19 September 2011

Regulatory Impact Statement

Proposed Local Government (Long Service Leave) Regulations 2012

Prepared for Local Government Victoria

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Executive Summary

Local government workers in Victoria have long enjoyed long service leave provisions that are similar to those for other public sector workers. These standards are ahead of those in the private sector, most notably in giving:

- greater entitlements (the leave accumulates at 3 months for every 10 years of service, compared with 3 months for every 15 years of service in the private sector); and
- portability of service between public sector employers.

These entitlements were codified in such measures as the *Local Government (Municipal Employés Long Service Leave) Act 1974*, (which inserted provisions into the *Local Government Act 1958*) and, since 1992, regulations under the *Local Government Act 1989.*

The standards for long service leave for local government workers are currently set under the *Local Government (Long Service Leave) Regulations 2002* ("the Regulations"). The Regulations came into operation on 19 February 2002, and, consistent with the provisions of the *Subordinate Legislation Act 1994*, they expire after ten years, on 19 February 2012.

Local Government Victoria (LGV) considers that the current Regulations provide an efficient and effective base for this part of local government employees' entitlements. LGV therefore proposes to remake the 2002 regulations as the *Local Government (Long Service Leave) Regulations 2012*. The proposed regulations largely follow the previous regulations, with some streamlining and improvement.

As required by the *Subordinate Legislation Act*, LGV has prepared this Regulatory Impact Statement (RIS) to explain and analyse the proposed regulations. A central rationale for the preparation of an RIS is to allow people affected by the Regulations the opportunity to comment.

A key focus in any review of regulation is to ask what problem the Regulations tackle – and to query whether regulation is indeed necessary to tackle that problem.

Regulation is required in this case because of specific provisions of the *Local Government Act 1989*, which states:

- In s101 (1) "A Council ***must*** implement appropriate long service leave arrangements for Council staff in accordance with the regulations" (emphasis added); and

- In s101 (2) (b) the Regulations cannot specify benefits "which are less than those which applied under the *Local Government Act 1958*"

This legislation is a particular case of the situation across Australia, where long service leave is a statutory entitlement provided in legislation. In Victoria the underlying legislation is the *Long Service Leave Act 1992*. However, the LSL Act specifies that it does not formally "apply to employees who have their long service entitlement provided by another Act or regulation."[1] The *Local Government Act 1989* is such an Act.

As noted above, the current Regulations provide benefits similar to those for other public sector workers, and ahead of those in the private sector in entitlements and portability. These benefits are long standing Government policy – stated for example in the Second Reading Speech for the *Local Government (Municipal Employés Long Service Leave) Act 1974*.[2] The key goals are:

- To encourage continuity of service with local government, with entitlements and arrangements that encourage the development of skills in the sector;
- To facilitate flexibility of service across government, with portability between local government and other public sector employers; and
- To create efficient long service leave arrangements that minimize administration costs.

These goals are especially important in reviewing the current Regulations, as various aspects of long service leave for other public sector employees have changed in the last ten years. There are now some discrepancies between entitlements – which create some challenges both for portability and for efficient administration.

From these points, the key goals of the Regulations are to provide the most effective mechanisms both to meet the statutory requirements, and to achieve the Government's policy objectives of ensuring that the standards and portability of long service leave are available to all Victorian local government employees.

As required by the *Victorian Guide to Regulation,* this report identifies possible alternative ways of addressing the problem, and discusses the costs and benefits of those different approaches.

The *Guide* requests that one option considered should be a no-regulation option. In the case of the Local Service Leave regulations, this would envisage letting the current Regulations sunset, and not replacing them – in effect letting provisions of the *Long Service Leave Act* apply. However, this approach would not meet the requirements of s 101 (1) and especially s 101 (2) of the *Local Government Act*, which specify different standards. Consequently, this option is not viable. In addition, as briefly discussed in the report, this would in any case be a higher cost option than the two options that are considered.

The Report therefore identifies two broad regulatory options:

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[1] Workforce Victoria *A Comprehensive Guide to the Victorian Long Service Leave Act 1992*, p2

[2] See Hon A. J. Hunt (Minister for Local Government) Victorian Legislative Council *Hansard* 17 September 1974, p206, and discussion in section 2.3 below.

1. Remake the current Regulations as they are
2. Remake the Regulations with amendments. Seven changes to the Regulations are proposed.

The proposed changes to the Regulations can be discussed in three groups:

- Ensuring portability. The proposed changes harmonise these Regulations with the provisions that apply in the Victorian public service and other public sector bodies. They also make appropriate adjustments to the provisions for payments between employers when an employee transfers.

- Access to entitlements. The proposed changes allow employees to access pro rata entitlements at 7 years, rather than the current 10 years – this change is consistent with the provisions of the *Long Service Leave Act*. In addition, once an employee has reached the minimum service length for access, subsequent access will accrue on a yearly, rather than five-yearly, basis.

- Modernisation. Three proposed changes bring the regulations into line with either the current Victorian public service standards or current accounting practice. These include: removing forfeiture on dismissal; providing an ability to restore service recognition after a termination for illness, and abolishing the requirement for councils to keep a separate long service leave account.

Six of the seven proposed changes are minor changes to streamline the operation of the Regulations, and to maintain consistency with either the public sector standard or the Long Service Leave Act. These changes have minimal cost. Only one proposed change has some potential cost for employers. This brings forward from 10 years to 7 years the length of service for employees to gain broad access (on a pro rata basis[3]) to long service leave.

The report outlines the current situation with long service leave in Victorian local government, and also surveys other analyses of long service leave. It notes that there is variation in how councils estimate the costs of the leave, and there is considerable uncertainty about the precise benefits of such outcomes as a more flexible labour market in local government. Such uncertainty about the valuations of both costs and benefits complicates any rigorous analysis.

The *Victorian Guide to Regulation* outlines several different possible methodologies for assessing whether a proposed Regulation is worthwhile. As discussed in this Report, the most suitable methodology for these Regulations is 'break even analysis'. A break-even analysis involves an assessment about whether the benefits of a proposal are likely to exceed a quantitative estimate of the costs of the proposal.

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[3] Rather than having to wait for an initial 10 years service to take 3 months long service leave, employees could if they wish take 2 months leave at 7 years service.

The choice between option 1, remaking the current regulations, and option 2, remaking with amendments, rests on the balance between

- some additional costs with the amendments, and
- some additional benefits of harmonizing public sector leave standards and promoting a more flexible local government labour market.

The analysis concludes that the benefits of the amendments are likely to outweigh the costs.

The table compares the two options on the key goals noted above:

Policy Goal	Discussion	Preferred option for this goal
Encourage continuity of service with local government, and development of skills in the sector	Current regulations (option 1) have somewhat inferior provisions for long service leave compared with other public sector employment. At the margin, this encourages some workers to seek employment away from local government, and discourages skill development. Option 2 harmonises the provisions.	Option 2
Facilitate flexibility of service across government, with portability between local government and other public sector employers	The same disparities in option 1 that encourage workers to move away from local government would discourage other public sector workers from moving to local government. Option 2 therefore builds flexibility to a greater extent	Option 2
Create efficient long service leave arrangements that minimize administration costs	The disparities in option 1 between current local government and other public sector provisions create some administrative inefficiencies – which are reduced in Option 2	Option 2
Minimise costs of provisions	In harmonizing with other public sector provisions, particularly granting access to entitlements at 7 years, option 2 increases employment costs for some local government employees. Over 10 years, the NPV of these costs is estimated at $10.3 million across all councils.	Option 1

From the above comparisons, option 2 provides better results on the first three goals than does option 1. However, on the fourth goal, option 2 also has somewhat higher costs than option 1. The critical question therefore is: do the benefits of option 2 outweigh the associated costs?

This report measures, as far as possible, the costs and benefits of the options. Acknowledging that there are problems with the data, it does not attempt a rigorous estimate of the benefits.

Applying the break-even analysis, it argues that the benefits of Option 2 in comparison with Option 1 are likely to exceed the quantitative estimate of the additional costs involved.

Overall, the report finds that Option 2 is **preferred** to Option 1. It has a low level of additional costs to achieve the benefits of more flexibility in entitlements, and of bringing the local government arrangements into line with standards in the LSL Act and VPS Agreement. The analysis of section 4.5.2 below indicates that these benefits should also further encourage skill development in local government.

This analysis concludes that Option 2: Remaking the Regulations with amendments, is the best option. Local Government Victoria therefore proposes to pursue this Option.

The remaining sections of the report address other issues either recommended or required by the *Victorian Guide to Regulation*. The analysis identifies no substantial problems with any of these issues.

Contents

1. Introduction

The standards for long service leave for local government employees in Victoria are current set under the *Local Government (Long Service Leave) Regulations 2002* ("the Regulations") The regulations came into operation on 19 February 2002, and, consistent with the provisions of the *Subordinate Legislation Act 1994*, they expire after ten years, on 19 February 2012.

Local Government Victoria (LGV) considers that the current regulations provide an efficient and effective base for this part of local government employees' entitlements. LGV therefore proposes to remake the 2002 regulations as the *Local Government (Long Service Leave) Regulations 2012*. The proposed regulations largely follow the previous regulations, with some streamlining and improvement.

As required by the *Subordinate Legislation Act*, LGV has prepared this Regulatory Impact Statement (RIS) to explain and analyse the proposed regulations. A central rationale for the preparation of an RIS is to allow people affected by the regulations the opportunity to comment.

1.1 What is the problem?

A key step in the analysis of any proposed legislation or regulation is to ask what problem the measure is intended to solve, and whether regulation is necessary to address that problem. This section asks what problem the Regulations tackle.

The Regulations implement a number of Government policy positions for local government workers' long service leave. The key goals are:

- To encourage continuity of service in local government, with entitlements and arrangements that encourage the development of skills in the sector;
- To facilitate flexibility of service across government, with portability between local government and other public sector employers; and
- To create efficient long service leave arrangements that minimize administration costs.

Across Australia, long service leave is a statutory entitlement provided in legislation. In Victoria the underlying legislation is the *Long Service Leave Act 1992*. However, the LSL Act specifies

that it does not formally "apply to employees who have their long service entitlement provided by another Act or regulation."[4] The *Local Government Act 1989* includes such provision, stating:

> **101 Long service leave**
>
> (1) A Council must implement appropriate long service leave arrangements for Council staff in accordance with the regulations.
>
> (2) Regulations made under this Act with respect to long service leave cannot—
>
> (a) reduce or adversely affect the position of any person in respect of service; or
>
> (b) specify levels of benefits for any person or class of persons which are less than those which applied under the Local Government Act 1958 as in force before the commencement of this section.

The current Regulations mirror the provisions that were in the Local Government Act 1958, and subsequently in regulations in 1992, remade in 2002. These provide benefits similar to those for other public sector workers, and ahead of those in the private sector in entitlements and portability. These benefits are long standing Government policy – stated for example in the Second Reading Speech for the *Local Government (Municipal Employés Long Service Leave) Act 1974*.[5]

From these points, the key goal is to provide the most effective mechanism to meet the statutory requirements, and achieve the Government's policy objectives of ensuring that the standards and portability of long service leave are available to all Victorian local government employees.

Consistent with s101 of the Act, Regulation 1 of the current Regulations states

> The objective of these Regulations is to provide for long service leave for members of Council staff.

As outlined in section 2.3 below, since at least 1974 local government workers have enjoyed long service leave provisions that are similar to those for other public sector workers. These standards have been ahead of those in the private sector, most notably in giving greater entitlements and in providing portability between public sector employers. These entitlements are provided for under (and underpinned by) a range of instruments, including:

- S101 (2) (b) of the *Local Government Act 1989*, which specifies a minimum standard for local government long service leave;

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[4] Workforce Victoria *A Comprehensive Guide to the Victorian Long Service Leave Act1992*, p2

[5] See Hon A. J. Hunt (Minister for Local Government) Victorian Legislative Council *Hansard* 17 September 1974, p206, and discussion in section 2.3 below.

- The Commonwealth *Fair Work Act 2009* (FWA) both preserves existing award-derived entitlements and recognises existing state long service leave instruments that comply with the requirements of the FWA. Division 9 of the FWA "Long service leave", section 113 "Entitlement to long service leave" specifically provide that existing entitlements to long service leave continue under the provisions of the FWA.[6] However, while it *recognizes* such entitlements, the FWA does not *create* long service leave entitlements – in Victoria's case[7], these are still created by state instruments.
- The Victorian *Long Service Leave Act 1992* (most recently amended in 2006) establishes the entitlement to long service leave for all workers in Victoria. However, while it underpins entitlements in this State, the LSL Act does not formally "apply to employees who have their long service entitlement provided by another Act or regulation."[8]
- The *Victorian Local Authorities Award 2001* (VLAA) covers Victorian Councils, Water Authorities, and Catchment Management Authorities. Section 38 of the VLAA calls up the *LG(LSL)R* in the following terms: "*Employees covered by this award will be entitled to long service leave in accordance with the provisions of the long service leave regulations made in respect of the requirements of the (Victorian) Local Government Act 1989 or the (Victorian) Water Act 1989 as appropriate".* The VLAA itself does not feature any enhancement to the core LSL entitlements provided by the Regulations.
- All councils have negotiated Enterprise Bargaining Agreements (EBAs) with their staff. Some 35 of these specify entitlements to long service leave. Where these provisions are more favourable than those in the Regulations, the EBA provisions take precedence. The remaining EBAs either refer to the provisions in the Award (and therefore the Regulations) or are silent (in which case the Award and Regulations apply).

Local government workers (along with most other public sector workers) receive two major entitlements which are above those found in the *Long Service Leave Act 1992.* These are:

- Council staff receive 3 months long service leave with pay after 10 years of service. The *Long Service Leave Act* provides 3 months long service leave with pay after **15** years of service (or the equivalent of 2 months long service leave with pay after **10** years of service).
- Council staff entitlements include service with other local councils and with some other public sector bodies (LSL entitlements are "portable"). The *Long Service Leave Act* provides for leave after specific periods of time only ***with the one employer*** (emphasis added).

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[6] see www.fwa.gov.au for details

[7] Victoria has referred its state industrial powers to the Commonwealth – but the referral excludes long service leave provisions. The situation for other States varies.

[8] Workforce Victoria *A Comprehensive Guide to the Victorian Long Service Leave Act 1992*, p2

These two key additional entitlements are specifically provided by the Regulations. They are supplemented by provisions in specific EBAs.

1.2 What are the Options?

As required by the *Victorian Guide to Regulation,* this report identifies possible alternative ways of addressing the problem, and discusses the costs and benefits of those different approaches.

The *Guide* requests that one option considered should be a no-regulation option. In the case of the Local Service Leave regulations, this would envisage letting the current Regulations sunset, and not replacing them – in effect letting provisions of the *Long Service Leave Act* apply. However, this approach would not meet the requirements of s 101 (1) and especially s 101 (2) of the *Local Government Act*, which specify different standards. Consequently, this option is not viable. In addition, as briefly discussed in section 3, this would in any case be a higher cost option than the two options that are considered.

The Report therefore identifies two broad regulatory options:

1. Remake the current Regulations as they are
2. Remake the Regulations with amendments. Seven changes to the Regulations are proposed, with three suboptions for each of the proposed changes:
    - Do not make any change to the current regulation
    - Make the proposed change
    - Make some other change(s)

1.3 Organisation of this Report

In assessing the above options, it is important to establish some broad features of the local government labour market and especially the patterns of eligibility for long service leave. These are discussed in Section 2.

As the *Victorian Guide to Regulation* specifically requests that one option should be a no-regulation option, section 3 briefly discusses the impact of letting the current Regulations sunset with minimal replacement. This option would not meet the requirements of s 101 (1) and especially s 101 (2) of the *Local Government Act*, which specify standards. In addition, this approach would produce a high cost result.

Section 4 looks in detail at the proposed amendments (Option 2). It argues that six of the changes proposed have no or minimal cost impacts. The section then discusses the costs and benefits of the one proposed change that does appear to have cost impacts.

Section 5 addresses a number of other issues which the *Victorian Guide to Regulation* either requires or recommends.

2. Background

This section looks at two critical backgrounds for the operation of the regulations: the local government labour market in Victoria and the background to Long Service Leave, both in general and specifically for local government in Victoria.

2.1 Patterns in the local government labour market

How many local government workers are eligible for long service leave? How many workers would be affected by the changes proposed to the Regulations?

To answer these questions, it is helpful to analyse the structure of employment service patterns in local government. As well as providing important background for the overall Regulations, this data provides a basis for calculating the cost implications of the changes, and especially the proposal to allow workers to access long service leave benefits at 7 years rather than the 10 years at present.

Data is available from several sources to help answer these questions. Table 1 shows council data on total employment and staff movements for 2008-09.

Table 1: Council staff numbers 2008-09

Group of councils	Total full time workers	Part time workers		Total EFT	Staff movements 2008-09	
		Number	EFT		Number	%
Inner metro	7,944	6,974	3,242	11,186	1,512	13.5%
Outer metro	5,240	5,452	2,426	7,666	1,126	15.9%
Regional cities	3,466	4,356	1,657	5,123	760	14.8%
Large Shires	2,523	2,463	1,074	3,597	478	13.3%
Small shires	1,648	1,676	694	2,342	320	13.6%
Total	20,821	20,921	9,093	29,914	4,196	14.3%

Source: Council returns to the Victoria Grants Commission, October 2009. The 'staff movements' figure is the average of staff leaving and new appointments. Note that one council (Wyndham) did not provide data on staff movements during 2008-09. The % movements for Outer Metro councils, and the total, have been calculated using total EFTs excluding Wyndham.

Table 1 shows a total of 40,700 people employed by local government in Victoria in 2008-09, split 50:50 between full time and part time workers. 14.3% of workers left during the year, and this figure varied little across the council groups.

The council returns do not provide any details on length of service. Greater Bendigo's Financial Statements provide a limited breakdown of service records for its 907 employees (588 EFT). This is shown in Table 2.

Table 2: Length of service, City of Greater Bendigo

Time of service	City of Greater Bendigo		Average, public admin Australia
	Number	%	
0-4 years of service	452	50%	46%
5-9 years of service	199	22%	20%
10+ years of service	256	28%	34%

Source: City of Greater Bendigo *Annual Report 2008-09*, Financial Statements, Note 22 Provisions, p26; ABS *Labour Mobility* catalogue 6209.0, February 2008, Table 4

Table 2 indicates that, for Greater Bendigo at least:

- 28% of local government workers have more than 10 years of service, and so have access to long service leave now,
- 22% have between 5 and 9 years of service, and half or slightly more of these would be eligible for long service leave with the proposed change to access at 7 years[9]
- 50% have fewer than 5 years of service, and are not eligible now nor under the proposed changes.

It is unclear from the Greater Bendigo Financial Statements whether these periods of service are solely with Greater Bendigo, or whether they include eligible service with other councils (and some other bodies) under the portability arrangements. However, it is useful to compare these figures for Greater Bendigo with data that is available for public administration more generally. The last column of Table 2 uses Australian Bureau of Statistics data on labour mobility, for the industry sector 'Public Administration and Safety', across Australia in 2008. It shows a similar pattern to the Greater Bendigo data, though with a slightly higher proportion of workers in the 10+ year category and slightly lower proportions in the other two.

The ABS category of 'Public Administration' appears to be the best comparator with the local government workforce. However, it is worth noting that many local government workers could well be considered as belonging to either of two other ABS categories: 'Construction' (for road crews) and 'Health Care and Social Assistance' (for human services workers). Table 3 gives the ABS data for each of these categories in 2008.

[9] As discussed elsewhere, 35 councils have EBAs which already give access to entitlements earlier than 10 years (in most cases, at 7 years). Greater Bendigo is not among these 35 councils.

Table 3 Workers' length of service in different industries

Period of service	Public administration and safety	Construction	Health care and social assistance
Under 12 months	15.9%	22.2%	18.6%
1 and under 2 years	8.7%	12.0%	11.4%
2 and under 3 years	9.7%	10.6%	9.3%
3 and under 5 years	12.1%	15.5%	14.0%
5 and under 10 years	19.4%	15.5%	19.2%
10 years and over	34.3%	24.3%	27.5%

Source: ABS *Labour Mobility* catalogue 6209.0, February 2008, Table 4

Both the construction and health care categories shown in Table 3 have shorter service profiles than the public administration category. Thus, the shorter service profile for Greater Bendigo compared with the 'public administration' figures probably reflects the inclusion of patterns for council workers who may be better categorized as construction and health care workers.

The overall similarity of the ABS 'Public Administration' data with the Greater Bendigo profile suggests that the more detailed information in the ABS statistics can be used to give an indication of service profiles in local government. Three particular aspects are useful:

- The stability of the data
- The destination of workers leaving employment in public administration; and
- The numbers of workers at each year of the completed employment profile.

The length of service profiles of workers have been fairly stable since 2000, as shown in Table 4.

Table 4: Service profiles of Government Administration Workers

	Under 1 year	1 to 2	2 to 3	3 to 5	5 to 10	10 +
2002	17.0%	9.4%	9.1%	12.5%	19.2%	32.7%
2004	16.8%	6.9%	9.3%	14.4%	18.0%	34.6%
2006	14.6%	8.9%	8.3%	13.7%	19.1%	35.5%
2008	15.9%	8.7%	9.7%	12.1%	19.4%	34.3%

Source ABS *Labour Mobility* (6209.0) 2002, Table 4; p12, 2004, Table 4, p13; 2006, Table 5, p15; 2008 Table 4. Note there has been a slight change of definition in the most recent figures. For the first three publications, the relevant category was "Government administration and defence", while the 2008 figures cover "Public Administration and Safety". The 2008 category has 207,000 workers, up from 156,000 in 2006.

Table 4 indicates there has been little change in the service profile of Public Administration workers over the past eight years.[10] This stability gives confidence that the following analyses are robust.

The second aspect is the annual movement in and out of jobs. As noted in Table 1, 14.3% of local government employees left their council employer in 2008-09. This proportion is slightly above the national figure for Public Administration, where 13.0% of workers left their employers in the year to February 2008.[11] Table 5 compares the figures for Public Administration and all workers.

Table 5 Job Mobility February 2007 to February 2008 (figures in 000)

	Public admin		All workers	
Employed at February 2007	584.5		10,232.9	
Still with same employer Feb 2008	508.3	87.0%	8,177.9	79.9%
With new employer, same industry	24.2	4.1%	568.9	5.6%
New employer, different industry	25.0	4.3%	644.2	6.3%
Not working Feb 2008	27.0	4.6%	841.9	8.2%

Source ABS *Labour Mobility* (6209.0) 2008, Table 9

Table 5 indicates that the Public Administration category has lower turnover rates than the workforce as a whole. Of those leaving Public Administration employers during the year, some 30% found other jobs in the Public Administration area.

The third aspect where the ABS statistics illuminate patterns in local government employment is in the details of service profiles. The ABS statistics give service periods in the categories: less than 1 year, 1-2, 2-3, 3-5, 5-10 and 10+. From these figures, it is possible to estimate the numbers of employees for each year of service.[12] The results are shown in Chart 1, and are compared with data provided by the superannuation fund Vision Super for the years of completed service by its members. Vision Super provides superannuation coverage for nearly all of the 42,000 local government workers in Victoria – but also provides coverage for another 30,000 workers. Its data on years of service are therefore also indicative. However, as Chart 1 shows, they are very similar to the figures estimated from the ABS public administration data.

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[10] This stable result is mirrored in the statistics for the workforce as a whole. There was some move towards shorter profiles in the 1990s, but the profiles have changed little since 2000. The proportion of workers under 1 year with their current employer rose from 20% in 1992 to 24% in 2000 – but has subsequently declined to 22%. These changes came almost totally from mirrored changes in the 1-5 year service group. The 5 year plus service group (the critical group for any discussion of long service leave) has remained stable at 41% of the total workforce.

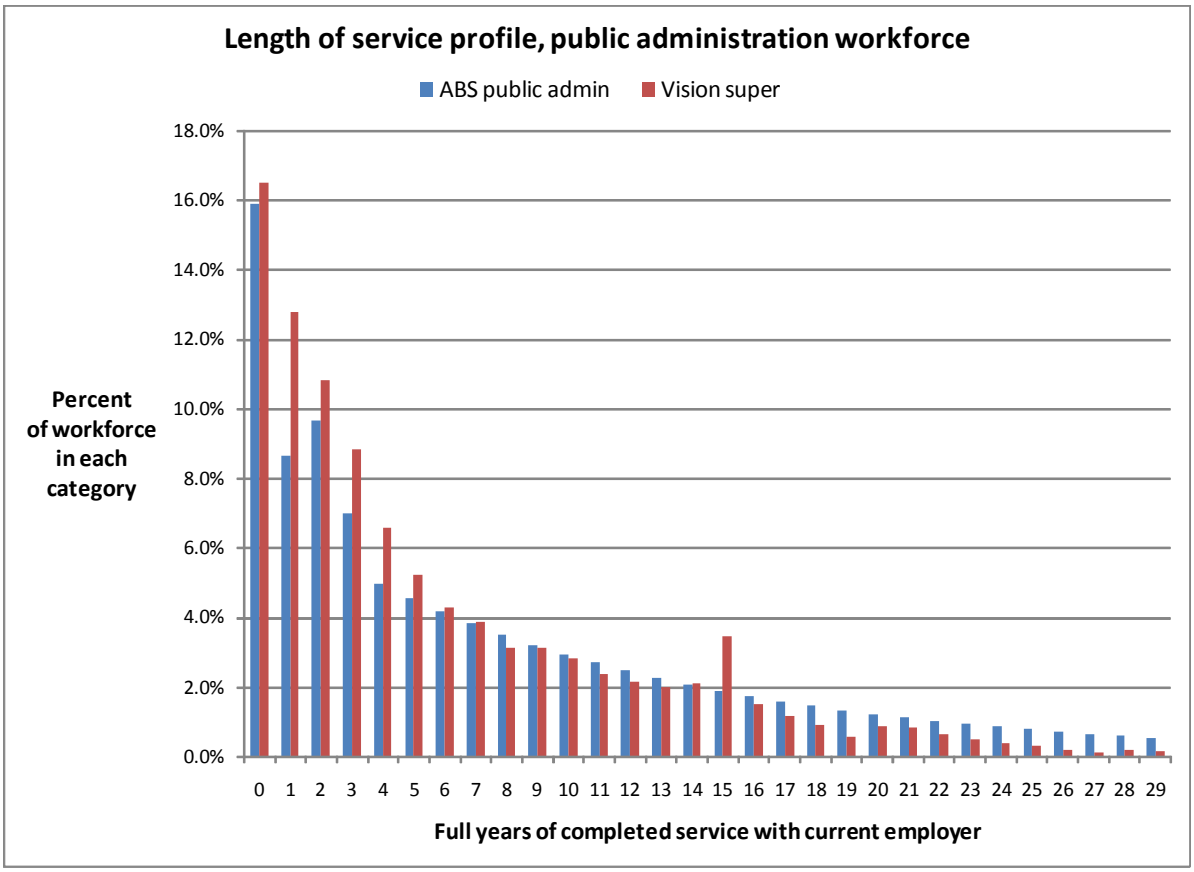
[11] Once again, these could be at least partially explained by local government workers in the health field – which has a higher turnover rate.

[12] The statistical technique was to use a decay equation where for each completed year of service y, the number of workers with that length of service is given by

n (y) = n (y-1) * a standard factor (in this case 0.917)

This produced a result for each year consistent with the totals in the categories used by the ABS. It implies that beyond the third year of employment 8.3% of the workforce leaves each year.

Chart 1



Source: ABS *Labour Mobility* (6209.0) 2008, Table 4; data provided by Vision Super (which provides superannuation coverage for nearly all of the 42,000 local government workers in Victoria)

Chart 1 shows marked similarity between the estimates based on ABS data and the Vision Super data, giving confidence that the figures are robust. The Chart has an important implication for later analysis. It allows estimation of the number of workers who leave local government employment between 7 and 10 years of service (and here the data from ABS and Vision Super are almost identical). Table 5 applies the proportion figures from Chart 1 to the total employment of 41,742 from Table 1 above.

Table 6 Estimated detailed service profile, Victorian local government workforce

Years of service	Proportion	Number of staff
up to 5	46.2%	19,300
5 or 6	8.8%	3,669
7	3.9%	1,609
8	3.5%	1,476
9	3.2%	1,353
10	3.0%	1,241
More than 10	31.3%	13,071

Source: calculated as in text above. Note that these figures are for all staff, not EFT staff

Table 6 estimates the numbers of workers with various completed years of service. Importantly, it also provides the basis for estimating the number of workers who leave local government each year. Table 4 above indicated that the service profiles are fairly stable from year to year. Using this insight, we can estimate that 134 workers with 7 years experience will leave their local government employer in the next year (the 1,609 workers at 7 years less the 1,476 workers at 8 years). Similarly, 122 workers will leave having completed 8 years of service, and 112 workers will leave with 9 but less than 10 years of service.

Thus, it can be expected that, each year, a total of 370 workers will leave their current local government employer with between 7 and 10 years of service. Applying the proportions in Table 5 above, it can be expected that just under one third, perhaps 120 workers, will find jobs elsewhere in local government, with the other 250 leaving the sector.

This 250 figure is used in subsequent calculations of the cost of changing the long service leave access arrangements.

2.2 Background of Long Service Leave

The background of long service leave was outlined in a paper to the national Labour Ministers' Council in 1999, and a subsequent survey article in the journal *Labour & Industry*.[13]

The entitlement has its origins in the 19th century Victorian and South Australian Civil Service Acts. Both colonies passed acts in 1862 that provided between six and twelve months paid leave for civil servants to return to Britain after ten years service in the colonies. LSL was gradually was extended to other states and subsequently to Commonwealth civil servants, and to other public sector employees. Long service leave began to be included in federal awards, by consent, in the late 1940s. It did not become a standard employment condition for all employees until the passage in the 1950s of long service leave legislation in all States.

The purpose of such legislation, according to Parliamentary debates prior to the introduction of the Long Service Leave Bill 1955 in NSW, was to:

- reduce labour turnover
- provide a reward for long and faithful service; and
- enable employees halfway through their working life to recover their energies and return to work renewed, refreshed and re-invigorated.

In 1964, the Commonwealth Conciliation and Arbitration Commission arbitrated its first long service leave award to provide what has become the standard provision for non-public service employees: 13 weeks leave after 15 years service, with pro-rata payment in lieu on termination of employment after 10 years service. State legislation and existing awards were amended to provide the same entitlement. In Victoria, this entitlement is included in the *Long Service Leave Act 1992.*

Public sector employees generally have more favourable long service leave entitlements. Most are eligible for 13 weeks leave after 10 years of service, and there is considerable scope for portability.

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[13] WA Department of Productivity and Labour Relations *Flexibility in Long Service Leave* (May 1999) paper prepared for the Labour Ministers' Council in liaison with the federal Department of Employment, Workplace Relations and Small Business, especially p7-8; John Burgess, Anne Sullivan, and Glenda Strachan, "Long service leave in Australia: rationale, application and policy issues" *Labour & Industry* vol 13 (1) August 2002. The following discussion draws on these two sources.

2.2.1 Portability

For the most part, long service leave is a period of paid leave granted after a period of continuous employment with the one employer. However in a number of industries the entitlement accrues after a period of continuous service in that industry, regardless of the number of employers. Table 7 outlines the various arrangements.

Table 7 Portable Long Service Leave Arrangements

Industry	**Portability Entitlement Established By**	**Responsibility for Leave Payments**
Building and Construction	State legislation in all States	Central fund in each State
Coal Mining	Commonwealth legislation	Central fund
Seafarers	Awards	Central fund administered by Australian Maritime Industries Pty Ltd
Stevedoring	Agreements	Employers transfer funds to other employers to cover accrued entitlements in the small number of cases when individual employees change employers
Government	Mixture of legislation, awards and agreements	Individual departments and organizations
Higher education	Agreements	Individual institutions
Contract Cleaning	State legislation (ACT, Queensland only)	Central fund

Source: With updating, based on Royal Commission into the Building and Construction Industry *Long Service Leave in the Building and Construction Industry* Discussion Paper 14 November 2002, p20-1, citing Allen Consulting Group 1999, *Long Service Leave (Building and Construction Industry) Act 1981: A National Competition Policy Review*. Final Report prepared for ACT Work Cover, November, p.3. See also Bendzulla Actuarial Ltd *Feasibility Study in a Portable Long Service Leave Scheme for the Community Services Sector in Victoria* Report for the Department of Human Services, September 2007, p20. The New South Wales Government recently announced (on 19 August 2010) that it had reached agreement to introduce a portable long service leave scheme for contract cleaners in that State. See http://www.abc.net.au/news/stories/2010/08/19/2987205.htm

As indicated in Table 7, where portability exists, it is frequently underpinned by legislation or regulatory instruments which require employers to participate. Even with such legislation, a number of employers in the building and construction industry during the WorkChoices period 2005-07 attempted to structure Australian Workplace Agreements to avoid portability responsibilities.[14]

[14] Bendzulla Actuarial Ltd *Feasibility Study in a Portable Long Service Leave Scheme for the Community Services Sector in Victoria* Report for the Department of Human Services, September 2007, p16

Two recent studies have looked at the feasibility of introducing portable long service leave in the community services sector: one in Victoria, one in ACT.[15] Both considered legislation was necessary for a scheme that would cover the entire sector.[16]

The advantages of portability were studied recently as part of an investigation into a possible scheme for the community services sector in the ACT.[17] Supporters of the scheme, including both employees and many employers from small organizations, saw the potential

> for this Scheme to effectively encourage movement around the sector, resulting in additional skills and knowledge being attained from increased exposure to different community issues and organisational cultures. Gaining experience across different areas of the sector was seen as creating a strong foundation of highly skilled workers with a variety of transferable skills, thus building the skill base of the sector as a whole.[18]

Younger employees supported the scheme particularly for "its capacity for professional development and the potential to learn transferable skills for movement around the sector."[19] However, some larger employers had concerns about portability, arguing that the Scheme will lead to higher staff turnover, thus increasing recruitment and training costs.[20]

While these attitudes differed on introducing a new benefit, it is also worth noting well-reasoned doubts about the cost effectiveness of any effort to remove established long service leave entitlements, and especially portability.

In 1993, consultants ACIL reviewed portability in the building industry in NSW, and concluded:

> …the case for abolition is not clear cut. The low costs of the scheme, assessed as a proportion of total remuneration, may mean that the benefits from abolition would not exceed the costs — political, industry disruption and possibly consequential economic…While the benefits are small, the scheme does have significant symbolic value, particularly within the unionised sector of the industry.[21]

Seven years later, the Allen Consulting Group conducted a review of the *Long Service Leave (Building and Construction Industry) Act 1981* for the ACT. It drew a similar conclusion:

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[15] Urbis Consultants *Portable long service leave for the ACT community services sector* Paper for the ACT Department of Disability, Housing and Community Services March 2009
[16] See eg Bendzulla Actuarial, p18
[17] Urbis Consultants *Portable long service leave for the ACT community services* sector Paper for the ACT Department of Disability, Housing and Community Services, March 2009
[18] Urbis Consultants, *Portable long service leave* p7
[19] Urbis Consultants, *Portable long service leave* p11
[20] Urbis Consultants, *Portable long service leave* p ii
[21] ACIL Economics and Policy Pty Ltd, *Review of the Building and Construction Industry Long Service Payments Scheme*, prepared for the NSW Department of Industrial Relations, Employment, Training and Further Education, November 1993, p27. Cited by Royal Commission into the Building and Construction Industry *Long Service Leave in the Building and Construction Industry* Discussion Paper 14 November 2002, p17

> A number of employer groups are also in favour of portability, to some degree out of concern for industrial action that could accompany the removal of portability…any move to wind back entitlements is likely to result in significant industrial disputation in the ACT building and construction industry (and possibly wider industries). It is impossible at this time to assess the possible (political and economic) costs associated with disputation surrounding any removal of long service leave portability.[22]

Particularly the latter of these studies also addressed possible anti-competitive elements in the long service leave provisions[23]. The Allen Consulting Group did not consider long service leave per se as posing competition difficulties, but considered two aspects that might be problematic:

- The portability provisions of the ACT Building and Construction Industry Act. The fundamental question was "to ask why the building and construction industry has been singled out by the legislature for special treatment with respect to long service leave." [24] The review looked at the arguments for this special treatment, and did not find them compelling.
- The centralised long service leave fund in the ACT scheme, which requires employers to contribute long service leave payments as they accrue to this fund.

Allen Consulting felt that there could be an argument for workers' accrued benefits to be protected where an employer failed, but not if workers chose freely to move from one employer to another. They also suggested that employers should be given the option of whether or not to contribute to a centralised fund, or to a competing fund.

The situation for the local government long service leave provisions is different from the ACT building and construction industry, on two grounds:

- There is no central fund administering the accrued benefits for local government employees, so these criticisms do not apply
- The central concern was why the building and construction industry should be singled out for special treatment compared with other private sector industries. As discussed in the next section, the comparative standard for local government employees is with other public sector workers. The regulations do not provide different benefits from elsewhere in the public sector.

The next section looks at the background of long service leave in Victorian local government.

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[22] Allen Consulting Group *National Competition Policy Review of the Long Service Leave (Building and Construction Industry) Act 1981,* for ACT WorkCover, Final Report November 1999, p27. Cited by Royal Commission into the Building and Construction Industry *Long Service Leave in the Building and Construction Industry* Discussion Paper 14 November 2002, p17

[23] This links to the analysis of whether the currently proposed regulations have any adverse impact on competition – this is discussed in detail in section 5.2 below.

[24] Allen Consulting Group *National Competition Policy Review* Interim Report, p3

2.3 LSL in Victorian Local Government

In the local government sector in Victoria, long service leave arrangements were formalized in the *Local Government (Municipal Employés Long Service Leave) Act* 1974. This Act inserted sections 167A to 167E into the *Local Government Act 1958*, giving local government employees the same LSL basic standard as Victorian Public Service employees, with provisions:

- For three months LSL at 10 years of service (the previous allowance was 4.5 months at 15 years of service), and
- For portability between councils, and between local government and some other public sector employers.

In his Second Reading speech for the Bill, the Minister for Local Government said:

> The lack of portability of service as between the 211 municipalities within Victoria has been of considerable concern to officers and generally a matter of some contention . . . The Bill springs from the belief of the Government that service with any municipality is service with local government and that local government should be treated as one service, serving the one public, and that the Bill will contribute to putting the best man into the job and so assist local government most effectively.[25]

In the debates in Parliament, all parties supported the Bill, and especially the introduction of portability. Advantages included improving the ability of local government to attract the best talent, and the additional flexibility and skills development of the workforce. The Bill was supported by the relevant unions, and by most councils across Victoria. The MP for Murray Valley saw a number of advantages in the Bill:[26]

> it is obvious that if a local government authority is to recruit the type of officer it needs for its competent administration it must be able to offer benefits similar to those applying in other fields. Portability of long service leave is a common practice . . . [In addition] some municipal officers suffer under the present restrictions because, if they have been with a municipality for many years and are about to become, entitled to long service leave, they are reluctant to move to other appointments. Municipalities, too, suffer because of this. I am not critical of any particular officer but there have been cases in which both the municipality and the officer would have been better off if there had been a change.

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[25] Hon A. J. Hunt (Minister for Local Government) Victorian Legislative Council *Hansard* 17 September 1974, p206

[26] Mr Baxter (MP for Murray Valley) Victorian Legislative Assembly *Hansard* 11 December 1974, p3755

In 1989, a new *Local Government Act* moved a considerable amount of the prescriptive detail out of the old 1958 Act. It maintained continuity with many provisions of the older Act by enabling the Government to establish regulations for particular matters. Thus, s101 (1) of the 1989 Act states "A Council must implement appropriate long service leave arrangements for Council staff in accordance with the regulations" and s101 (2) (b) states the Regulations cannot specify benefits "which are less than those which applied under the Local Government Act 1958".

Using this mechanism, the key provisions included in sections 167A to 167E of the *Local Government Act 1958* were transferred to the long service leave regulations made in 1992. These provisions were then remade in 2002, in the current Regulations.

2.4 Local Government LSL in other States

In preparation for this RIS, Local Government Victoria surveyed long service arrangements in local government instruments (acts and regulations) and in some cases awards and collective agreements applying to interstate jurisdictions.

The key issues for the basic renewal of the Regulations are the aspects giving standards ahead of those in the private sector, most notably in giving:

- greater entitlements (the leave accumulates at 3 months for every 10 years of service, compared with 3 months for every 15 years of service in the private sector); and
- portability of service between public sector employers.

All jurisdictions in Australia provide local government workers with the same accumulation rate as the public service, ie 3 months for every 10 years of service.

All jurisdictions also provide portability across local government employers. In some states, local councils provide water functions, so portability with the water sector is effectively included here as well. Continuity of service is generally assured, as long as the gap in time between movements between councils does not exceed a particular time limit. This limit is around 3 months in three states (NSW, QLD and SA), in Tasmania the transfer must be direct. Victoria allows a gap of 12 months.

Portability with each state's public service and other public sector organizations varies. Portability in New South Wales, Queensland, Tasmania and Western Australia is restricted to other councils within those states. Northern Territory likewise restricts arrangements to local councils, but includes subsidiaries formed with the Minister's approval and the Local Government Association. South Australia goes beyond local councils as the Act provides for regulations to extend the arrangements "to other authorities or bodies" or to modify arrangements "in relation to such an authority or body". In this regard the Victorian *LG(LSL)R*

give greater portability, consistent with the arrangements in place with the Victorian Public Service Agreement.

A National Working Party is currently investigating the possibility of standardisation of LSL entitlements, including portability, for local government across Australia. It is early days in this development, and some sort of Federal mandate or policy/mechanism would be necessary to provide automatic recognition of prior service across the country.

The proposed new regulations include a number of minor changes to streamline the regulations and establish consistency with either the Victorian Public Service Agreement or the Long Service Leave Act. While arrangements for these vary considerably across the jurisdictions, it is worthwhile noting the approach taken by other jurisdictions on these matters.

Qualifying period for initial leave The first qualifying period of 10 years is common in the private and public sectors examined across Australia. An exception is in the ACT where the private sector and ACT public service are entitled to a shorter first qualifying period of 7 years. Less favourable first qualifying periods of 15 years for the private sector exist in WA and Tasmania. The Victorian *Long Service Leave Act 1992 (LSLA)* featured 15 years until the amendments of 2005 were introduced that phased in a 10 year qualifying period.

Second qualifying period Provision for annual accruals after the first period has been served is standard in the Government public service of all states and territories, except WA. Annual accruals are now also evident in local government in SA, and in the private sector in ACT and SA.

Earlier entitlement in special circumstances. Most jurisdictions provide earlier access to entitlements if a worker retires, resigns for ill health or 'domestic or other pressing necessity', or is dismissed (apart from dismissal for misconduct, which is discussed below). This is available across both public and private sectors at 7 years' service in Queensland, NT and Tasmania, and for the SA local government. Entitlement at 5 years exists in New South Wales, ACT and in the mining industry in Tasmania. It should be noted however that some differences occur in how jurisdictions define 'ill health' or 'domestic or other pressing necessity'.

Loss of entitlement following dismissal for wilful and serious misconduct. This loss of entitlement occurs for local government employees in all other states, and appears to occur also in the ACT. There are again some differences in definition – Queensland for example requires 'serious misconduct'. However, in Victoria the provision was explicitly removed from the *Long Service Leave Act* in amendments in 2005.

3. A Minimal Regulation Approach

The *Subordinate Legislation Act 1994* specifies that Regulations expire after ten years. The rationale for this is to ensure that regulations are periodically reviewed to ensure they are still useful, and achieving their goals.

The *Victorian Guide to Regulation* requests that any RIS should consider a no-regulation option as the 'Base Case'. This base case can then be compared with alternative options, such as remaking those regulations.

In the case of the Local Service Leave regulations, this would envisage letting the current Regulations sunset, and not replacing them – in effect letting provisions of the *Long Service Leave Act* apply. However, this approach would not meet the requirements of s 101 (1) and especially s 101 (2) of the *Local Government Act*, which specify standards different from those that apply to the general workforce. Consequently, this option is not viable.

Nonetheless, it is valuable to consider what would happen with a base case of the Regulations expiring in February 2012, and not being replaced. The discussion provides useful detail on the various instruments and mechanisms that underlie long service leave for local government workers. It also, in section 3.2, enables consideration of how people would respond to such a change.

3.1 Basis for long service leave

Regulation 1 of the current *Local Government (Long Service Leave) Regulations* states

> The objective of these Regulations is to provide for long service leave for members of Council staff.

Long service leave for council staff is actually provided for under (and underpinned by) a range of instruments, including:

- S101 (2) (b) of the *Local Government Act 1989*, which specifies a minimum standard for local government long service leave;
- The Commonwealth *Fair Work Act 2009* (FWA) both preserves existing award-derived entitlements and recognises existing state long service leave instruments that comply with the requirements of the FWA. Division 9 of the FWA "Long service leave", section 113

"Entitlement to long service leave" specifically provide that existing entitlements to long service leave continue under the provisions of the FWA.[27] However, while it *recognizes* such entitlements, the FWA does not *create* long service leave entitlements – in Victoria's case[28], these are still created by state instruments.

- The Victorian *Long Service Leave Act1992* (most recently amended in 2006) establishes the entitlement to long service leave for all workers in Victoria. However, while it underpins entitlements in this State, the LSL Act does not formally "apply to employees who have their long service entitlement provided by another Act or regulation."[29]
- The *Victorian Local Authorities Award 2001 (VLAA)* covers Victorian Councils, Catchment Management Authorities, and Water Authorities prior to the introduction in 2010 of a modern award. Section 38 of the *VLAA* calls up the *LG(LSL)R* in the following terms: "*Employees covered by this award will be entitled to long service leave in accordance with the provisions of the long service leave regulations made in respect of the requirements of the (Victorian) Local Government Act 1989 or the (Victorian) Water Act 1989 as appropriate"* . The *VLAA* itself does not feature any enhancement to the core LSL entitlements provided by regulation.
- All councils have negotiated Enterprise Bargaining Agreements (EBAs) with their staff. Currently most (but not all) EBAs refer to the Regulations, with some 35 offering some terms (such as broad access to entitlements at 7 years rather than 10 years) that are more generous than those in the regulations.[30] Where these provisions are more favourable than those in the Regulations, the EBA provisions take precedence. The remaining EBAs either refer to the provisions in the Award (and therefore the Regulations) or are silent (in which case the Award and regulations apply).

The basic entitlement to long service leave for all workers in Victoria is the *Long Service Leave Act 1992*. For local government workers, the Regulations provide two key additional provisions:

- They provide for superior benefits, consistent with general public sector standards. Regulation 4 (1) provides "every member of Council staff who has been employed by a Council for a period of 10 years is entitled to 3 months long service leave with pay." In contrast, under section 56 (a) of the *Long Service Leave Act* "An employee is entitled to 13 weeks of long service leave on ordinary pay on completing 15 years of continuous employment with one employer" (the equivalent, of 2 months long service leave with pay after **10** years of service, is now being phased in).

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[27] See www.fwa.gov.au for details. This situation has also been set out in a fact sheet from the Fair Work Ombudsman *Long service leave and the National Employment Standards* (November 2009)

[28] Victoria has referred its state industrial powers to the Commonwealth – but the referral excludes long service leave provisions. The situation for other States varies.

[29] Workforce Victoria *A Comprehensive Guide to the Victorian Long Service Leave Act 1992*, p2

[30] These additional provisions are slightly more likely to be found in larger and inner Melbourne councils – the 35 EBAs represent 45% of councils, but cover 53% of total council employment. However, they are spread across the State, including 65% of inner metro councils and 38% of small shires.

- They provide portability of the leave. The *Long Service Leave Act 1992* provides for leave after specific periods of time only ***with the one employer*** (emphasis added). A local government employee transferring between councils would not be able to transfer long service leave entitlements under the provisions of this Act.

The remainder of this discussion concentrates on the portability issue.

Portability is included in the current (and proposed) regulations. Regulation 8 answers the question: "What constitutes a member's period of service?" Subsection (4) specifies that it includes any continuous service with any local government body in Victoria. Subsection (7) also includes prior period of service by the member with

a. any local government authority under the law of the Commonwealth or of any State; or
b. any office under the Crown in the right of the Commonwealth or any State; or
c. any public authority of the Commonwealth or any State

to the extent provided for in any agreement made between the Council and the responsible authority.

Thus, the Regulations provide for portability across the local government sector and with some other authorities. This continues a long standing policy position, since 1974, that local government workers should have access to such portability.[31]

In considering the above mechanisms, it should be stressed that even the 35 EBAs with more generous provisions still rely on 'calling up' the Regulations for most of the LSL entitlement, with only specific variations noted. In particular, an EBA only binds the parties signing it – in each case the specific council and its employees. Reciprocal portability cannot be assured by this mechanism: a specific EBA can bind that particular council to recognize service with other councils (and other public sector bodies), but it cannot bind those other councils and bodies to recognize service with the particular council.

A lack of formal recognition of portability means that this situation would not meet the requirement of s101 (2) (b) of the Act, which states benefits cannot be "less than those which applied under the *Local Government Act 1958*". That Act included portability.

[31] This discussion concentrates on the implementation mechanisms to achieve this long standing and agreed policy position. Some of the advantages for this policy position were noted above, and will be discussed in later sections which look at the costs and benefits of the changes proposed in the revised Regulations.

3.2 The Costs of a Minimal Regulation approach

The previous section noted that letting the Regulations expire is not a viable proposal. Nonetheless, consistent with the emphasis on a no-regulation base case in the *Victorian Guide to Regulation,* it is worthwhile briefly discussing what would happen if the current Regulations did expire in February 2012. This would mean a minimum standard based on the entitlements found in the *Long Service Leave Act*. These would remove two key current elements:

- The entitlement rate would revert to 3 months after 15 years, rather than the current 3 months after 10 years
- There would be no portability, neither between local councils nor with other public sector bodies.

There are two issues here:

- What would be the immediate situation? and
- How would people react?

The analysis of these two issues indicates that a non-regulatory approach would produce confusing and costly outcomes.

Immediate Situation

As noted above, some 53%[32] of local government workers are covered by the 35 EBAs that specifically refer to long service leave entitlements. The entitlements specified in these EBAs already have precedence over the Regulations, and so there would be little immediate impact on either the standard or portability from a removal of the current Regulations. However, there would be a change to allowing access to entitlements at 7 rather than 10 years (which is included in the *Long Service Leave Act*).

It also appears that in most (if not all) of these cases that the EBAs do refer to some aspects of the Regulations, and in these cases the situation might become complicated. Further, as noted above, a specific EBA cannot bind other councils and bodies to recognize service with a particular council. EBAs cannot by themselves ensure reciprocal portability – some other mechanism (such as a sector-wide agreement between all parties) would be necessary to ensure portability.

Workforce Victoria advises that while the above is the general case, there isn't one global answer with the EBAs as to what happens if the Regulations cease to exist. The specifics of whether LSL entitlements are preserved will depend on individual EBAs, and issues such as the timing of when they were made and whether they were made under the old act (the *Workplace Relations*

[32] See footnote 30 above

Act 1996) or the new FWA. Therefore, a specific answer of the detailed impacts on individual councils is going to require individual analysis of each EBA.

The remaining 47% of the workforce do not have specific LSL entitlements included in provisions in their EBAs. For these workers, the 'savings' provisions of the *Fair Work Act* would apply. Workers would still have their current entitlements, regardless of the current Regulations disappearing. However, the situation is much less clear for workers moving jobs in local government, and even more so for new employees.

The removal of the Regulations would therefore not have much of an immediate impact. They would however create some uncertainty about future prospects, and this would work against two of the goals outlined above for long service leave:

- The ability of local government to attract qualified staff; and
- The maintenance of career paths for staff, with the associated incentives for skill development.

The uncertainties in this situation lead to the second element – of how people would react.

Reactions

As outlined above, the Regulations support entitlements and portability that have been part of the local government workforce scene since 1974. The discussion in section 2.2.1 noted two reviews that considered the removal of long-standing portability entitlements in the building industry – in New South Wales (1993) and in the ACT (1999). In the words of the NSW review:

> …the case for abolition is not clear cut. The low costs of the scheme, assessed as a proportion of total remuneration, may mean that the benefits from abolition would not exceed the costs — political, industry disruption and possibly consequential economic.[33]

For local government long service leave in Victoria, the prospect of removing the current regulations was raised in consultation with both the Municipal Association of Victoria (MAV) and the Australian Services Union (ASU). Both responded that the situation with a removal of the Regulations would be 'chaotic'.[34] Workforce Victoria advises that a move to drop the Regulations could result in claims for loss of current employment entitlements and open up renegotiation of existing industrial agreements. The ASU has advised Local Government Victoria that, in the absence of the Regulations, it would indeed immediately seek to protect the benefits through other instruments.

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[33] ACIL Economics and Policy Pty Ltd, *Review of the Building and Construction Industry Long Service Payments Scheme*, prepared for the NSW Department of Industrial Relations, Employment, Training and Further Education, November 1993, p27. Cited by Royal Commission into the Building and Construction Industry *Long Service Leave in the Building and Construction Industry* Discussion Paper 14 November 2002, p17

[34] Both the MAV and the ASU used the word 'chaos' independently and without prompting

There are potentially two possible mechanisms: through the Award and through Enterprise Bargaining Agreements (EBAs).

It would be technically possible to amend the *Victorian Local Authorities Award 2001* to provide for the long service leave entitlements and portability.[35] However, the *Fair Work Act* envisages that any new Awards will follow the format of what are termed 'Modern Awards'. Since 1 January 2010, the relevant Modern Award under Fair Work Australia that applies to councils and water authorities is the *Local Government Administration Award (LGAA*). The *LGAA* will be phased in from 1 July 2010. At this stage, Modern Awards are not permitted to contain long service leave provisions. An amendment to the Award is therefore not a practical option

The ASU has therefore indicated it would seek to amend EBAs for all councils. These include the 44 EBAs where no additional long service leave entitlement is currently included, as well as the 35 EBAs with such entitlements but some references to the Award and/or Regulations.[36] These negotiations, conducted on an individual basis, could be time consuming and expensive. Both the MAV and ASU advise that the time taken to negotiate an EBA can vary considerably, but typically takes 3 months. While amendments to existing EBAs would be expected to take less time, there are three key issues:

- Negotiations to amend most if not all current EBAs will undoubtedly take considerably more time and administrative effort than remaking the existing Regulations, even with some amendments. A key aim of the Regulatory Impact Assessment process is to find options that minimize such administrative costs.
- The negotiation process is likely to lead to some inconsistencies between provisions in 79 separate EBAs. Such inconsistencies will require greater time and costs for ongoing administration than a standard regulatory set across the sector.
- As noted above, EBAs cannot guarantee reciprocal portability. A possible option here is a sector-wide agreement, with the possible inclusion of other public sector bodies such as the Victorian Public Service. Negotiating such agreements is again time-consuming with associated costs.

It is not easy to estimate the costs of negotiating any amendments. Broad indications can however be given, in three areas:

- Costs for councils. The MAV advises that even a straight-forward EBA negotiation can take three months, typically with fortnightly meetings and associated preparation, discussion and briefings. In many cases, councils seek, and pay for, external advice.

[35] The primary mechanism for the similar entitlements for Victorian Public Service employees is the Award, supplemented by the VPS Agreement in 2006, with extensions and variations in 2009. Further details are in section 4.2.4 below

[36] Workforce Victoria advises that the status and efficacy of the LSL arrangements in these EBAs may depend upon the timing and nature of each agreement. Where clarification is necessary, this would require legal interpretation, which would be time consuming and costly

- Costs for the union, being on the other side of the table for the above meetings.
- Costs for Fair Work Australia, which has to vet each new agreement. The approval for recent council EBAs has typically taken between one and four weeks.

As indicated in the discussion in section 5.4 below, the standard approach to assessing such costs typically involves estimating the time taken in administration, and applying a standard $60 per hour.[37] The diversity of experience in finalizing EBAs indicates there is no simple time parameter that can be applied to calculate the time taken. A broad indication can be given by assuming that a council would spend the equivalent of one full staff day per week for the three months an EBA can take to finalise. This would suggest:

13 days	*	7.6 hours/day	@	$60 per hour	=	$6,000

In addition, the Council might pay for some external advice, and it would be also necessary to add the costs for the Union and Fair Work Australia. Further, it is common in such bargaining periods for both the council and the union to arrange staff meetings to explain the issues and progress. Overall, a conservative estimate of total costs could be in the order of $10,000 - $15,000 for revising each EBA.

Given the variation between current EBAs, the costs would vary considerably across local government. Indeed, there may be some scope for joint negotiations involving more than one council in a particular area. Across the 79 councils, costs could be of the order of $500,000 to $750,000.

While a broad indication, this calculation suggests that the costs of effectively removing the Regulations would be substantial. Not only is a non-regulatory approach not viable in a legislative sense, but it also involves high costs.

4. Proposed Changes to the Regulations

Section 3 noted that it is not viable to let the current Regulations sunset. There are therefore two viable options:

1. Remake the current Regulations as they are
2. Remake the Regulations with amendments. Seven changes to the Regulations are proposed.

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[37] Department of Treasury and Finance *Presentation on RCM Methodology* available from http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/reducing-the-regulatory-burden

This section looks in detail at seven proposed changes to the Regulations. It argues that six of the changes proposed have no or minimal cost impacts. The section then discusses the costs and benefits of the one proposed change that does appear to have cost impacts.

The *Victorian Guide to Regulation* requires an RIS to set out an explicit decision criterion, with possible techniques including net present value, benefit cost ratio, break-even analysis, cost effectiveness analysis or a multi-criteria analysis. This is discussed in section 4.6.1 below.

4.1 Summary of the proposed changes

In reviewing the Regulations, a number of changes are proposed. These are summarized in Table 8.

The proposed changes to the Regulations can be discussed in three groups:

- Ensuring portability. The proposed changes harmonise these Regulations with the provisions that apply in the Victorian public service and other public sector bodies. They also make appropriate adjustments to the provisions for payments between employers when an employee transfers.
- Access to entitlements. The proposed changes allow employees to access pro rata entitlements at 7 years, both in service and on departure. This would replace the current 10 years, with the change consistent with the provisions of the *Long Service Leave Act*. In addition, once an employee has reached the minimum service length for access, subsequent access will accrue on a yearly, rather than five-yearly, basis.
- Modernisation. Three proposed changes bring the regulations into line with either the current Victorian public service standards or current accounting practice. These include: removing forfeiture on dismissal; providing an ability to restore service recognition after a termination for illness, and abolishing the requirement for councils to keep a separate long service leave account.

Six of the seven proposed changes are minor changes to streamline the operation of the Regulations, and to maintain consistency with either the public sector standard or the Long Service Leave Act. These changes have minimal cost. Only one proposed change has some potential cost for employers. This brings forward from 10 years to 7 years the length of service for employees to gain broad access to long service leave.

Table 8 Proposals for change to the Regulations

	Regulation	Proposal	Costs
Ensuring Portability			
1	Redraft Regulation 8(7) by insertion of new 8(7A), and Regulation 9	Provision for automatic recognition of service between Victorian Councils, Victorian Councils and the VPS	Recognition already occurs through agreements Minimal cost implications, with only a small number of such transfers each year – some administrative savings
2	Amend Regulation 9, add new Regulations 18 (for transfers between councils) and 19 (for other transfers).	Delete reference to agreements in Regulation 9, and, to deal with transfer payments, add new Regulations 18 (between Councils – no change) and 19 (spells out arrangements where automatic recognition of service applies). Allow staff members with eligible/ accessible entitlements to have the choice to transfer their leave when changing employers	Provides mechanisms to protect employee entitlements and ensure that authorities do not renege on their LSL obligations to other authorities e.g. must provide a transfer payment where it continues to be required
Access to Entitlements			
3	Amend Regulation 4(1) by insertion of new 4(1)(2A).	Provide access to LSL on a pro rata basis after 7 years of service in line with the VPSA, and on departure after 7 years in line with *LSLA*	Discussed in detail below – costs appear to be small. Justification in terms of increased flexibility
4	Amend Regulation 4(1)	Once the first service period of 10 years has been service, to introduce into the subsequent service period annual instead of 5 yearly accruals for LSL entitlements.	No issues, no financial implications
Modernise Regulations			
5	Amend Regulation 7(1)(b) by deleting forfeiture	Remove forfeiture of LSL entitlement that occurs if employee is dismissed after 5 years of service if for reasons involving serious or wilful misconduct and poor performance.	Very few employees are dismissed for serious or wilful misconduct and poor performance – and eventual outcomes tend to be negotiated settlements Minimal cost implications
6	Redraft Regulation 7(3) (b) and add new 7(4) and 7(5).	Ensure that termination for reasons of illness is worded so that employee leaving for serious illness is not debarred from re-entering the workforce at some future date if able, with continuity of service preserved if return to work occurs within 12 months	Very few cases occur. Minimal cost implications

	Regulation	Proposal	Costs
7	Remove original Regulation 18	Remove LSL account required of Councils	Councils use AASB 119 already instead of account. No cost implications.

As indicated in table 8, most of these proposals have minimal cost implications. The one element which may have cost issues is item 3.

The next sections discuss these changes, with section 4.5 discussing the costs and benefits of item 3.

4.2 Ensuring Portability

4.2.1 Automatic recognition of other service

Regulation 8 currently provides for prior service to be recognised between specific authorities. Included are Victorian and other state or commonwealth local government authorities, public authorities of any State and the commonwealth, and any offices under the Crown in any State or the Commonwealth. In practice this encompasses all Councils around Australia, Water Authorities and public authorities (including the public service) – in state, Territory and federal jurisdictions.

Although the Regulation provides for portability of LSL between the above authorities, in practice the provision of LSL entitlements of employees can be conditional on the existence of agreements, especially to cover transfer payments for accrued liabilities. Regulation 8(7) limits recognition "to the extent provided for in any agreement made under Regulation 9 between the Council and the local government authority, public authority" (etc).

Regulation 9 allows that "a Council may enter into an agreement with a local government authority, public authority . . . providing for transfer payments between the authorities."

In practice, transfer payments are taken care of with and without agreements. Most Victorian councils apparently do not use agreements with other councils as the regulations are prescriptive about the provision of transfer payments between councils. Between Councils and other authorities covered by the Regulations, the lack of an agreement can potentially be used to avoid transferring accrued entitlements. However, it is not known to what extent there is compliance with this requirement in practice as there is no monitoring of these arrangements.

The Victorian Public Service Agreement (VPSA) covers long service leave for Victorian public servants. Prior to 2009, the VPSA only recognised service with e.g. a local governing body if a reciprocal mutual recognition agreement existed between that council and the VPS. However, in March 2009, the Agreement was amended to provide:

- Automatic recognition of prior service with Commonwealth or other State Departments, and with local government and public authorities in Victoria; and
- Recognition of service, subject to mutual agreements, with local government and public authorities elsewhere in Australia.

Since 2006 the Australian Services Union has advocated *automatic* recognition of prior service for local government employees with all of the authorities recognised by the regulations. This was to be achieved by removing from the Regulations the requirement for agreements, and the requirement for transfer payments as described below.

There are three options:

a. Make no change, leaving transfers between councils and other public sector bodies subject to specific agreements
b. Harmonise with the provisions in the VPSA, giving automatic recognition for service with Victorian public service and public authorities. However this option would still require mutual agreements for recognition of service with local government and public authorities outside Victoria.
c. Allow automatic recognition of prior service with all public sector bodies throughout Australia.

Option a requires agreements for common transfers that are now treated (at least in the VPS, and as a matter of practice for many councils) as an automatic process. This is an unnecessary administrative burden.

Option b harmonises with the provisions in the VPSA, is in line with common current practice, and reduces administrative costs. As it is in line with common current practice, there are no significant additional cost implications. This is the **preferred option.**

Option c provides more extensive recognition of service with all public sector bodies throughout Australia. A plethora of approaches exists in the handling of LSL between these authorities and at present the task of harmonisation arrangements on a national scale to provide for automatic recognition of prior service is unrealistic. The only way this could be achieved would be through a Federal mandate or policy mechanism. This is not considered practical at this stage.

4.2.2 Transfer payments

When a worker transfers to a job with a different public sector employer:

- If the worker is already entitled to take long service leave, the current employer pays out the accumulated leave (or the worker takes the appropriate leave between jobs); and
- If the worker does not have an accessible entitlement, then Regulation 9 currently provides for transfer payments of accrued entitlements between the current employer and the new employer.

No change is proposed where a worker transfers to a different council – transfer payments would continue to apply. However, the changes recommended to give automatic recognition of prior service with the VPS make the latter provision unnecessary.

The changes to the VPSA in March 2009 were silent on the issue of transfer payments to cover LSL liabilities. In practice, business units in the VPS simply absorb the LSL costs of new employees entering the VPS who have prior service automatically recognised by the VPSA. Indeed, there is no mechanism to enforce transfer payments between agencies where LSL service periods are automatically recognised by the VPSA. Consistent with this, it is understood that Victorian councils are not required to provide transfer payments for employees departing local government service to take up work with the VPS if they do not have an accessible entitlement. It would be appropriate to reciprocate the spirit of these changes, giving a 'swings and roundabouts' result.

It is also proposed to allow a staff member, with an eligible/accessible entitlement, who is changing jobs to another employer, to have the choice to transfer their leave (rather than having to either take the leave before hand or be paid out on transfer).

It is worth noting that the numbers involved are not large. The State Services Authority surveyed new entrants to the VPS in 2008 and 2009 regarding their former employment. For some 2,500 new entrants to the VPS in each year, 100 (4%) came from local government. It seems likely that the numbers moving the other way (from the VPS to local government) are similar. On the basis of the service profiles discussed in section 2.1 and Table 6 above, it can be estimated that, for the 100 workers joining the VPS from local government:

- 46 of these employees will have less than 5 years service, and so have no entitlement to long service leave
- A further 34 will have 10 or more years of service, and hence be fully entitled to leave on leaving their current employer

- 9 will have 5 or 6 years of service, with an entitlement that is to be transferred, but is not currently accessible
- The remaining 11 will have between 5 and 9 years of service, and so have entitlements that may or may not be currently accessible, depending on the specific arrangements with their current employer.

At the most, there are 20 workers each year where the new transfer provisions have an impact compared with the current situation. However, even here some are already covered by current arrangements (either in formal arrangements or just in practice). Consequently, it is unlikely that more than 10 workers may be additionally affected each year by the new provision. The numbers and impact for people moving from the VPS to local government appear to be similarly small.

Thus, when a council employs a new staff member from the VPS with 5 or 6 years service they will be taking on a liability to pay long service leave for this prior service if that employee remains with them up to the date they become eligible for long service leave (after seven years of combined service). The average liability would be around $6,250 per employee. There are likely to be around 10 staff movements from the VPS to local government per annum where a new liability would be created, excluding a similar level of movements to councils that already recognise such prior VPS service.

Anecdotal evidence suggests that the numbers of local government employees moving to positions with public sector bodies outside Victoria is even smaller than the numbers moving to the VPS. Nonetheless, it is appropriate to maintain mechanisms for transferring LSL accrued entitlements where agreements exist with such bodies. The proposed regulations therefore include Regulation 19 to cover such situations.

4.3 Access to Entitlements

4.3.1 Entitlements at 7 rather than 10 years

Regulation 4 (1) currently provides for 3 months of long service leave after 10 years of service. As discussed above, some 35 councils already provide through their EBAs more generous pro rata access to the entitlement – typically allowing access to some 2 months leave at 7 years[38]. This access at 7 years is now enshrined in both the VPS provisions (both in service and on

[38] It should be stressed that this change does not affect the rate at which entitlements accrue – that rate is still 1.3 weeks leave for every year of service. The change solely allows workers to access whatever accrued entitlement they have at an earlier date

departure) and the *Long Service Leave Act* (on departure). It is proposed to extend this access to all council workers through amending the Regulations.

This is the one proposed change that has some cost implications for councils. It is therefore discussed in detail below, in section 4.5.

4.3.2 Once qualified, annual rather than 5 yearly accrual

Regulation 4 (1) specifies that, once a worker has completed their initial qualifying period of 10 years, subsequently one and a half months long service leave with pay accrues in respect of each additional period of 5 years completed service.

This provision was once common in other public sector long service leave provisions. However, a more flexible approach has now been adopted in the Government public service of all states and territories, except WA, with annual accruals for service beyond 10 years. Annual accruals now also occur in the private sector in ACT and SA, and local government in SA is entitled to annual accruals.

It is proposed to amend Regulation (4) to give annual accruals for local government, consistent with the situation for the Victorian Public service.

It should be noted that this does not create an additional entitlement to long service leave – just extra flexibility in using that leave. There are therefore no cost implications for councils.

4.4 Modernising Provisions

4.4.1 Forfeiture on dismissal

Regulation 7 (1) (b) currently provides that employees forfeit LSL entitlements if they are dismissed after 5 years of service for reasons involving serious or wilful misconduct and poor performance.

There are two reasons to review this provision:

- Very few employees are dismissed for serious or wilful misconduct and poor performance. In the infrequent cases that do occur, the matter usually subsequently goes

to negotiation or arbitration, and the eventual outcome is a negotiated settlement. It is understood that forfeiture of LSL entitlements generally does not occur in such settlements.

- A similar provision existed in the *Long Service Leave Act*, but was removed in 2005.

The removal of the provision in the *Long Service Leave Act* provides a benchmark for the State. Given how few cases occur, there are minimal cost implications

4.4.2 Ability to re-enter workforce after termination for illness

Regulation 7 (1)(a) currently entitles a member of council staff who has completed 5 or more years of service to an entitlement of 1/10th of 3 months for every year of service for retirement due to ill health. Regulation 7(3)(b) further specifies that such retirement for ill health occurs if the Council is satisfied that he or she ceased to be a member of the Council staff "because of ill health that is likely to be permanent."

The Union has argued that the wording of the provision is ambiguous. It has generally been interpreted to mean that the employee has to be sufficiently ill that he or she is not capable of any work in *any part* of the workforce (not just the Council).

The Union proposes that the ill health provision be amended such that if the ill health prevents the employee continuing employment with the council, this should suffice to trigger the entitlement. The employee is therefore not debarred from access to pro rata entitlements on departure at 5 years (or more) of service and is able to participate in the workforce post-departure. Further, it is proposed that if the employee subsequently recovers, and is able to re-enter employment with any council within twelve months, continuity of service will be recognized.

It is understood that few cases occur, and there are therefore minimal cost implications.

4.4.3 Long Service Leave Account

Regulation 18 currently

- Requires a Council to maintain a separate "long service leave account for paying LSL entitlements of staff" (subsection 1); and
- Sets out a formula to calculate the minimum amount councils have to hold in the account (subsection 3).

There are two problems with these requirements:

- They conflict with the modern trend not to have separate accounts for specific items, but to handle liabilities through annual reporting consistent with Accounting Standards; and
- The calculations conflict with the calculation of liabilities under the Accounting Standard AASB 119.

Section 131 of the *Local Government Act 1989* requires local government to prepare audited financial statements for the financial year in their annual report. Section 13 of the *Local Government (Finance and Reporting) Regulations 2004* requires financial statements to be prepared in accordance with the Australian Accounting Standards (AAS). The relevant standard here is AASB 119 "Employee Benefits other than Superannuation".

The potential differences between the calculations are discussed in more detail in section 4.5.1 below. As noted there, all councils use AASB 119 already to calculate the LSL liability. In consequence, Regulation 18 is at best redundant, and potentially confusing.

It is therefore proposed to remove the requirement to have a long service leave account. As councils already use AASB 119 to calculate the LSL liability, there are no cost implications of this change.

4.5 Entitlements at 7 rather than 10 years: Costs and Benefits

Regulation 4 (1) currently provides for 3 months of long service leave after 10 years of service. As discussed above, some 35 councils already provide through their EBAs more generous pro rata access to the entitlement – typically allowing access to some 2 months leave at 7 years[39]. This access at 7 years is now enshrined in both the VPS provisions and the *Long Service Leave Act*. It is proposed to extend this access to all council workers through amending the Regulations.

General access to entitlements at 7 years enables two types of access:

- Workers remaining with their employer will be able to take leave in service (ie as part of their normal employment) at an earlier date. This would not change the rate at which leave accrues, but give workers greater flexibility in taking that leave. They could for example take some two months leave at 7 years, rather than waiting to take three months leave at 10 years.

[39] It should be stressed that this change does not affect the rate at which entitlements accrue – that rate is still 1.3 weeks leave for every year of service. The change solely allows workers to access whatever accrued entitlement they have at an earlier date

- Workers leaving their employer (and leaving the local government sector) will be entitled to a payout so long as they have at least 7 years – under the current Regulations, many currently have to wait until they reach 10 years.

4.5.1 Costs

What will be the cost of changing access to entitlements at 7 years rather than the current 10 years? Workers can access such an entitlement in two ways: either taking leave in service, or having a payment made when they leave employment.

Employers face two costs when a worker takes long service leave:

- The cost of usual salary for the worker involved; and
- The cost of any additional employee hired to cover the worker's duties.

However, as noted below, councils already create liabilities in their financial accounts for LSL entitlements for all workers with 5 and more years of service. In accounting terms, when a worker takes leave, the council reduces its balance sheet liability for that leave.

For those workers taking leave in service, there is no additional cost for employers – indeed it may save them money. This is because employers have options of how to cover for a worker who is on leave:

- The employer can employ an additional worker *at the same pay grade* to cover for the leave. This payment is offset by the removal of the equivalent balance sheet liability, so there is no change in the council's net financial position;
- The employer can employ an additional worker at a *lower* pay grade – in which case the additional payment is less than the removal of the balance sheet liability; and/or
- The employer can request other workers to cover part or all of the responsibilities for the worker on leave – in which case there is even less additional payment.

The extent to which an employer can use one or more of these strategies varies widely – and so too will the financial impact. Beyond noting that there is a possibility that councils may save some money through workers taking leave earlier, it is not considered possible to estimate this possible saving.

The remaining discussion concentrates on those workers leaving their employer (and leaving the local government sector) with at least 7 years service.

The first point to make is that many local government workers already gain access to entitlements at 7 years:

- The 35 councils with EBAs making specific mention of long service leave generally (but not always[40]) allow access at 7 years.
- Under the current regulations, some workers gain access earlier than 10 years. Regulation 6 (1) provides payment on death at 5 or more years. Regulation 7 (1) provides access at 5 or more years for termination, and for resignation for ill-health or for some other specified situations.

These workers already receive an earlier access to their long service leave entitlement. In consequence, the proposed change does not create any additional access, nor additional cost for the employer.

As discussed above, the 35 councils with the EBA provisions employ some 53% of all council staff. The numbers in the second category for early access are likely to be small, so perhaps 55% of council employees eligible for long service leave already have access to entitlements at 7 years.

The cost of changing access to entitlements for the remaining 45% can be measured in one of two ways:

- By looking at any change in the accumulated long service leave provision in councils' annual accounts.
- By looking at the payments likely to be made to any employees who would gain access under this change. This would apply to any employees leaving employment in the local government sector between 7 years and 10 years service. Councils already have to meet the costs of employees leaving service after 10 years, so there is no change in costs for this group.

These two alternatives produce differing cost estimates. They are discussed in turn.

Changes in accumulated long service leave provisions

Current Regulation 18 requires councils to establish a Long Service Leave account, into which liabilities should be paid each year. Regulation 18 (3) (a) and (b) sets out the basis for calculating the liability. For full time workers (with appropriate pro rata for part-time workers), the calculations are:

[40] A small number allow general access at 8 years, and one at 9 years.

- For members with 5 years and up to 10 years service, weekly earnings x 1.3 x years of service x 70%;[41] and
- For members with more than 10 years service, weekly earnings x 1.3 x years of service x 100%.

A change in access entitlements from 10 years to 7 years would require a change in these calculations. The first calculation would now apply only to members with between 5 and 7 years service, while the second calculation would apply to all members with more than 7 years service. In consequence, the additional cost for councils would be the cost of moving those members with 7-10 years' service from a 70% calculation to a 100% calculation.

However, this calculation would differ from current estimates of liabilities under the Accounting Standards.[42] Apart from the requirements in the Regulations, councils also have to account for long service leave liabilities in their Annual Financial Statements. Until 2005, most councils did this consistent with Australian Accounting Standard AASB 1028. Starting from 2005-06, the required standard is AASB 119. From investigating council accounts, the major change between the two standards has been to reclassify most liabilities from 'non-current' to 'current'.[43]

AASB 119 "Employee Benefits other than Superannuation" includes an 'Australian Guidance' section at the back. This suggests that employers may estimate accrued long service leave liability based on remuneration for all employees with five or more years of service.[44] This approach is also recommended by the ACT Treasury in its notes on implementing AASB 119:

> The 'Australian Guidance' (located at the back on AASB 119) imply the use of probability factors when calculating LSL liability for officers with less than the ten years qualifying length of service for entitlement to LSL. Currently the PERSPECT LSL liability report includes 100% for the amount of accrued LSL liability for all employees with 5 or more years of service. This approach is a 'short hand' calculation method for recognition of probable LSL liabilities to eventuate for officers with less than 10 years of service. It . . . provides a simple calculation process which is considered to approximate probability calculations, if made for each year of service between zero and ten years.[45]

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[41] The current Regulation 18 (3) (a) has a mis-print – it states 0.3 in this equation rather than 1.3. The text here and subsequent discussion use the correct 1.3.

[42] As the Australian Accounting Standards are the appropriate mechanism here, the proposed regulations delete the previous Regulation 18. See discussion below.

[43] The balance between current and non-current liabilities differs between councils, indicating there is some room for judgment in how some liabilities are defined. The following discussion sums the two elements, presenting a total liabilities figure.

[44] See AASB 119 Australian Guidance, G6 at *www.charteredaccountants.com.au/files/.../AASB119_Guidance.doc*

[45] ACT Treasury, notes for ACT AIFRS Policy Summary AASB 119, www.treasury.act.gov.au/accounting/download/IAS_01f.pdf, p3-4

These sources suggest that the shorthand for calculating long service liabilities under AASB119 is to include 100% for all employees with more than 5 years of service. Under this approach, there is little difference between access to entitlements at 7 or 10 years.

This conclusion is reinforced by looking at the approach councils currently take to their long service leave liabilities. All council financial statements record long service leave liabilities. The liabilities in June 2008 were compared with council total employee benefits reported to the Victoria Grants Commission for 2008-09. Across Victoria, accrued liabilities came to 13% of the total employee benefits reported. There was a little variation around this average, but 59 of the 79 councils reported accrued liabilities worth between 10 and 16% of employee benefits.[46]

Importantly for this discussion, there was very little difference between the groupings of councils – and importantly, between those councils that have EBAs providing earlier entitlement to LSL and those that rely on the provisions in the Regulations. The details are:

- Inner metropolitan councils reported accumulated long service leave liabilities at 12.6% of employee benefits for 2008-09. The comparative figures were: Outer Metropolitan 13.1%; Regional Centres 13.3%; Large Shires 12.0% and Small Shires 13.3%.
- Across all councils, the standard deviation was 2.9%, around a simple mean liability of 12.9% of employee benefits.[47] For the councils with EBAs providing earlier entitlement to LSL, the mean is 12.7% and the standard deviation 2.7%. For the councils relying on the Regulations, the mean liability is 13.1% and the standard deviation 3.0%.

Variations between councils are influenced by the specific structure of their workforces, including factors such as the numbers of shorter-term employees, and the extent to which employees entitled to LSL have taken that leave. However, the most important finding of this analysis is that there is very little difference between the councils with earlier entitlement to LSL, and those with the standard entitlement. In fact, those with the standard entitlement have on average slightly higher LSL provisions than those with the earlier benefits!

This analysis indicates that earlier access to Long Service Leave has no discernable impact on a council's accumulated Long Service Leave liabilities.

Payments to employees leaving between 7 and 10 years.

The proposed change would mean that any employees leaving employment in the local government sector between 7 years and 10 years service would now be entitled to LSL payment. It should be noted that councils already have to meet the costs of employees leaving service after

[46] Two councils reported strange allowances for LSL. One had a very low amount, at 2.6% of employee benefits, and the other a very high amount, at 38.9% of employee benefits. As these appear to be erroneous, they have been excluded from the following statistical analysis.

[47] See previous footnote.

10 years, so there is no change in costs for this group. How many employees leave between 7 and 10 years?

This issue was considered in section 2.1 above, looking at the service profiles in local government. From that data, it can be expected that each year a total of 370 workers will leave their current local government employer with between 7 and 10 years of service. Just under one third, perhaps 120 workers, will find jobs elsewhere in local government, with the other 250 leaving the sector.

A further adjustment needs to be made to take account of those amongst these workers who are subject to EBAs that already provide entitlements at 7 years, or are eligible under other conditions. The above calculations suggested that perhaps 55% of workers come into these categories, so the annual cost of the additional entitlement will be based on 110 workers (the remaining 45% of the above 250 leaving the sector).[48]

In their annual returns to the Victoria Grants Commission, councils across the State reported a total employee entitlements bill of $2.1 billion in 2008-09. Dividing this by the 41,742 employment numbers gives an average of $50,000 per worker, or a gross weekly salary of $967.[49] This can be used to calculate the additional cost for councils of the proposed change, with the calculations shown in Table 9.

Table 9 Annual cost of workers leaving with between 7 and 10 years of service

Average years of service of workers leaving with between 7 and 10 years of service	8.5
Entitlement to paid long service leave (in weeks, with 1.3 weeks for each year of service)	11.1
Weekly gross salary	$967
Average total payment to each worker	$10,690
Number of workers leaving per year	110
Total payment to these workers	$1,176,000

[48] It should be noted that a significant number of this 110 find new employment in either the VPS or another public sector authority. At present, when such workers transfer with between 7 and 10 years of service, the council does not have to recognize any liability (or make any payment) – however, the new employer (VPS/authority) does recognize prior service with councils and so has an immediate liability. The proposed Regulations create an additional cost for the council concerned – but effectively fund the liability (ie reduce the costs) for the VPS/authority. For the public sector overall, any cost impact of the change is therefore reduced. However, the precise number of workers in this situation is not known, and so no calculations of this offset are offered.

[49] Note that this estimate is based on all workers employed by local government, both full time and part time. The discussion in section 2.2 above noted that the workforce is 50:50 full time and part time. It is possible that workers reaching 5+ years of service have a higher proportion of full-timers – to the extent this is so, it would increase the average salary level and the cost. However, it seems unlikely that the impact is major.

This discussion has outlined two mechanisms for calculating the cost of the change in long service leave entitlements from access at 10 years to access at 7 years. The costs from these two measures are:

- No increase in costs. This is the result from looking at the accumulated liability for long service leave reported in councils' accounts. Councils that already have access at 7 years do not have higher liabilities than councils with access at 10 years. It appears that in both cases the councils use similar reporting under Accounting Standard AASB 119 (which effectively calculates liabilities from 5 years of service).
- A cost increase of $1.2 million a year. This is calculated in Table 9 from the departure payments to be made to the estimated 110 workers who leave the local government sector each year with between 7 and 10 years of service and are currently not eligible for long service leave payments.

A conservative approach would use the higher estimate, $1.2 million.[50] In comparison with the total local government employee cost bill of $2.1 billion, this is a very small amount – a 0.06% increase in the total wages bill. Across the 44 councils that do not currently allow early entitlement in their EBAs, it represents an average cost of $27,000 per council per year. Nonetheless, it is a cost increase. The next section discusses what benefits might flow from this change.

4.5.2 Benefits

Section 3 above noted reviews of long service leave in the building and construction industry by consulting firms ACIL and Allen Consulting. Both concluded that it is difficult to assess costs and benefits in this area. While agreeing with that conclusion, this section discusses a range of evidence which suggests that measures to improve long service leave entitlements are likely to have significant effects on workforce productivity.

Section 2.2 above discussed the background to the introduction of long service leave across Australia. It noted a number of benefits for the leave, including the opportunity for workers to re-invigorate themselves. Further, the discussion about portability noted that it provides more opportunities for workers, and hence encourages both career planning and skill development. Each of these elements can improve workforce productivity.

Workforce productivity is very sensitive to factors such as workforce well-being and morale, and skills development. On the former, a recent Medibank Private study found remarkable

[50] The *Victorian Guide to Regulation* requests that any costs be presented as a Net Present Value over ten years, with a recommended discount rate of 3.5%. An annual cost of $1.2 million over ten years has a real NPV of $10.3 million

differences in worker productivity associated with health and well-being (including issues such as morale). From detailed questionnaires of a number of workplaces, it concluded:

> The results show a clear link between a worker's health and productivity with the healthiest employees nearly three times more effective than the least healthy. A worker with a high Health and Well-Being (HWB) score worked approximately 143 effective hours per month compared to 49 effective hours worked for a worker with a low HWB score.[51]

International evidence, from more than 152 studies worldwide, surveyed for the report supported these findings. Specifically looking at the impacts of good or poor worker morale,

> a Canadian study examining the link between an employee's emotional well-being and their work productivity found that a 20% reduction in a person's well-being leads to a 10% drop in their performance. Conversely, a 20% improvement in morale leads to a reduction in absenteeism, turnover and workers compensation.[52]

Improved access to leave arrangements, and reductions in uncertainty, should improve workforce morale, with such associated benefits. In addition, the proposed Regulations include two suggestions which will help improve the flexibility of the local government labour market:

- Access to LSL entitlements currently differs between different EBAs, and the regulations. This creates both uncertainty and barriers to movement between jobs – which work against a fully flexible local government labour market;
- The regulations give differing access to entitlements from those that now exist in the Victorian Public Service. This also creates a barrier to movement between the sectors, which hampers councils' abilities to recruit the best people for their jobs, and hampers employees' career development opportunities.

Uniformity in access to entitlements can thus help improve the flexibility of the local government labour market, and should improve productivity.

Measuring the benefits of labour market flexibility is a challenge. Professor Keith Hancock, perhaps the leading Australian labour market economist, has noted that in the late 1980s many supporters of extensive industrial relations reform argued that reform would raise productivity by 25 per cent. Hancock sceptically described this as "a claim so lacking in foundation that those who made it might just as well have said 10, 50 or 100 per cent."[53]

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[51] Medibank Private *The health of Australia's workforce: Healthy employees make a healthy business* November 2005, p6

[52] Medibank Private *The health of Australia's workforce*, p6

[53] Keith Hancock 'A Free Market for Labour?' *National Institute of Labour Studies Working Paper* 155 Address to a Convention of the Industrial Relations Society of Victoria on 'The Rise and Rise of Individualism', October 2005 http://nils.flinders.edu.au/assets/publications/WP_155.pdf p3.

The leading Australian authority in this area is the National Institute of Labour Studies at Flinders University in South Australia. In a June 2007 paper NILS produced a useful overview of the relevant debates over 'Industrial Relations and Productivity in Australia.'[54]

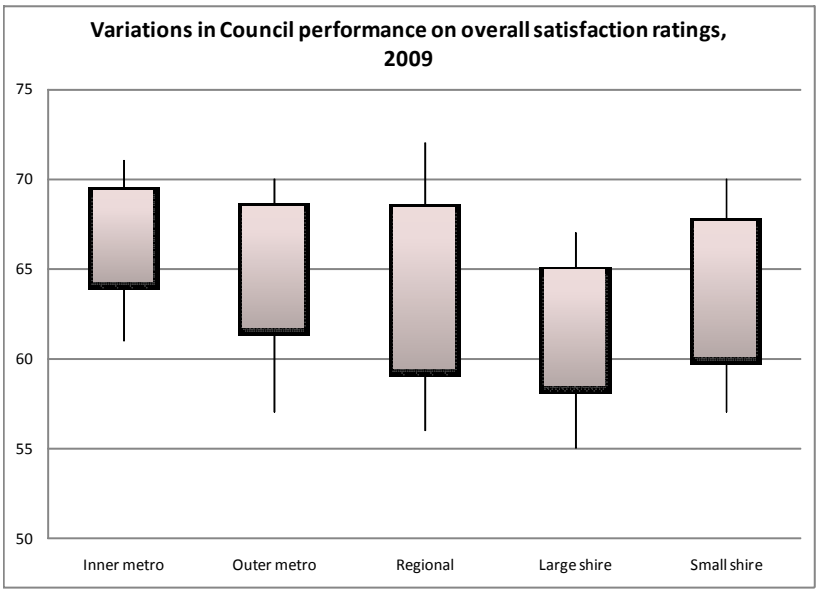
These sources suggest that while extra labour market flexibility is likely to give productivity improvements, it is difficult to measure the effects.

While it is difficult to measure the results, it is possible to indicate that increased skill development can have marked effects on local government performance. The evidence for this is the considerable variations in performance across local government. Performance results vary considerably for councils of similar size and location. This can be illustrated in two ways:

- Performance on the annual resident satisfaction ratings (shown in Chart 2 on the next page); and
- Financial performance, on annual operating results (shown in Chart 3 on the next page);

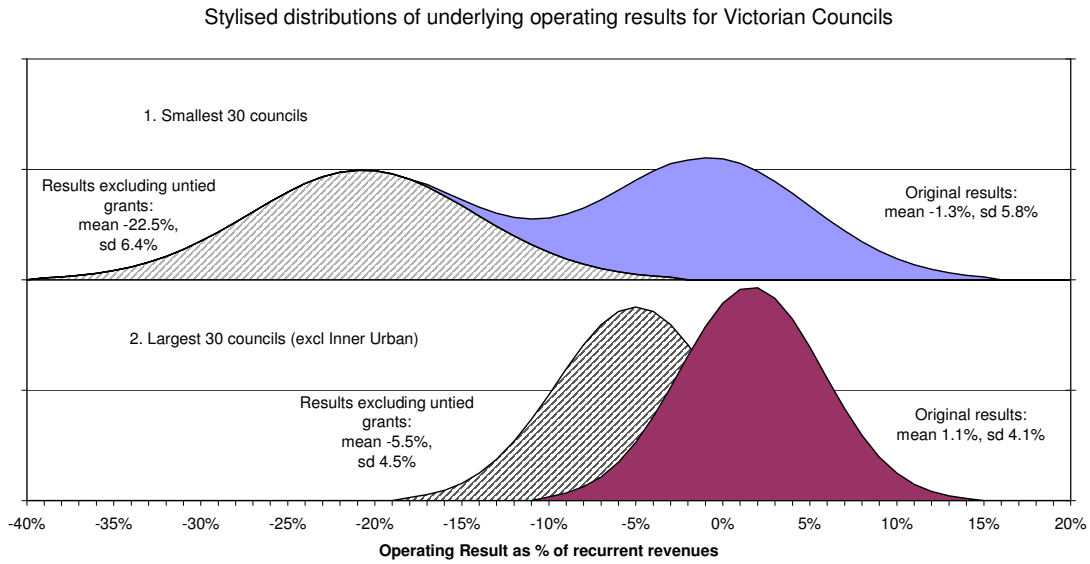
[54] Keith Hancock, Tracy Bai, Joanne Flavel and Anna Lane *Industrial Relations and Productivity in Australia* National Institute of Labour Studies, Research Paper for the Chifley Centre, 29 June 2007, available from http://nils.flinders.edu.au/assets/publications/Productivity.pdf . One interesting conclusion of the paper is that negotiated industrial relations reform is likely to give much better productivity results than one-sided reforms aiming at 'maximising employer power' (p34).

Chart 2



Source: data in *Local Government in Victoria 2009* report

Chart 3



Source: Victorian Paper on Local Government financial sustainability, presented to national Local Government and Planning Ministers Council, 2008. This drew on Auditor General *Local Government: Results of the 2006-07 Audits* Appendix D, Operating results, averaged for 2002-03 to 2006-07, and for levels of untied grants paid to councils: Victorian Grants Commission (Financial Assistance Grants) and National Office of Local Government (Roads to Recovery data).

Chart 2 shows the variations in annual satisfaction ratings for each group of councils (the satisfaction ratings give a result of 60 for 'average'). The thin lines on the link the highest and lowest score, with the boxes showing the range between one standard deviation above the mean and one standard deviation below the mean.

Chart 3 is based on the underlying operating results for each council, calculated by the Auditor General. It shows the stylised distribution of results for the 30 smallest and the 30 largest councils in Victoria, giving in each case the results with and excluding untied grants.

Both the charts show considerable variation in performance between similar councils. A range of factors influence these results. As the Victorian Government's 2008 Paper on Local Government financial sustainability argued, one significant factor is the level of skills and capabilities among council staff. Improving skills clearly has major impacts on raising productivity and performance.[55]

Sections 2.2.1 and 2.3 discussed portability arrangements, and noted the arguments that portability would both assist the sector attract better staff and encourage career paths and skill development. The above discussion also indicated that improvements in morale can have remarkable impacts on performance.

It is reasonable therefore to expect that the proposed change would give benefits in improving local government performance.

4.6 Comparing the Options

4.6.1 Decision Rule

Step 4 of the *Victorian Guide to Regulation* asks an RIS to "Assess the costs and benefits of the options" by evaluating the identified options, and setting out an explicit decision criterion. The Guide notes a number of possible analytical approaches, such as net present value, benefit cost ratio, break-even analysis, cost effectiveness analysis or a multi-criteria analysis. It suggests[56]

> If the magnitude of the likely benefits is difficult to determine, **break-even analysis** can be a useful tool. This technique involves dividing the costs of the option by the minimum

[55] The above discussion has highlighted the difficulty of calculating cause and effect in improving productivity. Nonetheless, it is useful to establish a context. If the proposed changes produce an overall improvement in productivity of only 1%, this would give annual benefits of some $21 million (based on a total local government wages bill of some $2.1 billion in 2008-09). Such an estimate can be compared with the costs that councils face, of at most $1.2 million a year, calculated as outlined above.

[56] *Victorian Guide to Regulation* p5-18

amount of benefits required for the option to break-even. By estimating the minimum benefits required, this approach allows a judgement to be made about the likelihood of those benefits actually being achieved.

From the above discussion, it is possible to estimate the costs of the proposed changes. It is also possible to indicate the nature of the potential benefits. It is therefore possible to judge whether the benefits of the proposal are likely to exceed the quantitative estimate of the costs involved – and the break-even analysis is the appropriate decision tool.

4.6.2 Comparison: Break-even analysis

This analysis measures, as far as possible, the costs and benefits of the two broad options:

1. Remake the current Regulations as they are
2. Remake the Regulations with amendments. Seven changes to the Regulations are proposed.

The choice between these options rests on the balance between

- some additional costs with the amendments, and
- some additional benefits of harmonizing public sector leave standards and promoting a more flexible local government labour market.

Within option 2, as outlined in sections 4.1 to 4.4, six of the seven proposed changes are minor changes to streamline the operation of the Regulations, and to maintain consistency with either the public sector standard or the Long Service Leave Act. These changes have minimal cost.

One proposed change has some potential cost for employers. This is bringing forward from 10 years to 7 years the length of service for employees to gain broad access to long service leave. Section 4.5.1 noted two possible ways of estimating the costs of this change. One, using accrued liabilities in council accounts, indicates no change, the other, using annual payouts to workers leaving local government with between 7 and 10 years of service, gives an annual cost of at most $1.2 million. As section 4.5.2 argued, while there are likely to be benefits in terms of workforce skill development, it is difficult to assess these.

Table 10 compares the two options on how well each achieves the key policy goals outlined above.

Table 10 Comparison of the two options on the key policy goals

Policy Goal	Discussion	Preferred option for this goal
Encourage continuity of service with local government, and development of skills in the sector	Current regulations (option 1) have somewhat inferior provisions for long service leave compared with other public sector employment. At the margin, this encourages some workers to seek employment away from local government, and discourages skill development. Option 2 harmonises the provisions.	Option 2
Facilitate flexibility of service across government, with portability between local government and other public sector employers	The same disparities in option 1 that encourage workers to move away from local government would discourage other public sector workers from moving to local government. Option 2 therefore builds flexibility to a greater extent	Option 2
Create efficient long service leave arrangements that minimize administration costs	The disparities in option 1 between current local government and other public sector provisions create some administrative inefficiencies – which are reduced in Option 2	Option 2
Minimise costs of provisions	In harmonizing with other public sector provisions, particularly granting access to entitlements at 7 years, option 2 increases employment costs for some local government employees. Over 10 years, the NPV of these costs is estimated at most $10.3 million across all councils.	Option 1

From the above comparisons, option 2 provides better results on the first three goals than does option 1. However, on the fourth goal, option 2 also has somewhat higher costs than option 1. The critical question therefore is: do the benefits of option 2 outweigh the associated costs?

Overall, Option 2 is **preferred** to Option 1. It has a low level of additional costs to achieve the benefits of more flexibility in entitlements, and of bringing the local government arrangements into line with standards in the LSL Act and VPS Agreement. The analysis of section 4.5.2 indicates that these benefits should also further encourage skill development in local government.

It is the opinion of Local Government Victoria that there are strong potential benefits in improving local government performance. While these benefits have not been quantified, Local Government Victoria notes that the total wages bill of Victorian councils exceeds $2 billion per annum and therefore only a very small increase in productivity (due to the skill development,

flexibility and reduction in administration costs resulting from the proposed regulations) would be required for the benefits of this proposal to exceed the estimated cost of at most $1.2 million and the proposal to break-even..

This analysis therefore concludes that Option 2, remaking the regulations with amendments, is the preferred option. Local Government Victoria therefore proposes to pursue this option.

5. Other Issues

This section addresses a number of other issues which the *Victorian Guide to Regulation* either requires or recommends. The analysis identifies no substantial problems with any of these issues.

5.1 Assess the impact on small business

The *Victorian Guide to Regulation* specifies that an assessment of the impacts on small business is mandatory when considering a new piece of legislation, and is considered good practice for a Regulatory Impact Statement.

The proposal remakes the existing Regulations with some minor changes. The regulations deal solely with employment conditions for council staff. There are therefore no impacts on small business.

As discussed in section 4.3, one element of the proposal may involve some costs. However, at the most these are minor, and should be more than offset by improvements in workforce productivity. There should therefore be no impact on council rates.

5.2 Undertake a competition assessment

The *Victorian Guide to Regulation* (p5-22) requires RISs to assess whether the proposed measures produce a restriction on competition, and, if so, to show that the restriction is necessary to the objective.

The *Guide* suggests that a legislative measure is likely to have an impact on competition if any of the six questions in Table 11 can be answered in the affirmative. As indicated in the Table, the answer to each of these for the proposed Long Service Leave regulations is ‘No’.

Table 11: Competition Assessment

Question	Response
Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms?	No effect. The regulations only apply to local government, and so do not affect any 'market sector'.
Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure?	Not applicable. Local government is not an 'industry' into which competitors attempt to enter
Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms, part-time participants in occupations etc)?	No. Regulations do not affect 'firms or individuals', and create level playing field for local government.
Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products?	No. Regulations affect only local government, not businesses
Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet?	Not applicable.
Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure?	No.

On these tests, the proposed regulations do not have any impact on competition.

The discussion in section 2.2.1 above noted analysis in 1999 of possible competition impacts of long service leave in the construction industry. One concern there was the differential impacts of portable leave between different industries in the private sector.[57]

In the current case, the proposed renewal of the Regulations, with amendments, impacts essentially on local government staff, and to a limited extent to staff employed by other public sector authorities.

For the most part, local government services do not compete with the private sector. In the limited cases where they do, a greater benefit for local government workers does not restrict that competition. There is therefore no impact on the private sector.

This analysis concludes that the proposed Regulations do not produce a restriction on competition.

[57] Allen Consulting Group *National Competition Policy Review of the Long Service Leave (Building and Construction Industry) Act 1981,* for ACT WorkCover, Final Report November 1999.

5.3 Consistency with Government policy

The *Victorian Guide to Regulation* requests that an RIS examine the consistency of any proposed measure with general Victorian government policy and with actions in other jurisdictions.

As discussed in section 2.3 above, it has been Victorian Government policy since 1974 that local government employees should have the same long service leave entitlements as Victorian public servants. Indeed, introducing the 1974 Bill, the then Minister for Local Government said

> some degree of reciprocity with the State Government is provided. I suggest this is a welcome precedent. I look forward to the day when there will be absolute transferability between all government service, local, State, Federal, and instrumentalities. This occurs in Canada, and I believe it can and should occur here. It helps to broaden not only the experience of those who transfer from one arm of government to another, but also of the various arms of government themselves. Officers would think more in terms of serving the public as a whole rather than Federal, State, or local government.[58]

This policy position was welcomed by all parties in Parliament in 1974, and LGV is not aware of any subsequent public statement of a changed policy position.

The proposed remaking of the Regulations maintains this position. Further, the proposed changes align the Regulations more closely with the amendments to the *Long Service Leave Act* in 2005 and the amendments to the Victorian Public Service Agreement in March 2009.

5.4 Any change in the administrative burden

The *Victorian Guide to Regulation* requests that the potential administrative burden on business and other bodies is considered. From January 2010, the applicable methodology to assess this is the Regulatory Change Measurement (RCM) process. The *Regulatory Change Measurement Manual* describes the types of costs to be considered: [59]

> All **compliance costs** (including *administrative* and *substantive compliance* costs) and **costs of delays** should be included:

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[58] Hon A. J. Hunt (Minister for Local Government) Victorian Legislative Council *Hansard* 17 September 1974, p206

[59] Department of Treasury and Finance *Victorian Regulatory Change Measurement Manual*, effective 1 January 2010, p8

- **Substantive compliance costs** are costs that directly lead to the regulated outcomes being sought. These are often capital and production costs.
- **Administrative costs**, often referred to as red tape, are the costs incurred by regulated entities *primarily* to demonstrate compliance with a regulation or to allow the government to administer the regulation. Assessing such costs typically involves estimating the time taken in administration, and applying a standard $60 per hour.[60]
- **Delay costs** are the expenses and loss of income incurred by a regulated entity through either an application delay and/or an approval delay.

There are two important caveats in assessing these costs.

Firstly, when a new regulation is imposed, businesses may have already been undertaking a part of that requirement as a normal business practice. If so, only the incremental change from Business-as-Usual needs to be mapped.[61]

Secondly, to limit the need to conduct an RCM process for smaller changes in regulatory burdens, no RCM is required for regulatory changes within certain **materiality thresholds:**[62]

o For a change in *administrative burdens* on the business and not-for-profit sectors, a threshold of $250,000 per annum is applicable.

o For the sum of all regulatory costs within the initiative (i.e. including substantive compliance and delays), a combined threshold of $500,000 per annum applies.

The proposed Regulations do not introduce any major changes compared with current council administrative operations. An RCM is therefore not included with this RIS because the burden does not exceed the materiality threshold.

It should be noted, as discussed in section 3, that the minimal regulation approach, letting the Regulations sunset, would lead to widespread renegotiation of Enterprise Bargaining Agreements. These would involve considerable administrative expenses for councils.

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[60] Department of Treasury and Finance *Presentation on RCM Methodology* available from http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/reducing-the-regulatory-burden

[61] DTF *Victorian Regulatory Change Measurement Manual*, p11

[62] DTF *Victorian Regulatory Change Measurement Manual*, p3

5.5 Implementation and enforcement issues

The proposed Regulations do not introduce any major changes compared with current council administrative operations. No major implementation or enforcement issues are therefore expected.

The Victoria Guide to Regulation (p5-29) suggests four questions for consideration in this area.

1. *Identify the parties responsible for administering / enforcing the preferred option.*

   Both Local Government Victoria and the MAV will be involved in administering the proposed Regulations.

2. *Explain any actions that regulated parties will be required to take as a result of the preferred option.*

   As the proposed Regulations do not introduce any major changes compared with current council administrative operations, few if any changes in council systems or procedures are expected.

3. *Describe any transitional arrangements that will be introduced to minimise the initial impact of the preferred option.*

   When the proposed Regulations are released for public scrutiny, LGV proposes to work with the MAV to prepare explanatory and briefing materials for councils and the workforce. These efforts should assist in ready implementation of the changes.

4. *Detail how the preferred option will be enforced, including details of the compliance strategy.*

   As with any award or Enterprise Bargaining Agreement matter, enforcement is primarily through the provision of the *Fair Work Act*. The accounting requirements are enforced through the annual audit process. Both of these are well-established mechanisms which councils are familiar with.

5.6 Evaluation strategy

The key issue for on-going evaluation is whether or not the Regulations are needed, as discussed in section 3. Over time, it is quite possible that EBAs will contain more details on LSL entitlements[63]. If this occurs, then there will be less need for the Regulations. However, it is unclear at this stage when and to what extent this could occur, and, indeed, there are still doubts as to the extent it may cover portability. Both the Union and the MAV currently are placing

[63] It is noted that this trend has occurred in the water industry in Victoria

higher priority on industrial discussions over how the Award relates to the new provisions of the Fair Work Act, and the requirements of Modern Awards (see outline in section 3.1 above). As the proposed Regulations do not impose any major new conditions, the appropriate time to review these matters is at the next sunset required under the *Subordinate Legislation Act*, in ten years time.

5.7 Consultation

LGV developed the current proposals in response to initial proposals from the Australian Services Union in 2006. LGV subsequently discussed those proposals with the Municipal Association of Victoria (MAV), the Victorian Employers' Chamber of Commerce and Industry (VECCI), and other Government agencies, including the State Services Commission, Workforce Victoria and the Department of Sustainability and Environment (which has responsibility for long service leave regulations in the water industry).

In drafting this Regulatory Impact Statement, LGV has had specific consultation with:

- The Australian Services Union
- The Municipal Association of Victoria
- Vision Super
- Workforce Victoria
- The Victorian Competition and Efficiency Commission

There is considerable support from the ASU, the MAV and Workforce Victoria for harmonising the provisions in the Regulations with those of the VPSA and the *Long Service Leave Act*. In addition, as noted in section 3.2 above, all three groups expressed concern about possible 'chaos' and associated costs if the Regulations were allowed to sunset with no substantive replacement.

This RIS is now being published for public consultation. It will be available for public consideration and comment from 28 October 2011 to 25 November 2011. Comments should be submitted to:

Governance and Legislation
Local Government Victoria
Department of Planning and Community Development
GPO Box 2392
Melbourne , Victoria 3001

Or by email to local.government@dpcd.vic.gov.au

6. Summary

The standards for long service leave for local government workers are currently set under the *Local Government (Long Service Leave) Regulations 2002* ("the regulations"). The regulations came into operation on 19 February 2002, and, consistent with the provisions of the *Subordinate Legislation Act 1994*, they expire after ten years, on 19 February 2012.

Local Government Victoria (LGV) considers that the current regulations provide an efficient and effective base for this part of local government employees' entitlements. LGV therefore proposes to remake the 2002 regulations as the *Local Government (Long Service Leave) Regulations 2012*. The proposed regulations largely follow the previous regulations, with some streamlining and improvement.

As required by the *Victorian Guide to Regulation,* this report identifies possible alternative ways of addressing the problem, and discusses the costs and benefits of those different approaches.

The *Guide* requests that one option considered should be a no-regulation option. In the case of the Local Service Leave regulations, this would mean letting the current Regulations sunset, and not replacing them – in effect applying provisions of the *Long Service Leave Act*. However, this approach would not meet the requirements of s 101 (1) and especially s 101 (2) of the *Local Government Act*, which specify different standards. Consequently, this option is not viable. In addition, as briefly discussed in section 3, this would in any case be a higher cost option than the two options that are considered.

The Report therefore identifies two broad regulatory options:

1. Remake the current Regulations as they are
2. Remake the Regulations with amendments. Seven changes to the Regulations are proposed.

Assessing the costs and benefits, Option 2 is **preferred** to Option 1. It has a low level of additional costs to achieve the benefits of more flexibility in entitlements, and of bringing the arrangements into line with standards in the LSL Act and VPS Agreement. There should also be benefits of encouraging skill development in local government.

From this analysis, Option 2 Remaking the Regulations with amendments, is the best option. Local Government Victoria therefore proposes to pursue this Option.

The remaining sections of the report addressed other issues either recommended or required by the *Victorian Guide to Regulation*. The analysis identifies no substantial problems with any of these issues.

In particular, the impact of the proposed regulations is focused on councils and council employees. The analysis shows no major changes from the current situation with which councils and workers are familiar. In consequence, there is no material change in administrative burden, and the analysis concludes that the proposed Regulations do not produce a restriction on competition.

As required by the *Subordinate Legislation Act*, LGV has prepared this Regulatory Impact Statement (RIS) to explain and analyse the proposed regulations, and give people affected by the regulations the opportunity to comment.

Appendices

Proposed Local Government (Long Service Leave) Regulations 2012