

18 October 2019

Industrial Relations Victoria  
1 Macarthur Place  
East Melbourne  
Victoria, 3002

To whom it may concern,

**The Early Learning Association Australia (ELAA), on behalf of its 1,300 Victorian members, continues to raise deep concerns with the implementation of the Victorian Portable Long Service Leave scheme. ELAA has six concerns with the legislation and regulations underpinning the Victorian Portable Long Service Leave scheme.**

#### **1. Inadequate sector consultation**

We wrote to the State Government and responsible Ministers on 27 April 2018 and 26 July 2018 when this bill was first tabled expressing our concerns with the proposal, arguing that the costs of the bill far exceeded the benefits and that it was poor policy. As a result, the then Minister, Hon, Jenny Mikakos, moved in the Legislative Council on 24 August 2018 to excise the ECEC sector noting:

*“A re-elected Andrews Labor government will work at adding additional parts of the community sector workforce at appropriate times in coming years once the authority and the scheme are up and running. I think it is important, and I put on the record, that further consultation will be undertaken with the early childhood education and care and disability sectors to minimise any cost to employers and to families beyond what they already are required to allocate to long service leave entitlements.”*

We were very surprised when the Government tabled draft regulations on 3 May 2019 that scoped the ECEC sector into the portable long service leave scheme without that consultation having occurred. The narrow scope of consultation on draft regulations fell well short of a proper consultation on the merits, costs and benefits of this policy proposal. As a result, we are unfortunately not surprised to receive the email dated 16 October 2019 from Industrial Relations Victoria stating that:

*“Due to an administrative error in the making of the Long Service Benefits Portability Regulations 2019 (the Regulations), the Minister for Industrial Relations, Tim Pallas MP, has determined that the Regulations be revoked and re-made.”*

Over an extended period and across multiple channels we have noted that the extension of the legislation and regulations to ECEC was brought forward without a proper assessment of the merits and costs. Our view remains that it will significantly increase employment and compliance costs to the sector, possibly increase cost pressures on families and potentially result in the loss of ECEC jobs due to service viability. These detrimental outcomes will occur without delivering significant benefits to employees or the sector.

## 2. Application is inconsistent with broader policy goal of portable long service leave

The circumstances in Victoria's ECEC sector do not meet the criteria for a very unusual government market intervention justifying the introduction of a portable long service leave scheme. The report of the Parliamentary Committee in 2016 justified the establishment of portable long service leave schemes in industries such as building and contract cleaning because employees were not generally hired on an ongoing basis or change jobs frequently and, as a result, not able to qualify for long service leave. The extension of the principle of portable long service leave was justified in community services because:

*"The Committee found that community services workers are not always able to work with a single employer long enough to qualify for long service leave because of the short-term funding of community services and the high risk of worker burnout. Based on this inequity and the existence of a portable long service leave scheme for the sector in the ACT, the Committee found that there is merit in introducing portable long service leave for community services workers."*

This argument simply does not apply to the early childhood sector, where employment is overwhelmingly permanent in nature and the funding structure – based on parental fees and State and Commonwealth contributions – is not affected by the short-term nature of contracts typical in the rest of the community sector.

## 3. Inequity of application

ELAA is a strong advocate for fair, equitable and sustainable working conditions for sector staff. The scheme only applies to not for profit providers, creating a division of employee benefits between the for-profit and not-for-profit sectors, as well as increasing direct employee costs for not-for-profit providers as who employ just 35% of the workforce in the ECEC sector in Victoria.

This inequity in application will mean that not for profit providers will face higher compliance and employment costs related to long service leave not faced by the for-profit or government providers, while employees in the sector will not achieve true portability of leave as most of the sector would not be covered by the scheme.

The prospect of considerable periods of service being 'lost' as a result is quite high. We note that the ACT is the only jurisdiction in Australia to include ECEC in its portable long service leave scheme and includes both for-profit and not-for-profit providers. Yet, after nine years of operation, levy collections still exceed long service leave payouts by a factor of four to one, with one employee leaving the scheme for every two new employees who joined. We expect that the pattern in the Victorian scheme will be even more extreme given most of the ECEC sector is out of scope.

## 4. Increase in costs of long service leave provisions for not for profit providers

We are concerned that the regulations of the Bill go well beyond the current portable long service leave arrangements in the community kindergarten sector, including the continuity rules in the ECEC sector, which allow for a three month break in continuity rather than four years. These changes will considerably increase the provisioning costs for long service leave for ECEC providers covered by the scheme. This detracts from the underlying objective of long service leave which is to provide a benefit for actual long service.

Current provisions for long service leave have regard for the probability of employees claiming leave, with the employer 'retaining' the provision if an employee leaves. Under the new regulations, the levy will apply to all employees and the Authority will retain any amounts unclaimed. There are likely to be significant additional secondary costs that will also need to be factored in such as increased use of casuals and agency staff as more staff take long service leave in the future. Coverage of employees who stay with an employer but move interstate also needs to be clarified.

Services will also have the burden of being required to keep two sets of records: one prior to the implementation of the scheme and one for the scheme. ELAA highlights that the higher costs associated with the Bill will need to be either:

- Absorbed by ECEC service providers, reducing the future capacity to fund wage increases and access to professional development for our educators
- Passed on to families by way of increased fees, compromising affordability for Victorian families.

Both of these outcomes remain undesirable.

## 5. Impact on quality

ELAA remains deeply concerned that the legislation and regulations will have an unintended detrimental impact on the quality of service provision. With its increased focus on compliance and administration, the implementation of the scheme will draw organisational effort and attention away from the implementation of the single largest reform in early childhood education – the implementation of two years of preschool – and delivering quality educational outcomes for children.

A combination of financial, administrative and other adverse impacts of the Long Service Benefits Portability Scheme could also impact quality in the following ways:

- A reduced capacity for providers to invest in their education programs, resources and professional learning opportunities for staff
- A reluctance on the part of some educators to take on leadership roles because those indirect roles are excluded from the scheme
- A trend that a number of members have recently lost valued senior employees to the private “child care” sector for significantly higher salary levels which the community service organisations have not been able to match given financial pressures.

## 6. Implementation issues

We are extremely concerned that the sector will have insufficient time to implement the reform from January 2020, which falls part way through the financial year for which budgets and fees have already been set. The next three years are already extremely challenging for workforce planning in the ECEC sector with the introduction of a new NQS staffing ratio change in 2020 and the rollout of Victorian Government funding for School Readiness.

Most significantly, from 1 January 2020, the largest reform in the history of the Victorian early childhood education and care sector will commence implementation. The kindergarten expansion program will see over \$7B invested by the State Government to make 15 hours of funded kindergarten available to all Victorian three-year-olds.

Experience of ECEC providers with the Australian Capital Territory scheme suggests that compliance costs for the scheme will be very high. Major changes to payroll software programs will also need to be built and tested to apply the scheme, and the specifications for this build have not yet been provided. This also creates a significant financial or administrative burden for smaller ECEC providers, the majority of which will not be able to invest in technology solutions to streamline administration processes.

Whilst the Portable Long Service Authority (PLSA) has delivered some implementation workshops recently, feedback provided to ELAA indicates that the depth of information provided at these workshops was poor. Furthermore, it would appear that the quality, clarity and consistency of advice provided to members when contacting the PLSA directly is also highly variable.

At a meeting between the ELAA CEO and PLSA CEO on 12 September 2019, a request was made by the ELAA CEO for tailored information and communication for early childhood education employers. This request has not been satisfactorily responded to, placing further risk around effective scheme implementation. ELAA remains very concerned for the close to 500 standalone community kindergarten service providers, managed by parent committees, that at this point are very likely to have very little understanding that the regulations are even being implemented from 1 January 2020.

### **Concluding Comments**

ELAA remains deeply concerned at the scope and implications of the current regulations, as well as the readiness of early childhood education and care sector employers to implement the regulations from 1 January 2020. The capacity for the PLSA to adequately support scheme implementation is also questionable based on the experiences of employers and peak associations trying to elicit clear and consistent information on employer obligations.

The short time frame to respond to this notice of consultation by Industrial Relations Victoria is also cause for concern. ELAA, together with a select group of our members, would welcome the opportunity to meet with Industrial Relations Victoria to discuss this feedback. In the meantime, questions regarding this letter can be directed to Lisa Minchin (Advocacy and Grants Lead) as follows:

- Email: [lminchin@elaa.org.au](mailto:lminchin@elaa.org.au)
- Phone (03) 9411 4124 (Monday, Tuesday, Thursday).

Yours sincerely,



**David Worland**  
Chief Executive Officer  
**Early Learning Association of Australia**

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Cc:

Ms Jenny Atta, Secretary, Department of Education and Training

Mr Joseph Yeung, Registrar and Chief Executive Officer, Portable Long Service Leave Authority