



Submission in Response to Draft Long Service Leave Benefits Portability Interim Regulations

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Contents

Introduction	3
Key Recommendations	3
NHVIC Feedback	5
Double Dipping.....	5
Concerns with Regulation 12.....	6
Short Term Vacancies Created.....	7
Reimbursement Process.....	7
Issues with Recruitment	8
Opting in or out of the Scheme	9
Commencement.....	9
Disputes and Conflict	10
Students within the Community Sector	10
Increased Risk of Discrimination	10

Introduction

Neighbourhood Houses Victoria (NHVic) welcomes the opportunity to provide feedback on the draft Long Service Benefits Portability Regulations (LSLP).

NHVic is the state peak body for over 400 Neighbourhood Houses across Victoria. These organisations are usually small community-based incorporated associations managed by a few paid staff and governed by an elected volunteer committee.

Whilst NHVic supports the concept of portal long service, it is opposed to the forced introduction of the aforementioned scheme. Indeed, the Neighbourhood House sector already provides portability in terms of long service, with the current system providing greater benefit to our employees than the proposed Regulations.

Key Recommendations

1. The Victorian State Government repeals current legislation concerning Long Service Leave Benefits Portability.
2. The Victorian State Government revokes any bills, draft or proposed legislation in relation to Long Service Leave Benefits Portability.
3. That Regulation 12,¹ be amended to ensure an employee cannot double dip.

¹ Long Service Leave Benefits Portability Interim Regulations 2019.

4. Regarding Regulation 12,² to be amended to include a process on how an employer is to be reimbursed, ensuring any such provisions are not onerous or time consuming upon an employer.
5. Further investigation and discussion are to occur regarding potential conflicts between *Long Service Leave Act 2018* and *Long Service Benefits Portability Act 2018*.
6. Regulations are insufficient in assisting employers with the increased costs and time, this scheme will expose employers to.
7. Employers should have the ability to opt in and out of this scheme.
8. Concerns regarding the commencement of this scheme, can the commencement be phased in and can employers opt out of the scheme while current instruments are operating.
9. Conflict with Federal Instruments, there is little detail aside from reimbursement, concerning how this conflict and disputes will be managed.
10. Employment of students in the sector, can students be exempt from the scheme.
11. Increased risk of discrimination.
12. Issues with the narrow approach of draft regulations. The draft Regulations have specified certain awards that it intends providing coverage. This specific coverage has excluded an Award, which is included within NHACE EBA.

² *Long Service Leave Benefits Portability Interim Regulations 2019*.

NHVIC Feedback

NHVIC Preference

NHVIC would like to see the Victorian State Government revoke all legislation that is currently enacted, drafted or proposed concerning Long Service Leave Benefits Portability.

NHVIC is of the opinion that under the current fair work instruments in place within our sector, our employees and employers are better off overall.

In the event that the Victorian State Government elects to continue to introduce legislation regarding Long Service Leave Benefits Portability, NHVIC has the following comments/concerns:

Double Dipping

S 15 of the *Long Service Benefits Portability Act 2018*³ (the Act) deals with Double Dipping.

'The Act' states that a worker cannot be entitled to both long service leave (LSL), under a fair work instrument and under 'the Act'.

'The Act' at section 15 (3) states that Long Service Leave Benefits Portability Interim Regulations 2019 (the Regulations) may modify the operation of the other provisions of 'the Act' for the purposes of giving effect to these principles.

³ *Long Service Benefits Portability Act 2018*.

'Regulation 12', deals with double dipping. Double dipping is a concern to the sector, as the sector has fair work instruments, which deal with the management of LSL.

'Regulation 12' was to better assist employers within the sector regarding employees who may be covered by a fair work Instrument. NHVic has some concerns regarding the drafting of 'Regulation 12'.

Concerns with Regulation 12

The arrangements in which 'Regulation 12' sets out, do not take into consideration provisions that apply to entitlements under the *Long Service Leave Act 2018* (LSL Act). This 'Regulation' needs to discuss how entitlements under the 'LSL Act' are to be managed and this amendment must be discussed with our sector prior to being introduced.

NHVic believes that there can be no amendment to 'the Regulations' without first amending 'the Act'.

'Regulation 12' provides for an employee to make a choice as to which benefit; they will choose in relation to LSL. If the employee chooses to take the fair work instrument benefit, the employer will only be required to pay the entitlement under the fair work Instrument, if they choose to take the 'Act' benefits, they will only receive a benefit from this benefit.

'Regulation 12 (5)' allows for an employer to recover from and be reimbursed by, the Authority any amount paid under the fair work instrument.

'Regulation 12' does not discuss or deal with the increased costs portability of an employees LSL will have with respect to an increase in administrative requirements in order to seek reimbursement.

Short Term Vacancies Created

NHVic understands that an employer would normally be required to provide cover for an employee while they are on LSL, but in the circumstances of portability, an employee can take a period of LSL upon commencement of their employment with an employer, and not after a period of seven years' service.

This increased cost and workload on an employer within our sector has caused some concerns.

NHVic would like to see 'the Regulations' amended to assist employers with the management of employees who are employed with an existing LSL liability.

NHVic are requesting that further discussion occurs concerning the significant increase in costs this will place on each of our sectors houses. NHVic has identified that many of our houses are small, they do not have the resources, time or money to comply with this scheme, which may cause many of them to close.

Reimbursement Process

Reimbursement has been discussed within 'the Regulations', but it is not clear on how an employer would achieve a reimbursement from the scheme.

NHVic would like to see a detailed process for reimbursement included in the amendments to the scheme.

Any reimbursement process needs to be simple and needs to occur at the time payment to the employee occurs. NHVic has identified that many of our houses will require reimbursement immediately, as they are unable to maintain this sort of liability in the short term.

This process should be provided to the sector for comment, prior to being approved and introduced.

Issues with Recruitment

NHvic employers have raised concerns regarding issues with employees transferring or obtaining other positions with other employers, operating in this sector.

Our Houses, employers within our sector, believe that a long-term employee, with a considerable liability with respect to LSL, will be less attractive to an employer, as they have a liability of the LSL and may elect to take LSL immediately upon commencing with this employer.

The employer would not only be required to pay the LSL, they will incur additional administrative costs, possibly be required to seek reimbursement from the scheme, if the employee elects to take the instrument benefit and be required to replace the employee on LSL, for the duration of their LSL.

The employer would be required to administer and pay for this, without having received loyal and long service from the employee.

NHVic is concerned that without addressing the increased cost of operating and administrative costs, this 'Act' places on employers within our sector, our employers may make decisions which will see them contravening obligations concerning General Protections and Discrimination.

Opting in or out of the Scheme

It is not clear if an employer can elect to opt in or out of the scheme.

NHVic would like to see a process that would allow employers to opt in or out of the scheme.

In opting in or opting out, the process needs to detail calculations as to what an employer would need to contribute to opt in and it would need to clearly reimburse the employer for what they have contributed, if they opt out.

NHVic would like a clear option to opt out, if they are already providing a more beneficial deal for their employees.

Commencement

It is not clear when or how this scheme is to commence. NHVic would like to see a controlled phase in of the scheme.

NHVic would like to see the ability for an employer to opt into the scheme, should they elect to do so, when they are able to and or when their current instruments have expired and or are being negotiated.

Disputes and Conflict

NHVic is concerned that there is little assistance in addressing the conflict this scheme has with current fair work instruments, such as enterprise agreements and awards.

NHVic is seeking clarity on how entering into this scheme will relieve our houses from fair work industries regarding LSL and any agreements into the future.

NHVic would like specific details concerning the management of disputes that may arise regarding this scheme. Disputes may occur between employee and employer or employer and scheme and or employee and the scheme.

NHVic would like to understand who has jurisdiction over this scheme and who will manage any disputes, including reviewing the proposed dispute process.

Students within the Community Sector

Currently our houses employ a large number of students. These students contribute to the sector, but they are essentially there to fulfill their educational requirements. Our Houses are subsequently concerned that if they are compelled to make PLSL contributions on behalf of these students, who then don't remain in the sector and never access their LSL, this will result in these contributions being lost to the scheme. NHVic would, therefore, like to see student employment exempt from the scheme.

Increased Risk of Discrimination

NHVic is concerned that the introduction and operation of this scheme may increase our houses' risk of discrimination.

Specifically, NHVic is concerned that an employer may elect not to hire or engage an employee, because of their existing PLSL liability.

Indeed, if an employer engages an employee that has been in this sector for a period greater than seven (7) years, this person may take LSL immediately on commencement, leaving this employer to pay for the LSL up front and then also replace this employee while they are away on a period of LSL.

This increase in operating cost of a small employer operating a community house, may cause this employer to decline engaging this employee based on their service within the sector, and may lead to issues concerning discrimination.

Award Coverage

NHVIC has identified that the draft 'Regulations' are descriptive as to the Awards it will provide coverage to. It has been identified that there is no coverage of Tutors and Teachers (Educational Services (Post-Secondary Education)) Award 2010, which is included in NHVIC Enterprise Agreement, Neighbourhood Houses and Adult Community Education Centres Collective Agreement 2018 (NHACE).

By excluding this Award from the draft 'Regulations', will place additional time and costs on NHVIC Houses.

NHVIC is therefore requesting that the 'Regulations' are updated to include all applicable Awards that are included in our sectors Enterprise Agreements.