?

1. For the purposes of clause 4(2)(b) of Schedule 2 to the Act, an individual is prescribed not to be an employee for the contract cleaning industry if the individual is employed under one of the following awards—
   1. the Manufacturing and Associated Industries and Occupations Award 2020;
   2. the Vehicle Manufacturing, Repair, Services and Retail Award 2020;
   3. the Airline Operations Ground Staff Award 2020;
   4. the Waste Management Award 2020.
2. For the purposes of subregulation (1), an individual is taken to be employed under an award even if an enterprise agreement applies to the individual's workplace.
3. For the purposes of clause 4(2)(b) of Schedule 2 to the Act, an individual is prescribed not to be an employee for the contract cleaning industry 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 cleaning work.

# Part 6—Security industry

### Who are not *employees* for the purposes of the security industry?

For the purposes of clause 4(2)(b) of Schedule 3 to the Act, an individual is prescribed not to be an employee for the security industry 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 security work.

# Schedule 1—Bush nursing centres

Regulation 9(b)

Balmoral Bush Nursing Centre Buchan Bush Nursing Centre Cann Valley Bush Nursing Centre Dargo Bush Nursing Centre

Dartmoor and District Bush Nursing Centre Dingee Bush Nursing Centre

Elmhurst Bush Nursing Centre Ensay Bush Nursing Centre

Gelantipy District Bush Nursing Centre Harrow Bush Nursing Centre

Lake Bolac Bush Nursing Centre Lockington & District Bush Nursing Centre Swifts Creek Bush Nursing Centre

Walwa Bush Nursing Centre

Woomelang & District Bush Nursing Centre

# Schedule 2—Bush nursing hospitals

Regulation 9(c)

Ballan & District Soldiers' Memorial Bush Nursing Hospital & Hostel

Euroa Health

Heyfield Hospital Incorporated Nagambie HealthCare

Neerim District Health Service

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1 Reg. 4: S.R. No. 110/2019.

# Endnotes