

Local Government (Long Service Leave) Regulations

Exposure Draft

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Victoria

Local Government (Long Service Leave) Regulations

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PART 1—PRELIMINARY

1 Objective

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

2 Authorising provisions

These Regulations are made under section 243 of, and Schedule 12 to, the **Local Government Act 1989**.

3 Commencement

These Regulations come into operation on 18 February 2012.

4 Revocation

The Local Government (Long Service Leave) Regulations 2002 are **revoked**¹.

5 Definitions

In these Regulations—

Authority has the same meaning as in section 3(1) of the **Water Act 1989**;

former Council has the meaning in regulation 21(1);

licensee has the same meaning as in section 3(1) of the **Water Industry Act 1994**;

member means member of Council staff;

Note

Section 196(7)(c) of the **Local Government Act 1989** provides that long service leave arrangements, amongst other things, apply to a regional library as if it were a Council.

public service body has the same meaning as in section 4(1) of the **Public Administration Act 2004**;

recognised service has the meaning in regulation 12;

special body has the same meaning as in section 6 of the **Public Administration Act 2004**.

6 Meaning of current pay

(1) For the purposes of regulations 9(3), 9(5)(b), 9(6), 10(1), 11(3), 11(4), 11(5), 11(6) and 21(2), a member's *current pay* must be based on the member's normal weekly number of hours of work and the member's ordinary time rate of pay as at—

- (a) the date of accrual to the member of his or her long service leave entitlement; or
- (b) the date the member ceased employment with a former Council—

as the case requires.

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Part 1—Preliminary

(2) In this regulation—

date of accrual to the member of his or her long service leave entitlement means the date on which a member is entitled to long service leave with pay or pay instead of that leave under these Regulations;

normal weekly number of hours means, if no normal weekly number of hours is fixed for a member under the terms of his or her employment, the average weekly number of hours worked by the member during the 12 month period immediately preceding—

- (a) the date of accrual to the member of his or her long service leave entitlement; or
- (b) the date the member ceased employment with a former Council—

as the case requires;

ordinary time rate of pay means, if no ordinary time rate of pay is fixed for a member's work under the terms of his or her employment, the average weekly rate earned by the member while actually working during the 12 month period immediately preceding—

- (a) the date of accrual to the member of his or her long service leave entitlement; or
- (b) the date the member ceased employment with a former Council—

as the case requires.

**PART 2—GENERAL ENTITLEMENT TO LONG SERVICE
LEAVE**

**7 Council must not grant leave or pay for service
where leave or pay already granted in respect of
that service**

For the purposes of calculating the period of long service leave, or pay instead of that leave, to which a member is entitled under these Regulations, the Council must not grant long service leave or pay instead of that leave for any period of recognised service in respect of which the member has already taken long service leave or been granted pay instead of that leave.

8 General entitlement to long service leave

- (1) Subject to these Regulations, every member who has completed an initial period of 10 years of recognised service is entitled to 3 months long service leave with pay and one-tenth of 3 months long service leave with pay in respect of each additional year of completed recognised service.
- (2) Subject to these Regulations, a member is entitled to access his or her long service leave entitlement after completing an initial period of 7 years of recognised service and is entitled to one-tenth of 3 months long service leave with pay for each year of that service.
- (3) Subject to regulation 23, the long service leave entitlement for a part-time member is to be calculated on a pro rata basis.

9 Entitlement to long service leave on voluntary termination where member has 7 years of recognised service

- (1) This regulation applies to a member who has completed an initial period of 7 or more years of recognised service and who voluntarily terminates his or her employment.
 - (2) The member may, in writing, request that the Council grant pay instead of long service leave.
 - (3) If a request is made under subregulation (2), the Council must pay the member one-tenth of 3 months current pay for each year of completed recognised service.
 - (4) If the member does not intend to take the long service leave to which the member is entitled or, before his or her termination becomes effective, does not request pay instead of that leave, and the member intends to commence work with another Council or a public service body or special body, the member may elect to defer the taking of the long service leave entitlement.
 - (5) If the member elects to defer the taking of the long service leave entitlement under subregulation (4)—
 - (a) in the case of a member who intends to commence work with another Council, the Council must transfer the long service leave entitlement to the other Council with the payment to be transferred under regulation 22;
 - (b) in the case of a member who intends to commence work with a public service body or special body, the Council must pay to the public service body or special body (as the case requires) an amount equal to one-fortieth of one month's current pay for each
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completed month of recognised service of the member calculated in accordance with these Regulations.

- (6) If, before the member's termination becomes effective, the member has not taken the whole of the long service leave to which the member is entitled or pay instead of that leave, or deferred the taking of the long service leave entitlement under subregulation (4), the member is not entitled to take the remaining long service leave with pay and the Council must pay the member one-tenth of 3 months current pay for each year of completed recognised service.

10 Entitlement to long service leave on death

- (1) A member who has completed 5 or more years of recognised service and who dies before or while taking long service leave is entitled to be granted pay instead of long service leave at the rate of one-tenth of 3 months current pay for each completed year of recognised service.
- (2) If the member dies before or while taking long service leave, or before being paid in full for long service leave, the Council must pay to the legal personal representative of the member (as the case requires)—
- (a) the pay which the member elected to take;
and
 - (b) pay instead of any long service leave to which the member was entitled and which he or she had not taken, or for which he or she had not been paid.
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11 Entitlement to long service leave on termination in other circumstances

- (1) Subject to these Regulations, a member who has completed 5 or more years of recognised service and who—
- (a) retires because of age or ill-health; or
 - (b) has his or her services terminated for any reason (except serious or wilful misconduct or for poor performance); or
 - (c) voluntarily terminates his or her employment—
 - (i) because of, or in anticipation of, marriage; or
 - (ii) because of impending parenthood; or
 - (iii) while on maternity or paternity leave—
- is entitled to long service leave at the rate of one-tenth of 3 months leave for each completed year of recognised service.
- (2) A member who ceases employment in any of the circumstances set out under sub-regulation (1) may, by notice in writing to the Council, elect to take pay instead of all or any part of the long service leave to which he or she is entitled.
- (3) If a member makes an election under subregulation (2), the Council must pay the member one-tenth of 3 months current pay for each year of completed recognised service.
- (4) If a member who ceases employment in any of the circumstances set out under sub-regulation (1) has not taken the whole of the long service leave to which the member is entitled or pay instead of that leave before his or her termination or retirement becomes effective, the member is not entitled to take the remaining long service leave with pay
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and the Council must pay the member one-tenth of 3 months current pay for each year of completed recognised service.

- (5) A member who has completed an initial period of 7 years of recognised service and who has been terminated for serious or wilful misconduct or for poor performance is entitled to one-tenth of 3 months long service leave with pay based on the member's current pay for each year of that service.
- (6) A member terminated under subregulation (5) is not entitled to take the long service leave with pay and the Council must pay the member one-tenth of 3 months current pay for each year of completed recognised service.
- (7) For the purposes of this regulation, a member retires—
 - (a) because of age, if on or after attaining the age of 55 years he or she ceases to be a member;
 - (b) because of ill-health, if the member has ceased to be a member because of ill-health that is assessed as likely to be permanent at the time of retiring—
 - (i) by a medical practitioner approved by the Council; and
 - (ii) in accordance with the applicable rules under the Council's recognised superannuation fund for assessing eligibility for access to benefits.

12 Recognised service under these Regulations

- (1) For the purposes of calculating a member's entitlement to long service leave or pay instead of that leave under these Regulations, the period of recognised service of that member must be
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calculated in accordance with regulations 13, 14 and 15.

- (2) The period of recognised service may be made up of aggregated periods of service if those periods are not continuous.

13 Recognised service—Absences that must be included

- (1) The period of recognised service of the member must include any period during which the member was absent from work for any of the following reasons—
- (a) the taking of long service leave by the member;
 - (b) the taking of any paid leave by the member including personal, annual, and parental or sick leave;
 - (c) action by the Council with the intention of avoiding obligations in respect of long service leave or annual leave;
 - (d) service in a temporary capacity by the member in the defence forces of the Commonwealth (other than service as a member of the permanent defence forces whilst the member is also employed by the Council);
 - (e) the taking by the member of unpaid sick leave where the absence from work was not—
 - (i) more than 6 months in total in the initial 10 year entitlement period; or
 - (ii) one-tenth of 6 months in total in each subsequent annual entitlement period;
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- (f) an injury for which weekly payments or compensation are payable to the member under the **Accident Compensation Act 1985** or the **Accident Compensation (WorkCover Insurance) Act 1993**;
 - (g) service by the member on temporary assignment with another Council or a person or body referred to in regulation 15(4).
- (2) For the purposes of subregulation (1)(a) the period of recognised service during a period of leave on half pay must be calculated on a pro rata basis.

14 Recognised service—Absences and service not included

- (1) The period of recognised service of the member must not include—
- (a) any absence due to the taking of unpaid leave by the member (except unpaid sick leave as provided under regulation 13(1)(e)); or
 - (b) if the member's employment with the Council was terminated or he or she retired due to ill-health or age (within the meaning of regulation 11(7)) and the member has recommenced employment with the Council more than 12 months after the date of termination or retirement, any service prior to that date; or
 - (c) any service prior to an absence referred to in paragraph (a) that exceeds 12 months unless the absence is for parental leave approved under the National Employment Standards under section 76 of the Fair Work Act 2009 of the Commonwealth.
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15 Recognised service to include prior employment with other Councils, persons or bodies

(1) Subject to subregulation (5), the period of recognised service of the member must include any period of prior service by the member with—

- (a) any other Council after 1 March 1975;
- (b) any other Council prior to 1 March 1975 if that Council was the member's employer on 1 March 1975—

if the period of service would have been included in the period of recognised service of the member with the other Council under these Regulations.

(2) If 2 or more Councils are amalgamated and any member of Council staff of the previously existing Councils is employed by the new Council, the period of service of the member with the previously existing Council is taken to be service with the new Council.

(3) Subject to subregulation (5), the period of recognised service of the member must include any period of prior service of the member with a public service body or special body if that prior service would have been taken into account by the body in calculating the member's entitlement to long service leave when he or she was employed by the body.

(4) The period of recognised service of the member must include any period of prior service of the member with—

- (a) any local government authority under the law of the Commonwealth or any Territory or any State other than Victoria; or
 - (b) any office under the Crown in the right of the Commonwealth or any State; or
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- (c) any State, Territory or Commonwealth public authority; or
- (d) an Authority; or
- (e) a licensee—

to the extent provided for in any arrangement made under regulation 22 between the Council and the authority, person responsible for the office, Authority or licensee (as the case may be).

- (5) The Council must not include in the period of recognised service under subregulation (1) or (3) any period of service prior to the member ceasing employment with another Council or body referred to in subregulation (3) if the member did not commence work with the Council within 12 months after ceasing that employment.
- (6) The Council may include, to the extent determined by the Council in each particular case, the whole or any portion of a period of service when the member was absent from duty with the prior or subsequent approval of the Council.

16 Public holidays

- (1) If a public holiday falls during any period taken as long service leave taken by a member under these Regulations, it is not to be regarded as part of the long service leave and the Council must grant the member a day off instead of the public holiday.
 - (2) The day off instead of the public holiday is to be taken by agreement at the conclusion of the long service leave period or at a mutually convenient time to the member and the Council.
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**PART 3—MANNER IN WHICH LONG SERVICE LEAVE
ENTITLEMENT MAY BE TAKEN**

17 When leave can be taken

A member may take all or part of his or her long service leave entitlement at any time which is mutually acceptable to the member and the Council.

18 Double leave at half pay

A member may, with Council approval, take all or part of his or her long service leave entitlement at half the salary for twice the period.

19 No other employment

A member on long service leave must not engage in any employment for hire or reward, unless he or she has the prior approval of the Council to do so.

PART 4—GENERAL

20 Exchange of information between Councils

A Council must, at the request of any other Council, provide that other Council with any information in its possession which may be required by that other Council for the purposes of these Regulations.

21 Transfer of payments between Councils in respect of entitlements

- (1) If a member is employed by a Council within 12 months of ceasing employment with another Council—
 - (a) the Council must inform the other Council (the *former Council*) of the employment within 6 months of the commencement of the employment; and
 - (b) the former Council must, within 2 months of being informed of the employment, pay to the Council an amount equal to one-fortieth of one month's pay for each completed month of service of the member with—
 - (i) the former Council; and
 - (ii) with any other Council, or authority, office Authority or licensee referred to in regulation 15(4)—

if that service would be included in calculating the period of recognised service entitling the member to long service leave under these Regulations.
- (2) The amount to be paid by the former Council to the Council under sub-regulation (1) is to be calculated on the basis of the member's current

pay at the time he or she ceased employment with the former Council.

- (3) A Council must refund a payment made to it under subregulation (1) by the former Council if—
- (a) the member in respect of whom the payment was made ceases to be employed by the Council; and
 - (b) within 18 months after the cessation—
 - (i) the Council has not been informed that the member has been employed by another Council; and
 - (ii) no arrangement under regulation 22 has been made by the Council with another employer in respect of the member's service to which the payment relates; and
 - (c) the member did not receive any long service leave, or pay instead of that leave, from the Council; and
 - (d) the member is not entitled to receive any long service leave, or pay instead of that leave, from the Council.

22 Arrangements regarding transfer of entitlements

- (1) A Council may enter into arrangements with an authority, person responsible for an office, Authority or licensee referred to in regulation 15(4), providing for the following—
- (a) payments by the Council to the authority, person, Authority or licensee in respect of long service leave for a person or class of persons transferring from employment with the Council to employment with the authority, office, Authority or licensee;
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- (b) payments to the Council by the authority, person, Authority or licensee in respect of long service leave for a person or class of persons transferring from employment with the authority, office, Authority or licensee to employment with the Council.

23 Part-time service prior to 1 January 1986

A part-time member who worked less than 24 hours per week before 1 January 1986 is not entitled to accrue long service leave entitlements in respect of that work on a pro rata basis, however, the period of service during which that work was carried out must be included as recognised service in accordance with these Regulations for the purpose of the member's long service leave entitlement.

24 Saving of earlier entitlements

- (1) If any provision of these Regulations has the effect of—
 - (a) reducing or adversely affecting the position of any person in respect of service; or
 - (b) specifying a level of benefits for any person or class of person which is less than the level which applied—

under the **Local Government Act 1958** as in force before the commencement of section 101 of the **Local Government Act 1989**, that provision, to the extent that it has that effect, has no force.

- (2) If subregulation (1) applies, the position of the person, or the level of benefits which is to apply, is to be determined as if the **Local Government Act 1958** (as in force immediately before the commencement of section 101 of the **Local Government Act 1989**) were still in force.

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ENDNOTES

¹ Reg. 4: S.R. No. 10/2002.