



EEJSC Submission No.49  
Received 14 August 2015

## **Community and Public Sector Union/SPSF Group Victorian Branch submission**

**Inquiry into Portability of Long Service Leave Entitlements**

**August 2015**

**Authorised by:**

**Karen Batt  
CPSU/SPSF Victorian Branch Secretary**

***Economic, Education, Jobs & Skills Committee***

***Inquiry into Portability of Long Service Leave Entitlements***

***Received from the Legislative Assembly on 5 May 2015:***

*To the Economic, Education, Jobs and Skills Committee — for inquiry, consideration and report no later than 1 May 2016 on employer schemes that provide portability of long service leave entitlements for Victorian workers and*

- 
- a. *in particular, the Committee is requested to investigate employer schemes that provide portability of long service leave entitlements for workers as they move between jobs in the same or similar industry, including:*
    - i. *the objectives of portable long service leave schemes;*
    - ii. *which sectors, industries or occupations may benefit from such schemes;*
    - iii. *the rationale for any difference in treatment between sectors or groups of employees;*
    - iv. *funding arrangements applying to existing portable long service leave schemes;*
    - v. *governance, compliance and enforcement arrangements applying to existing portable long service leave schemes;*
    - vi. *the key components that should apply to any portable long service leave scheme for the community services sector including coverage, eligibility for and the calculation of long service leave benefits;*
    - vii. *whether alternative mechanisms or arrangements could better meet the objectives of a portable long service leave scheme for sectors of the workforce including the community services sector;*
    - viii. *the capacity to operate such schemes within or across jurisdictions, including recognition of service;*
    - ix. *the appropriate role for Government in facilitating portable long service leave schemes; and*
    - x. *relevant implementation issues and options;*
  - b. *in making its recommendations the Committee should have regard to:*
    - i. *constitutional or other legal issues or impediments arising from interaction with the Fair Work Act 2009 (Cth), agreements and awards operating under the fair work scheme;*
    - ii. *the distinction between schemes for portability of long service leave entitlements and legal structures underpinning other leave entitlements;*
    - iii. *the financial impacts or benefits of portable long service leave entitlements on employers, employees and taxpayers; and*
    - iv. *the economic impact on Victorian jobs, employment and investment and whether such schemes may disproportionately affect urban or regional areas.*

## Contents

<b>Executive summary</b> .....	<b>3</b>
<b>1. Introduction</b> .....	<b>4</b>
<b>2. Long Service Leave Entitlement in the Victorian Public Service (VPS)</b> .....	<b>5</b>
<b>3. Long service leave portability in the Victorian public service</b> .....	<b>6</b>
<b>4. Long service leave entitlement in the Victorian public sector</b> .....	<b>7</b>
<b>5. Constitutional and legal issues</b> .....	<b>9</b>
<b>6. Recommendations</b> .....	<b>10</b>
<b>Attachment A – Extract from AT841792 - Victorian Public Service Award 2005</b> .....	<b>11</b>
<b>Attachment 2. Extract from Victorian Public Service Workplace Determination 2012</b> .....	<b>14</b>

---

### **Executive summary**

This submission covers long service leave entitlements in the Victorian public sector. The *Public Administration Act 2004 (Vic)* makes a distinction between the Victorian public service and public sector.

Long service leave entitlements are different in the public service/sector compared to those in the *Long Service Leave Act 1992*.

There are long standing arrangements that provide for recognition of service across various sectors and public entities within the Victorian public sector; and between the Victorian public sector and public services in the Commonwealth and other States/Territories.

Despite these arrangements the submission identifies that there is not a consistent approach; there are gaps in coverage; and funding the entitlement is problematic.

CPSU recommends that a joint public sector unions’ and Government working party be established to review existing long service arrangements and develop proposals for a consistent approach across the Victorian public sector.

---

## 1. Introduction

1.1 The Community and Public Sector Union/SPSF Group Victorian Branch (CPSU) is the main union with coverage in the Victorian public service (VPS) and numerous public entities in the Victorian public sector. The union also has industrial coverage rights in higher education; non-teaching staff in schools; and some private sector businesses including private correctional facilities.

1.2 The *Public Administration Act 2004 (Vic)* provides for the organisation of the public sector into two groups<sup>1</sup>:

- Public service bodies
- Public entities

1.3 Our submission deals with the long service leave arrangements applying in the VPS and public sector. In particular we address the existing portability arrangements that apply. Most of these employees have long service leave entitlements under a Federal award or enterprise agreement. In some cases the long service leave entitlement is also subject to specific state legislation and regulations<sup>2</sup>.

1.4 The Victorian *Long Service Leave Act 1992* does not regulate LSL in the VPS. It only applies to the public sector where the long service leave is not set out in an enterprise agreement or award. LSL entitlements in the public sector are superior to the *Long Service Leave Act*. Section 56 of the Act sets out the basic entitlement as follows. The basic LSL standard in the VPS is common across the public sector with the exception of the health sector. It is provided for in awards, enterprise agreements, and in some instance state legislation and regulation.

**Table 1: Basic long service leave under Long Service Leave Act 1992 compared to VPS**

<i>Long Service Leave Act 1992 (Vic). Section 56</i>	<i>Victorian Public Service Award 2005. Clause 25</i>
13 weeks ordinary pay after 15 years continuous service	3 months (or 13 weeks) pay after 10 years continuous service

---

<sup>1</sup> For further detail see Victorian Public Sector Commission website. <http://vpsc.vic.gov.au/about-public-sector/the-victorian-public-sector/>

<sup>2</sup> Eg *Water (Long Service Leave) Regulations 2011*

## **2. Long Service Leave Entitlement in the Victorian Public Service (VPS)**

- 2.1** Prior to 1992 VPS long service leave entitlements were set out in the *Public Service Act 1974* (Vic), and *Public Service Regulations 1985* (Vic). The 1974 Act was replaced in 1992 with the *Public Sector Management Act 1992* (Vic), and *Public Sector Management Regulations 1993* (Vic). The 1992 Act largely replicated the LSL provisions in the 1974 Act. Prescriptive entitlements were removed from the legislation in 1998 when the *Public Sector Management Act 1992* was replaced with the *Public Sector Management and Employment Act 1998* (Vic). VPS LSL was now covered by a general head of power in section 20 providing that an Agency Head has “*all the rights, powers, authorities and duties of an employer in respect of the Agency and employees in it*”. Without limiting that power, sub section 20(2)(k) dealt with the power to grant leave. LSL became subject to department/agency policy which generally continued to follow the former legislated provisions.
- 2.2** In 2004, *Public Administration Act 2004* (Vic), replaced the *Public Sector Management and Employment Act 1998* (Vic). Initially section s20(2)(j) provided a head of power for a ‘public service body head’ to grant leave. The list of specific powers was subsequently removed from the Act, leaving the public service body head with general rights, powers, authorities, and duties of an employer subject to 20(3). This remains the head of power for LSL in the VPS.
- 2.3** Since 1996 state public service legislation has applied in conjunction with federal award (and agreement) regulation of terms and conditions of employment. In 1996 the VPS became covered by interim federal award following a dispute finding under the then conciliation and arbitration powers of the Australian Industrial Relations Commission. Victoria subsequently transferred its industrial relations powers to the Commonwealth<sup>3</sup>. The referral of powers has been amended and renewed on a number of occasions since, lastly in 2009 following the coming into effect of the *FW Act 2009*<sup>4</sup>.
- 2.4** Initially LSL was not in the *Public Service (Non-Executive Staff – Victoria) Interim Award 1996*. LSL was included in the *Public Service (Non-Executive Staff – Victoria) Conditions Award 2001*. These two awards applied until 2005 when the *Victorian Public Service Award 2005* made as part of the then award simplification process. LSL was included as clause 25 (see attachment A). The award clause is included in many agreements covering the Victorian public sector.

---

<sup>3</sup> *Commonwealth Powers (Industrial Relations) Act 1996* (Vic)

<sup>4</sup> *Fair Work (Commonwealth Powers) Act 2009* (Vic)

- 2.5 An agreed new modern award, the *Victorian Public Service Award 2015* is currently before the Fair Work Commission (FWC) for approval as part of the award modernisation process<sup>5</sup>. Section 155 of the *FW Act 2009* provides that a modern award cannot have a term dealing with long service leave. LSL is instead protected under the National Employment Standard (NES). Section 113 provides for LSL entitlement in accordance with *applicable award derived long service leave terms*. Effectively this preserves provisions from former awards if such an award previously applied. But it only protects the entitlement to the named respondents of former awards. In the VPS, LSL entitlements in the *Victorian Public Service Award 2005* are preserved via this means. The Productivity Commission's August 2015 draft report *Workplace Relations Framework* notes the complexity and uncertainty this creates<sup>6</sup>.
- 2.6 The award sets a safety net for bargaining. Actual VPS LSL entitlements are currently in the *Victorian Public Service Workplace Determination 2012*. Clause 50 is Attachment B to this submission. The Victorian Public Service Workplace Determination 2012 currently covers 7 Victorian Government departments, and 32 administrative offices who have employer status under the *Public Administration Act 2004*<sup>7</sup>.

### 3. Long service leave portability in the Victorian public service

- 3.1 Portability rights are in the *Victorian Public Service Workplace Determination 2012* in clause 50.10 – Recognised service; set out below. In particular clause 50.10.2 sets out what service with other employers is recognised in the VPS. Recognition of service is subject to limitations in clause 50.10.3. The clause provides for wide recognition of prior service with the Victorian public sector and other Commonwealth, State, and Territory public services. Funds are not required to be transferred to recognise service.

#### **50.10 Recognised Service**

**50.10.1** *In clause 50.10.2 an “authority” means an authority, whether incorporated or not, that is constituted:*

**50.10.1(a)** *by or under a law of a State, the Commonwealth or a Territory of Australia; and*

**50.10.1(b)** *for a public purpose.*

**50.10.2** *Subject to clause 50.10.3 the following will be recognised as service in the VPS for the purposes of long service leave (“Recognised Service”):*

**50.10.2(a)** *any service with a State, Commonwealth or Territory of Australia Government Department or Public Service authority; or*

---

<sup>5</sup> Modernisation and termination of State reference public sector transitional awards under Schedule 6A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. See <https://www.fwc.gov.au/awards-and-agreements/awards/award-modernisation/state-reference-public-sector-transitional-award-0>.

<sup>6</sup> *Productivity Commission, Workplace Relations Framework, Draft Report*, pp172-176.

<sup>7</sup> <http://vpssc.vic.gov.au/about-public-sector/employer-public-sector-bodies/>

- 50.10.2(b) any service with a public entity under the *Public Administration Act 2004 (Vic)*; or
- 50.10.2(c) any service with a local governing body that is established by or under a law of Victoria.

*Notwithstanding the above, the Employer may recognise any service with:*

- 50.10.2(c)(i) a public sector authority; or
- 50.10.2(c)(ii) a local governing body of the Commonwealth, a State other than Victoria or a Territory of Australia.

#### 4. Long service leave entitlement in the Victorian public sector

4.1 Public sector employers which are not part of the Victorian public service are known as public entities under the *Public Administration Act 2004 (Vic)*. These are the statutory authorities, state-owned corporations, school councils, boards, trusts and advisory committees, established by government legislation to undertake a public purpose. The Victorian Public Sector Commission (VPSC) groups them as follows.

**Table 2: Victorian public entity employers**

Public entity group	Number of employers in group
Public health	89
Government schools	1534
TAFE and other educational institutions	18
Police and emergency services	6
Water and land management	47
Arts, finance, transport, and others	63

*Source: The State of the Public Sector in Victoria 2013-2014, Table 2, pp5-6, Victorian Public Sector Commission*

4.2 CPSU does not have industrial coverage rights in relation to all of these employers. Below we outline some of the long service leave and portability arrangements that apply to public sector agencies where an enterprise agreement applies. Many of these entities were formerly part of the VPS and have been removed from the VPS by various Government's over time. The VPS award long service leave term has been used as the model for many of the agencies, although over time there have been variations. **Table 3** shows that there is a wide variety of arrangements apply in the Victorian public sector. Some employers have much more inclusive arrangements while others are either nonexistent or restricted. Requirements to transfer funds before prior service will be recognized also applies in some agencies.

4.3 For some employees it is hit and miss whether their prior service is recognised. It is possible an employee could have their service recognised with an interstate public sector employer, but not from elsewhere in the Victorian public sector. Employees have no control over whether funds are transferred or not. Historic reciprocal recognition arrangements may also be more generous and flexible than more recent situations.

**Table 3: CPSU covered Victorian public sector employers long service leave and portability arrangements**

Employer	LSL in Agreement	3 months after 10 years	Prior public sector/service recognition
Adult Multicultural Education Services	✓	✓	Yes provided former employer recognises service with current employer
Australian Centre for the Moving Image	✓	✓	✓
Council of Trustees of the National Gallery of Victoria	✓	✓	Yes provided former employer recognises service with current employer
Department of Education and Training (Education support staff)	✓	✓	<i>Education and Training Reform Act 2006 (Vic)</i> and Ministerial Orders regulate LSL. Prior service recognised in some circumstances
Department of Education and Training (Nurses agreement)	✓	✓	✓
Emergency Services Superannuation Board	✓	✓	✓
Film Victoria	✓	✓	✓
Gippsland Southern Rural Water Corporation	✓	✓	<i>Water (Long Service Leave) Regulations 2011</i> apply. Requires transfer of funds
Goulburn Murray Rural Water Authority	✓	✓	<i>Water (Long Service Leave) Regulations 2011</i> apply. Requires transfer of funds
Grampians Wimmera Mallee Water Authority	✓	✓	<i>Water (Long Service Leave) Regulations 2011</i> apply. Requires transfer of funds
Library Board of Victoria t/as State Library of Victoria	✓	✓	✓
Lower Murray Urban and Rural Water Corporation	✓	✓	<i>Water (Long Service Leave) Regulations 2011</i> apply. Requires transfer of funds
Metropolitan Planning Authority	✓	✓	✓
Museums Board of Victoria	✓	✓	✓
Parks Victoria	✓	✓	Yes provided finance transferred
Parliament of Victoria (Parliamentary officers)	✓	✓	✓
Parliament of Victoria (Electorate officers)	✓	✓	✓
Places Victoria	✓	✓	x
Public Transport Development Authority	✓	✓	✓
Royal Botanic Gardens Board	✓	✓	Yes provided finance transferred
Shrine of Remembrance Trustees	✓	✓	x
State Trustees Limited	✓	✓	x

<b>Employer</b>	<b>LSL in Agreement</b>	<b>3 months after 10 years</b>	<b>Prior public sector/service recognition</b>
The Trustee for Geelong Performing Arts Centre Trust	✓	✓	x
Transport Accident Commission	✓	✓	No provides that LSL Act applies except where expressly varied
Trust for Nature	✓	✓	✓
Vic Forests Ltd	✓	✓	Yes provided former employer recognises service with current employer
VicRoads	✓	✓	x
Victoria Legal Aid	✓	✓	✓
Victoria State Emergency Service Authority	✓	✓	✓
Victorian Arts Centre Trust	✓	✓	Yes limited to named entities
Victorian Building Authority	✓	✓	yes if funds transferred from former employer
Victorian Health Promotion Foundation	✓	✓	✓
Victorian Institute of Teaching	✓	✓	✓
Victorian Workcover Authority	✓	✓	Yes only if reciprocal recognition
Zoological Parks and Gardens Board	✓	✓	Yes if funds transferred from former employer

## 5. Constitutional and legal issues.

5.1 In paragraph 3.5 above we note how the interim LSL National Employment Standard (NES) applies in relation to the VPS. The scheme preserves pre existing award based long service leave arrangements applying as 1 January 2010. Part of the explanation for the range of different provisions in the public sector is due to the existence of former awards, and a number of state long service leave regulations in the public sector. For agencies that were not part of the award system prior to 1996 there is no preserved award term. In these situations the *Long Service Leave Act 1992 (Vic)* effectively provides the entitlement to LSL notwithstanding that the quantum of leave is significantly different from the public sector standard. Nor are there any arrangements dealing with recognition of prior service which has been the mechanism for LSL portability in the public sector.

- 5.2 Following Victoria's transfer of industrial relation powers to the Commonwealth in 1996, it was no longer necessary to be a named respondent to a federal award to have an agreement<sup>8</sup>. Numerous Victorian public sector agencies were award free as at the transfer of Victoria's IR powers. Many of these agencies have long service provisions identical to the VPS eg State Library, National Gallery, and Museum Victoria, Victoria State Emergency Service. These agencies, and others, were at earlier points in time part of the VPS.
- 5.3 The 20 named agencies respondent to then Victorian State Agencies Award 2003 had long service leave provisions in similar terms to the VPS, although the clause is less comprehensive than that in the Victorian Public Service Award 2005..The multi agency Victorian public sector award – the Arts and Entertainment Administration Award 2001 – did not have a long service leave clause, although agreements apply the Victorian public service long service leave standard rather provisions of the *Long Service Leave Act*
- 5.4 Modern awards cannot have long service leave terms. Instead, LSL is preserved in a pre existing award under the NES. For Victorian public sector employers who were not covered by a pre existing award identifying the LSL entitlement can be complex and unclear. This makes it difficult to make any changes in enterprise bargaining.

## 6. **Recommendations**

CPSU submits that long service leave entitlements in the Victorian public sector be reviewed by a joint public sector unions' and Government working party and a common standard be developed to ensure that there is a consistent approach to recognition of service and portability arrangements operate fairly and equitably.

---

<sup>8</sup> Agreements, known as enterprise bargaining agreements (EBA) at that time, tended only to supplement an award. Awards could only be made under the conciliation and arbitration power of AIRC. Victoria's transfer of powers meant that an agreement could be made without an award being first in place. The then legislation provided the means to deem an award to apply for the purpose of the no disadvantage test the AIRC was required to apply before approving an agreement.

## Attachment A – Extract from AT841792 - Victorian Public Service Award 2005

### 25. LONG SERVICE LEAVE

#### 25.1 Basic entitlement

*An employee who has ten years of continuous service in the Victorian Public Service is entitled to the equivalent of three months long service leave with pay. For each additional period of five years continuous service in the Victorian Public Service, an employee is entitled to the equivalent of one and one half months long service leave with pay.*

#### 25.2 Holidays during leave

*Where a public holiday occurs during a period of long service leave granted to an employee, the public holiday is not to be regarded as part of the long service leave and the employer will grant the employee a day off in lieu.*

#### 25.3 Eligible period of service

25.3.1 In 25.3 **eligible period of service** in relation to an employee means:

25.3.1(a) *if the period of service of the employee is not less than four years but less than ten years, that period of service; and*

25.3.1(b) *if the period of service of the employee is more than ten years, then that part of the period of service which does not give rise to an entitlement under 25.1.*

25.3.2 *An employee is entitled, or in the case of death is deemed to have been entitled, to an amount of long service leave with pay equalling 1/40th of the employee's eligible period of service in the Victorian Public Service if:*

25.3.2(a) *on account of age or ill health:*

25.3.2(a)(i) *the employee retires or is retired; or*

25.3.2(a)(ii) *the employment of the employee is terminated; or*

25.3.2(b) *the employment of the employee is terminated for any other reason except for serious misconduct or resignation by the employee; or*

25.3.2(c) *the employee dies.*

#### 25.4 Period of leave

*The employer may allow an employee who is entitled to long service leave to take the whole or any part of that leave at half pay for a period equal to twice the period to which the employee would otherwise be entitled.*

#### 25.5 Time of taking leave

*The employer may determine the time for granting long service leave so that the employer's operations will not be unduly affected by the granting of long service leave to numbers of employees at or about the same time.*

#### 25.6 Recognised service

25.6.1 In 25.6.2 an **authority** means an authority, whether incorporated or not, that is constituted by or under a law of a State, the Commonwealth or a Territory of Australia for a public purpose.

25.6.2 Subject to 25.6.3, the following will be recognised as service in the Victorian Public Service for the purposes of long service leave (**recognised service**):

25.6.2(a) *any service with a State or Commonwealth Government Department; or*

25.6.2(b) *any service with an authority of a State or Commonwealth Government Department; or*

25.6.2(c) *any service in the Public Service, the Teaching Service or in an authority of a Territory of Australia; or*

25.6.2(d) *any service with a local governing body that is established by or under a law of a State; or*

25.6.2(e) *any service with a body set up by legislation primarily and exclusively to achieve a Government purpose and upon which Government has substantial control or influence beyond the usual level of scrutiny of Government funded bodies.*

*provided that such service is only recognised if the body described above recognises for long service leave purposes service with the Victorian Public Service.*

- 25.6.3** *Recognised service does not include any period of service:*
- 25.6.3(a)** *which preceded a continuous gap in approved recognised service of greater than 12 months other than:*
    - 25.6.3(a)(i)** *an absence of three years or less in the nature of retirement occasioned by disability; or*
    - 25.6.3(a)(ii)** *an absence of two years or less which in the opinion of the employer was caused by special circumstances; or*
  - 25.6.3(b)** *during any absence from duty on maternity, paternity or adoption leave without pay; or*
  - 25.6.3(c)** *except to the extent (if any) authorised by the employer, during any other absence on leave without pay; or*
  - 25.6.3(d)** *during any absence from duty when the employee was in receipt of weekly payments of compensation under the Accident Compensation Act 1985 (Vic) or any corresponding previous enactment, other than the first 12 months of that period; or*
  - 25.6.3(e)** *of retirement on the ground of disability, other than a period which followed the date on which a pension under the State Superannuation Act 1988 (Vic) (or similar provision applying to persons on the staff of a declared authority) became payable by reason not exceeding 12 months during which a pension under section 83(3) of that Act (or similar provision applying to persons on the staff of a declared authority) was paid; or*
  - 25.6.3(f)** *during a period of suspension from duty for disciplinary reasons, unless that suspension is not (pursuant to the terms relating to that suspension) to affect the employee's entitlements; or*
  - 25.6.3(g)** *from which the employee was dismissed for disciplinary reasons; or*
  - 25.6.3(h)** *which preceded the resignation of the employee from the public service or the termination of the employee's employment in the public service if on that resignation or termination the employee received a sum characterised as a voluntary departure incentive or a targeted separation payment that was additional to his or her entitlements under any Act or agreement.*

## **25.7** *Payment for leave*

- 25.7.1** *The pay to which an employee is entitled for the period during which long service leave is granted shall:*
- 25.7.1(a)** *if the leave is granted with full pay - be computed in the same manner as if the employee had remained on duty during that period; or*
  - 25.7.1(b)** *if the leave is granted at half pay - be computed at half the rate the employee would have received had the leave been granted with full pay.*
- 25.7.2** *In computing the pay of an employee for or in lieu of long service leave, that pay includes:*
- 25.7.2(a)** *if the employee is receiving salary maintenance, that salary maintenance; and*
  - 25.7.2(b)** *any additional payment payable for a temporary assignment where the assignment has continued for a period of at least 12 months before the commencement of the leave; and*
  - 25.7.2(c)** *any annual allowance payable to the employee which the employer determines should be included, but does not include:*
    - 25.7.2(c)(i)** *any payment of overtime, commuted overtime or penalty rates; or*
    - 25.7.2(c)(ii)** *any travelling or transport allowance; or*
    - 25.7.2(c)(iii)** *any allowance in the nature of reimbursement of expenditure.*
  - 25.7.2(d)** *Nothing in this clause entitles an employee to long service leave (or payment for long service leave):*

- 25.7.2(d)(i)** *in respect of a period of service for which the employee was entitled to receive long service leave (or payment for long service leave) from an employer other than the employer; or*
- 25.7.2(d)(ii)** *for which the employee has received long service leave (or a payment in respect of long service leave) from any employer.*

## Attachment 2. Extract from Victorian Public Service Workplace Determination 2012

### 50. LONG SERVICE LEAVE

#### 50.1 Basic Entitlement

50.2 An Employee is entitled to 495.6967 hours (three months) long service leave with pay for each period of ten years' paid full-time Continuous Service in the VPS. An Employee who is a part-time Employee for the purposes of clause **Error! Reference source not found.** is entitled to long service leave on a pro rata basis calculated on the number of ordinary hours worked. The entitlement is 521.786 hours for Employees whose ordinary hours of work average 80 hours per fortnight.

#### 50.3 Meaning of Continuous Service for casual Employees

For the purposes of this clause, a reference to Continuous Service in respect of a casual Employee has the same meaning as that set out in section 62A of the *Long Service Leave Act 1992* (Vic).

#### 50.4 Pro-rata access

An Employee is entitled to access their long service leave entitlement, on a pro-rata basis, after an initial seven years of paid Continuous Service.

#### 50.5 Payment of outstanding entitlement on termination

An Employee, who, upon retirement, resignation or termination of employment, has an outstanding long service leave entitlement will be entitled to an amount equal to the unused long service leave entitlement.

#### 50.6 Holidays During Leave

Where a Public Holiday occurs during a period of long service leave granted to an Employee, the Public Holiday is not to be regarded as part of the long service leave and the Employer will grant the Employee a day off in lieu.

#### 50.7 Eligible Period of Service

50.7.1 In clause **Error! Reference source not found.** "eligible period of service" in relation to an Employee means the period of Continuous Service between four years and seven years.

50.7.2 An Employee is entitled, or in the case of death is deemed to have been entitled, to an amount of long service leave with pay equalling one-fortieth of the Employee's eligible period of service in the VPS if:

50.7.2(a) on account of age or ill health:

50.7.2(a)(i) the Employee retires or is retired; or

50.7.2(a)(ii) the employment of the Employee is terminated by the Employer; or

50.7.2(b) the employment of the Employee is terminated for any other reason except for serious misconduct or resignation by the Employee; or

50.7.2(c) the Employee dies.

#### 50.8 Period of Leave

50.8.1 An Employee who is entitled to take their long service leave will take the whole or any part of their entitlement at the current time fraction they work. For the avoidance of doubt, but subject to operational requirements, an Employee may take long service leave of one day.

50.8.2 Notwithstanding clause **Error! Reference source not found.** above, the Employer and the Employee may agree that the whole or any part of their entitlement can be taken at a different time fraction to that currently worked.

50.8.3 After concluding their period of leave, the Employee will return to the time fraction they worked immediately prior to going on leave, unless otherwise agreed by the Employer and the Employee.

#### 50.9 Time of Taking Leave

The Employer may determine the time for granting long service leave so that the Employer's operations will not be unduly affected by the granting of long service leave to numbers of Employees at or about the same time.

## 50.10 Recognised Service

- 50.10.1** In clause **Error! Reference source not found.** an “authority” means an authority, whether incorporated or not, that is constituted:
- 50.10.1(a)** by or under a law of a State, the Commonwealth or a Territory of Australia; and
  - 50.10.1(b)** for a public purpose.
- 50.10.2** Subject to clause **Error! Reference source not found.** the following will be recognised as service in the VPS for the purposes of long service leave (“Recognised Service”):
- 50.10.2(a)** any service with a State, Commonwealth or Territory of Australia Government Department or Public Service authority; or
  - 50.10.2(b)** any service with a public entity under the Public Administration Act 2004 (Vic); or
  - 50.10.2(c)** any service with a local governing body that is established by or under a law of Victoria.
- Notwithstanding the above, the Employer may recognise any service with:
- 50.10.2(c)(i)** a public sector authority; or
  - 50.10.2(c)(ii)** a local governing body of the Commonwealth, a State other than Victoria or a Territory of Australia.
- 50.10.3** Service for the purpose of long service leave does not include any period of service:
- 50.10.3(a)** which preceded a continuous gap in approved Recognised Service of greater than twelve months other than:
    - 50.10.3(a)(i)** an absence of three years or less in the nature of retirement occasioned by disability; or
    - 50.10.3(a)(ii)** an absence of two years or less which in the opinion of the Employer was caused by special circumstances; or
  - 50.10.3(b)** during any absence from duty on maternity, paternity/partner or adoption leave without pay; or
  - 50.10.3(c)** except to the extent (if any) authorised by the Employer, during any other absence on leave without pay; or
  - 50.10.3(d)** during any absence from duty when the Employee was in receipt of weekly payments of compensation under the Accident Compensation Act 1985 (Vic) or any corresponding previous enactment, other than the first twelve months of that period; or
  - 50.10.3(e)** which followed the date on which a pension under the State Superannuation Act 1988 (Vic) (or similar provision applying to Employees on the staff of a declared authority) became payable by reason of retirement on the ground of disability, other than a period not exceeding twelve months during which a pension under section 83A(1) of that Act (or similar provision applying to Employees of a declared authority) was paid; or
  - 50.10.3(f)** from which the Employee was dismissed for disciplinary reasons.

Ref: H:\My Documents\Long Service Leave\CPSU submission Vic Parliament re.portability of LSL Aug 2015.docx