

GOODSTART SUBMISSION IN RESPONSE TO THE DRAFT INTERIM REGULATIONS UNDER THE LONG SERVICE BENEFITS PORTABILITY ACT 2018

October 2019

Goodstart Early Learning is Victoria's largest provider of early learning and care with 174 centres caring for 21,000 children and employing over 4,200 staff. Goodstart is a not for profit social enterprise with the primary purpose of ensuring all of Australia's children have the learning, development and wellbeing outcomes they need for school and life.

We would recommend that the Government withdraw the regulation made in June and engage in meaningful consultations about the true costs and benefits of the proposed portable long service leave scheme before promulgating new regulations.

These consultations were promised by the Minister when the bill establishing the scheme was considered by Parliament last year when she advised the Legislative Council (24/8/2018) that:

"A re-elected Andrews Labor government will work at adding additional parts of the community sector workforce at appropriate times in coming years once the authority and the scheme are up and running. I think it is important, and I put on the record, that further consultation will be undertaken with the early childhood education and care and disability sectors to minimise any cost to employers and to families beyond what they already are required to allocate to long service leave entitlements."

We are disappointed that the consultation that the Minister promised would occur with the sector to minimise any cost to employers and families has not occurred. Nor indeed, was the scheme 'up and running' before the Government brought forward its proposal to extend the scheme to the early childhood sector. We note that the Government has not undertaken the work to minimise the cost of the scheme and that the scheme presented in this draft regulation is identical in scope, reach, compliance and cost to the one that was heavily criticised by the sector last year. If anything, the draft regulations add to our list of concerns.

The scheme as proposed makes no meaningful effort to minimise any cost to employers and to families. We estimate that the scheme will increase costs to Goodstart by around \$3 million a year over and above what we currently outlay on long service leave entitlements. This will reduce a little over time as employees claim benefits from the scheme, but not by much. Based on the payout ratios from the ACT scheme, even after

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eight years of operation, scheme refunds to employees were just a quarter of levy payments by employers.¹

There were more cost-effective ways of addressing attraction and retention issues in the early childhood sector, and indeed for securing improvements in portability of leave. We have never had a chance to discuss these options in any meaningful way with the Government.

Goodstart regularly engages with our staff on issues impacting on attraction and retention and portability of long service leave has never emerged as a priority issue for inclusion in our employment conditions. Improving pay, access to professional development and study leave, professional recognition, flexible working conditions, and improving parental leave are the priorities that our staff regularly raise with us. These are the issues that impact on attraction and retention of quality staff. Implementation of portable long service leave will increase our payroll costs while reducing our fiscal capacity to fund the improvements in wages and conditions that will truly make a difference to staff retention.

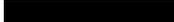
We are concerned that the Portable Long Service Authority and the sector does not appear to be ready for employer returns to be made from next year. Goodstart has a large SAP on-line payroll system and we are yet to receive technical specifications from the Authority to allow the system to report to the Authority with just 10 weeks to 'go live' date. We understand many other employers in the sector are yet to register with the Authority and awareness of the change among both employers and employees is low.

The withdrawal of the technically flawed regulations creates a new opportunity for the Government to get this scheme right first before imposing heavy costs and compliance burdens on overstretched not for profit providers across the State.

We recommend that the June regulations be withdrawn and NOT replaced, and that the Government engage in the meaningful consultation with the sector that was promised last year to reduce costs of implementation.

A copy of our submission in response to the June draft regulation is attached as the issues we raised as still very current.

Your sincerely,


Head of Advocacy
Goodstart Early Learning

¹ Payout rates under the Victorian scheme are likely to be lower than under the ACT scheme because the ACT scheme covers the private sector and allows prorata payments after 5 years service. The Victorian scheme does not cover the private sector and allows prorata payments after 7 years service. However, ECEC turnover rates are much higher in the ACT as employees move to better paid jobs in the public service or interstate.

ATTACHMENT:

**SUBMISSION BY GOODSTART EARLY LEARNING
ON TH DRAFT REGULATIONS UNDER THE *LONG
SERVICE LEAVE PORTABILITY ACT 2018*, MAY
2019**

**SUBMISSION BY GOODSTART EARLY LEARNING
May 2019**

1.0 Introduction:

Goodstart Early Learning is Victoria's largest provider of early learning and care with 174 centres caring for 21,000 children and employing over 4,200 staff. Goodstart is a not for profit social enterprise with the primary purpose of ensuring all of Australia's children have the learning, development and wellbeing outcomes they need for school and life.

Goodstart prides itself on being able to continually invest to increase the quality of education and care provided to children, particularly in more disadvantaged communities, while seeking to keep costs under control. Our heavy investment in raising quality – particularly in workforce development – has seen our quality ratings last year exceed the average rating for the standalone kindergarten sector for the first time. We have achieved that by also keeping our fee increases below the sector average for three years in a row, although in many local markets our fees are still higher than those of our competitors.

We would argue that the circumstances in Victoria's early childhood education and care sector do not meet the criteria for a very unusual government market intervention justifying the introduction of a portable long service leave scheme. The report of the Parliamentary Committee in 2016 justified the establishment of portable long service leave schemes in industries such as building and contract cleaning because employees were not generally hired on an ongoing basis or change jobs frequently and, as a result, not able to qualify for long service leave. The extension of the principle of portable long service leave was justified in community services because:

*"The Committee found that community services workers are not always able to work with a single employer long enough to qualify for long service leave because of the short-term funding of community services and the high risk of worker burnout. Based on this inequity and the existence of a portable long service leave scheme for the sector in the ACT, the Committee found that there is merit in introducing portable long service leave for community services workers."*ⁱ

This argument simply does not apply to the early childhood sector, where employment is overwhelmingly permanent in nature and the funding structure – based on parental fees – not affected by the short-term nature of contracts typical in the rest of the community sector.

The average tenure of an employee in Victoria's long day care sector in 2016 was 3.6 years,ⁱⁱ which is higher than the average tenure with an employer in Australian industry overall of around 3.3 yearsⁱⁱⁱ. Between 2013 and 2016, the number of employees who had served more than 10 years with a long day care employer rose from 1,365 to 1,800 employees, while the number with 7-9 years' experience rose from 1,120 to 1,769 employees. This pattern in a rapidly expanding sector suggests that employees are successfully building long service leave balances in the early childhood sector and that the case for Government intervention through a portable long service leave scheme in the sector is weak.

The scoping of this scheme is unlikely to improve portability arrangements marked for early childhood workers while substantially increasing employers' costs. Employees in the community kindergarten sector already enjoy portable long service leave through a long established custom and practice. Little analysis is presented as to why this long run

scheme which works for both employers and employees for many years needs to be replaced.

In summary, given the substantially different funding and employment conditions in the early childhood sector compared to the rest of the community sector and other industries covered by the Portable Long Service Leave Scheme, the case for extending the scheme to early childhood education is very weak.

2.0 Proposed scope of the regulation

The scoping the proposed definition of which parts of the long day care sector will be covered by the scheme effectively fails to achieve meaningful portability for employees because most of the sector falls outside the scope of the proposed definition. Again, this reflects the significant differences in the early childhood sector compared with the rest of the community sector. Whereas the community sector has very little private sector involvement comprising multiple not for profit service provider reliant on direct government funding, the long day care sector is overwhelmingly privately owned with funding of service driven by parent choices in a heavily competitive and increasingly oversupplied market place. The number of long day care centres in Victoria grew by 7.2 per cent in the year to June 2018, although children enrolled in long day care grew by just 3.8 per cent. Just 31% of long day care centres in Victoria are owned by not for profit entities, and hence caught by the proposed regulation:

COMPOSITION OF CENTRE BASED SERVICES – VICTORIA - Dec 31, 2018

Type	NFP	Private	Govt/Schools	TOTAL
Preschools	821	0	368	1189
Long day care	472	926	128	1526
TOTAL	1293	926	496	2715

(Source: ACECQA National Register)

When the Long Service Leave Portability Bill was tabled in April last year, Goodstart joined a number of other large not for profit providers in requesting that the early childhood sector be excised from the bill because of its unique circumstances. Our lobbying was successful, although the Government said that it wanted to consider scoping the early childhood sector back into the Act in later years. The Minister, Hon. Jenny Mikakos told the Legislative Council (24/8/2018):

“A re-elected Andrews Labor government will work at adding additional parts of the community sector workforce at appropriate times in coming years once the authority and the scheme are up and running. I think it is important, and I put on the record, that further consultation will be undertaken with the early childhood education and care and disability sectors to minimise any cost to employers and to families beyond what they already are required to allocate to long service leave entitlements.”

We are disappointed to note that the consultation that the Minister promised would occur with the sector to minimise any cost to employers and families has not occurred. Nor indeed, was the scheme 'up and running' before the Government brought forward its proposal to extend the scheme to the early childhood sector. We note that the Government has not undertaken the work to minimise the cost of the scheme and that the scheme presented in this draft regulation is identical in scope, reach, compliance and

cost to the one that was heavily criticised by the sector last year. If anything, the draft regulations add to our list of concerns.

Goodstart is concerned that the Bill's extension to ECEC is being brought forward without a proper assessment of the merits and costs of its proposals. It will significantly increase employment and compliance costs to the sector, possibly increase cost pressures on families and potentially result in the loss of ECEC jobs due to service viability, without delivering a significant benefit to employees or the sector.

As an employer, we strive to provide fair, equitable and sustainable working conditions for our staff. The proposed bill creates a division of employee benefits between the for profit and not for profit sector, as well as increasing direct employee costs for not for profit providers as the Bill will only apply to not for profit providers, who constitute less than half of the ECEC sector in Victoria.

This inequity in application will mean that not for profit providers will face higher compliance and employment costs related to long service leave not faced by the for-profit or government providers, while employees in the sector will not achieve true portability of leave as most of the sector would not be covered by the scheme. The prospect of considerable chunks of service being 'lost' as a result is quite high^{iv}. We note that the ACT is the only jurisdiction in Australia to include ECEC in its portable long service leave scheme, and that scheme includes both for-profit and not-for-profit providers.

We are concerned that the provisions of the Bill go well beyond current long service leave entitlements in Victoria which allow for a three month break in continuity rather than four years. These changes will considerably increase the provisioning costs for long service leave for ECEC providers covered by the scheme. This detracts from the underlying objective of long service leave which is to provide a benefit for actual long service.

Goodstart's analysis of exit surveys of our own staff show that very few departing staff go to another not for profit ECEC provider:^v

- 42.6% have no other role to go to;
- 23.5% go to another industry (e.g. primary and secondary school);
- 3.4% go to another role although the industry is not specified
- 30.5% go to another role in ECEC, usually at other long day care centres, the vast majority of which are out of scope of this scheme.

This analysis shows that 69% of our existing employees move outside the ECEC sector, and that of those who stay, most move to a for-profit or government-run LDC service. We estimate that less than 10% of our exiting employees would move to another role in the not-for-profit sector. Yet, the portable long service leave scheme will require full provisioning for all employees from day one.

Goodstart provides full portability of long service leave for employees who move between our 645 centres nationwide, and many do so. The State based scheme will add a further degree of complication to managing a national payroll when staff move interstate within the one employer.

Current provisions for long service leave have regard for the probability of employees claiming leave, with the employer 'retaining' the provision if an employee leaves. Under the new scheme, the levy will apply to all employees and the Authority will retain any amounts unclaimed. There are likely to be significant additional secondary costs that we

will also need to factor in such as increased use of casuals and agency staff as more staff take long service leave in the future. Coverage of employees who stay with an employer but move interstate also need to be clarified.

Goodstart regularly engages with our staff on issues impacting on attraction and retention and portability of long service leave has never emerged as a priority issue for inclusion in our employment conditions. Improving pay, access to professional development and study leave, professional recognition, flexible working conditions, and improving parental leave are the priorities that our staff regularly raise with us. These are the issues that impact on attraction and retention of quality staff. Implementation of portable long service leave will increase our payroll costs while reducing our fiscal capacity to fund the improvements in wages and conditions that will truly make a difference to staff retention.

Goodstart estimates that the scheme would increase our payroll costs in Victoria by around \$3 million p.a. as we would need to provide provisioning for long service leave costs as well as paying the levy. We estimate that upwards of \$2m of this additional impost would probably never be claimed by any employee.

Goodstart strongly recommends that the draft regulation be amended to remove the proposal to include early childhood education and care from its scope and that the Government engage in a real and meaningful consultation with the sector to address the serious concerns that the sector has raised with this proposal.

3.0 Timing of implementation

We are concerned that the sector will have insufficient time to implement the reform from January 2020, which falls part way through the next financial year for which budgets and fees are currently being set. Experience of ECEC providers with the ACT scheme suggests that compliance costs for the scheme will be very high. Goodstart is a member of the ACT scheme which does not operate an effective online portal, requiring any claims to be processed manually. This has proved to be a significant impost for the 200 employees we have in the ACT, but would prove an intolerable burden if applied to the 5000 employees we have in Victoria.

Major changes to payroll software programs would be needed to fully integrate the scheme into our online payroll system. Our payroll provider has not developed a module to implement the Victorian portable long service leave scheme, which would need to be subjected to extensive testing before it went live. We are not aware whether the scheme itself has developed specifications to allow such a module to be developed.

The early childhood sector faces major reforms over the next three years including:

1. Requiring all long day care services with more than 60 children to employ a second teacher or suitably qualified person by 2020;
2. The rollout of the School Readiness funding program involving the provision of additional needs-based funding for children facing disadvantage, which will require the recruitment of substantial numbers of qualified support professionals;
3. The roll out of 3-year-old kindergarten by 2022, which will require long day care centres and kindergartens to employ additional teachers, despite a shortage of early childhood teachers, exacerbated by Government-funded differential rates of pay between schools and kindergartens on one hand, and lower rates of pay in long day care centres on the other.

The private sector in Victoria is rapidly building hundreds of new long day care centres, driven by heavy demand for investors to own this class of investment.^{vi} The rapid expansion of the sector has been particularly evident in Victoria.^{vii} The rapid expansion of the long day care sector in Victoria has put considerable pressure on centre occupancy and made competition based on fees more intense. There is also more competition for qualified staff, with above award wages adding to costs. The cost impost flowing from meeting the demands of the portable long service leave scheme will reduce the capacity of not for profit providers to offer competitive upfront wages to prospective employees, while also putting upward pressure on their fees. It will make the challenge of maximising the opportunities for children and families to participate in high quality not for profit services that little bit harder just when the Government is looking for the sector to step in the implementation of major new reforms.

If the Government insists on scoping not for profit ECEC providers into the new scheme, Goodstart would strongly recommend that this occur no earlier than July 1 2022 to allow:

- 1. Kindergartens and long day care centres to fully absorb the major funding changes being rolled out by the Victorian Government, that is NQS ratio changes in 2020, the roll out of 3 year old kinder and School Readiness funding; and***
- 2. To allow for genuine consultation to occur with the sector on scope of the regulation and minimising any cost to employers and families beyond what they already are required to allocate to long service leave;***
- 3. To undertake a more detailed and proper consideration of the likely payout rates given most of the sector is scoped out of the scheme and to have that reflected in a lower levy percentage rate for early childhood; and***
- 4. To allow adequate time to develop and test online payroll system enhancements to allow the portable long service leave scheme to seamlessly interact with providers.***

4.0 Responses to specific consultation questions:

The Government has requested responses to specific consultation questions, and Goodstart provides the following responses:

Quarterly returns

- 1. Is the prescribed additional information appropriate?*

In most respects it is appropriate. However, a partial benefit is not tied to a particular period of service, it is just a portion of a total accrued amount.

Will previous benefits paid by the Authority be disclosed to the entity to avoid double dipping in an automated system interface?

- 2. Will employers be in a position to provide this additional information?*

It is fundamentally important that any quarterly return be capable of being delivered electronically and should not require information over and above what is available in the online payroll system. The critical issue is whether the scheme has an automated system for go live and a test system and specifications on which to design, build, and test our system in SAP. Our current experience with ACT is that their system is so poor and manual that it takes at least four hours per month to upload and deal with queries for only 170 employees. We have 4500 employees in Victoria, and the cost of manually processing information at that scale is prohibitive.

There is no information on how changes of names and addresses will be tracked by the Authority in order for our system to match data. Each person will need their unique identifier and may not be able to produce this information on registration. As such it is presumed the Authority will create a new number, and previous levies paid will be lost.

An employer cannot have full line of sight into what leave or service an employee may or may not have had with a previous employer. This potentially opens up the possibility that an employee could be paid twice for the same period of service, as the portable long service leave is a 'cash' scheme while the entitlement that employers work with under industrial instruments is a 'leave' scheme.

Disclosure of information

3. *Are there any specific matters about privacy of information that you wish to raise as part of this proposed regulation?*

We are concerned that the Authority appears not to be in a position to assist employers seeking to determine whether an employee has already claimed payment for leave relating to previous service with another employer.

Community services sector

4. *Do the exposure draft Regulations provide clarity as to the scope of the community services sector, what is community service work, and who is an employer, and an employee for the sector?*

No – there is a contradiction between the regulations and the Act and the scope clauses are extremely confusing and need to be substantially revised. The Act (Schedule 1 Clause 4(2)) appears to suggest that the only employee covered by the scheme will be where 'individual's role is to care for children or coordinate the care for children for the licensed children's service or approved provider'. Yet the regulation 9 suggests that the only employee scoped out of the scheme will be an individual employed in an executive or management role, that is if—

- (a) the role is wholly administrative; or
- (b) the predominant activity in the role is not the personal delivery of services or the personal performance of activities that are community service work.

We have a large number of employees who may or may not be caught by these provisions, including centre directors, administrative staff, cooks, bus drivers, maintenance workers, therapists, learning consultants and so forth. Centre Directors, for example, sometimes work on the floor and sometimes don't. This approach is inconsistent with the previous proposal where a predominant role test was proposed in relation to direct services. Non-ECEC specific roles such as cooks, admins or maintenance workers are likely to move in and out of multiple industries with the high probability that they would ever make a claim in the scheme despite significant levy payments.

We would request that the Government take the time to clarify these scope clauses further in respect of our sector to ensure that the language is consistent. The wording in the Act should, as far as possible, be replicated in the regulation.

5. *Is the list of awards and agreements at clause 9 of the exposure draft Regulations comprehensive? Should any of those awards or agreements be excluded? Should any other awards or agreements be included?*

We have no comment on this.

6. *Whilst it is proposed that the Regulations operate on and from 1 July 2019, the Regulations bringing children's services, and disability services within the scope of the scheme only operate on and from 1 January 2020. This will enable businesses in those sectors adequate time to prepare for the legislation. Are these appropriate commencement dates?*

As discussed above the 1 January 2020 date is entirely inappropriate for implementation of this regulation as the consultation to minimise the cost of the scheme that the Minister committed to undertaking has not yet occurred. Our budgets and fees for FY2020 have already been set. The argument in the RIS seeking to balance the 'benefits' of employees against the 'costs' to employers creates a false equivalence as the vast majority of our employees will not receive any benefit from this scheme. Indeed, it will act to their detriment by reducing the fiscal capacity of employers to provide the employment conditions that employees genuinely want.

Further the system changes cannot be commenced until there is a clear understanding of how we can integrate with and automated system. Alternatively, we would need to review how large employers in relevant industries are experiencing the system issues post 1 July 2019, which was what the Minister committed to last year.

Implementing this scheme will involve a significant systems build and will impact all relevant employers utilising its product in Victoria. Given the limited number of consultants available to perform this build, the timeframes are not achievable, or will be significantly more expensive than a staged approach with appropriate lead times. Major system changes such as this have a minimum 18 months lead time or more (e.g. STP).

In addition, the sector will be implementing significant State led reforms with major consequences for staffing – School Readiness funding and kinder for 3 year olds over the next three years, which will generate significant challenges in terms of attracting and retaining qualified staff. The additional cost impost that would flow from the portable long service leave schemes will make it more difficult for services to implement these reforms. As discussed earlier, if the Government proceeds with scoping in ECEC services, a date no earlier than July 1 2022 should be considered when these reforms are fully bedded down.

No double-dipping

7. *Does the proposed Regulation adequately address any risk of double-dipping?*

No - Part 4 Div 2 s 11 (3) is unclear as the employer is not obliged to pay a levy if a registered active worker has entitlement to long service leave under a fair work instrument. This would seemingly cover all of our existing employees.

Unless the Authority provides details of previous payments to workers then double dipping cannot be avoided. It is difficult to understand how these payments would calculate in our system to reduce payments made as the accrued levies are at the wage rate in the year the levy is paid whereas our obligations to pay are at the final pay rate plus on-costs. How would our system be adjusted to reflect a fair and equitable reduction in our full payments as required under a fair work instrument to avoid an over or under payment?

The legislation is also silent on whether on-costs are reimbursable under the scheme.

The double dipping provisions only appear to relate to circumstances where the employee is covered by a Fair Work instrument, eg Enterprise Agreement or Modern Award and where such instrument provides for long service leave. Whilst Goodstart has the instrument in the way of our EA, it does not provide an entitlement to long service leave, and as a consequence, the double dipping provisions do not apply.

Therefore, these provisions do not expressly address the issue of a worker having an entitlement under both the Victorian LSL Act and the portability scheme.

For example –

- Employee A works Company B for 4 years. Contributions are made to the scheme by Company B.
- Employee A leaves Company B and starts work for Company C.
- Employee A works for Company C for an additional 3 years. Employee A is now entitled to a payment under the scheme as they have reached the 7 year threshold. Whilst there is an entitlement to a payment under the scheme, there is not entitlement to actual leave, as the employee has not reached the threshold under the Vic LSL Act. They need to do an additional 4 years to qualify for leave.
- Employee works an additional 4 years Company C, and now qualifies for paid leave under the Vic LSL Act.
- Employee A is granted the paid leave consistent with the Vic LSL Act.
- Company C is unaware that Employee A has already claimed under the scheme as there exists no express obligation on either the Authority, or the Employee to disclose the payment.
- Employee A has double-dipped as the first 3 years of service has been recognised for both the portability scheme and the LSL Act.

It is assumed that in the above case, we would have to apply to the scheme to claim back the proportion already paid to Employee A. However, this does not address the issue of the double-dip, as the employee has already got the money and the leave.

As a national employer, it is our experience that Victoria's long service leave provisions are already the most complicated in the country to administer. Employees should accrue the relevant proportion per hour as is consistent across other jurisdictions. We would prefer that the Government moved to standardise and reduce complexity elsewhere in the scheme before adding to complexity through the new portability provisions.

ENDNOTES:

ⁱ Economic, Education, Jobs and Skills Committee report "Inquiry into portability of long service leave entitlements" June 2016 p. xxi

ⁱⁱ National ECEC Workforce Census 2016 State tables 1.10.3.

ⁱⁱⁱ <https://mccrindle.com.au/insights/blog/job-mobility-australia/>

^{iv} The ACT community sector scheme has deregistered around 1 in 3 employees since the scheme commenced in 2010, mostly due to service breaks. Levy collections exceed leave payouts \$9m to \$2 in FY2017.

^v Data from Goodstart employee exit survey, n=1101

^{vi} Burgess Rawson 2019 "Eight Good Reasons why Child Care Assets make good investments" <https://www.burgessrawson.com.au/8-reason-why-childcare-assets-make-good-investments/>; Australian Financial Review 15/5/2019 "Childcare Centres back in vogue among investors"

<https://www.afr.com/real-estate/commercial/childcare-centres-back-in-vogue-among-investors-20190515-p51nkb>

^{vii} <https://thesector.com.au/2019/05/10/latest-acecqa-snapshot-provides-more-clarity-on-moderation-in-ldc-supply/>