



Victorian
Chamber of Commerce
and Industry



Victorian Government review of the *Long Service Leave Act 1992*

Victorian Chamber Submission

April 2016

Introduction

The Victorian Chamber of Commerce and Industry welcomes the opportunity to provide a submission to the Victorian Government's review of the *Long Service Leave Act 1992*.

As Victoria's leading business organisation, each year the Victorian Chamber informs and services more than 15,000 members, customers and clients across the state, encompassing all industry sectors and spanning small, medium and large-sized businesses.

The Victorian Chamber also has extensive experience in helping members to understand and comply with their long service leave obligations. The Victorian Chamber Workplace Relations Helpline, which provides members with up-to-date and independent advice on a range of workplace relations issues, receives an average of 20 calls per week relating to long service leave.

The review must not increase costs to employers

While keeping our legislative frameworks up to date is worthwhile, it is important to recognise that in today's modern workplace long service leave is largely irrelevant to the majority of employees as around 75 per cent do not remain with a single employer long enough to become eligible.

This fact casts doubt on whether long service leave continues to provide a meaningful incentive for workers to stay with a single employer and whether it provides an overall benefit to the economy.

Long service leave is an anachronism, described by the Productivity Commission as an "Antipodean idiosyncrasy". It was invented in the mid-19th century to allow citizens to sail to and from England every decade. This is clearly not a problem for today's workers.

The Victorian Chamber is concerned that a number of options proposed in the discussion paper would increase the cost and complexity of long service leave to employers.

While it is reasonable to seek to bring long service leave legislation up to date and make it easier to administer, efforts to 'modernise' long service leave should not be used as an excuse to increase benefits to workers, without considering that employers will bear the cost.

We also take this opportunity to restate our opposition to any extension of current portable long service leave arrangements, as detailed in our submission to the Victorian Parliament's Economic, Education, Jobs and Skills Committee *Inquiry into Portability of Long Service Leave Entitlements*.

In the current economic climate, with unemployment at 6 per cent, changes to long service leave would undermine the Victorian Government's commitment to create jobs and strengthen business competitiveness.

Efficiency and productivity must be prioritised

The discussion paper is organised around four themes: flexibility; consistency and equity; clarity; and compliance and enforcement.

It is concerning that the discussion paper does not place more emphasis on the economic impacts of long service leave. It does not examine the economic rationale for having a long service leave scheme or the role that it plays in a modern economy. Equally, it does not seek to evaluate any of the options against economic objectives.

As such, the Victorian Chamber urges the review to ensure business costs are given due consideration in the review process and that reform options are evaluated against the criteria of efficiency and productivity.

Comments on options

The Victorian Chamber's comments on the options outlined in the discussion paper are presented in the table below.

Proposed Option	Victorian Chamber Comment
<p>Allow employers and employees to agree that leave be taken in shorter periods than currently permitted.</p>	<p>The Victorian Chamber only supports allowing long service leave to be taken in periods shorter than those currently allowed where there is agreement between the employer and the employee.</p> <p>Consideration needs to be given to smaller employers without sophisticated payroll and leave management systems. Tracking and managing shorter periods of long service leave (i.e. single days) would impose additional administrative costs on these employers.</p> <p>Consideration should also be given to placing a floor on the minimum period that can be taken (i.e. three days) recognising that tracking and managing long service leave in smaller increments (i.e. hours) would impose additional administrative costs or not be feasible.</p> <p>We recognise that such a reform could benefit some employers as it may provide additional flexibility and result in leave being taken earlier, helping reduce employer long service leave liabilities and their related costs.</p>
<p>Allow for leave to be cashed out.</p>	<p>The Victorian Chamber supports allowing long service leave to be cashed out subject to agreement between the employer and the employee.</p> <p>We recognise that such a reform would provide employers with additional flexibility and if paid out, reduce liabilities that need to be managed.</p> <p>Around 6 per cent of enquiries regarding long service leave to the Victorian Chamber helpline relate to cashing out leave.</p>

Proposed Option	Victorian Chamber Comment
<p>Allow pro rata leave to be taken after seven years' service.</p>	<p>The Victorian Chamber notes that there may be some balance sheet benefits to business in having leave taken earlier and therefore paid at current rates, rather than at a future date and higher rates.</p> <p>However, this must be weighed against the fact that businesses incur additional costs associated with backfilling or lost productivity when an employee takes long service leave.</p> <p>Therefore, allowing leave to be taken after seven years of service may impose additional indirect costs on employers even though the strict liability to the employer may reduce slightly.</p> <p>Many employers do allow for pro rata long service leave to be taken but this should be a decision for individual businesses, not a legislative requirement.</p>
<p>Change the way payment for long service leave is calculated by referring to an employee's actual rate of pay for their usual hours of work at the time leave is taken (including any non-monetary benefits).</p>	<p>The Victorian Chamber opposes any change to the way that pay is calculated for the purposes of long service leave.</p> <p>Including penalty rates and allowances in the definition of 'ordinary pay' would increase the cost of long service leave for many businesses.</p> <p>There is no economic rationale for making such a change and it would provide no economic benefits.</p> <p>This change would also add to the complexity of calculating entitlements.</p>
<p>Calculate the hours worked over the life of the employment period.</p>	<p>The Victorian Chamber does not support any change to the way that hours worked are calculated for the purposes of long service leave.</p> <p>The current arrangements which provide for hours of work to be averaged over the previous 12 months or five years (whichever is greater) provide sufficient flexibility to accommodate changes in hours worked over time.</p> <p>Averaging pay over the full period of employment is not practical, especially as employers are only required by law to keep time and wage records for 7 years.</p>

Proposed Option	Victorian Chamber Comment
<p>Allow for a period of family leave of up to 12 months, regardless of whether it is paid or unpaid, to be counted as service</p> <p>and/or</p> <p>Allow for a period of family leave greater than 12 months to not break continuity of service (without counting as service), whether it is paid or unpaid.</p>	<p>While the Victorian Chamber supports the operation of family leave entitlements, both of the proposals would result in more employees becoming eligible for long service, thereby increasing costs for employers.</p> <p>We do not support family leave, paid or unpaid, counting as service for the purpose of long service leave.</p>
<p>Clarify that certain interruptions to employment of a casual or seasonal employee still count towards the period of continuous employment, for achieving an entitlement to long service leave.</p>	<p>The Victorian Chamber supports a clarification of what counts as service for casual and seasonal employees provided that this does not result in any increase or broadening of periods that count as service.</p>
<p>Changes to recognition of prior service where a business with no physical assets is sold.</p>	<p>Recognising prior service when a business with no physical assets is sold would result in the transfer of long service leave liabilities to the new business owner.</p> <p>We do not support this reform option as it would result in an increased cost burden, even if this would only occur in a small number of cases.</p> <p>Again, this is an issue that should be considered at the time a business is sold to determine if those liabilities are part of the sale.</p>
<p>Remove the right for an employer to seek an exemption from the <i>Long Service Leave Act 1992</i>.</p>	<p>The Victorian Chamber understands that a provision allowing an employer to seek an exemption from complying with the Act was last used in the 1960's, and is therefore redundant.</p> <p>This provision only allows an employer to seek an exemption on the basis that they provide long service leave arrangements that better serve the interests of employees than those under the Act.</p> <p>As such, we do not see a problem with removing the exemption on the condition that a savings clause is used to preserve any existing arrangements in operation.</p>

Proposed Option	Victorian Chamber Comment
<p>Provide departmental officers the ability to require the production of documents and materials for investigating complaints</p> <p>Allow departmental officers to enter a business premises to inspect documents in order to check compliance</p> <p>Increase penalties for non-compliance.</p>	<p>The Victorian Chamber does not support allowing compliance officers to enter a business premises to inspect documents relating to long service leave.</p> <p>There is no demonstrated requirement for an additional regulator and / or inspectorate to enforce long service leave obligations.</p> <p>Penalties currently in place for failing to recognise long service leave entitlements, failing to keep records and for making a false or misleading statement in a record are more than sufficient to encourage compliance.</p> <p>The review should consider alternative, less intrusive ways of seeking access to documents relating to long service leave, including closer cooperation with the Fair Work Ombudsman and / or giving departmental officers the right to request relevant documents in writing.</p> <p>The Victorian Government automatically indexes the value of fees and fines each year for inflation so that the value of those fees and fines is maintained. As current penalties under the <i>Long Service Leave Act 1992</i> (of up to 20 penalty units or around \$3,000) have been automatically indexed for inflation since they were last reviewed in 2005, there is no reason to increase them further.</p>