
*Health and Community Services Union (Victoria) (HACSU) Submission to Portable
Long Service Leave Inquiry*



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Introduction

This submission makes the case for a Portable Long Service Leave scheme for workers in the Community Service Sector.

The Health and Community Services Union (HACSU), which was first registered in 1911, represents the professional and industrial interests of Victoria's Disability workforce and Nurses, Allied Health Professionals and support staff working in Mental Health services and Alcohol and Other Drug services.

Our members are employed across all areas of health and community services in the public, private and not-for-profit sectors. HACSU's main aim is to improve members' working lives by negotiating improvements in wages and conditions and protecting workers' rights.

Portable long service leave enables a worker to accrue long service for the time they are employed within the sector, not just the time they're with a particular employer.

A Portable Long Service Leave scheme for the Community Services Sector will provide security of long service leave entitlements to over 40,000 workers. The scheme will support the sector in attracting and retaining a skilled workforce.

A Portable Long Service Leave scheme rewards long term community services workers who remain within the sector. It also encourages professional development and career advancement by facilitating movement across the sector, without workers suffering the penalty of losing accrued long service leave entitlements.

The inability to access the long service leave entitlements that members have earned, has been an issue of concern for HACSU members for many years.

HACSU support the Portable Long Service Leave scheme for all Victorian workers, but in particular for the community services sector, who face multiple pressures including low wages, high staff turnover, increasing demands for higher qualifications and are reliant on government funding.

History

The Portable Long Service Leave has previously been strongly advocated for by the Community Services Sector.

In 2003, the Victorian community services minister announced the launch of the Community Sector Investment Fund (CSIF) to assist with building the sustainability of organisations within the community services sector.

In 2007, the ASU and HACSU began a joint campaign to establish a Portable Long Service Leave scheme for Community Service sector workers.

In 2008, the Victorian Government announced the allocation of \$1.2 million to the Department of Human Services (as it was then known) to establish the scheme for the community sector in Victoria. Following a feasibility report and an actuarial report, the recommendations included that the scheme be established as prospective, compulsory and statutory.

In December 2009 Price Waterhouse Coopers was engaged to review the proposed Portable Long Service Leave Scheme in the Community Sector. It was to ensure that the sector issues were thoroughly tabled and considered during the final development stages of the scheme.

The Price Waterhouse Coopers report confirmed that there was merit in introducing Portable Long Service Leave into the sector. The report identified the benefits for employees in the community sector and employers of this workforce initiative. The report also looked at the employer concerns for managing the costs and administrative requirements of the scheme.

After receiving submissions in response to the Price Waterhouse Coopers report, the former Victorian Brumby Government, through the Honourable Lisa Neville MP, decided to accept 16 out of the 25 recommendations and drafted the Community Services Long Service Leave Bill 2010.

The Victorian Government took the initiative, and along with the ACT became the first state to support such an entitlement.

This initiative resulted in a high level of agreement across the community services sector. We call on the Victorian Government again to play a leadership role and implement a Portable Long Service Leave scheme for the community services sector.

A state election in 2010 led to a change of government and the new Liberal / National Coalition government unfortunately abandoned the commitment to a community services sector PLSL scheme.

The 2014 Victorian Labor Platform provides support for facilitating employer schemes that provide portability of Long Service Leave Entitlements for workers as they move between jobs in the same or similar industry, as well as providing an undertaking to re-visit a Portable Long Service Leave scheme for community sector workers.

Community Services Long Service Leave Bill 2010

A copy of the Bill, as well as the Explanatory Memorandum has been attached to these submissions for ease of reference.

The Portable Long Service Leave scheme, according to the 2010 Bill, was compulsory, prospective and would be enabled by state legislation. HACSU support a compulsory scheme. Anything less would not lead to a viable industry scheme. HACSU also supports a legislated Statutory Authority scheme with an Industry Stakeholder governance arrangement, similar to an industry superannuation scheme where board directors are drawn from Government appointment, and persons nominated by employer peak bodies and unions.

Community Services sector employees included in the scheme would have been determined on a whole organisation approach for not-for-profit, non-government organisations that employ workers delivering community services in Victoria.

The scheme as set out in the Bill would have provided the opportunity to create a minimum data set of industry characteristics for the community services sector and would have enabled more effective measurement and identification of benefits for the future.

The Portable Long Service Leave scheme, as outlined in the Bill, would have delivered improved employment conditions to workers and facilitated the retention of experienced workers across the Community Services sector.

Scope of a Portable Long Service Leave scheme in the Community Services Sector

HACSU submits that defining the scope of eligible employees to which employers would be required to contribute should be multi-layered and include the following:

- Employees whose employment arrangements are determined by Federal Awards and Employment Agreements, and
- Employers who are Victorian not-for-profit Community Sector Organisation's [CSO] and employ staff for the provision of services under a funding and service agreement with the State of Victoria, and
- Employers including State and Local Governments, and
- Persons who the employer has an obligation to pay compulsory employer superannuation contributions and/or Workcover premium payments based on remuneration, and
- Employers who are Victorian for-profit companies. The NDIS will open the market and if for-profit companies are not included within the scope, it will effectively give those companies an unintended competitive advantage. For-profit companies are included in the Building and Construction industry scheme. There would therefore be no reason not to include them in a scheme covering the community service sector.

HACSU submit that a Portable Long Service Leave scheme should be retrospective. As a compromise, the scheme should be retrospective at least as far as the workers employment with their currently employer.

Benefits of a Portable Long Service Leave scheme in the Community Services Sector

Attraction and Retention of employment in the Community Services Sector

High staff turnover is a well acknowledged challenge for the community services sector.

Approximately one-quarter of community and personal services workplaces consistently experience high numbers of people who work with the same employer for less than one year, and more than 40% stay for between one to five years.

High turnover has multiple negative impacts upon the sector and its stakeholders. When workers move between employers, they nearly always lose long service leave entitlements. Too many disability and community services workers never reach the threshold for long service leave, despite many decades of often uninterrupted employment within the sector.

HACSU would like the opportunity to present and bring forward workers who will be able to provide comprehensive evidence on this point.

A Portable Long Service Leave scheme will improve the delivery and security of employment entitlements and therefore enhance career options in the sector. It is anticipated that these improved worker entitlements will increase the benefits of working in the sector and will lead to reduced recruitment costs for the sector, as workers become more inclined to enter and remain in community service roles and reduce the training costs as the skills, knowledge and experience of our community service workers are retained in the sector.

Attraction and retention of employment in the Community Services Sector was one of the major reasons that the Brumby Government supported the Community Services Long Service Leave Bill 2010. The Bill was a response to the sectors capacity and sustainability issues that directly impact on recruiting and retaining staff, and to encourage professional development through staff movement between organisations, without the personal disadvantage associated with loss of long service leave entitlement accruals.

A Portable Long Service Leave scheme will help protect some of Victoria's most vulnerable workers. It was for this reason that HACSU welcomed the Brumby Government's commitment and looked forward to assisting it with the implementation of the scheme.

Highly Feminised Workforce

The Community Services Sector is highly feminised, where women are more dependent on their Long Service Leave entitlements. Female employees, statistically take more time off paid employment to raise their children and care for family members.

They are more likely to change modes of employment from Full-Time to Part-Time, and are more likely to take time off work to care for children, or take extended maternity leave. They are also more likely to change jobs or positions to ensure that it fits in with their family responsibilities.

Due to the time that working women take away from paid employment, they will become more reliant of their Long Service Leave entitlements. The ability to have a Portable Long Service Leave scheme would mean that working women will be able to take their entitlements with them to new employment where the hours or position better suits both them and their families, without losing any of their hard earned long service leave accrued entitlements.

National Disability Insurance Scheme (NDIS)

Currently the majority of disability services providers receive their funding as 'block funding'. This funding model allows service providers to future plan and, in theory, employ workers on an ongoing basis given their guaranteed future funding base.

The implementation of the NDIS will see the cessation of the block funding model disability service providers currently operate within. Under the new funding model a person with a disability [their family or their fund managers] will receive funding appropriate to their needs. The requisite level of support will be then be 'purchased' from disability service provider/s.

Given disability service providers will no longer have access to a guaranteed ongoing funding source their capacity to provide on-going employment to their workforce will be impeded. Rather, they will be forced to be increasingly reliant on the use of precarious employment because they will not know the amount of funding they will receive beyond the expiry date of the service agreements they have with each service user.

This increase in precarious employment will only serve to exacerbate both the current attraction and retention issues faced by the disability CSO sector and the predicted shortfall of workers in the sector, with the prediction that demand for service will outstrip supply in less than 10 years due to an aging workforce. Statistics which do not take into account the doubling of the disability workforce required to meet the needs of the NDIS.

It is clear that there will be a short fall in the workforce if something is not done to address these issues and capacity for employees to have access to a Portable Long Service Leave scheme would, in part, act as an incentive to the potential future disability workforce.

Given the imminent arrival of the NDIS it is our view that a Portable Long Service Leave scheme is imperative.

Funding Cycles / Moving without Choice.

Service with one employer is becoming increasingly rare and will become more so with the NDIS. Employees often change employers in the community services sector. This move is often dictated by changes to the funding structure.

The sector is characterised by high levels of part-time and casual employees and is substantially reliant on government funding sources. These factors combined mean that the Victorian community

services sector workers are currently less able to access long service leave entitlements as they have difficulties in accruing enough service with one employer to be eligible.

A lack of funding may cause a service to close their doors, which would result in employees being made redundant. The fact that these employees are forced to move onto another employer without making the choice to do so results in them losing their long service leave entitlements at present. The market based nature of the NDIS will mean that employment in the sector will become increasingly precarious.

It is clear that workers will be disadvantaged if they work in an industry that is heavily reliant on funding, and frequently have to move from employer to employer in order to remain employed.

The scheme would allow employees in the sector to retain their long service leave entitlements when they change employers, but remain in the sector. The scheme should therefore apply to non-government, non-profit and for profit employers that provide community service activities.

If not for a Portable Long Service Leave scheme, many of these workers would not be entitled to long service leave.

Funding of a Portable Long Service Leave scheme

To finance the Scheme, employers should pay a levy set as a percentage of wages for each employee. The contribution to be paid by employers should be fixed at a certain percentage. The Community Services Long Service Leave Bill 2010 fixed the levy at 1.6% of worker's wages. The rationale behind this was that it comprised of approximately 0.2% for the administration costs of operating the Scheme and a 1.4% levy for the costs of the workers' direct entitlements.

HACSU submit that the Victorian Government should agree to meet all of the establishment costs of the Scheme. This would involve paying for all costs which arise before the fund receives revenue from contributions made by employers. At the time the Community Services Long Service Leave Bill 2010 was due to be implemented the estimated cost was up to \$5 million.

It may be that the Government should provide additional financial support to employers while they are adjusting to the scheme in order to defray administration costs.

There has already been much work completed on the business impact and funding for a Portable Long Service Leave scheme. Funding agencies have already acknowledged that provision for

employee entitlements, which include long service leave, are made in the Funding and Service Agreement reached with the Victorian Government. It is unclear if this will still be the case under the NDIS. Agencies acknowledged prior to the drafting of the 2010 Bill the funding is invested and utilised for other employer purposes when not required for long service leave. A Portable Long Service Leave scheme would merely be ensuring that these funds already provided by the Government are set aside and dedicated to these worker entitlements.

ACT Portable Long Service Leave Scheme

The ACT PLSL scheme is the most recently established Portable Long Service Leave scheme in Australia, having commenced operations in 2010. The ACT scheme covers both community sector and child care workers, and aims to improve retention and enhance “sector loyalty”.

The ACT government announced funding for the PLSL scheme for the community services sector in its 2008-2009 Budget, and commenced a six-month consultation process with key stakeholders such as unions, peak organisations, employers/managers of organisations, and workers.

Broad agreement was reached on the following issues:

- That any scheme should be mandatory, and include both for profit and not-for-profit community services employers and workers.
- That the ACT government should fund the administrative costs until the scheme became self-sustaining.
- That any unused funds would be used to reduce a PLSL levy.
- That full-time, part-time, casual, limited-tenure and independent contractors should all be covered.
- That minimum earnings should parallel that of superannuation—therefore, workers earning less than \$450 a month would not fall under the scope of the scheme.

Other Examples of Portable Long Service Leave schemes

Portable Long Service Leave is legislated and available for workers in certain industries including:

- The Australian Building and Construction Industry
- The Australian Coal Mining Industry

- The Australian Stevedoring Industry
- The Australian Contract Cleaning Industry

CoINVEST Ltd is a public company which administers the Portable Long Service Leave Scheme for the construction industry in Victoria. The Long Service Leave scheme was created by an Act of Parliament. The Long Service Leave scheme administers the Construction Industry Long Service Leave Act, 1997 (amended 2004).

CoINVEST provides portable Long Service leave to workers in the construction industry in Victoria.

CoINVEST keeps a record of how many days of eligible service a worker accrues in Victoria - this record of service is centralised with CoINVEST so that it can keep track of an employee's accrued service throughout all of their employers.

Once a worker has built up seven or more years of eligible service, they will be able to claim Long Service Leave from CoINVEST at any point thereafter.

CoINVEST is a compulsory part of the construction industry in Victoria. As such, all employers who perform covered work are required to record with CoINVEST how many days each worker has performed - this is done quarterly and builds up an employee's record of service.

The employer then pays a contribution fee into the Long Service Leave Fund to ensure CoINVEST is sufficiently funded to be able to pay out claims to all eligible workers when they make their claim for Long Service Leave.

Employers contribute a designated percentage to the Long Service Leave Fund every three months - this is an on-cost to employers and not deducted from workers' wages. The contribution rate is currently based on 2.7% of the total gross wage of all of their workers - this is to keep the costs uniform and relative between the smaller and larger employers and to make sure that everyone is paying their fair share to fund the Long Service Leave scheme.

The costs are not itemised per employee, and there is no dollar amount building up against a worker's name - the rate of pay for a worker's Long Service Leave claim is based on their current normal weekly rate of pay at the time of claiming.

Conclusion

It is the very strong view that a comprehensive Portable Long Service Leave scheme is long overdue and a necessary strategic component of building a sustainable community services sector. Whilst a Portable Long Service Leave scheme will not be a panacea to the recruitment and retention problems that beset the sector it will provide the necessary structural capacity to improve employment standards in respect to leave and give employees the confidence that they will be rewarded in time for choosing a longer term career in the sector.

Further, HACSU's campaign for long service leave portability is no more than securing workers earned entitlements consistent with the *Victorian Long Service Leave Act* and for which the sector employers are funded.

Recommendations

1. That the Victorian Government recognise the changing nature of today's modern workforce – including the increasing prevalence of casual, contract, labour hire and other forms of insecure work – and acknowledge the need for a portable long service leave scheme for Victorian workers engaged in the Community Services Sector.
2. That the Victorian Government lead building capacity in the community services sector and commit to introducing a portable long service leave scheme for the Community Services Sector; and undertake with relevant stakeholders including community groups, employer associations and unions to develop a strategy for its introduction.
3. That the Victorian Government, in planning a portable long service leave scheme, recognise the diverse needs of the Community Services Sector. The sector is highly feminised, low paid with high rates of staff turnover as a result of insecure work.
4. That a portable long service leave scheme should include minimum standards such as:
 - A compulsory system for Victorian workers in the Community Services Sector, regardless of employment status;

- At least 8.67 weeks leave after 10 years of service (pro-rata at 7 years) plus payout on retirement;
 - Guarantee no loss of entitlements for workers already able to access a long service leave scheme; and
 - The scheme should be retrospective
5. That the Victorian Government work with other states, where relevant, to facilitate the transferring of portable long service leave between state bodies.