



MACQUARIE  
UNIVERSITY



CENTRE FOR  
WORKFORCE FUTURES

# MCKELL INSTITUTE

**The Case for a National Portable  
Long Service Leave Scheme in Australia**



# About the McKell Institute

The McKell Institute is an independent, not-for-profit public policy institute dedicated to developing practical policy ideas and contributing to public debate.

**The McKell Institute's key areas of activity include producing policy research papers, hosting policy roundtable discussions and organising public lectures and debates.**

**The McKell Institute takes its name from New South Wales' wartime Premier and Governor-General of Australia, William McKell.**

**William McKell made a powerful contribution to both New South Wales and Australian society through progressive social, economic and environmental reforms.**

**For more information phone (02) 9113 0944 or visit [www.mckellinstitute.org.au](http://www.mckellinstitute.org.au)**



---

The opinions in this report are those of the authors and do not necessarily represent the views of the McKell Institute's members, affiliates, individual board members or research committee members.  
Any remaining errors or omissions are the responsibility of the authors.

---

JUNE 2013



# MCKELL INSTITUTE

## **The Case for a National Portable Long Service Leave Scheme in Australia**

# The authors

## RAY MARKEY



Ray Markey has been Professor of Employment Relations and Foundation Director of the Centre for Workforce Futures at Macquarie University since November 2011. He has extensive experience in workplace research in

Australia and New Zealand. He was the Foundation Director of the New Zealand Work & Labour Market Institute, 2006-11. He is currently undertaking a survey of work practices to reduce carbon emissions for the Australian Department of Innovation, Science, Research & Tertiary Education. He has undertaken research work for the International Labour Organisation, the Danish Work Environment Fund and the NZ Industrial Relations Foundation.

## NICK PARR



Nick Parr has lectured at Macquarie University in the field of demography since 1992. He was awarded a Faculty of Business and Economics Teaching Award in 2008. Nick has published extensively in demography

and its related areas. His recent research includes: the effects of family policies on fertility and workforce participation in Australia; migrant labour force outcomes in regional and rural Australia; and population challenges for the Local Court of NSW. He has provided invited expert advice to senior Federal and State politicians.

## TIM KYNG



Tim Kyng is an actuary / statistician and a Lecturer in Actuarial Studies, in the Department of Applied Finance and Faculty of Business and Economics at Macquarie University. Previously, he worked

in the financial services industry including the NSW Government Actuary's Office, GIO, QBE, Commonwealth Bank, and Coopers and Lybrand Actuarial Services.

## SALUT MUHIDIN



Salut Muhidin is a Lecturer in demography at the Faculty of Business and Economics, Macquarie University. He has actively been working on the study of population mobility issues and its consequences in

different settings such as Asia, West Africa and Australia. Previously, Salut had wide-ranging international experience, including placements in North America (Brown University and Université de Montréal), Europe (Groningen University and IIASA-Austria), and Asia (University of Indonesia).

## SHARRON O'NEILL



Sharron O'Neill joined Macquarie University in July 2011 as a Research Fellow in the International Governance and Performance (IGAP) Research Centre. Her PhD examined accounting for occupational health and safety and her current

research explores issues of corporate governance, risk management and accountability. Sharron has also taught at the University of Sydney and at the University of Western Sydney. Sharron came to academia from an established career as a financial accountant, primarily in healthcare and multinational manufacturing firms.

## LOUISE THORNTHWAIT



Louise Thornthwaite is a Senior Lecturer in the Department of Marketing and Management, Macquarie University. Previously she has held appointments as Associate Professor, Sydney Graduate School of Management at the University of Western Sydney, and Senior Lecturer

and Head of School, School of Industrial Relations at Griffith University and Lecturer in Law at the University of Western Sydney. Louise has also been Director, Centre for Research on Employment and Work at Griffith University, and Deputy Director, Australian Institute of Women's Research and Policy at Griffith University.

## CHRIS F. WRIGHT



Chris Wright is a Postdoctoral Research Fellow at the Centre for Workforce Futures, Macquarie University. He completed a PhD and worked as a Research Fellow at the University of Cambridge. Chris has worked as a researcher in the University

of Sydney Business School, the Workplace Research Centre, the International Labour Organisation and the Australian Broadcasting Corporation.

## CATRIONA LAVERMICOCCA



Catriona Lavermicocca recently completed her doctoral studies on the income tax compliance behaviour of large Australian corporations. She originally specialised in tax law with a major chartered accounting firm. Catriona currently

lectures in taxation law and is the co-ordinator for the accounting programs in the Faculty of Business and Economics, Macquarie University.

## SHAUNA FERRIS



Shauna Ferris is a Senior Lecturer in the Actuarial Studies Department at Macquarie University. She has previously worked in the financial services industry, in superannuation, banking, and life insurance. Her research interests

include risk management and prudential regulation for financial institutions

# Contents

<b>Foreword</b> .....	8
<b>Executive Summary</b> .....	10
<b>Recommendations</b> .....	20
<hr/>	
<b>Introduction</b> .....	<b>22</b>
<hr/>	
1.1 Purpose of report.....	22
1.2 Methodology.....	24
<hr/>	
<b>Labour force trends and their implications for access to LSL</b> .....	<b>26</b>
<hr/>	
2.1 Length of time in employment.....	26
2.2 Labour force projections.....	28
2.3 Labour mobility patterns.....	28
2.4 Access to LSL.....	30
2.5 People with more than 10 years' lifetime work experience and less than 10 years with current employer.....	34
2.6 Implications for access to LSL.....	35
<hr/>	
<b>Long service leave in Australia</b> .....	<b>36</b>
<hr/>	
3.1 Brief history of LSL.....	36
3.2 Portable Long Service Leave (PLSL) schemes.....	38
3.3 Major points of difference in existing statutory PLSL schemes.....	40
3.3.1 Administrative arrangements for the management of the fund.....	40
3.3.2 Employees' LSL entitlements.....	42
3.3.3 Length of service for pro rata leave entitlements under certain conditions.....	43
3.3.4 Rate of pay during LSL.....	43
3.3.5 Rate of employer levy.....	44
3.3.6 When the levy is payable.....	46
3.3.7 Frequency of employer reporting on workforce and deadline for returns.....	46
3.3.8 Type of employment arrangements covered.....	47
3.4 Review of the established PLSL schemes.....	51
3.4.1 Arguments for and against the establishment of PLSL schemes.....	51
3.4.2 Previous official reviews of established PLSL schemes.....	56
3.4.3 Feedback from stakeholders.....	57
3.5 Extra benefits of long service leave.....	58
3.5.1 Research into the benefits of taking leave for employees.....	58
3.5.2 Benefits to tourism and hospitality.....	60

3.5.3 Fair entitlements guarantee and payment of long service leave entitlements in event of insolvency	60
3.5.4 Contribution to national saving and investment	61
3.6 Portable long service leave and small business	62
<b>Designing portable long service leave schemes</b>	<b>64</b>
4.1 Desirable features of portable long service leave arrangements	67
4.2 Comparison of alternative models	74
4.2.1 Option A: The ADF model	74
4.2.2 Option B: The Industry-based Defined Benefit Fund model	82
4.2.3 Option C: The Accumulation model	100
<b>Costing of long service leave obligations</b>	<b>106</b>
5.1 The rate of accrual of LSL benefits	108
5.2 Investment returns relative to wage increases	109
5.3 Length of time until payment of benefits	113
5.4 Exits: Number of people who exit from the fund before qualifying for an LSL benefit	115
5.4.1 Non-PLSL	115
5.4.2 PLSL within industry	115
5.4.3 PLSL across industries	117
5.5 Administration expenses	117
5.6 Taxes	118
5.7 Overview of levy costs	119
5.8 Defined Benefit Funds: Variability in the levy rate	119
5.9 Accumulation Funds: Risks to employees	121
<b>Tax implications and advantages for employers of a nationally consistent PLSL scheme</b>	<b>122</b>
<b>Conclusion and recommendations</b>	<b>124</b>
<b>Appendices</b>	<b>130</b>
Appendix 1. Meaning of 'ordinary pay' or 'remuneration' in PLSL statutes	130
Appendix 2: Actuarial estimates of administration costs as a percentage of worker's wages	133
Appendix 3: ATO list of Approved Worker Entitlement Funds (per ATO website, 4 March 2013)	134
Appendix 4: Vesting requirements under State legislation for minimum LSL entitlements	135
<b>Acknowledgments</b>	<b>136</b>
<b>Footnotes</b>	<b>137</b>

# Foreword

## LONG SERVICE LEAVE IS UNIQUE TO AUSTRALIA AND NEW ZEALAND.

**The origins of Long Service Leave can be traced back to the 19th century as an entitlement referred to as a furlough given to civil servants which enabled those who had served for a long period of time to travel 'home' to Britain, confident that they could return to Australia and return to their previous job.**

The entitlement was transformed from leave provided to visit Britain, to leave provided after a long period of employment for workers to have a break and return to work fresh and renewed.

During the post-war years, Long Service Leave spread from the public sector to the private sector, and soon was legislated as a basic entitlement in State and Territory Parliaments. While the length of leave and qualification periods vary from State to State, the general entitlement a worker receives is two months leave after ten continuous years of service with the same employer.

However, due to the changing nature of employment, Australian workers are more frequently changing jobs and careers. This has meant Long Service Leave in its current form has become inaccessible to the overwhelming majority of Australian workers.

Only one in four Australian workers stay with the same employer for 10 years.

This is not due to a change in the 'loyalty' of workers to one employer, but a simple reality of the changing dynamic of the Australian labour market.

Now more than ever before, Australian workers are struggling to balance their work commitments with their family and other life commitments. This is in no small part due to the changing nature of our labour market and the fact that Australians work some of the longest hours in the world. They also stay in the workforce for longer than previously.

Recent surveys have shown well over 50% of Australian workers would rather have an extra two weeks annual leave than take the equivalent annual pay rise.

In this context, the McKell Institute believes the time has come to again restructure Long Service Leave and create a 21st century entitlement by making Long Service Leave fully portable.

If Long Service Leave were to follow a worker as they change jobs and



careers (as our superannuation does), the majority of Australian workers would again be able to take a well earned break after a long period of time in the workforce.

The McKell Institute is proud to present this report by Professor Raymond Markey and his colleagues at the Macquarie University Centre for Workforce Futures.

The report provides the most comprehensive framework for the establishment of a National Portable Long Service Leave Scheme ever produced in Australia.

The report will provide a basis for deliberation, consideration and discussion around this significant and timely proposal.

An entitlement that began as a furlough to visit Britain was transformed into Long Service Leave to provide a decent break for workers partway through their working life.

That objective is as relevant today as ever, but the changing nature of the way we work requires

us to again re-invent this entitlement so that it achieves its intended ends.

Such a change will ensure that the majority of Australian workers receive a well earned break partway through their increasingly longer working lives.



**The Hon John Watkins**  
CHAIR,  
MCKELL INSTITUTE



**Peter Bentley**  
EXECUTIVE DIRECTOR,  
MCKELL INSTITUTE

# Executive summary

## THE CASE FOR A NATIONAL PORTABLE LONG SERVICE LEAVE SCHEME IN AUSTRALIA

**This report examines the feasibility of a nationally consistent portable long service leave (PLSL) scheme for Australia. Traditionally, three reasons have been cited for providing long service leave (LSL) benefits:**

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

The third objective, in particular, is becoming increasingly important to Australian workers. Australians are spending larger proportions of their lifetimes in employment and growing numbers of workers are remaining in the workforce at older ages. As the length of time in work increases, the importance of LSL entitlements – particularly for those who work in physically or mentally exhausting jobs – becomes increasingly evident.

Despite this, high mobility trends in the profile of Australia's workforce have resulted in a low proportion of workers being able to access LSL benefits – some due to employment choices and others for structural reasons. Recognising this, a small number of industries with high structural job mobility, such as construction and contract cleaning, have introduced portable long service schemes (PLSLs). These schemes have successfully improved access for a small percentage of workers. This report examines the feasibility of introducing a nationally consistent PLSL scheme that would cover all workers, including those who are casual, permanent full-time and permanent part-time.

## Methodology

This report assesses trends in the Australian labour force based on data from the census, the Australian Bureau of Statistics (ABS) and from the survey of Household Income and Labour Dynamics in Australia (HILDA). We also prepared projections of future labour force patterns and reviewed the development of LSL in Australia. The full report summarises key features of minimum LSL entitlements and industry-based PLSL arrangements. We analysed annual and actuarial reports and reviews of these schemes and conducted interviews with key stakeholders, including fund administrators and the employer and worker representatives of their boards, to gain further insights into how effectively these schemes operate, their financial stability, and their costs and benefits.

We consider three approaches for extending PLSL to a broader range of workers. Employers will naturally be concerned about the additional cost of PLSL benefits, therefore we have provided cost calculations for typical LSL benefits. These illustrate the factors which are likely to affect the overall cost, including benefit accrual rates, investment returns, wage increases, benefit design, workforce mobility, leave taking patterns, and administrative arrangements. This illustration should not be used as an estimate of the costs of any particular scheme. Further, the cost analyses do not address savings and potential tax benefits that employers may gain as a result of introducing a PLSL scheme, nor the financial benefits to government and the community.

## SECTION 2.

### Labour force trends and their implications for access to LSL

#### Labour force participation and time spent in employment are both increasing

Australians are spending more of their lifetimes in employment. For new-born males in 2011 the expected lifetime number of years in employment is 36.8 years, and 31.9 years for females. There are also increases in the numbers of males and females in the later working and post standard retirement ages. The number of females aged 60 to 69 in employment rose by 169.7% between 2001 and 2011, whilst for males aged 65 to 69 the number in employment also more than doubled (an increase of 124.1%).

The median age of employed males is projected to increase to 41.9 years in 2021 and that for employed females to 41.6 years. The percentage of the employed who are aged 45 or over is projected to increase for males from 39.6% in 2011 to 43.1% in 2021, and for females from 38.8% to 42.8%.

#### Australian workers are highly mobile, but mobility rates differ across the workforce

Mobility is high with almost 1 in 5 workers employed by their current employer for less than one year (ABS 2012b).

Labour mobility differs across sectors and is highest among those employed in industries such as: mining; wholesale trade; transport and logistics; rental, hiring and real estate; business and personal services; and healthcare.

#### Implications for access to LSL

There is a low prevalence of long-term employment relationships, with around three in four workers working with their employer for less than 10 years (including many that have worked in the labour force for a longer period). Given that 10 years is the usual qualifying period for LSL, the structural trend away from long-term employment is limiting access to LSL entitlement for a significant share of the Australian workforce.

Benefits from LSL portability are more likely among workers aged 35 to 54, female workers and workers engaged in particular (generally lower-skilled) non-managerial service and blue-collar occupations. Notably, the highest mobility rates are reflected in occupations that tend to be characterised by high rates of contract and casual labour. It is a highly gendered issue because of the predominance of women in the casual and part-time workforce.

## SECTION 3.

### Long Service Leave in Australia

As a statutory right to a sustained period of leave after an extended period of employment, LSL is a distinctively Australian provision, with origins going back to the 19th century. Most States currently provide 8.67 weeks LSL after 10 years of service. Workers are entitled to LSL again after every additional 5 year period in most jurisdictions. These schemes are typically State-wide and provide an entitlement to LSL for workers who complete continuous service with the one employer. This entitlement is not portable within an industry or across employers.

PLSL entitlements are widely available to public sector workers in the Commonwealth, State and Territory public sectors. They are most prevalent in building and construction, mining, contract cleaning and community services.

### Feedback from stakeholders about PLSL schemes

Representatives of employers, employees, and administrators involved in the management of established PLSL schemes generally present a positive view of these schemes and see the advantages of PLSL as outweighing its costs. A number of interviewees (including employer representatives) said that PLSL allows workers to receive their LSL entitlements, and that the levy system is an effective way of collecting funds without imposing an administrative burden on employers. However, some interviewees said that the obligation to make LSL payments into industry funds effectively imposes an additional cost burden on employers operating in industries where the profit margins are typically very small. Stakeholders' detailed comments are summarised as follows.

### Potential advantages of PLSL schemes

- **Retention of workers** – PLSL schemes address challenges in retaining employees in industries with high levels of labour mobility.
- **Equity** – Workers in highly casualised or contract roles otherwise have no practical access.
- **Mobility and flexibility** – Workers have more capacity to move between employers or to take short periods out of employment to meet commitments such as carer responsibilities.
- **Productivity and work environment** – The capacity to take a sustained period of leave to rejuvenate after a lengthy period of continued work has advantages for boosting productivity and morale.
- **Employee attraction** – A benefit for “good employers” as employees feel less compelled to stay in poorly managed workplaces in order to meet LSL eligibility requirements.

- **Non-compliance problems reduced** – Employers pay for entitlements as they accrue.
- **Free-riding problems reduced** – Industry-based LSL schemes mean that all employers are obliged to fund LSL entitlements, regardless of whether they retain employees who reach the vesting period for taking leave.
- **Administrative benefits for employers** – Industry funds effectively remove from employers the responsibility for administering LSL arrangements and payment for employees.
- **Cost certainty** – Greater cost stability is provided to employers because the pay-as-you-go operation limits the potential for employers to accumulate liabilities and not being able to pay employees their entitlements if they become insolvent or have trading difficulties.
- **Tax benefits** – Employers can claim a tax deduction for payment of the levies, and the portable industry funds are not required to pay tax on their investment income.

### Potential disadvantages of LSL portability

- **Administration costs for employers** – This factor is pronounced during transitional periods of newly established schemes. However, recent improvements in administrative software and systems were cited by administrators and employer representatives as significantly reducing the administrative burden and cost.
- **Financial costs of providing benefits for employees who leave after a short period of service** – In industries where many workers do not achieve the qualifying period under non-portable schemes, PLSL has effectively imposed an additional financial cost for employers.
- **Prefunding impact on business cash flows** – Smaller employers may fail to provide for LSL benefits in their accounting systems and simply pay LSL payments from consolidated revenues as required. The PLSL schemes require employers to prefund these benefit payments, which impacts the employers' cash flows.



### Additional benefits of LSL

Although there is limited research into the benefits of LSL specifically, research into annual leave sheds light on the need for LSL. In general the importance of leave from work for employee health, well-being and work/life balance has been widely acknowledged. Long hours of work with a lack of adequate leave have been associated with stress-related illness, including heart disease and stroke. This can represent a cost to employers. Leave also provides an important period of rest for workers in occupations particularly susceptible to long-term fatigue and associated stress. Studies have found that people who take leave are generally more productive and exhibit fewer symptoms of workplace stress, which may help to reduce employers' occupational health and safety costs.

### Wider benefits include

- the tourism and hospitality sector may benefit from extended leave provisions;
- the Commonwealth government would save a substantial and growing financial outlay for the LSL component of the Fair Entitlements Guarantee in the case of business insolvencies; and
- PLSL funds would benefit the economy generally by contributing substantially to national saving and investment.

## SECTION 4. Designing PLSL schemes

Under the Fair Work Act 2009, the Commonwealth government has the power to establish National Employment Standards, including standards for LSL entitlements. There are three key aspects: *the Constitutional issue associated with establishing PLSL funds, vesting of entitlements and transfer of entitlements.*

Firstly, the Commonwealth may have the Constitutional power to establish PLSL funds with compulsory employer levies, but this may also be challenged by the States. An alternative approach would be to develop cooperative arrangements with the States whilst the Commonwealth institutes model legislation; this approach was used for occupational health and safety.

Secondly, portability requires full vesting of each worker's LSL entitlements to a pro rata benefit whenever they leave service, even after a short period of service, for whatever reason. Over time, effectively the "vesting period" would be reduced to zero. Each employer would have a liability to pay a specified amount in respect of the LSL entitlements accruing for each worker during each worker's period of employment.

Thirdly, it would be necessary to develop rules for the payment of LSL benefits and the transfer of leave entitlements. At present, pro rata LSL benefits are paid in cash when an employee leaves service, and the employee cannot transfer their leave entitlements to their next employer. However, under a PLSL scheme, a worker might not take cash payment when they leave their job. Instead, the money set aside to pay their accrued benefits would be held in reserve. Of course, some workers might prefer to take the cash payment, although this would mean that they will not be eligible to take leave for another 10 years and would forgo many of the benefits identified here. Questions then arise as to whether portability should allow the worker to choose either alternative, or whether there should be restrictions in the payment of cash pro rata benefits.

LSL entitlements are usually determined on a *defined benefit* basis. When an employee takes leave, they receive a benefit which is equal to the number of weeks of LSL taken multiplied by their weekly wages at the date the benefit is taken. Alternatively, employers might fund LSL payments on an *accumulation* basis. The employer would periodically pay contributions, equal to a fixed percentage of salary, into an employee's LSL account. The contributions would accumulate with interest, less administration fees. When the employee takes leave, they would be entitled to withdraw money from their account. Under an accumulation arrangement, the contribution would presumably be set at a level which would be expected to provide an adequate LSL benefit.

### Comparison of 3 alternative models

Each of these models has a different mixture of advantages and disadvantages for employers and employees.

#### OPTION A

##### The ADF Model (paying a mixture of defined and accumulation benefits)

The ADF model is based on the system of Approved Deposit Funds (ADFs) established in the superannuation industry during the 1980s (also known as Rollover Funds). Employers make their own internal provisions for LSL until an employee leaves or is eligible for LSL. Employees who leave service can roll over a lump sum PLSL benefit into any ADF they nominate. The accrued benefit payable at exit from an employer would be calculated using a defined benefit formula, based on the employee's wages at the date of exit, in line with existing legislation, awards and/ or workplace agreements. The lump sum benefit would not normally be payable in cash (unless the employee met a LSL condition of release). The ADF invests the money on behalf of the employee, in an accumulation-style account, until the employee is eligible to receive LSL.



Each worker would have just one ADF account for LSL benefits. If a worker worked in a series of different jobs, or worked in two or more part-time jobs, the LSL payments would be made into the same ADF account. This would help to prevent the proliferation of multiple small accounts. Each employer would provide the ADF with information about the period of service applicable to each lump sum payment. The ADF would be required to maintain records sufficient to determine a worker's eligibility for LSL cash payments in the future. The ADF would invest the money on behalf of the account-holder, and credit investment earnings to the account. The ADF would also deduct administration fees from the account.

The LSL ADF provider would be required to meet registration, reporting, and corporate governance requirements, similar to those imposed on the ADFs that hold superannuation savings. Financial institutions would be required to apply for permission to manage LSL ADF accounts. The Australian Prudential Regulatory Authority (APRA) would set standards for authorisation and would monitor ADF providers. Banks, life insurers, and superannuation funds would be eligible to offer LSL ADFs, as long as they met the authorisation standards.

### **This model has many advantages:**

- It could be phased in gradually over time.
- It is relatively simple to understand.
- It does not create a great deal of extra administrative work for employers.
- It does not require pre-funding, therefore the employers' cash flows would not be affected until their employees left service or took LSL.
- It is flexible.
- It does not create cross-subsidies between different employers or industries.
- It reduces (but does not eliminate) the risk of loss of entitlements due to employer insolvency.
- It could make use of existing infrastructure, i.e. it would not be necessary to create new organisations to provide ADF LSL accounts.

### **However this model does have significant weaknesses:**

- The administrative costs are likely to be high relative to the size of the account balances, and this will erode workers' LSL benefits.
- Financial institutions may be reluctant to offer products which are likely to have low balances and hence limited profitability.
- Workers who hold money in ADF accounts are exposed to investment and inflation risks, meaning that the account balance might not always be sufficient to provide a replacement of income when the worker takes leave.
- This model does not incorporate any additional mechanisms for ensuring that employers will comply with their LSL obligations (other than the existing compliance checks performed by Fair Work Australia).
- Unless regulated to restrict payments to one ADF, this model could mean that workers end up with multiple LSL accounts in different ADF's. Multiple accounts would create problems in assessing eligibility for entitlements, and risk many workers losing track of their accounts and becoming "lost members" leading to lost monies, as occurs in the superannuation system.

---

## **OPTION B**

### **The Industry-based Defined Benefit Fund Model**

---

An alternative model involves the creation of a range of industry-based defined benefit funds. There are already more than a dozen established industry-based PLSL arrangements, however, each of these provides only limited portability. Workers only accrue LSL benefits while working within the industry, and may forfeit their entitlements if they cease working in the industry prior to completing the vesting period of service. Workers who complete the vesting period, and then leave the industry are usually entitled to claim a cash payout.

Employers in the industries covered by existing schemes are required to be registered with the relevant fund. The employers periodically provide information about each employee and periodically pay levies to the fund administrators. Each fund is invested in line with a strategy determined by the Board and/or approved by the Minister or Trustee. When an employee becomes eligible for an LSL payment, a benefit may be payable directly from the LSL fund; or may be payable by the employer, who then claims reimbursement from the fund. The benefits payable are calculated in accordance with the relevant legislation and/or award. This currently means that LSL benefits are defined benefits.

Each fund is periodically reviewed by an actuary, who assesses the adequacy of the fund's assets, relative to the fund's liabilities, using reasonable assumptions about the future experience of the fund. The actuary might recommend an increase or a decrease in the levy rate, in order to maintain an acceptable level of solvency. The fund administrators play a role in ensuring that employers comply with their obligations, for example, educating new employers, inspecting records of registered employers and imposing financial penalties for late payments.

If these schemes are extended to provide full portability, then presumably the LSL benefit entitlements would be transferred to a different industry fund if a worker shifted employment to a different industry. For example, if a person working in the retail industry transferred to the hotel industry, LSL funds would be transferred from the retail industry fund to the hotel industry fund. This would allow more workers to claim their LSL benefits, but the complexity of the administration would be increased.

**Industry-based PLSL funds have the following advantages:**

- The defined benefit structure provides benefits which provide a replacement of normal income while the employee is on long service leave.
- The established industry-based funds have been successful in developing administration systems which minimise the administrative burden for employers.
- The larger industry-based funds have apparently been able to keep administration costs at about 1.5% to 2% of assets or less.

- The established funds have devoted resources towards improving compliance, i.e. ensuring that workers receive their entitlements.
- Improved compliance also provides a level playing field for employers, i.e. by limiting the risk that irresponsible employers will be able to undercut responsible employers.

**However this option also has disadvantages:**

- Defined benefit funds are more difficult to manage when there are multiple employers with a diverse group of employees who frequently switch between funds.
- If new schemes are created for each industry, this will create administrative difficulties, e.g. if workers accrue benefits in multiple industries across multiple jurisdictions.
- If new schemes are created for each industry, it is likely that many of these schemes will be too small to operate efficiently. If they are unable to attain economies of scale, employers will have to pay higher contributions in order to cover higher administration fees.
- The defined benefit structure might create cross-subsidies between different employers and different generations of employers.
- Based on the experience of the established PLSL schemes, the levy rate is likely to vary over time, creating difficulties for employers. This problem is likely to be more severe in cyclical industries and/or in funds which adopt more volatile investment strategies.
- Defined benefit funds may develop large deficits (especially if there is pressure to keep levy rates low); it would be desirable to have clear-cut rules for the management of fund surpluses and deficits (which might entail benefit reductions).
- Defined benefit schemes are less flexible than accumulation schemes, i.e. less able to cope with variations in entitlements across different categories or workers, and less able to cope with changes in entitlements over time.



## OPTION C

### The Accumulation Model

Employers would be required to make regular contributions for all eligible employees into designated LSL accounts administered by superannuation funds and/or authorised financial institutions. (The minimum contribution would be determined by the National Employment Standards.) Account funds would be invested on behalf of the account holder and investment earnings would be credited. Administration fees would be deducted. The account-provider would be required to maintain records sufficient to determine the worker's eligibility for LSL cash payments in the future.

The LSL benefit would not become payable in cash until the worker met an "LSL condition of release", similar to the preservation requirements applicable to superannuation benefits. The LSL account-provider would be required to meet registration, reporting, and corporate governance requirements, similar to those imposed on the financial institutions that hold superannuation savings. APRA would set standards for authorisation and monitor account-providers. Banks, life insurers, and superannuation funds would be eligible to offer LSL accounts, as long as they met the authorisation standards.

The employee would be entitled to choose their LSL account-provider and to transfer their LSL account from one provider to another. This would enable an employee to combine LSL payments from two or more employers into one account. This would improve the efficiency of the system, i.e. minimising administration fees. If an employee did not exercise their right to choose, then the employer would make payments to an LSL account administered by a default account-provider. In practice, the employer's administrative burden would be reduced if there was consistency between the superannuation system and the LSL system.

It would be necessary to carefully consider the tax treatment of these LSL accounts. Established industry-based PLSL schemes are not required to pay tax on levies received or on the investment income earned. However, LSL benefits are taxed

in the hands of recipients when the benefits are ultimately paid. The tax treatment of these accounts will, of course, affect the costing of LSL benefits. If LSL accounts are taxed, then employers will have to pay a higher rate of contributions in order to fund the same level of benefits. If LSL accounts are given favourable tax treatment, the annual contributions should not exceed the amount needed to fund the accruing LSL entitlements (e.g. fixed as a percentage of wages or salary).

#### The advantages of this model are:

- It is simple to understand.
- Assuming that the administrative arrangements can be integrated with the superannuation system, the administrative burdens for the employer should be acceptable.
- Assuming that: (1) the LSL savings account is designed to be a low cost, no-frills product; (2) the industry can achieve economies of scale in providing these products; and (3) there are synergies with the superannuation; then administration costs should be lower than Option B.
- The employers' cost is stable and predictable.
- It avoids cross subsidies between employers and industries.
- It is flexible.

#### On the other hand, this model also has some disadvantages:

- The legal framework for creating this system has not been specified and it might be difficult to achieve consensus between Commonwealth and State governments.
- It would require some additional resources to monitor and enforce compliance.
- Accumulation benefits may not provide a replacement of income during leave – the risks are passed to the employee.
- As with Options A and B, the system is vulnerable to the "small accounts problem", i.e. relatively high administration costs for accounts with small balances.

## SECTION 5. Costing of LSL obligations

As a basic principle, over the long term the income received by any fund must cover the payments made from the fund according to the following formula:

**Employer levies PLUS investment income on assets must be sufficient to cover Benefit Payments PLUS Administration Expenses PLUS Tax**

The cost of LSL benefits will depend on the level of benefits provided, the fund's investment returns relative to wages growth, the timing of benefit payments, the amount of withdrawal surplus, and the administration costs. We have estimated the long term average levy rate based on the following assumptions:

- The fund can earn investment returns which exceed the rate of wages growth by 2% p.a.;
- Benefits are paid to an employee after every 10 years of service, on average;
- There is no significant amount of withdrawal surplus;
- Ongoing administration costs are between 0.1% and 0.3% of workers' wages;
- Establishment expenses are not included;
- Funds do not have to pay tax.

### Under these assumptions:

- A fund which provides 2 months LSL after 10 years of service would require a levy rate between 1.6% and 1.9% of worker's wages;
- A fund which provides 3 months LSL after 10 years of service would require a levy rate between 2.4% and 2.7% of workers' wages.

These figures are purely indicative. In order to estimate the costs for any specific fund, a full actuarial review should be conducted, taking account of the rules of the fund and the demographics of the fund membership.

### Defined Benefit Funds: Risks to employers

We have estimated the long term average levy rate which would be needed to fund LSL benefits. However, in a defined benefit fund, levy rates might vary widely over time. Volatility in the levy rate is also more difficult to manage when a fund's revenue base is cyclical or declining. For example, suppose that a particular industry is booming, and a large number of workers accumulate LSL benefits. Suppose that the fund then suffers large investment losses, creating a large deficit. If the industry is stable, these losses can be spread across a large number of employers, i.e. the levy rate would increase by a relatively small amount. But if the industry is facing profitability problems and the number of employers in the industry declines, a smaller number of employers must pay higher levies to cover the fund's deficit.

Clearly, in a defined benefit system employers bear the risk of volatility in levy rates. Many employers are unwilling to accept such risks. In the superannuation industry, employers have demonstrated a strong preference for accumulation benefits. The number of defined benefit superannuation funds has declined steadily over the last 20 years. The trend towards accumulation benefits has been particularly strong amongst smaller employers.

### Accumulation Funds: Risks to employees

In an accumulation fund, the workers will bear the investment risk. If there are poor investment returns, then the workers' accounts may not provide enough money to provide a replacement income during periods of LSL. As a result, it might be preferable to adopt a low-risk investment strategy. If we assume that the long term investment returns are roughly equal to long term increases in remuneration (i.e. a 0% gap), then the required contribution rates would increase slightly. For example, under these assumptions:

- A fund which provides 2 months LSL after 10 years of service would require a levy rate between 1.8% and 2.1% of worker's wages;
- A fund which provides 3 months LSL after 10 years of service would require a levy rate between 2.6% and 2.9% of workers' wages.

## SECTION 6.

### Tax implications

Currently employers required to prepare accounts recognise a liability to pay LSL to employees over an employee's period of service and then claim that liability as an expense in the accounts each reporting period. However, for income tax purposes no deduction is available until the LSL benefit is actually paid out or until the employer makes a leave transfer payment. As a result there is often a mismatch between the liability recognised by the employer in the accounts and the amount actually claimed as an income tax deduction in any particular reporting period.

A nationally consistent PLSL scheme would ensure that the amount provided for LSL in a particular year is tax deductible in that year. An income tax deduction for a levy paid to the scheme is supported by the ATO's approach to worker entitlement funds as it is envisaged that the scheme would have similar characteristics. The Commonwealth Government could legislate to make the position clear in this respect. In addition, because the LSL is paid directly to the member of the scheme, employers would not have to include these payments in their workers compensation calculations.

Another tax issue relates to the question of whether a levy paid by an employer would constitute the provision of a fringe benefit and be subject to fringe benefits tax (FBT) at a flat 46.5%. It could be argued that exemption from FBT should apply on the same basis as the current exemption for approved worker entitlement funds. If an employer levy paid to a scheme is treated as an exempt benefit for FBT purposes then it would also be excluded from liability to State payroll tax.

The treatment of existing worker entitlement funds in relation to the Superannuation Guarantee Charge could also be applied: that neither the worker entitlement fund or the employer have an obligation to make superannuation contributions on LSL payments made to an individual from the fund.

ATO class rulings have confirmed that a payment of LSL from a worker entitlement fund to an employee will receive the same tax treatment as if it had been paid directly by the employer. In addition, contributions by the employer to the worker entitlement fund are not assessable as income to the fund. A nationally consistent PLSL scheme, if structured appropriately, would provide an upfront income tax deduction in respect of an employer's liability to pay LSL as well as payroll tax and workers compensation payment savings.

Further tax incentives could be explored to minimise any increased costs for small employers. These could include company tax reductions linked with the cost of a levy.

## SECTION 7.

### Conclusion and Recommendations

We conclude that a national uniform system of PLSL accessible to all workers would be of great benefit: not only to employees, but also for employers, government and the community and economy generally. This system could build on extensive experience from existing PLSL schemes and the superannuation system, which provide strong viable models. PLSL should be introduced as part of a collaborative process between stakeholders and all levels of government, with supportive tax measures to minimise cost to employers and ensure the full value of entitlements to employees.

# Recommendations

- 1** That the Commonwealth government legislate for a uniform minimum Long Service Leave standard as part of the National Employment Standards.
- 2** That the Commonwealth government find ways to extend coverage of Long Service Leave through a portable scheme to include the large proportions of the workforce who are mobile between employers as a result of changing career patterns, rapidly shifting sectoral labour demand, and the growth of workplace flexibility through casual and part-time employment.
- 3** That the name for this employee benefit be changed to Accrued Employment Leave in recognition that it would no longer be tied to service with one employer.
- 4** That the Commonwealth government initiate a consultative process involving State and Territory governments and employer and employee representative groups to determine the most effective mechanisms for implementing portable long service leave and to broaden the level of community support.
- 5** That the Commonwealth government adopt a model for Accrued Leave Funds based on one, or a combination of, models successfully employed in the superannuation industry, namely Approved Deposit Funds, industry-based Defined Benefit Funds, or Accumulation Funds.
- 6** That the Commonwealth government consider the ways of minimising extra business costs, especially for small and medium sized enterprises, through favourable tax treatment of portable long service leave accounts in specified funds, tax offsets linked with the cost of a levy in the form of reduced company tax.
- 7** That the stakeholders consider an agreement for a one-off wage offset for the first year of an employer levy, to the extent of 1-2% of anticipated wage increases, to assist with the transition.
- 8** That existing portable long service leave arrangements in some sectors, whether established by State legislation or industrial instruments, be allowed to persist within the new system, at least for a transitional period.





# Introduction

## 1.1 Purpose of report

The *Fair Work Act 2009* established a framework for uniform minimum National Employment Standards (NES) across all States and Territories of Australia. The NES cover various types of leave, including annual leave, parental leave, carer's leave, and community service leave. In relation to long service leave the National Employment Standard preserved employees' existing rights in a transitional entitlement, pending the development of a uniform national long service leave standard.

The Fair Work Review proposed a national streamlining of the long service leave standard by 2015:

"The Panel recommends that the Commonwealth, State and Territory governments should expedite the development of a national long service leave standard with a view to introducing it by 1 January 2015."<sup>1</sup> The government's intention was to provide an opportunity for a community discussion on all aspects of long service leave entitlements. Before developing a uniform national standard, policy makers needed to establish what type of long service leave benefits should be provided, and what is the best way of providing these benefits for the greatest benefit of employees and employers.

This report aims to examine the feasibility of a nationally consistent portable long service leave (PLSL) scheme for Australia that would cover all workers, including those who are casual, permanent full-time and permanent part-time. The name of the entitlement would more appropriately become Accrued Service Leave.

Long service leave (LSL) is a benefit unique to Australia and New Zealand. It had its origins in the 19th century benefits to civil servants which enabled

long serving workers to travel 'home' to Britain, confident that they would be able to return to their positions when they arrived back in Australia. The post-war decades saw LSL become a widespread entitlement for workers in Australia as employers strove to be more comparable with the public service. Over time, each State and Territory passed long service leave legislation which set out the minimum entitlements in each jurisdiction (the current provisions are described in Section 3 of this report).

LSL has evolved over time as a result of trends to extend LSL benefits to a wider range of employees, reduce the qualifying and vesting periods for LSL benefits, and increase the amount of leave granted. These changes demonstrate recognition by State legislatures of the value of providing LSL benefits. Indeed, proponents of long service leave cite important benefits for both employees and employers (see Section 3), although its critics argue it is an obsolete entitlement.<sup>2</sup> Traditionally, three reasons have been cited for providing long service leave benefits:

- *to reduce labour turnover;*
- *to provide a reward for long and faithful service;*
- *to enable employees halfway through their working life to recover their energies and return to work renewed, refreshed, and reinvigorated.*<sup>3</sup>

The third objective, in particular, is becoming increasingly important to Australian workers. Demographic changes in the labour force are seeing Australians spend increasing proportions of their lifetimes in employment (see Section 2) and increasing numbers of workers are remaining in the workforce at older ages, consistent with government policy. As the length of time in





work increases, to 30 or 40 years or more, the importance of LSL entitlements – particularly for those who work in physically or mentally exhausting jobs – becomes increasingly evident.

Despite this, however, changes in the profile of Australia's workforce have resulted in a declining proportion of workers being able to access LSL benefits. LSL was originally designed to reward full-time employees for long and faithful service with one employer. However, Australia's workforce is increasingly mobile, driven by structural changes in the labour market, which have substantially increased the proportion of contract, casualised and part-time labour as employers seek labour flexibility. As a result, many workers are failing to qualify for long service leave – some due to employment choices and others for structural reasons. If labour mobility continues to increase in the future even fewer workers will be eligible to access these benefits.

Recognising this problem, a small number of industries with high structural job mobility, such as construction and contract cleaning, have introduced portable long service schemes (PLSLs). This broke the traditional nexus between the employee and a single employer by enabling workers to retain their LSL entitlements as they move from one employer to another, as long as they remain within the same industry. A review of existing industry-based PLSL schemes is described in Section 3 of this report.

While the introduction of PLSLs has improved access for a small percentage of workers, many remain unable to access LSL benefits. This has prompted questions over whether LSL entitlements should be strengthened and adapted more broadly to meet the changing needs of the Australian workforce. In particular, the potential to extend PLSL to cover more workers is one such consideration. The ACTU's Independent Inquiry into Insecure Work, for example, recommended that:

**“ The Federal Government support the expansion of portable long service leave schemes for insecure workers, particularly in contracting industries where workers are most exposed to poor job security.”<sup>4</sup>**

This report examines the feasibility of introducing a nationally consistent PLSL scheme. Section 4 explores three alternative models for the design of such a scheme. Each model is assessed against various criteria such as simplicity, flexibility, efficiency and cost. In Section 5, a simplified actuarial approach is presented to estimate the cost of providing these PLSL benefits.



## 1.2 Methodology

We assessed trends in the Australian Labour Force based on data from the census, the Australian Bureau of Statistics and from the survey of Household Income and Labour Dynamics in Australia (HILDA). We also prepared projections of future labour force patterns.

We reviewed the historical development of LSL arrangements in Australia. This report includes a summary of the key features of the minimum LSL entitlements provided under current Commonwealth, State and Territory legislation; and a description of the industry-based PLSL arrangements which cover workers in a small number of industries, including coal mining, building and construction, contract cleaning, security and community services. We reviewed annual and actuarial reports of these schemes, and conducted interviews regarding the features of the existing schemes with key stakeholders including fund administrators and the employer and worker representatives of their boards. This

allowed us to gain further insights into how well these schemes operate, their financial stability, and the costs and benefits.

We considered different approaches that might be used to extend PLSL to a broader range of workers. We looked at the problem from the perspective of the stakeholders – employees, employers, and government – in order to identify the criteria that might be used to assess these alternatives. Our analysis is informed by our knowledge of the issues which have arisen in the superannuation industry and the superannuation system as it has progressively evolved since the 1980s, to provide better portability of benefits as workers move from one job to another.

Each of the alternatives has advantages and disadvantages, costs and benefits. However, we need to be clear about the limitations of our approach. For instance, we do not provide an analysis of the risk for the alternative schemes proposed.

Employers will naturally be concerned about the additional cost of PLSL benefits. We have provided illustrations of the calculation of costs for





typical LSL benefits. This is designed to illustrate the factors which are likely to affect the cost, including (inter alia) benefit accrual rates, investment returns, wage increases, benefit design, workforce mobility, leave taking patterns, and administrative arrangements. We should stress that this illustration should not be used as an estimate of the costs of any particular scheme. Notably, the cost analyses do not address the cost savings that may be gained as a result of introducing a PLSL scheme. It is impossible to provide an accurate estimate of these costs and savings at this stage, since so many scheme details are as yet undefined and there is little data available on many of the key demographic and financial variables. The Actuaries Institute is sponsoring further research into some of these aspects.

The report is structured as follows:

- Section 2 presents an analysis of recent and projected trends in the Australian labour force and the implications of these trends for workers' capacity to access LSL entitlements;

- Section 3 outlines the history and rationale for LSL before examining the legislation governing existing standard and PLSL provisions across the various jurisdictions;
- Section 4 considers various factors that policymakers will have to consider when designing a nationally-consistent system of PLSL and then outlines three alternative models that could form the basis for the design of such a system;
- Section 5 examines the cost of funding PLSL benefits, illustrating the impact of variables such as investment returns, salary growth rates, administration costs, tax, staff turnover, and patterns of leave-taking; and
- Section 6 examines the tax implications and advantages for employers of a nationally consistent LSL scheme.

We hope that this report will provide a useful basis for further discussion on the provision of PLSL.

# Labour force trends and their implications for access to LSL

This section describes recent and prospective changes in the composition of Australia's labour force, trends in variables related to access to LSL, and differences in these patterns between demographic subgroups of the population and between industries. Particular attention is paid to the number of years Australians spend in employment over their lifetimes and to the numbers of years they have been employed by their current employer. The data in this section is drawn from the five-yearly population census, the Australian Bureau of Statistics (ABS), the Household Income and Labour Dynamics in Australia (HILDA) survey and labour force projections prepared by the authors.

Demographic data shows that in Australia: labour force participation is growing, especially amongst women; the number of years spent in paid employment is growing; the workforce is ageing; the proportion of the part-time workforce is increasing; and labour mobility is increasing. This means that access to LSL is restricted and potentially declining even as the need for it is increasing.

## 2.1 Length of time in employment

The increase in years spent in the paid workforce is not surprising. Life expectancy is increasing, and workers can look forward to a longer period of retirement. As a result, workers may need to remain in the workforce longer, in order to build up sufficient superannuation savings to provide an

income for many years in retirement. In response to the ageing of Australia's population, the government has taken steps to encourage older workers to remain in the workforce. The eligibility age for accessing lump sum superannuation benefits is increasing from age 55 to age 60; the eligibility age for the old age pension is increasing from 65 to 67; and further increases have been mooted.<sup>5</sup> The government has also taken steps to prevent age discrimination in employment, and has a policy of encourageing employers to recognise the benefits of employing mature, experienced workers. Indeed, many older workers now remain healthy and fit enough to continue working well past traditional retirement ages – particularly in occupations which do not require manual labour.

Between 2001 and 2011 the number of Australians counted as being in the labour force increased by 19.0%.<sup>6</sup> The growth rate for the number of females in the labour force (23.7%) was greater than that for males (17.1%), resulting in a modest increase in the female share of the labour force (from 44.9% to 46.6%). With a generally falling unemployment rate, the increases in the numbers of employed (18.0% for males and 25.1% for females) have been slightly more rapid than those for the labour force. These increases are the product of population growth in the working ages and increases in labour force participation.

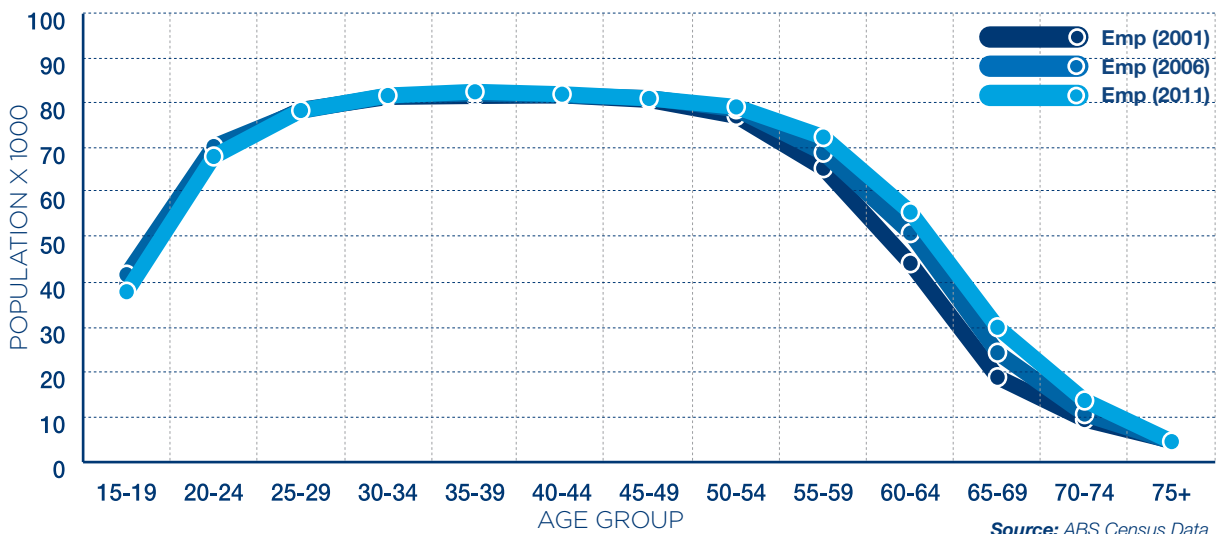
Between 2001 and 2011 the employment-to-population ratio for males increased for all ages over 30 years,<sup>7</sup> with the largest increases occurring in the later working ages (Figure 2.1).<sup>8</sup> For females there were increases for all ages over 25 years,<sup>9</sup> with the increases generally being greater than those for males (Figure 2.2). The increases were

especially large in the later working ages for females. For example, for females aged 60 to 64 years the percentage in employment almost doubled from 22.9% in 2001 to 40.1% in 2011. Figures 2.1 and 2.2 show that, in addition to a general increase in employment to population ratios, there has also been a trend towards a later pattern of labour force participation, reflecting the marked trend towards later retirement and, of secondary importance, lower employment to population ratios near the labour force entry ages. The trends for full-time employment-to-population ratios are broadly similar to those for all employment, except that the

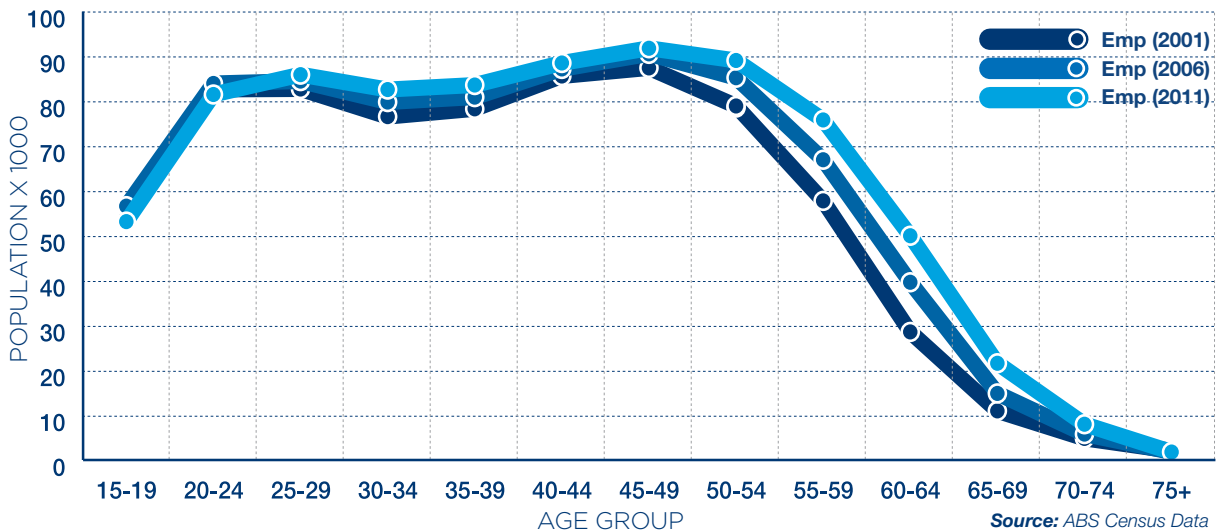
decreases below age 25 are more marked due to increases in the percentage of the employed who work part-time.

Australians are spending more of their lifetimes in employment. For new-born males the expected lifetime number of years in employment increased from 35.1 in 2001 to 36.8 in 2011.<sup>10</sup> The increase for female new-borns, from 28.7 years in 2001 to 31.9 years in 2011,<sup>11</sup> has been even more rapid. Whilst there were significant increases in the percentage of the employed who worked part-time as opposed to full-time (from 16.5% of employed males and 43.0% of employed females

**FIGURE 2.1**  
**EMPLOYMENT TO POPULATION RATIOS BY AGE FOR AUSTRALIAN MALES, 2001, 2006, 2011**



**FIGURE 2.2**  
**EMPLOYMENT TO POPULATION RATIOS BY AGE FOR AUSTRALIAN FEMALES, 2001, 2006, 2011**



in 2001 to 18.3 of employed males and 44.3% of employed females in 2011) (ABS 2012a), there was nonetheless a significant increase in the expected lifetime numbers of years in full-time employment (from 26.6 to 27.6 for males and from 14.2 to 15.4 for females). The increases in lifetime years in employment are driven by a combination of increased life expectancy and increasing participation in the labour force.

The shift towards a later pattern of workforce participation, combined with underlying ageing of the population, has resulted in a significant ageing of Australia's labour force. Between 2001 and 2011 the median age of males in employment increased from 39.3 to 40.9 and the median age of females in employment from 38.4 to 40.5. The median ages for males and females who are employed full-time also increased (from 39.9 to 41.3 for males and from 38.1 to 40.5 for females). The percentages of the employed who were 50 years or over increased from 23.9% in 2001 to 29.3% in 2011 for males and from 20.3% to 27.4% for females. There were also increases in the numbers of males and females in the later working and post standard retirement ages. For example the number of females aged 60 to 69 who were in employment rose by 169.7% between 2001 and 2011, whilst for males aged 65 to 69 the number in employment also more than doubled (an increase of 124.1%).

## 2.2 Labour force projections

Labour force projections for the period 2011 to 2021 were calculated by applying projections of future labour force participation rates and of employment to population ratios, which were calculated through a linear extrapolation of the 2001-2011 trends, to projections of the population. The projections of the population were prepared assuming that life expectancy at birth for males and females increases to 82.4 years for males (an increase of 2.2 years from 2011) and to 86.5 years for females (1.8 years) by 2021, using the projections of Li (2013), and assuming that net international migration remains constant at around its recent level of 180,000 per annum.

Under these assumptions the expected lifetime number of years in employment is projected to increase further to 39.0 for males and 35.4 for females by 2021, and the expected lifetime numbers of years in full-time employment to 29.0 for males and 16.8 for females. The median age of employed males is projected to increase further to 41.9 and that for employed females to 41.6 in 2021. The percentage of the employed who are aged 45 or over is projected to increase for males from 39.6% in 2011 to 43.1% in 2021, and for females from 38.8% to 42.8% over the same period.

## 2.3 Labour mobility patterns

High rates of labour mobility have been evident in recent years. In February 2012 nearly one-fifth (19.5%) of employed Australians had been with their current employer for less than one year, with the percentage for females (20.3%) being slightly higher than that for males (19.5%) (ABS 2012b). Younger adults are more likely than older adults to have been with their current employer for less than 12 months. Employed people in managerial and professional occupations have the lowest rates of mobility, whilst sales workers (27%), labourers (27%), machine operators and drivers (26%), and community and personal service workers (25%) have the highest rates.

Between 2000 and 2008 the percentages of males and females who had been with their current employer for less than a year remained fairly steady. However a marked drop was evident between 2008 and 2010, followed by a small and partial recovery between 2010 and 2012.

Changes in employment may be either voluntary or involuntary. The ABS data shows that 37% of the people who left their jobs left involuntarily; 16% because their employer went out of business or downsized the workforce; and 17% because their job was seasonal or temporary.<sup>12</sup> If an employer goes out of business, then the employees will involuntarily forfeit their accrued (but unvested) LSL entitlements.

There also have been some significant changes in the distribution of employment between industries over the 2001 to 2011 period. The largest increases in the share of total employment were recorded by health care and social assistance, construction, public administration and safety, and mining, whilst the largest decreases were for manufacturing, agriculture, forestry and fishing, and wholesale trade (Table 2.1). The distribution of the employed between types of occupation also has changed, with

increasing percentages in professional occupations and personal and community service workers and decreases in all the other 1-digit (i.e. broadly defined) Australian and New Zealand Standard Classification of Occupations (ANZSCO) categories.

These workforce changes reflect changes in Australia's economy. For example, the ageing population leads to an increase in demand for health care; the mining boom leads to an increase in employment in the mining industry; the decline

**TABLE 2.1**  
**PERCENTAGES OF EMPLOYED PEOPLE BY INDUSTRY, 2001, 2006, 2011**

INDUSTRY	PER CENT OF TOTAL EMPLOYED IN INDUSTRY			% CHANGE 2001-2011
	2001	2006	2011	
Agriculture, forestry & fishing	3.99	3.09	2.48	-38
Mining	0.91	1.17	1.76	+93
Manufacturing	11.82	10.46	8.98	-24
Electricity, gas, water & waste services	0.93	0.98	1.15	+24
Construction	6.55	7.80	8.24	+26
Wholesale trade	5.04	4.35	4.01	-20
Retail trade	11.12	11.35	10.51	-5
Accommodation & food services	6.52	6.32	6.47	-1
Transport, postal & warehousing	4.64	4.70	4.76	+3
Information media & telecommunications	2.46	1.94	1.77	-28
Financial & insurance services	3.76	3.83	3.75	0
Rental, hiring & real estate services	1.70	1.69	1.58	-7
Professional, scientific & technical services	6.61	6.61	7.26	+10
Administrative & support services	3.33	3.15	3.22	-3
Public administration & safety	5.83	6.68	6.86	+18
Education & training	7.56	7.66	8.00	+6
Health care & social assistance	9.56	10.50	11.61	+21
Arts & recreation services	1.39	1.40	1.51	+9
Other services	3.98	3.71	3.76	-6

Source: ABS Census Data



in manufacturing industries leads to a decline in employment in this sector. The workforce must be adaptable in order to cope with changes in demand for labour. However, under the current arrangements, workers who change their occupation are likely to miss out on LSL benefits.

## 2.4 Access to LSL

Our projections suggest that in the future, workers are likely to remain in the workforce for 35 to 40 years on average. Under these circumstances, the opportunity to take breaks from work from time to time is likely to be valuable. But how many workers will be able to take LSL?



According to ABS data, approximately 33% of workers report not having any entitlement to LSL.<sup>13</sup> As shown in Figure 2.3, those who are earning the least are most likely to report that they have no LSL entitlements.

The ABS data indicates that the majority of workers (about 67%) are entitled to LSL benefits. But under current arrangements, most workers will only be eligible to take leave if they remain with the same employer for 10 years. Therefore, the numbers who actually qualify to take LSL will depend on labour mobility patterns.

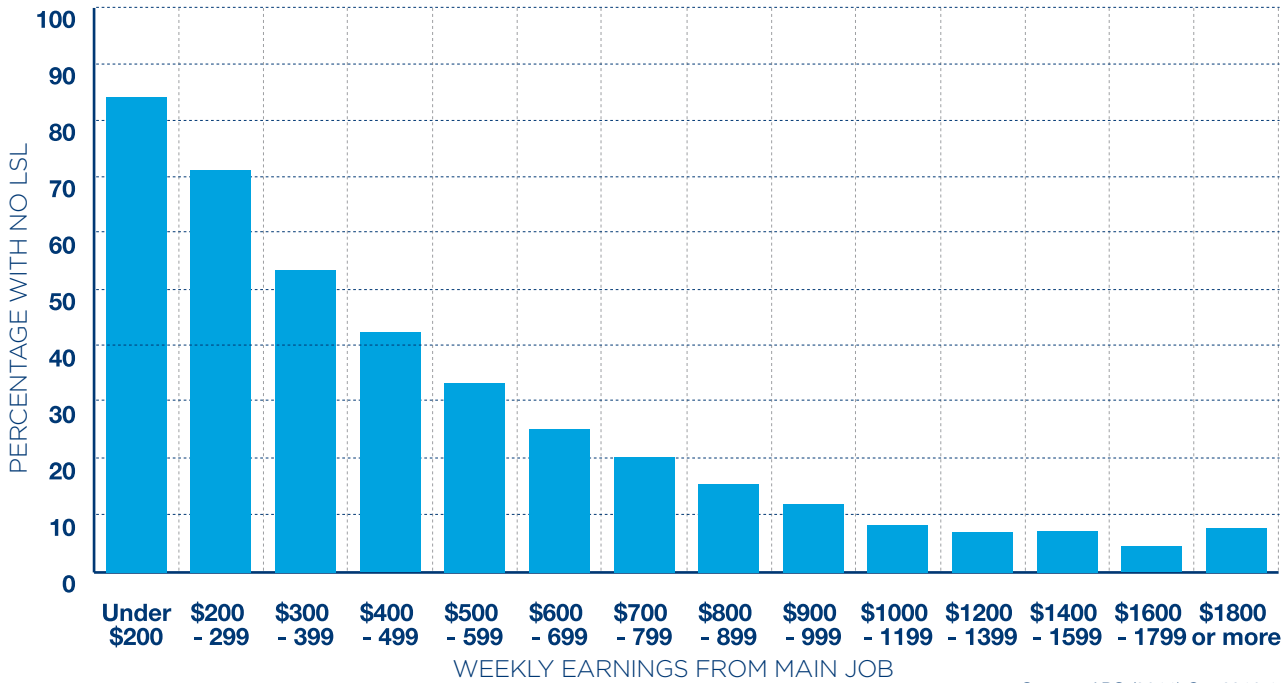
In order to gauge the extent of eligibility to LSL among employed Australians, and the extent to which this would have been different had a portable scheme been in operation, we have analysed employment data from the Australian Bureau of Statistics and from the 2009 survey of Household, Income and Labour Dynamics in Australia (HILDA Survey).<sup>14</sup>

Workers are generally entitled to take LSL after completing 7 or 10 years of service; they may be entitled to pro rata cash payments after 5 or 7 years on leaving the service of the employer and subject to certain conditions (depending on the jurisdiction, award, or workplace agreement). Therefore, the percentages of employed people who have been employed by their current employer for more than 5 or 10 years provides a crude indication of the extent to which employed Australians are eligible for LSL from their current employer.

The most recent data from the Australian Bureau of statistics survey shows that about 44% of workers had been employed by the same employer for at least 5 years. Only about 25% of workers had remained with the same employer for 10 years or more, even though as Figure 2.4 shows, the proportion of people working 10 years or more has increased slightly over the past 20 years.

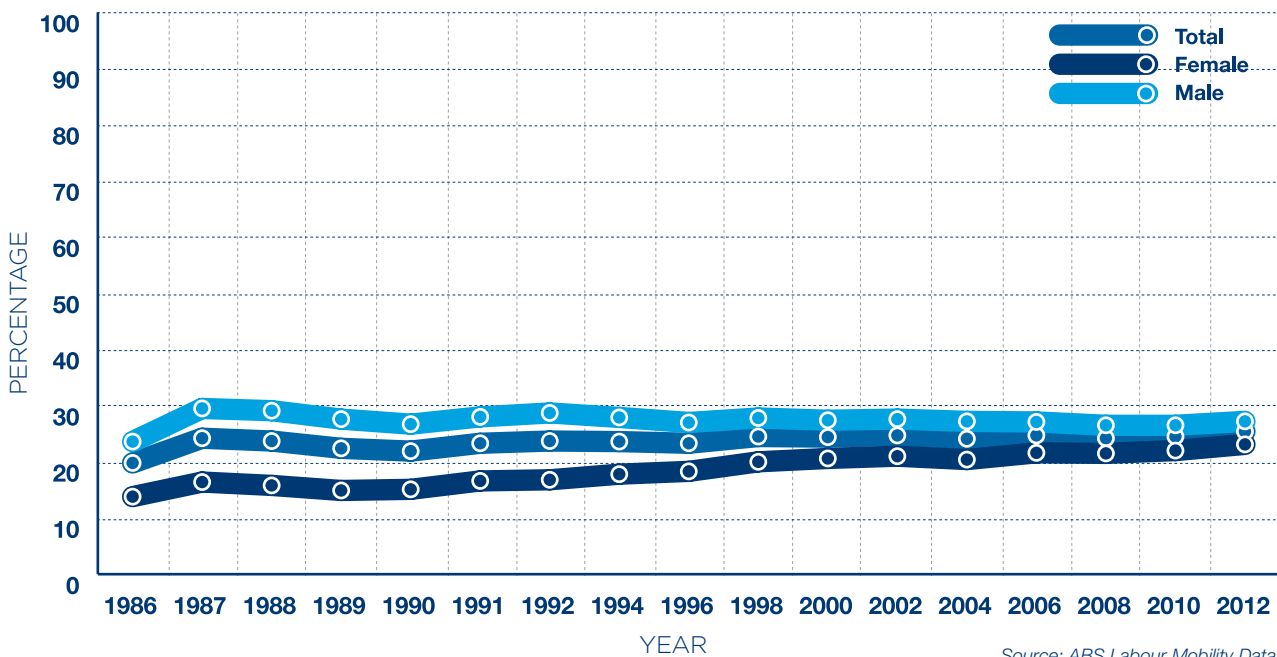
This is consistent with data from the HILDA Survey. In 2009, 24.5% of all employed people<sup>15</sup> and 26.9% of all full-time employed people in Australia had been with their current employer for at least 10 years. These figures have been fairly stable over the last 20 years for males, while increasing for females. There were significant increases in these figures between 2004 and 2009.

**FIGURE 2.3**  
**EMPLOYEES WHO STATE THAT THEY DO NOT HAVE ANY LSL ENTITLEMENTS (%), 2011**



Source: ABS (2011) Cat 6310.1

**FIGURE 2.4**  
**PEOPLE WORKING MORE THAN 10 YEARS**



Source: ABS Labour Mobility Data



Different subgroups have different job mobility patterns. The second column in Table 2.2 shows the percentage of workers who have been with the same employer for at least 10 years, subdivided between demographic subgroups of the population and between industries. Not surprisingly the percentage who have been with their current employer for at least 10 years increases rapidly with age. However even for the 55 to 64 age group only slightly more than half (51.7%) have been employed by their current employer for at least 10 years. In addition:

- Males are more likely than females to have been employed by their current employer for at least 10 years;
- The percentage of Indigenous Australians (12.1%) who have been with their employer for at least 10 years is well below average;
- Migrants are slightly more likely than the Australia-born to have been employed for at least 10 years.

Some of these differences would be due to differences in age composition: there is a general pattern of younger subpopulations tending to have higher percentages who have been with their current employer for fewer than 10 years.

The percentage of those who have been employed with their current employer for at least 10 years varies widely by industry, ranging from 52.9% for Agriculture, Forestry and Fishing and 38.4% for Education and Training down to 13.3% for Retail Trade and 8.0% for Accommodation and Food Services.

There is a general pattern of industries with younger workforces (for example, Retail Trade, and Accommodation and Food Services) tending to have higher percentages who have been with their employer for shorter periods of time and those with older workforces (for example, Agriculture, Forestry and Fishing, and Education and Training) tending to have higher percentages who have been employed for at least 10 years with the same employer.



**TABLE 2.2**  
**PERCENTAGES OF EMPLOYED**  
**PEOPLE BY DURATION OF SERVICE**

	(a) Percentage of all currently employed workers who have been with the current employer for at least 10 years	(b) Percentage of all currently employed workers who have been in the workforce for at least 10 years but have less than 10 years service with current employer
All	24.5	45.9
<b>AGE</b>		
15 to 24	0.1	0.0
25 to 34	7.9	39.7
35 to 44	25.3	69.8
45 to 54	39.1	57.6
55 to 64	51.7	46.6
65 and above	65.6	32.4
<b>SEX</b>		
Males	26.8	45.4
Females	22.1	46.5
<b>BIRTHPLACE</b>		
Australia	24.0	43.9
Main English-Speaking Overseas	28.5	58.7
Other Overseas	26.0	51.3
<b>INDIGENOUS</b>		
Indigenous	24.2	39.6
Not Indigenous	12.1	44.0
<b>INDUSTRY</b>		
Agriculture, Forestry & Fishing	52.9	30.2
Mining	16.9	61.2
Manufacturing	28.5	46.2
Electricity, Gas, Water & Waste Services	25.3	48.0
Construction	22.6	44.2
Wholesale Trade	21.7	54.9
Retail Trade	13.3	40.1
Accommodation & Food Services	8.0	35.0
Transport, Postal & Warehousing	28.7	54.6
Information Media & Telecommunications	25.7	41.3
Financial & Insurance Services	21.5	51.5
Rental, Hiring & Real Estate Services	14.2	56.1
Professional, Scientific & Technical Services	23.9	48.6
Administrative & Support Services	21.1	51.2
Public Administration & Safety	33.9	45.5
Education & Training	38.4	39.1
Health Care & Social Assistance	24.7	50.9
Arts & Recreation Services	18.7	42.8
Other Services	21.8	47.7

Source: HILDA Wave 9 Data

## 2.5 People with more than 10 years' lifetime work experience and less than 10 years with current employer

In order to assess the impact of improved portability of LSL benefits, it is preferable to divide the workforce into two groups: those whose combined lifetime duration of employment across all employers is less than 10 years (for example, recent labour force entrants) and those whose lifetime duration of employment exceeds 10 years (for example, experienced workers who have changed jobs). The latter group includes the people who generally would have qualified for LSL under a portable scheme but who would usually not be eligible on the basis of their length of service with their current employer.<sup>16</sup>

The third column of Table 2.2 shows the percentage of workers who have more than 10 years lifetime work experience but have less than 10 years of service with one employer. In 2009, 45.9% of employed Australians were in this category.<sup>17</sup> This figure is significantly higher than the equivalent figure for 2004 (36.5%).<sup>18</sup> The increase would reflect a combination of increased rates of workforce participation, the ageing of the workforce, and the high rates of labour mobility over the preceding 10 years, discussed in Sections 2.1, 2.2 and 2.3. Employees aged between 35 and 55 are most likely to fall in this category, which provides a crude indication of the potential beneficiaries from portability. The percentages of males and females in this category are similar.

Migrants, both those from the main English-speaking countries and those from other countries, are more likely than the average to have more than 10 years of lifetime work experience but have less than 10 years' service with one employer,

while Indigenous Australians are less likely than average to be in this category. These patterns reflect that whilst the percentages of Indigenous Australians and the Australia-born with less than 10 years' service with their current employer are above average, there are also higher percentages of these younger than average subpopulations with less than 10 years' work lifetime work experience. The differences between migrants and the Australia-born should be interpreted with caution in view of likely differences in the extent to which previous migrant work experience was overseas. This experience presumably would not be considered as counting towards PLSL.

The percentages of employees with more than 10 years of lifetime work experience and less than 10 years with their current employer varies between industries. Over three-fifths (61.1%) of employees in the mining industry and 56.1% of employees in Rental, Hiring and Real Estate Services are in this category. These are industries in which high percentages have been recruited relatively recently and additionally in which high percentages of the more recent recruits have extensive previous work experience. In contrast only 30% of employees in Agriculture, Forestry and Fishing, 34.9% of those in Accommodation and Food Services, and 38.9% of those in Education and Training fall into this category. As noted previously, Agriculture, Forestry and Fishing and Education and Training have relatively mature workforces in which relatively high percentages have been with their current employer for more than 10 years (Section 2.4). In contrast, in Accommodation and Food Services the small percentage of employees is primarily due to the low percentage who have more than 10 years' lifetime work experience.

## 2.6 Implications for access to LSL

In summarising the main findings above, a number of trends are evident.

### Labour force participation and time spent in employment are both increasing;

The significant rise of labour force participation among older workers reflects the increasing length of time workers are remaining in employment. This trend is expected to continue.

### Australian workers are highly mobile between employers;

Mobility is high with almost 1 in 5 workers employed by their current employer for less than one year.

### Differences in mobility across industries suggests structural drivers;

Labour mobility differs across sectors and is highest among those employed in industries such as: mining; wholesale trade; transport and logistics; rental, hiring and real estate; services; and healthcare.

### Labour force mobility is greater for certain categories of workers;

The benefit from LSL portability is more likely among workers aged 35 to 54, female workers and workers engaged in particular (generally lower-skilled) non-managerial service and blue-collar occupations. In particular, the highest mobility rates were seen among: sales, labourers, machine operators and drivers, and community and personal service workers. Notably, the highest mobility rates are reflected in occupations that tend to be characterised by high rates of contract and casual labour.

Overall, these trends reflect the low prevalence of long-term employment relationships, with around three in four workers working with their employer for less than 10 years (including many that have worked in the labour force for a longer period). Given that 10 years is the qualifying period for LSL in most States and Territories, these findings indicate the structural trend in the labour market away from long-term employment relationships is serving to limit access to the statutory LSL entitlement for a significant and growing share of the Australian workforce.

It is notable that those occupations which tend to be characterised by work that is highly physically and/or emotionally demanding are not only occupations that reflect a disproportionately high rate of work-related injury and illness,<sup>19</sup> but also, given the above analysis, are occupations that have the highest rates of labour mobility and therefore offer the least access to the potential benefits of LSL.

Taken together, this raises the question of how best to manage increased length of time spent in employment in the light of other major patterns of labour market experience. The following sections examine how the extension of PLSL schemes allowing workers to transfer their entitlements between jobs may help to address this problem.



# Long Service Leave in Australia

## 3.1 Brief history of LSL

Long service leave is an entitlement that is unique to Australia. In Britain, Greece and some parts of Canada, there is provision for extended annual leave according to length of service. Some New Zealand employment contracts provide for LSL (Labour Ministers Council, 1999). But as a statutory right to a sustained period of leave after an extended period of employment, LSL is a distinctively Australian provision.

The entitlement to LSL has its origins in the 19th century colonial public services. The Victorian and South Australian Civil Service Acts in the 1860s provided an entitlement for civil service officers who had completed at least 10 years of service to paid leave of absence for between 3 and 12 months. LSL was intended to provide public servants with an opportunity to sail to the United Kingdom or Europe and back. All State and Commonwealth public servants were subsequently granted the entitlement. It was then gradually but unevenly extended to other public sector employees.

Commonwealth awards began to include LSL provisions by consent in the late 1940s. However, LSL did not become a standard employment condition for all employees until the passage of the *Long Service Leave Act 1955 (NSW)*, which other States then followed by enacting similar legislation.

In 1964, the Commonwealth Conciliation and Arbitration Commission arbitrated its first LSL award to provide what has become the standard provision for non-public service employees. The entitlement was 13 weeks leave after 15 years of service with an employer, with pro rata payment in lieu on termination of employment after 10 years of service (Labour Ministers Council, 1999). State legislation and existing awards were amended to provide the same entitlement. In the ensuing years, most jurisdictions have provided for the entitlement to be available on a pro rata basis after 10 years of continuous employment. While LSL entitlements are predominately provided for under State laws, the Commonwealth makes legislative provision for entitlements for those employed in the Commonwealth public sector.

Table 3.1 details existing statutory LSL schemes in Australia and the primary piece of legislation which establishes them. In each jurisdiction, supplementary legislation and regulations provide specific and further details on operational matters of the schemes. The length of entitlement and qualifying period for LSL under each of the standard and portable schemes are also outlined in Table 3.1. Several patterns are clear. Most States provide for 8.67 weeks after 10 years of service. South Australia and the Northern Territory provide the more generous entitlement of 13 weeks leave after 10 of years of service. In the ACT, workers are entitled to take leave after only 7 years of service. Workers are entitled to LSL again after every additional 5 year period in most

jurisdictions. Workers in the NSW Metalliferous Mining sector have a more generous entitlement than the norm, with 3 months leave for every 10 years of service.

These schemes are typically State-wide and provide an entitlement to LSL for workers who complete continuous service with the one employer. This entitlement is not portable within an industry or across employers.

**TABLE 3.1**  
**STANDARD LSL ENTITLEMENTS**

JURISDICTION	KEY LEGISLATION	ENTITLEMENT
<b>NSW</b>	<i>Long Service Leave Act 1955</i>	2 months after 10 years' service. Then 1 month leave for each subsequent 5 years' service
<b>NSW</b>	<i>Long Service Leave (Metalliferous Mining Industry) Act 1963 No 48</i>	3 months after each 10 years' service.
<b>VIC</b>	<i>Long Service Leave Act 1992</i>	8.67 weeks after 10 years' service. Then 4.33 weeks after each additional 5 years' service
<b>QLD</b>	<i>Industrial Relations Act 1999</i>	8.67 weeks leave after 10 years' service. Then further leave after each additional 5 years' service.
<b>SA</b>	<i>Long Service Leave Act 1987</i>	13 weeks leave after 10 years' service. Then 1.3 weeks leave for each subsequent year.
<b>WA</b>	<i>Long Service Leave Act 1958</i>	8.67 weeks leave after 10 years' service. Then 4.33 weeks leave after additional 5 years' service
<b>TAS</b>	<i>Long Service Leave Act 1976</i>	8.67 weeks leave after 10 years' service. Then 4.33 weeks leave for each additional 5 years employment
<b>NT</b>	<i>Long Service Leave Act 1981</i>	13 weeks leave after 10 years' service. Then 6.5 weeks after each additional 5 years' service.
<b>ACT</b>	<i>Long Service Leave Act 1976</i>	0.2 months leave for each year of service, with leave available to be taken after 7 years' service.

*Note: 'Service' refers to continuous service with one employer*

## 3.2 Portable LSL schemes

Notwithstanding the potential benefits of LSL schemes to both employers and employees, many workers have found it increasingly difficult to qualify for a LSL entitlement in the context of increasingly short-term employment arrangements (as discussed in Section 2). Although these patterns have become much more prevalent since the 1980s, the use of short-term contract-based commercial arrangements have characterised industries such as construction, mining and property services, for much longer periods. One solution used increasingly in those industries, and established throughout the public sector, enables workers to receive their statutory entitlements to LSL by allowing them to gain credit for their long service in the industry, rather than to an individual employer, through the use of Portable LSL (PLSL) schemes.

PLSL entitlements are widely available to **public sector workers** in the State and Territory public sectors and the Australian Public Service. The source of public sector entitlements varies between jurisdictions, arising from legislation in some places and a combination of legislation and modern awards in others. What is significant for our purposes is that the LSL entitlement is essentially uniform across the country, with the exception of

NSW which has a lesser entitlement. Public sector worker entitlements are as follows:

- NSW public sector workers are entitled to 2 months ‘extended leave’ after 10 years’ continuous service in the public sector.
- In **all other** jurisdictions, public sector workers are entitled to 3 months long service leave following 10 years of continuous employment in the public sector – although in some cases the entitlement is drafted as 90 days (South Australia) or 13 weeks (Queensland, Tasmania and Western Australia) instead of 3 months.
- Portability is ensured through provisions concerning **recognised service** of a **continuous** nature, which, in all essential respects, are replicated in each set of LSL regulations (see example in Box 3.1).

Given the widespread access to PLSL by public sector workers, this report focuses on access to LSL available to workers employed in the private sector. PLSL emerged first in awards in the coal mining industry in 1949 on a national basis. Other instances have occurred on a State basis, as a result of legislation at that level. PLSL began extending into the building and construction industry in the 1970s, albeit with some variation between States (see Tables 3.2, 3.3, 3.4). Portability arrangements exist between the building and

### BOX 3.1 PLSL PROVISIONS IN THE VICTORIAN PUBLIC SERVICE AGREEMENT 2006 EVA 2009

**Clause 49.8.2** the following will be recognised as service in the Victorian Public Service for the purposes of long service leave (“Recognised Service”):

**49.8.2(a)** any Service with a State, Commonwealth or Territory of Australia Government Department or Public Service Authority; or

**49.8.2(b)** any service with a public entity under the Public Administration Act 2004 (Vic); or

**49.8.2(c)** an service with a local governing body that is established by or under a law of Victoria.

Notwithstanding the above, the Employer may recognise any service with a public service authority or local governing body of the Commonwealth, a State other than Victoria or a Territory of Australia.

construction industry State schemes; i.e. service under one of the schemes is counted for eligibility for entitlements under the other schemes. However, this relies on workers advising the schemes of their service periods, which leads to “leakage” of entitlements. To meet this issue the State building and construction industry schemes are currently working towards a national database.

In 1999 the ACT legislated for PLSL in the contract cleaning industry, a lead which Queensland and NSW followed in 2005 and

2011 respectively. The ACT has continued to be a pacesetter, subsequently introducing PLSL into highly casualised and contracted sectors of the community services and security industries.

Table 3.2 summarises the PLSL schemes currently operating in Australia’s private and not-for-profit sectors and the primary piece of enabling legislation. Arrangements that enable a limited portability of LSL entitlements between clearly defined circles of employers through awards and/or collective agreements<sup>20</sup> are not addressed.

**TABLE 3.2**  
**PLSL SCHEMES IN THE PRIVATE AND COMMUNITY SECTORS IN AUSTRALIA**

STATE	PLSL SCHEME	START	KEY LEGISLATION
NSW	Building and Construction	1986	Building and Construction Industry Long Service Payments Act 1986, Building and Construction Industry Long Service Payments Regulation 2011
	Contract Cleaning	2011	Contract Cleaning Industry (PLSL Scheme) Act 2010
ACT	Building and Construction	1981	Long Service Leave (Portable Schemes) Act 2009
	Contract Cleaning	1999	“
	Community Services	2010	“
	Security	2012	“
QLD	Building and Construction	1992	Construction Industry Long Service Leave Act 1987 Building and Construction Industry (PLSL) Act 1991, Building and Construction Industry (PLSL) Regulation 2002
	Contract Cleaning	2005	Contract Cleaning Industry (PLSL) Act 2005
VIC	Building and Construction	1976	Construction Industry Long Service Leave Act 1997 Rules of the Construction Industry LSL Fund as at 7 April 2009
SA	Building and Construction	1987	Construction Industry Long Service Leave Regulations 2003.
WA	Building and Construction	1986	Construction Industry Portable Paid Long Service Leave Act 1985 Construction Industry Portable Paid LSL Regulations 1986
TAS	Building and Construction	1971	Construction Industry (Long Service Leave) Act 1997
NT	Building and Construction	2005	Construction Industry Long Service Leave and Benefits Act 2005 Construction Industry LSL and Benefits Regulations as in force at 3 August 2012
Commonwealth	Coal Mining	1949	Coal Mining Industry (LSL) Administration Act 1991 - Amended by Coal Mining Industry (LSL) Legislation Amendment Act 2011. - Two related Coal Mining Industry Payroll Levy Acts also apply (both 1992 Acts)



### 3.3 Major points of difference in existing statutory PLSL schemes

For the purposes of comparing PLSL schemes, there are eight key aspects of PLSL schemes which need to be considered:

1. Administrative arrangements for management of the fund;
2. Length of employees' LSL entitlement and qualifying period;
3. Length of service required for pro rata leave entitlements under specified conditions;
4. Rate of pay;
5. Rate of employer levy;
6. When the levy is payable;
7. Frequency of employer reporting on workforce and deadline for returns;
8. Type of employment arrangement covered e.g. 'employee', sub-contractor, contractor, labour hire.

We examine each of these aspects of PLSL schemes below in order to draw out similarities and differences between systems.

#### 3.3.1. Administrative arrangements for the management of the fund

Each of the PLSL schemes currently in operation is established by statute, which specifies the procedures for the creation, constitution and functions of the administrative body managing each fund. Table 3.3 provides details on the organisational arrangements for administering each PLSL scheme. In most cases, members of the governing body of the organisation are appointed either by the relevant Minister, the Government or the Governor. The Victorian fund, Coinvest, is a public company in which directors are elected at an annual general meeting from employer and employee constituencies. Tasbuild, the Tasmanian construction industry fund, is a private trustee company whose directors are representatives of employers and employees through their relevant union bodies. The powers of all of these bodies may vary according to their legal personality, which is based on the legal form in which they have been constructed.





**TABLE 3.3**  
**ORGANISATIONAL ARRANGEMENTS FOR ADMINISTRATION OF PLSL SCHEMES**

	ORGANISATION	TYPE OF ORGANISATION
<b>BUILDING AND CONSTRUCTION</b>		
<b>NSW</b>	Long Service Payments Corporation	NSW Government agency, under Ministerial control with day-to-day management by CEO. The Corporation administers the Building and Construction Industry Long Service Payment Fund
<b>Victoria</b>	Coinvest Limited	Public company acting as trustee for the Construction Industry Long Service Leave Fund
<b>Queensland</b>	QLeave (Trading Name of Building & Construction Industry (Portable Long Service Leave) Authority)	Board consisting of 8 members appointed by Governor for terms of 3 years
<b>South Australia</b>	Construction Benefit Services	Board is a body corporate consisting of 7 members appointed by the Governor to administer the scheme
<b>Western Australia</b>	Construction Industry Long Service Leave Payments Board	Board of a statutory authority acting as a body corporate, which has 7 members appointed by State Government. Chair is appointed by the Minister
<b>Tasmania</b>	TasBuild Limited	Private trustee company acting as the trustee for the Construction Industry Long Service Fund, which has 6 directors and an independent chairperson. The Fund is administered as a trust fund
<b>Northern Territory</b>	NT Build	Statutory board appointed by the Government
<b>ACT</b>	ACT Long Service Leave Authority	Statutory authority reporting to ACT Government and Legislative Assembly
<b>CONTRACT CLEANING</b>		
<b>NSW</b>	Long Service Payments Corporation	NSW Government agency, under Ministerial control with day-to-day management by CEO, which administers the Contract Cleaning Long Service Leave Fund
<b>Queensland</b>	QLeave (Trading Name of Contract Cleaning Industry (Portable Long Service Leave) Authority)	Board consisting of 6 members appointed by the Governor for terms of 3 years
<b>ACT</b>	ACT Long Service Leave Authority	Statutory authority reporting to ACT Government and Legislative Assembly
<b>COAL MINING</b>		
	Coal Mining Industry (Long Service Leave Funding) Corporation	Corporation acting as a body corporate established by the Act, with a board consisting of six directors appointed by the Minister for Employment and Workplace Relations. The Corporation administers the Coal Mining Industry Long Service Leave Fund

### 3.3.2. Employees' LSL entitlements

Table 3.4 summarises employees' PLSL entitlements in existing schemes. Each PLSL scheme provides for workers to accrue a LSL entitlement after a specified period of service. They also permit workers to retain accrued service towards their LSL entitlement for a specified period of absence from the industry (see Section 3.3.3) and a break in service of 4 years is permitted

without any loss of accrued service entitlement. For instance, under the Victorian construction industry scheme, workers retain their accrued service entitlement for a service break of up to 4 years, where that break is due to illness or incapacity to work in the industry.

Note, the coal mining scheme also has a unique provision under s.39C of the relevant Act that all service contributes to the LSL entitlement provided there has not been a break of more than 8 years from the industry. No conditions are attached to the reasons for the service break from the industry.

**TABLE 3.4**  
**PLSL ENTITLEMENT**

STATE	PLSL SCHEME	KEY LEGISLATION
NSW	Building and Construction	8.67 weeks for each 10 years' service; 4.33 weeks for each subsequent 5 years' service
	Contract Cleaning	Cleaning - 8.67 weeks after 10 years' service (3650 days); 4.33 weeks for each 5 years' service thereafter (1825 days)
ACT	Building and Construction	13 weeks after 10 years' service
	Contract Cleaning	6.067 weeks after 7 years' service
	Community Services	4.333 weeks after 5 years' service
	Security	8.667 weeks leave after 7 years' service
QLD	Building and Construction	8.67 weeks after 10 years' service (2,200 days); pro rata entitlement after 7 years' service
	Contract Cleaning	8.67 weeks after 10 years' service; pro rata after 7 years' service
VIC	Building and Construction	42.4 days after each 7 years' service
SA	Building and Construction	13 weeks after 2600 days (260 days p.a.)
WA	Building and Construction	8.67 weeks after 10 years' service (2200 working days); 4.33 weeks for each 5 years' service thereafter (1100 days)
TAS	Building and Construction	13 weeks after 10 years' service (2,600 days); pro rata for each 5 years' service thereafter
NT	Building and Construction	65 days after 10 years' service (2600 days) (i.e. 13 weeks), 32.5 days for each 5 years' service thereafter
Common -wealth	Coal Mining	13 weeks for each 8 years' service

*Note: 'Service' refers to service with one or multiple employers in the industry. Where number of days is given in brackets (e.g. WA – 2200 working days), this refers to the number of days of service which provide an entitlement. State laws often specify the number of days of service which will be regarded as 1 year of service. This is qualified by a specification that no more than a certain number of days will be credited to an employee in a 12 month period. Thus if 220 days is regarded as one year service, and no more than 220 days may be credited in a 12 month period, then 2200 days constitutes 10 years of service.*

### 3.3.3. Length of service for pro rata leave entitlements under certain conditions

Almost all the schemes provide for payment of PLSL entitlements on a pro rata basis where employment ceases prior to the basic qualifying period. Circumstances enabling pro rata payments generally include the following:

- When the employee dies;
  - When the employee retires on reaching retirement age;
  - When the **employer** terminates the engagement for any reason other than for serious misconduct;
  - When the **employee** terminates the engagement due to:
    - intention to permanently leave the industry;
    - domestic or other pressing necessities; or
    - illness or incapacity of such a nature as to prevent further engagement;
  - The coal mining scheme only provides for pro rata payments for eligible employees, which ordinarily means employees who have accrued the 8 years of service for entitlement to normal PLSL.
- The various portable schemes also provide different rules regarding the amount of service required for entitlement to take pro rata LSL:
- Most of the **building and construction industry** schemes specify within the legislation circumstances under which workers are entitled to take pro rata leave after 7 years of eligible service.
  - The ACT scheme contains slightly different provisions:
    - workers with 7 years' service are entitled to payment of accrued leave upon permanently leaving the industry, but 20 weeks must have passed since they left the industry;
    - workers are entitled to pro rata payment after 5 years of service where workers have left the industry due to permanent incapacity, retirement or death;

For the other PLSL schemes, the pro rata entitlement generally comes into effect after 5 years:

- In the **contract cleaning industry**, the NSW and ACT schemes provide for pro rata leave after 5 years, whereas the Queensland scheme has a 7 year service requirement;
- The ACT **community sector** scheme provides for pro rata leave after 5 years;
- The **coal mining industry** scheme does not appear to provide any service requirements for entitlement to payment in lieu of leave in circumstances where the leave entitlement is sought for one of the prescribed reasons (death, illness or incapacity, retirement). Only in the case of redundancy is a time requirement specified, which is that the employee has completed 6 years of service.

### 3.3.4. Rate of pay during LSL

Appendix 1 provides examples of the wage payment on which LSL is based. Each statute specifies what 'ordinary pay' or 'remuneration' is, for the purposes of calculating LSL entitlements. Because the meaning of these terms varies somewhat between schemes, we have provided representative examples of the statutory provisions for the building and construction industry and the contract cleaning industry schemes (see Appendix 1). Some building and construction schemes, including the NSW scheme, do not require the worker to take leave in order to receive the entitlement; i.e. once eligible for an entitlement, the worker can apply for and receive a payment from the scheme while still continuing to work.

**TABLE 3.5**  
**RATE OF EMPLOYER LEVY PRESCRIBED**  
**IN PLSL SCHEMES**

<b>COMMONWEALTH</b>	<b>COAL</b> 2.7% of eligible wages paid
<b>NSW</b>	<b>B &amp; C</b> Up to 0.6% of cost of erecting building; Current Regulation (2011) prescribes levy of 0.35% of cost
	<b>CLEANING</b> 1.7% of total remuneration
<b>VIC</b>	<b>B &amp; C</b> 2.7% of every workers' ordinary rate of pay
<b>QLD</b>	<b>B &amp; C</b> 0.3% of total of all costs relating to construction work (if over \$80,000)
	<b>CLEANING</b> 2% of ordinary wages paid
<b>SA</b>	<b>B &amp; C</b> 2.25% of total remuneration paid
<b>WA</b>	<b>B &amp; C</b> 2% of ordinary rate of pay for all workers (except apprentices) for all days engaged on site
<b>TAS</b>	<b>B &amp; C</b> 2% of ordinary pay
<b>NT</b>	<b>B &amp; C</b> 0.3% of cost of project for work started on or after 1 April 2012 (0.4% for work started prior)
<b>ACT</b>	<b>B &amp; C</b> 1.25% of ordinary wages (no levy on apprentices)
	<b>CLEANING</b> 2% of ordinary wages paid
	<b>SECURITY</b> 1.47% of ordinary wages
	<b>COMMUNITY SERVICES</b> 1.67% of ordinary wages

Note: 'B & C' refers to Building and Construction Industry

### 3.3.5. Rate of employer levy

Employer levies vary considerably between schemes (see Table 3.5). Even within the one jurisdiction there can be considerable variations. There are two methods of levying employers:

- Levy is a proportion of total costs for construction/project: This method applies to the construction schemes in NSW, Queensland and Northern Territory. The prescribed levy currently varies from 0.3% to 0.35% of total costs.
- Levy is a proportion of ordinary or eligible wages paid. This method applies to all other PLSL schemes reported below. These levies vary between 1.25% (ACT building and construction industry) and 2.7% (for the coal mining industry and Victoria's construction industry). The average for these 11 schemes is a 1.81% levy and the most common is a 2% levy of wages paid.

As explained in Section 4, the levy rates have varied substantially over time.

At present, levies in many schemes are higher than usual. This reflects the impact of the Global Financial Crisis. Funds which suffered investment losses have increased levies in order to recoup their losses.









### 3.3.6. When the levy is payable

Requirements as to when employers must pay the levy are likely to affect perceptions of the cost burden and also employers' flexibility in relation to transferring the funds. With some schemes, employers must pay up-front and with others, payment occurs on a regular basis, with payment intervals varying also. Thus in many cases, employers must pay the levy on a quarterly basis, but in other cases it is monthly, two-monthly or half-yearly.

Construction industry LSL schemes in NSW, Queensland and NT, which require employers to pay levies calculated as a percentage of the cost of the project, provide that the levies must be paid before the work commences. These schemes also allow for employers to pay by instalments in certain circumstances. For instance, in NT, where the amount owed exceeds \$10,000 or the work is scheduled to last for one year or more, employers can pay in instalments. In NSW, employers can pay by instalment where the amount exceeds \$100,000 or where work will continue for more than one year.

PLSL schemes that calculate the levy as a percentage of wages paid generally provide for payment following the reporting of workforce statistics. Thus employers must report at regular intervals on the number of workers, hours worked and so forth by a certain date, and are then given a legislated period to pay the total levy to the fund.

### 3.3.7. Frequency of employer reporting on workforce and deadline for returns

Reporting requirements are as follows:

- For the Victorian and WA construction industry schemes and for each of the contract cleaning LSL schemes (NSW, Queensland, ACT) employers must report quarterly;
- The Queensland and NSW building and construction schemes have annual reporting;
- In SA (construction industry), there is a two-monthly reporting schedule;
- In Tasmania (construction industry), reports are required at the end of each month, or quarterly if the levy payable is less than \$100 or if the organisation employs three or fewer workers;
- In NT (construction industry), a half-yearly reporting cycle applies to employers who choose to pay by instalment (rather than up-front);
- With the coal mining industry scheme, employers must report workforce data at the end of every month.

A number of schemes have introduced or are introducing online reporting to make reporting easier for employers.

The flexibility for employers regarding transfer of funds owed to the Administering Body also depends on the actual deadline for returns on workforce data. In some cases, this buys them considerable time. Deadlines vary as follows – returns must be provided:

- Within 14 days of end of reporting period – Victoria (Construction), Queensland (Cleaning, Construction) and NSW (Cleaning);
- Within 15 days of end of reporting period – in WA;
- Within 21 days of prescribed period – in SA (construction);
- Within 28 days of end of quarter – for the coal mining industry scheme;
- Within one month of end of reporting period – in NT (construction), and for all the ACT schemes.

In the Queensland building and construction scheme, for which levies are based on project costs of \$80,000 or more, employers must notify the fund prior to the issue of a development permit or, if no permit is given, before the work starts. In the NSW building and construction scheme, levies are based on project costs of \$25,000 or more and the employer must pay the levy, or begin instalments, prior to a construction certificate being issued.

In each jurisdiction, the enabling statute provides for civil penalties for late returns. The severity of fines varies according to the quantum of penalty units prescribed and the value of each penalty unit in particular jurisdictions. Penalties are imposed by courts, as the funds in almost all cases do not impose penalties directly. In the Queensland building and construction scheme failure to pay the levies before the work starts could result in a compound interest rate of 2% per month, or part thereof, applying to unpaid amounts. The Tasmanian building and construction fund applies a higher rate of levy where an employer is found to have under-reported or failed to report.

---

### 3.3.8. Type of employment arrangements covered

---

Schemes also vary in terms of the type of workers who are entitled to receive PLSL. The industries which currently have PLSL schemes provided by legislation are those which have experienced long-standing but also growing proportions of workers in short-term and non-traditional employment arrangements.

The traditional distinction in Australian employment law between contract of service and contract for service is applied in a number of these schemes, with some making PLSL available only to those engaged on a contract of service. However, some quite clearly ‘rope in’ workers engaged through other arrangements, including sub-contractors, contractors and labour hire arrangements.

This is an important distinction and one which dramatically affects the coverage and cost of a PLSL scheme. It is also an issue that is likely to be politically controversial, particularly at the present time.

The exclusion of workers on contracts for service from regulation by employment law, and hence various industrial entitlements, is something which currently is attracting considerable attention in Australia. In 2012, employer groups engaged in significant litigation to try to stem encroachments by trade unions through enterprise bargaining to regulate employment conditions for these workers. The following patterns can be identified:

- **Coal mining industry** – PLSL is restricted to ‘employees’ as defined in s.13 of the *Fair Work Act 2009 (Cth)*;
- **Contract cleaning industry** – PLSL available to **workers** and **contractors**, therefore including workers engaged both in a contract of service and contract for service;

- **Construction industry** – In WA only workers on a contract of service are covered. The remaining schemes generally provide the entitlement also to those engaged in a contract for service, including sub-contractors, other contracts for labour, and workers engaged in group training schemes and apprenticeships.

Various PLSL statutes provide for the inclusion of subcontractors and/or workers on contracts for service. The clauses in the statutes take different forms.

In NSW, the construction industry scheme provides a PLSL entitlement to workers and subcontractors. Employers are required to register employees and report on their length of employment. Subcontractors must register themselves and provide returns on their own working arrangements with respect to the hours and days worked. Box 3.2 contains the definitions of each type of work and then the rule in relation to subcontract workers and their responsibilities in relation to registering for LSL.

- The definition of ‘worker’ under the Queensland law is slightly different – see Box 3.3.
- The SA Scheme covers working directors and self-employed contractors on a voluntary (opt-in) basis; entitlements are based on the accumulation of fixed dollar contributions with interest.
- The ACT Scheme provides an entitlement to workers, which include employees and contractors (as defined in s.10 – see Box 3.4. For each group of workers (building and construction, contract cleaning, security and community service workers) there are provisions for how LSL payments are calculated for contractors in each of those sectors. Box 3.4 presents an extract from the Act regarding contractors in the construction sector scheme (s.1.13).

## BOX 3.2

### BUILDING CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS ACT 1986 (NSW) NO 19

**Section 3: subcontract worker** means a worker who performs work otherwise than under a contract of employment.

**worker** means any person who, under a contract, whether or not a contract of employment, performs building and construction work, however remunerated, but does not include a person of a class prescribed as exempt by the regulations or a person who performs, or supervises the performance of, any such work under a contract of employment.

#### **Section 21 Subcontract workers—claims for service credits**

- (1) A registered worker may furnish to the Corporation a claim for service credits in respect of building and construction work performed by the registered worker under a contract other than a contract of employment.
- (2) A claim for service credits under subsection (1) may be furnished:
  - (a) within 12 months after 30 June in any year, in respect of building and construction work performed by the registered worker in the year immediately preceding that 30 June,
  - (b) within 12 months after the registered worker permanently ceases work in the building and construction industry, in respect of building and construction work performed by the registered worker in the period commencing on 1 July immediately preceding that cessation of work and ending on that cessation of work.



**BOX 3.3**  
**QUEENSLAND BUILDING AND  
CONSTRUCTION INDUSTRY (PLSL) ACT 1991**

**s. 3A Who is an eligible worker**

(1) An **eligible worker** is an individual who—

- (a) under a contract of service is engaged to perform work in the building and construction industry for the majority of the person's ordinary hours of work; or
- (b) under a contract, whether or not the contract is a contract of service, or at piecework rates, is engaged to perform work in the building and construction industry, for labour only or substantially for labour only, for the majority of the person's ordinary hours of work; or
- (c) under a contract, whether or not the contract is a contract of service, performs work in the building and construction industry for the majority of the person's ordinary hours of work, unless—
  - (i) the individual—
    - (A) is paid to achieve a stated result or outcome; and
    - (B) has to supply all, or substantially all, of the plant and equipment or tools of trade needed to perform the work; and
    - (C) is, or would be, liable for the cost of fixing a fault with the work performed; or
  - (ii) a personal services business determination is in effect for the individual performing the work under the *Income Tax Assessment Act 1997 (Cth)*, section 87-60.



## BOX 3.4

### LONG SERVICE LEAVE (PORTABLE SCHEMES) ACT 2009 (ACT) S 8 WHO IS A WORKER?

#### s 8 Who is a worker?

Each of the following is a **worker** for a covered industry:

- (a) an employee for the industry;
- (b) a contractor for the industry.

**Note** An individual may be declared by the Minister to be an employee or a contractor for a covered industry (see s 11).

#### s 9 Who is an employee?

(1) An individual is an **employee** for a covered industry if the individual is—

- (a) employed by an employer for the industry (whether in the ACT or elsewhere); or
- (b) declared to be an employee for the industry under section 11

(2) In this section:

**employed** includes employed as—

- (a) a full-time employee; or
- (b) a part-time employee; or
- (c) a casual employee; or
- (d) a person remunerated at piecework rates or completely or partly by commission; or
- (e) an apprentice.

**Note** For this Act, an individual declared to be an employee of a stated employer is taken to be employed by the employer (see s 11 (3)).

#### s 10 Who is a contractor?

(1) An individual (other than an employee) is a **contractor** for a covered industry if the individual—

- (a) carries out work in the industry for another person for fee or reward on the individual's own account; or
- (b) is declared to be a contractor for the industry under section 11.

(2) Also, an individual who is a working director of an employer for a covered industry is taken to be a contractor for the industry.

#### s. 1.13 Leave payments for service as registered contractor— building and construction industry

(1) For section 1.11 (How are leave payments worked out for the building and construction industry?), the amount payable to a registered worker for the building and construction industry for long service leave for service accrued as a contractor is the total of the following for the service:

(a) amounts paid by the worker to the authority under section 56

(Determination of levy—contractors);

(b) interest at the determined rate worked out from the date of receipt of each amount paid under section 56 until the designated day for the leave.

(2) The governing board must determine an interim rate of interest from time to time prior to the determination of the rate under subsection (1).

(3) The determined rate of interest must be determined at the end of each financial year for the previous financial year, and is—

(a) if the construction industry scheme funds invested made a return—75% of the rate of the return for the financial year in which the determination is made; or

(b) if the fund did not make a return or made a loss—nil.



### 3.4 Review of the established PLSL schemes

In order to assess the advantages and disadvantages of the established PLSL schemes, we have considered the following information:

- The arguments for and against the introduction of these schemes, as set out in Parliamentary debates/policy papers/feasibility studies when these schemes were first established and/or under consideration;
- Previous Parliamentary reviews of some of the PLSL schemes; and
- Feedback from stakeholders: interviews conducted with the employee and employer representatives in industries with PLSL schemes and with the board members of these schemes.

#### 3.4.1. Arguments for and Against the establishment of PLSL Schemes

Several new PLSL schemes have been established over the last fifteen years, including for the Building and Construction Industry in the Northern Territory; Contract Cleaners in NSW, the ACT, and Queensland; and Community Workers and Security Guards in the ACT.

The State or Territory governments normally consulted with stakeholders before introducing the new scheme. Typically the consultation processes would include publication of discussion papers and actuarial feasibility studies; acceptance of submissions from stakeholders; interviews with industry bodies representing both employers and unions; and surveys.

The unions and employees were generally strongly in favour of the new schemes. The employer



reactions were more mixed (often depending on the size of the employer organisation). The employers could see that the proposed schemes provided some benefits for the employer as well as the employees (albeit at some cost).

The following examples illustrate the consultative processes and the rationale for the introduction of new industry-based PLSL schemes in recent years.

Queensland introduced a PLSL scheme for cleaners in 2005. The Queensland government held extensive consultations before introducing the new scheme, and obtained the support of employer organisations.

In 2010 the ACT established a new PLSL fund for the Community Services Sector.

Proposals for the establishment of more PLSL schemes have not always been successful. Several years ago, the Victorian government proposed the establishment of a PLSL scheme for community workers. In 2007 the government commissioned a feasibility report which included actuarial recommendations on the design of the scheme and provided an initial estimate of costs. In 2009, the Department of Human Services held meetings to discuss these proposals with stakeholders. As a result of this process “it became apparent that there was substantial employer opposition to the proposed CSS PLSL scheme, particularly on the basis of the cost and administration requirements.” Eventually, the government decided not to proceed with the proposed scheme.<sup>28</sup>

## EXAMPLE: NSW CONTRACT CLEANING PLSL SCHEME

The government explained the purpose of the proposed scheme:

The Contract Cleaning Industry (Portable Long Service Leave) Bill 2010 seeks to eliminate the inequity experienced by thousands of contract cleaners who are unable to access long service leave entitlements through no fault of their own.<sup>21</sup> The scheme further delivers on the Government’s commitment to protect low-paid and vulnerable workers who, through no fault of their own, have been unable to access their entitlements because of the nature of their industry.<sup>22</sup>

**The government then consulted with stakeholders. It seems that both employers and employees supported the proposed scheme.**

..... I announced that the New South Wales Government was committed to examining the feasibility of a portable long service leave scheme. This was met with overwhelming support from cleaning workers. This bill will give cleaners a fair deal for all the hours they have dedicated to their job. Since then New South Wales Industrial Relations has undertaken a comprehensive consultation process to ascertain the level of industry support for the scheme, to assess the scheme’s financial viability and to explore optimum governance and administrative arrangements. Peak industry stakeholders who participated in regular consultation meetings include the Liquor, Hospitality and Miscellaneous Union, the Building Service Contractors’ Association of Australia, NSW Division and the Australian Cleaning Contractors Association. I am told that it was immediately evident that each of the stakeholders had considered

a scheme of this kind in some detail, with many elements of the proposal meeting with unanimous support and/or a high degree of consensus.

**The benefits for employers were identified:**

The support of industry stakeholders reflects the strong belief that a statutory scheme supported by a comprehensive workplace education and compliance regime will act as a practical and effective deterrent for non-compliant operators. Importantly, the new scheme will help maintain a level playing field for employers competitively tendering for cleaning services contracts while protecting the core benefits of essential service workers. I am told that the stakeholder consultations were characterised by a spirit of informed and constructive engagement.<sup>23</sup>

It is anticipated that, apart from the obvious benefit to cleaners and their families, there will be a number of related positive effects including a boost to industry retention rates and, by retaining skills and experience, increased service standards in industry performance. This is a significant step forward to the cleaning industry, which has often been characterised by a race to the bottom on wages and conditions.<sup>24</sup>

There will be benefits for New South Wales in the form of a more stable industry, and workers will be able to take their long service leave and come back to their jobs. Formerly, when employees wanted a rest from work or to take a holiday or a trip back home, many of them had to leave their positions and hope to find another position later. Employers would lose the benefit of their valued employees' expertise and loyalty. Employers know the value of keeping their valued and trusted workers: it is good for business. The constant

search for new staff is costly and time consuming. There are also costs in taking on new workers, including their training and supervision, and the uncertainty of the performance of new staff and how it might affect contractual obligations.<sup>25</sup>

**It appears that the peak industry body supported the new scheme, although this support was not unanimous.**

The Government announced its intention to examine the feasibility of a portable long service leave scheme for cleaning workers in August and claims to have consulted widely since and to have received support from stakeholders for the scheme. The Australian Contract Cleaners Association has confirmed to me that this is the case, but concerns have been raised from others that that organisation, or any other organisation, is unlikely to represent the whole of the industry.<sup>26</sup>

The Opposition (Liberal/National Parties) did not oppose the legislation, and the PLSL Scheme for Contract Cleaners commenced operations in 2011.



## ACT COMMUNITY SECTOR SCHEME

The following information is taken from a report on *Portable Long Service Leave for the ACT Community Services Sector, prepared for the Department of Disability, Housing, and Community Services* (March 2009).

The main purpose of the scheme was to “support the community sector to attract and retain a skilled workforce and foster a more sustainable Community Services Sector in the ACT.”

The government started by consulting the peak bodies in the industry and the employers/managers of large organisations. This was done by issuing a discussion paper, collecting submissions, and holding targeted interviews. The key finding of this consultation process were:

*“The proposed Scheme was strongly supported by unions and employees as an appropriate strengthening of employees’ entitlements. However the degree of support from employers was mixed, with smaller employers showing significantly more support for the scheme than larger employers. The primary objection from many large employers in the community sector was that such a Scheme will not achieve success in the apparent goal of supporting the retention of staff within the sector.”*

The ACT government also commissioned a survey of employers and employees. 122 people responded to the survey: 60% were employees and 40% were employers. The survey results were:

*“Overall there were very high levels of support for the Portable Long Service Leave Scheme. The statement I would support the introduction of a Portable Long Service Leave Scheme’ received a very strong mean score of 4.1 out of 5 (where 1 = strongly disagree and 5 = strong agree)”.*

Most respondents believed that the new scheme would allow the sector to attract and retain staff; and would be of benefit to employees.

Survey respondents provided the following comments on the advantages of the scheme:

*“It allows [for] employees who may need a break from particularly stressful areas of community service (high risk, behavioural management, mental health) and leave[s] the door open for a return to the sector without penalty or fear of losing entitlements”*

*“Moving between jobs is often the only way to advance in a career in the community sector and thus portability of long service leave will enable people to increase skills, experience, training, and thus provide more valuable service to clients and employees.”*

*“It allows for extended periods of leave, particularly since mostly women work in the sector. I am thinking about the time women take to step out of the workforce, have children and raise them to school age, re-engage with work.”*

*“Allows for employees to plan the work/life balance better and with greater security.”*

On the other hand, the consultation process also identified a number of concerns about the proposed scheme.

Many of the Community Sector organisations were concerned about the cost of providing additional LSL benefits. Since there is generally high staff turnover in this sector, LSL costs were only about 1% of salaries. The provision of PLSL was expected to push LSL costs up to 2% of salaries. Since most of these Community Sector organisations operated on very tight budgets, the additional cost would lead to a reduction of service standards; lay-off of some staff; or an increase in the fees charged to customers for their services. These organisations suggested that the increased LSL costs should be funded by an increase in government funding for the Community Services sector.

Some employers were also concerned about the difficulties of finding staff to “fill in” while others were on leave. They suggested that employers might be reluctant to hire people who already had accrued LSL entitlements from prior jobs, since this would cause staffing difficulties. During the consultation process, some employers suggested that new employees should not be



allowed to take LSL within the first 12 months at their new organisation.

Although the employers did have some concerns, the strength of support for the scheme outweighed these reservations. The ACT government decided to go ahead and establish a PLSL scheme for Community Sector Workers, and the new scheme commenced operations in 2010.

Three years into the operation of the scheme, the experience of both employers and employees is reported to have been largely positive. Recent interviews with employer representatives found:

*“The way the scheme has been administered in the ACT is really good. Certainly when the community sector scheme came on board it coincided with new technology that allows electronic submissions. It makes a big difference in terms of us just being able to upload ordinary files from our administration systems and it has made the process quite easy. If that had not been the case, and we had to prepare paper returns, then it would have been quite onerous. But the technology is now at a point where it is a much simpler process to administer.”*

Compliance was not seen as a significant issue either: *“We have very high rates of compliance. There was significant education that occurred in the lead-up to the scheme and the Authority has a regulatory role and has active discussions with employers and agencies. In fact all four schemes in the ACT have very high rates of compliance.”*

Nevertheless, challenges were evident, for example: *“The biggest challenge is the need to run dual administration systems in the transition phase because part of the entitlement is held with the organisation and part with the board. But once the transitional period is over it will be much simpler.”*

In terms of the scheme’s advantages and disadvantages the employer representative noted: *“We always saw that the key advantage was that the employees got their entitlements. From a purely financial perspective a portable long service scheme is more expensive –*

*particularly in a sector like ours where a lot of the LSL allocations weren’t being realised because we have high turnover and people often work in multiple part-time or casual positions. These are hard jobs to work in and this is one of the sectors where you really encourage people to take some decent time out – because they need it. To be supportive of these types of schemes sends a very strong message to our staff; that we do actually understand the reality of their everyday work and we are looking out for them in terms of them accessing it. This is an entitlement. [PLSL] actually recognises the need to take a break after a long and intensive period of work. It is a significant issue in a sector like ours where we know that there is a lot of movement across organisations but potentially not any break of activity and service. If [workers] are taking a break, they are rejuvenating then they are more likely to stay in the sector.*

*“Overall there has been a really strong acceptance of this scheme in this industry. There are still pockets of employers who raise concerns, who take longer to get their heads around it, although they do tend to be concentrated in sub-sectors, and those are potentially subsectors that are going through a whole range of change anyway. In a sense it largely reflects other things going on. But overall, I think it has been a really smooth transition; it certainly costs more, it does. But in terms of what the benefits are, they outweigh all the obvious costs. You have to take that broader perspective, if you are seen as a good, flexible employer who is looking out for their staff then that impacts retention and good people will come work for you. You save money on a lot of the hidden costs associated with burnout, turnover and lost productivity. It is absolutely in our interest [to have PLSL]. To be able to ensure that there is recognition of service and staff are able to realise their entitlements is a real benefit. The ability to provide a better environment for staff is the main advantage of portability.”*





### 3.4.2. Previous official reviews of established PLSL schemes

Some of the industry-based PLSL schemes have been in operation for many years. From time to time, their operations have been subjected to review.

A review of the WA construction industry scheme in 1996 found that 56% of employers and 69% of employees supported the scheme. Nevertheless the report recommended that the scheme be scrapped, because of the high turnover of construction industry workers. The high turnover rates meant that many employees would not remain in the industry long enough to obtain benefits.<sup>29</sup>

In 1997, the Minister for Workplace Relations and Small Business (Peter Reith) initiated a review of the LSL funding arrangements in the black coal mining industry.<sup>30</sup>

Some of the larger employers in the industry favoured closing down the PLSL fund and distributing its assets back to the employers. These employers felt that the system was not flexible enough to cope with the changing patterns of employment and remuneration in the industry. Other employers (mainly the smaller employers) were satisfied with existing arrangements and reluctant to disturb the status quo. The review recommended the scheme's closure, and suggested that the fund's assets should be returned to the mining industry employers. The CFMEU announced its "implacable opposition" to any such changes and threatened to go on strike to defend PLSL. The report's recommendations were never implemented.<sup>31</sup>

In 2003 the Cole Royal Commission reviewed PLSL schemes in the building and construction industry. Submissions from employer organisations and unions “*without exception supported the retention of the existing schemes*”.<sup>32</sup> The Commissioner did note some problems with the financial management of these schemes, which are discussed in Section 4 below.

In 2011 a Tasmanian Parliamentary Committee recommended the dissolution of the Tasmanian PLSL scheme (TasBuild). Many employers were quite satisfied with TasBuild, but others were rather critical. The majority of Committee members favoured winding up TasBuild, and replacing it with an increase in contributions to superannuation funds: the increased contributions would be set aside to provide LSL benefits, although it appears that this would contravene the superannuation fund sole purpose test. Despite these findings, the Tasmanian Government has reportedly promised to consider extending PLSL to a wider range of industries.

---

### 3.4.3. Feedback from stakeholders

---

In the course of our research, we interviewed a number of people involved in the management of established PLSL schemes: representatives of employers, employees, and administrators.

These stakeholders generally presented a positive view of these schemes and saw the advantages of PLSL as outweighing its costs.

A number of interviewees (including employer representatives) said that PLSL allowed workers to receive their LSL entitlements, and that the levy system was an effective way of collecting funds without imposing an administrative burden on employers. However, some interviewees said that the obligation to make LSL payments into industry funds effectively imposed an additional cost burden on employers operating in industries where the profit margins were typically very small.

## Potential advantages of PSL schemes

- **Retention of workers** – A key consideration underpinning the creation of PLSL schemes was the high levels of labour mobility and the prevalence of non-permanent and short-term working arrangements in these industries, which created difficulties for employers in retaining staff and meant that workers had difficulties in qualifying for their LSL entitlements. The introduction of PLSL was intended to address these challenges, but it is difficult to determine whether or not the industry schemes have helped to meet this objective. PLSL can allow workers to take a break from mentally or physically challenging jobs with a high rate of burnout or injury. These outcomes could lead to high levels of workers exiting the industry and thereby erode employer incentives to invest in human capital. Conversely, the costs of LSL for employers could be potentially offset by improved health and safety outcomes.
- **Equity** – Workers in highly casualised or contract roles would otherwise have no practical access to LSL.
- **Mobility and flexibility** – Workers have more capacity to move between employers or take short periods out of employment to meet commitments such as carer responsibilities without losing the accumulated entitlement to LSL.
- **Work environment** – Workers have the capacity to take a sustained period of leave to rejuvenate after a lengthy period of continued work, which has advantages for boosting productivity and employee morale.
- **Employee attraction** – Flexibility for workers is seen as a benefit for “good employers” as employees felt less compelled to stay in poorly managed workplaces in order to meet LSL eligibility requirements.
- **Non compliance problems reduced** – Employers would pay for entitlements as they accrue.

- **Free-riding problems reduced** – Under the existing rules, employers have no obligation to provide any LSL benefits to employees who leave before completing the vesting period (5 or 7 years’ service depending on the jurisdiction). As a result, employers might be tempted to sack employees shortly before they become eligible for benefits. Industry-based LSL schemes mean that all employers are obliged to fund LSL entitlements, regardless of whether they retain employees who reach the vesting period for taking leave.
- **Administrative benefits for employers** – Industry funds effectively remove from employers the responsibility for administering LSL arrangements and payment for employees. The industry-based funds have improved efficiency in record-keeping.
- **Cost certainty** – Greater cost stability is provided to employers because the pay-as-you-go operation of portable schemes limits the potential for employers to accumulate liabilities and not being able to pay employees their entitlements if they become insolvent or have trading difficulties.
- **Tax benefits** – Employers can claim a tax deduction for payment of the levies; and the portable industry funds are not required to pay tax on their investment income. An illustration of the potential tax advantages is given later in this document.
- **Financial costs of providing benefits for employees who leave after a short period of service** – In industries where many workers would not have achieved the qualifying period under non-portable schemes, the introduction of PLSL has effectively imposed an additional financial cost for employers. By contrast, PLSL often means that employers are required to provide levy contributions for all potentially eligible employees.
- **Prefunding impact on business cash flows** – One interviewee noted that many (particularly smaller) employers had failed to provide for LSL benefits in their accounting systems and simply paid LSL payments from consolidated revenues as required. The PLSL schemes require employers to prefund these benefit payments. This has an impact on the employers’ cash flows.

### Potential disadvantages of LSL portability

- **Administration costs for employers** – This factor was pronounced during transitional periods of newly established schemes and was particularly onerous under schemes that previously used paper systems of returns (but have largely been alleviated by the advent of electronic return systems).

## 3.5 Extra benefits of Long Service Leave

### 3.5.1. Research into the benefits of taking leave for employees

There is very little research into the benefits of long service leave. However, there is research into annual leave, and some of this research sheds light on the need for LSL. In general the importance of leave from work for employee health, well-being and work/life balance has been widely acknowledged.<sup>33</sup> Long hours of work with a lack of adequate leave have been associated with stress-related illness, including heart disease and stroke. This can represent a significant cost to employers.

The key findings in a report released by Safe Work Australia in April 2013 included, for example, that “Mental stress claims are the most expensive form of workers’ compensation claims” - primarily due to the lengthy periods of work absence typical of these claims.<sup>34</sup> Furthermore, more psychosocial compensation claims related to work pressure than any other subcategory of mental stress.<sup>35</sup>

While 70% of workers who experience mental stress do not apply for compensation,<sup>36</sup> stress is linked to cognitive risk factors that drive many workplace accidents and illnesses. Employers can also face significant non-compensable costs arising from the negative impact of work stress on staff morale, productivity, ‘presenteeism’ and dysfunctional behaviours. Conversely, studies such as Cairncross and Waller have pointed out that people who take leave are generally more productive and exhibit fewer symptoms of workplace stress. Allowing workers to take LSL is therefore likely to benefit employers by helping to improve productivity and reduce employers’ occupational health and safety and costs.<sup>37</sup>

Annual leave provides an opportunity to take a short break from work each year. However, previous studies have shown that about six in ten workers are “stockpiling” their annual leave. According to research from the Centre for Work + Life, the most common reason for not taking leave is that workers are saving it for a future holiday (this was the reason specified by about 40% of full-time workers).<sup>38</sup>

Similarly, a study commissioned by Tourism Australia also found that many Australian workers are stockpiling their annual leave. When asked about barriers to leave-taking, 40% cited concerns about availability of funds; 24% said that they were saving up leave for a big holiday; and 26% said that they wanted to have leave available for emergencies, such as illness or job loss.<sup>39</sup> Of course, better LSL entitlements would help to meet these needs.

According to the survey conducted by the Centre for Work + Life, about 56% of workers would rather have 2 weeks additional leave instead of a 4% pay rise. This suggests that:

**“... increased leave opportunities, including longer holidays, are likely to be associated with improved work-life outcomes and appreciative workers.”<sup>40</sup>**

LSL also provides an important period of rest for workers in those occupations, particularly susceptible to long-term fatigue and associated stress. Shiftworkers are a key group in this regard, given that circadian rhythms do not adapt easily to changing work schedules and fatigue is an additional health and safety risk factor in stress responses to the shiftwork experience.<sup>41</sup> As Smith noted, the shiftworker ‘is engaged in trying to achieve a complex balance between useful hours of wakefulness for work, family and leisure with the maintenance of an individually acceptable level of fatigue for both sleep and wakefulness’.<sup>42</sup> LSL provides an opportunity for extended relief from the fatigue and stress involved.

Some studies have suggested that the provision of leave will also produce benefits for employers. For example, Cairncross and Waller have pointed out that people who take leave are generally more productive and exhibit fewer symptoms of workplace stress. Stress is linked to higher levels of claims for workplace accidents and illness (including mental health claims, which have been escalating in recent years). Allowing workers to take LSL might help to reduce employers’ occupational health and safety costs.<sup>43</sup>



### 3.5.2. Benefits to tourism and hospitality

The study by Tourism Australia referred to above was part of its extensive No Leave, No Life campaign designed to encourage employees to take their leave instead of stockpiling it.<sup>44</sup> The tourism and hospitality industries would be obvious beneficiaries. Although this campaign was focused on annual leave, many of the same arguments for taking funded accrued leave to the benefit of industry as well as employees could be mounted for long service leave. The Business SA chief executive, Peter Vaughan, made this connection in 2009.<sup>45</sup>

Similar arguments have been mounted in Europe where the tourism and hospitality sector is a beneficiary of extensive annual leave and paid public holiday provisions. The EU sets a paid leave floor of 20 days (4 weeks) per annum, but several countries provide for more, notably France with 30 days (6 weeks) and Sweden with 25 days (5 weeks). Extra paid holidays are up to 13 extra days in some European countries.<sup>46</sup> Commentators have noted the coincidence of generous leave and productivity in the same European countries and suggested a link between the two, benefiting industry as a whole as well as the tourism and hospitality sector.<sup>47</sup>

In addition, it is common in a number of European countries for employees to receive extra payments for their leave periods as a result of collective agreements. For example, Danish workers receive a 12.5% bonus during their holiday, Swedish workers receive 12%, and Norwegian workers receive 11%. Employees in Luxembourg receive a 13th monthly wage, and in Italy 13th and 14th monthly wages. In Iceland annual leave entitlements increase with long service.<sup>48</sup> Outside Europe, Brazil, Singapore and the Philippines have employee entitlements for a 13th month of pay for annual leave.<sup>49</sup> The tourism and hospitality is a strong supporter of these arrangements since it generally considers that it is a major beneficiary and that employment opportunities in the sector are sustained at higher levels than they would otherwise be.

### 3.5.3. Fair Entitlements Guarantee and payment of LSL entitlements in event of insolvency

A major problem for a substantial number of employees over the years has been the non-payment of entitlements when companies became insolvent. One of the entitlements affected has been LSL, for which organisations do not normally set aside funds as the entitlements accrue, but pay from revenue when employees are due to take the leave. One of the advantages of PLSL funds for employees is that these entitlements can be paid in full in the event of insolvency.

For the same reasons, the extension of PLSL funds would result in a significant saving to the Commonwealth government budget. The Fair Entitlements Guarantee (FEG) is the Commonwealth government fund from which minimum payments are made for employee entitlements owed when businesses become insolvent. The FEG replaced the General Employee Entitlements and Redundancy Scheme (GEERS) on 5 December 2012. GEERS/FEG covers a wide range of employee entitlements, including unpaid wages, unused annual leave, pay in lieu of notice, and redundancy payments as well as LSL.

Payments under this scheme are funded from general tax revenue. Commonwealth budget allocation to GEERS has increased from \$40m upon the scheme's inception in 2001/02 to \$195m in 2011/12. LSL entitlements made a substantial contribution to the total spend for GEERS, and can be expected to continue to do so for the FEG.

Table 3.6 shows the proportion of LSL entitlements compared with the total GEERS payments by the Commonwealth government for the period 2007/08 to 2011/12. Here we find three trends. First, the total expenditure on GEERS more than tripled in the period to reach almost \$200 million. Correspondingly, the LSL component of the GEERS expenditure also tripled, to exceed \$24.5 million. Finally, as a proportion of the total GEERS expenditure in this period, the LSL fluctuated slightly, but accounted



**TABLE 3.6**  
**LONG SERVICE LEAVE COMPONENT OF GEERS EXPENDITURE, 2007/08-2011/12**

FINANCIAL YEAR	TOTAL GEERS EXPENDITURE \$	LSL COMPONENT OF GEERS \$	LSL % OF TOTAL GEERS
2007-08	60,779,791	7,856,104	12.9
2008-09	99,756,911	13,403,266	13.4
2009-10	154,058,670	17,799,682	11.6
2010-11	151,497,218	17,959,723	11.9
2011-12	195,534,647	24,503,383	12.5

Sources: Department of Education, Employment and Workplace Relations (2012) Annual Report 2011-12, Canberra, accessed April 10 2013, available at <http://foi.deewr.gov.au/documents/deewr-annual-report-2011-12-full-version>;

Department of Education, Employment and Workplace Relations (2011) Annual Report 2010-11, Canberra, accessed April 10 2013, available at [http://foi.deewr.gov.au/system/files/doc/other/annual\\_report\\_201011.pdf](http://foi.deewr.gov.au/system/files/doc/other/annual_report_201011.pdf);

Department of Education, Employment and Workplace Relations (2010) Annual Report 2009-10, Canberra, accessed April 10 2013, available at [http://foi.deewr.gov.au/system/files/doc/other/annual\\_report\\_200910\\_part\\_1.pdf](http://foi.deewr.gov.au/system/files/doc/other/annual_report_200910_part_1.pdf);

Department of Education, Employment and Workplace Relations (2009) Annual Report 2008-09, Canberra, accessed April 10 2013, available at [http://foi.deewr.gov.au/system/files/doc/other/annual\\_report\\_200809\\_part\\_1.pdf](http://foi.deewr.gov.au/system/files/doc/other/annual_report_200809_part_1.pdf);

Department of Education, Employment and Workplace Relations (2008) Annual Report 2007-08, Canberra, accessed April 10 2013, available at [http://foi.deewr.gov.au/system/files/doc/other/annual\\_report\\_200708\\_volume\\_1.pdf](http://foi.deewr.gov.au/system/files/doc/other/annual_report_200708_volume_1.pdf).

for between 11.6 and 13.4%. This represents a substantial government funding commitment without a PLSL scheme.

This expenditure continues to rise significantly. The Department of Education, Employment and Workplace Relations (DEEWR) increased the 2012/3 budget for GEERS/FEG to \$304 million after higher than expected payouts in the second half of 2012. Recently reported figures from DEEWR reveal that in the nine months to March 2013, \$205 million had been spent.<sup>51</sup> The LSL proportion of this will no doubt fall as a result of redundancy payments being uncapped in the new FEG. Nevertheless, LSL entitlements remain a substantial contributor and will continue to rise in absolute terms as total expenditure continues to increase.<sup>52</sup>

### 3.5.4. Contribution to national saving and investment

One of the potential benefits of establishing PLSL funds to cover the workforce generally is the contribution they could make to national saving and investment. The argument in this regard is similar to that for superannuation.

Both saving and investment have tended to be higher as a share of GDP in Australia relative to other advanced economies. Consensus is lacking over the explanations for this, but according to a number of substantial analyses, part of the explanation for Australia's relatively high and

increasing level of national saving is the gradual growth of compulsory superannuation.<sup>53</sup> Gruen and Soding (2011) estimate the boost to national saving over recent years from compulsory superannuation to be about 1.5% of GDP, up from around 0.5% of GDP in 1992.

PLSL funds will not result in as substantial a contribution to savings as superannuation, since the percentage of contributions to them would be much lower. Nevertheless, they could be expected over time to significantly add to national savings in the same way as superannuation, thus providing a further substantial source of investment capital.

### 3.6 PLSL and small business

Small business is of special importance for PLSL arrangements because it is such a large employer and is often identified with low rates of survival. High turnover in small businesses would mean that their employees were especially vulnerable to loss of LSL entitlements without a portable scheme.

According to the Australian Bureau of Statistics, around 96% of all ‘businesses’ are small businesses, defined as employing less than 20 employees. However, around 64% of these small ‘businesses’ do not employ staff.<sup>54</sup> Every ABN is counted as a ‘business’, including individual contractors. So if we only count businesses that employ people, then around 89% are small. Small businesses account for 39% of total employment, or 46% of private sector employment in Australia.<sup>55</sup> They account for the greatest proportion of employment in the following sectors:

- Agriculture, forestry and fishery – 86%;
- Rental, hiring & real estate – 77%;
- Construction – 63%;
- Professional, scientific & technical services – 56%;

- Accommodation & food services – 51%;
- Transport, postal & warehousing – 41%;
- Retail trade – 38%.<sup>56</sup>

One of the sectors with a high proportion of small businesses, construction, is already working with PLSL schemes that have high levels of approval from employers.

Interestingly, it is a myth that business size heavily influences survival rates and that small businesses generally have a lower survival rate than larger ones. That simply is not supported by the data. Non-employing small businesses have the worst survival rate, but they are not relevant for LSL. It is only by combining non-employing with employing small businesses that all small businesses of less than 20 employees appear to have low survival rates.<sup>57</sup>

In fact, amongst employing businesses, small businesses appear to have no worse and in many cases, better survival rates than larger businesses. It is true that businesses employing 1-4 employees do consistently have lower survival rates than businesses with 5-19 employees, but not by much, and not consistently lower than the overall average or businesses which were larger still.

For business entries in 2007/08 the average survival rates for just employing businesses were as follows:

- 83% for small business, compared with 82% for all employing businesses at 2009;
- 70% for small business, compared with 69% for all employing businesses at 2010;
- 62% for small business, compared with 60% for all employing businesses at 2011.

What this means is that small business will not represent a disproportionate call on PLSL funds as a result of more frequent turnover in that sector.



# Designing portable long service leave schemes

**Under the *Fair Work Act 2009*, the government has the power to establish National Employment Standards, including standards for long service leave entitlements. If the government decides to extend the portability of long service leave benefits, how could this be done to include as wide a range of workers as possible, including those who are casual, contract and part-time?**

There are three aspects to this problem: possible limitations in the Constitutional powers of the Commonwealth, and assuming these can be overcome, vesting of entitlements, and transfer of entitlements.

Firstly, it is not entirely clear how LSL would be established at a national level if it is to be generalised, and therefore, involve compulsory levies on employers similar to existing portable schemes or superannuation. The existing PLSL schemes were set up under State legislation. The Commonwealth government has two options. One is to legislate directly, which could be subject to constitutional challenge by the States. However, the Commonwealth has expanded its direct regulation of various forms of leave in recent years, e.g. carers' leave, without constitutional challenge, and it may therefore be able to extend its powers further. The Corporations Power of the constitution has enabled substantial Commonwealth expansion of industrial relations jurisdiction in recent years. The Fair Work Act might give the Commonwealth government the power to require compulsory LSL contributions. An alternative approach would be to provide the PLSL through cooperative arrangements with the States whilst the Commonwealth institutes model

legislation, as it did with occupational health and safety. A cooperative approach was implied by the Fair Work Review proposal for national streamlining of LSL, referred to at the beginning of this report. This would require support from the States. This report is not intended to address this political and legal issue, but instead focuses upon the technical aspects of design of a PLSL scheme.

Secondly, portability requires full vesting of each worker's LSL entitlements. At present, workers only receive their pro rata LSL entitlements if they remain with the same employer for a specified period, known as the "vesting period".<sup>58</sup> If the worker leaves service before the completion of this vesting period, the worker forfeits their accrued LSL benefits. In order to improve portability, workers should be entitled to a pro rata benefit whenever they leave service, even after a short period of service, for whatever reason.<sup>59</sup> Effectively, the "vesting period" would be reduced to zero. Each employer would have a liability to pay a specified amount (a levy or contribution) in respect of the LSL entitlements accruing for each worker during each worker's period of employment.

Thirdly, it would be necessary to develop rules for the payment of LSL benefits and the transfer of leave entitlements. At present, in each State, pro rata LSL benefits are paid in cash when an employee leaves service; and employees cannot transfer their leave entitlements to the next employer. This means that a worker might not be able to take LSL until s/he has completed another ten years of service with a new employer. However, under a PLSL scheme, a worker might not take a cash payment when s/he leaves a job. Instead,





the money set aside to pay the accrued benefits would be held in reserve (either in a defined benefit fund or in a separate accumulation account, as described below). The worker would then transfer his/her leave entitlements to the new employer, and continue to accrue more leave in the new job. When he/she did eventually take leave, s/he would be able to draw upon the reserved funds from previous periods of employment in order to finance leave.

Of course, some workers might prefer to take the cash payment, instead of transferring their benefit to the new employer – although this would mean that they will not be eligible to take leave for another 10 years. Others might prefer to forego the cash payment, while retaining the right to take leave at an earlier date. Should the portability allow the worker to choose either alternative? Or should there be restriction in the payment of cash pro rata benefits?

### EXAMPLE: TRANSFER OF ACCRUED LSL ENTITLEMENTS

Mr John Doe has worked for 8 years for Employer A in Victoria. He has just resigned and is due to start work for Employer B.

Under the current rules, he would receive a lump sum payment for his accrued LSL benefits. He will be eligible to take LSL after another ten years of work, i.e. after completing ten service years for Employer B. [Note that if he changes jobs over and over again, and never completes ten years service, he may receive several lump payments but never actually take any LSL.]

Under the proposed portability rules, he would not receive a cash payment from Employer A – instead, the pro rata payment from employer A would be held in a special PLSL fund or account. John could transfer his leave entitlement to his next employer, Employer B. After two more years of service, he would be eligible to take LSL. The money from the LSL fund, which had been contributed by Employer A, would be available to pay him an income while he is on leave. His new employer, Employer B, would also contribute his share of the LSL costs.





These policy decisions will also affect employers. Many employers may be reluctant to give LSL to a new employee after a relatively short period of service, i.e. where the new employee has transferred LSL entitlements from a prior job. It might be desirable to give the employer greater flexibility to manage LSL for their employees, i.e. the employer might be given the option to defer providing LSL to an employee who has less than a specified number of years' service in the current job.

PLSL is a benefit designed for the benefit of workers who change employment, remaining in the workforce while switching from one job to another. However, further discussion may be needed for workers in other circumstances:

- At present, many workers use their LSL as a de facto redundancy payment, to cover living expenses while looking for another job. Would workers still be able to take a cash payment of the accrued LSL benefits in the event of redundancy?
- How would the portability rules apply to people who are temporarily or permanently leaving the workforce to look after children or to act as carers for family members? Would they be eligible for a payout of their accrued LSL payments? Would their benefit be held in reserve until they rejoined the workforce or retired (i.e. as a de facto superannuation benefit)? Or would their LSL benefits be forfeited? If forfeited, who would receive the money which had been set aside to pay this benefit?
- How would the portability rules apply to people who are leaving their job with the intention of becoming self-employed?
- How would the portability rules apply to people who are permanently leaving the Australian workforce to relocate overseas? Would they be eligible for a payout of their accrued LSL benefits, or would their accrued LSL benefits be forfeited?
- How would the portability rules apply to people who are permanently leaving the workforce in order to retire? At what age would workers be able to obtain a cash payout of their accrued LSL benefits?
- Would "cashing out" be allowed? At present some schemes allow employees to take a cash payment for LSL entitlements while still working, i.e. without actually taking leave. This would seem to undermine the socially desirable objectives for LSL benefits, i.e. to allow the employee to take a break for rest and refreshment.

Similar issues have arisen in the superannuation industry. The superannuation regulations include "conditions of release": superannuation payments may not be made unless the fund member has met one of these conditions of release. If LSL benefits are to be portable as workers move from job to job, it will be necessary to develop similar conditions for LSL benefits. These benefit design decisions will affect the scheme costs and the ease of implementation.<sup>60</sup>

## 4.1 Desirable features of PLSL arrangements

In this section, we will examine different approaches to the provision of fully vested and PLSL benefits.

That is, we will assume that the objective is to:

- Allow employees to accrue LSL entitlements while they are working in any job;
- Allow employees to retain a pro rata entitlement when they leave employment, even after a short period of service (full vesting); and
- Allow the accrued leave entitlement to be transferred to their next job, so that the employee will be entitled to take leave after working for at least 10 years service in total, across one or more jobs (portability).

Once the LSL vesting rules have been specified, and the portability rules have been determined, then it will be necessary to determine the best mechanism for implementing the new standards. Any such mechanism must manage the following tasks:

- **Record-keeping** – How will benefit entitlements be preserved and transferred from one employer to the next? It may be necessary to maintain service records across several periods of employment over decades.
- **Funding** – An employee's LSL benefits may be the result of two or three or more periods of employment. How can we ensure that each employer pays an appropriate share of the costs of providing those benefits?
- **Management of investments** – If the LSL benefits are funded in advance, then the money set aside to provide these LSL benefits must be held securely and invested prudently.

This section examines different alternatives for implementation of the proposed portability rules.

Before designing a scheme to provide LSL benefits, we should identify the desirable features of such a scheme, allowing for the needs of different stakeholders. Ideally, any LSL scheme should

ensure that employees will have a high probability of receiving their legally-defined LSL entitlements. Presumably employers will prefer a system which minimises the administrative burden, in both time and money (e.g. administration costs), and provides some stability in costs from year to year.

We use the following criteria for identifying the factors that would allow for the design of a nationally consistent PLSL scheme that would accommodate the needs of these stakeholders:

1. Transitional arrangements;
2. Simplicity;
3. Adequacy of benefits;
4. Compliance;
5. Protection in the event of insolvency;
6. Prudential management and solvency;
7. Payment of benefits (unclaimed money/lost members);
8. Administrative burden for employers;
9. Administration costs;
10. Stability of employer costs;
11. Employer cross-subsidisation; and
12. Flexibility.

### 1. TRANSITIONAL ARRANGEMENTS

It is desirable to implement a new scheme as smoothly as possible and with minimum disruption to existing arrangements for those employers/employees already providing/receiving LSL entitlements. In terms of the reduction of vesting periods, this could occur gradually over time so as to phase-in costs of providing PLSL for employers. However, this consideration needs to be balanced against extra administrative complications of such an approach when the level of extra cost is small.

One transitional approach might also involve employees forgoing a portion of a wage increase for the minimum wage, awards, and/or collective agreements on a one-off basis as a contribution to the costs of establishing PLSL. This approach was adopted for the extension of superannuation in

1986. As a result of agreement between the ACTU and the government under the Prices and Incomes Accord, the unions were willing to forgo a claim for a 3% wage increase for productivity before the Australian Conciliation and Arbitration Commission under the national wage guidelines of the time. Instead, they sought 3% employer contributions for superannuation and the Commission endorsed claims on an industry basis through variation of awards on a consent basis. This led to the doubling of the workforce with superannuation from about 40% to 79% to 1989, mainly through multi-industry funds jointly sponsored by unions and employer associations, prior to the generalised phasing in of superannuation by the government in 1992.<sup>61</sup> This phased introduction of superannuation, therefore, was the result of a consensus process between government, employers and the unions. In the case of PLSL it would only be necessary to forgo 1-2% of wage increases if this consensus model were adopted.

## 2. SIMPLICITY

Ideally, the rules of the scheme should be defined as simply and unambiguously as possible (while maintaining equitable treatment for all participants). Workers should be able to understand their entitlements easily, and employers should be able to understand their obligations. If the rules are simple, this will help to reduce administrative costs and improve compliance.

## 3. ADEQUACY OF BENEFITS (INCOME REPLACEMENT)

At present, LSL entitlements are usually determined on a “defined benefit” basis.<sup>62</sup> When an employee takes leave, s/he receives a benefit which is equal to the number of weeks of LSL taken multiplied by her/his weekly wages at the date the benefit is taken.<sup>63</sup>

Arguably, a defined benefit is suitable for our purposes, because it provides a benefit which allows the employee’s normal income to be maintained during the period of LSL.<sup>64</sup>

Alternatively, employers might fund LSL payments on an “accumulation” basis. The employer would

periodically pay contributions, equal to a fixed percentage of salary, into an employee’s LSL account. The contributions would accumulate with interest, less administration fees. When the employee takes leave, s/he would be entitled to withdraw money from their account. Under an accumulation arrangement, the contribution would presumably be set at a level which would be expected to provide an adequate LSL benefit.

However, the accumulation approach presents greater risk for employees than a defined benefit. The account balance might not be sufficient to provide the worker’s normal income during the period of leave, because:

- The investment returns on the account might be lower than expected, or even negative;
- The administration fees might consume an undue proportion of the account balance; and/or
- If the worker’s wages have increased sharply, then the investment returns on the account might not match the growth of the worker’s wages.

On the other hand, if investment returns are better than expected, the account might be more than sufficient to fund the worker’s leave. The fund rules would need to specify the allocation of any such surpluses. Would the surplus belong to the worker? Would the worker be able to take LSL payments which provided a higher-than-usual income during any period of leave? Or would the excess funds be held in reserve in order to fund future periods of leave, or to provide additional retirement savings? These are significant design issues.

## 4. COMPLIANCE

A PLSL scheme should have systems in place to ensure that employers meet their obligations. High levels of compliance are obviously in the best interests of the workers and law-abiding employers. If everyone is required to obey the same rules, this creates a level playing field. Otherwise, employers who evade their obligations may have lower labour costs, which would give them a competitive advantage. As noted previously (see Section 3.4),

responsible employers have been willing to support the introduction of PLSL schemes in industries where poor compliance is a problem.

What systems are currently in place to ensure compliance with LSL obligations? The Fair Work Ombudsman is responsible for ensuring that employers comply with their obligations under the Fair Work Act 2009. The Ombudsman's officers conduct targeted campaigns to monitor and enforce compliance in particular industries. Industries may be targeted in response to complaints from workers.

Some employers fail to meet their obligations because they simply do not understand the requirements. The Ombudsman's office responds to this problem by providing information and training for employers.

However, it is clear that some companies deliberately avoid paying employee entitlements. For example, a report by the Ombudsmen into the contract cleaning industry found that 37% of employers were non-compliant with employment laws: effectively this allowed these employers to undercut compliant employers. The Ombudsman's office has also noted that "sham contracting" and the misclassification of employees as independent contractors to evade employer obligations is a serious problem in many other industries, such as building and construction, and security.<sup>65</sup>

If employers are misclassifying or underpaying their workers and neglecting their record-keeping obligations, it seems probable that they are also failing to pay the correct LSL benefits. There is very little data available which specifically focuses on the level of compliance with LSL obligations, however other studies have found high levels of non-compliance in the provision of other employee entitlements, e.g. superannuation guarantee obligations. Superannuation non-compliance was highest for the most vulnerable workers: those in low paid and casual employment, young people, and people employed in specific industries, e.g. hospitality, hairdressers, restaurant workers, cleaners, transport, etc.<sup>66</sup>

The Global Financial Crisis has also had an impact on compliance. For example, in the NSW building

and construction scheme compliance has fallen significantly since 2008. The fund administrators placed considerable emphasis on pursuing unmet liabilities in 2012, with some success. This was particularly important in maintaining the levy at the same level rather than increasing it as claims increased during the economic downturn.

The existing building and construction industry PLSL schemes have compliance functions, which not only educate employers and employees but also, importantly, have investigative and prosecution powers. Some stakeholders consider this preferable to the Ombudsman model described in this section, since the latter relies on complaints from employees in order to detect non-compliance. However, employees often may not understand their entitlements and options. The means for enforcing compliance with LSL obligations is an area that merits further investigation.

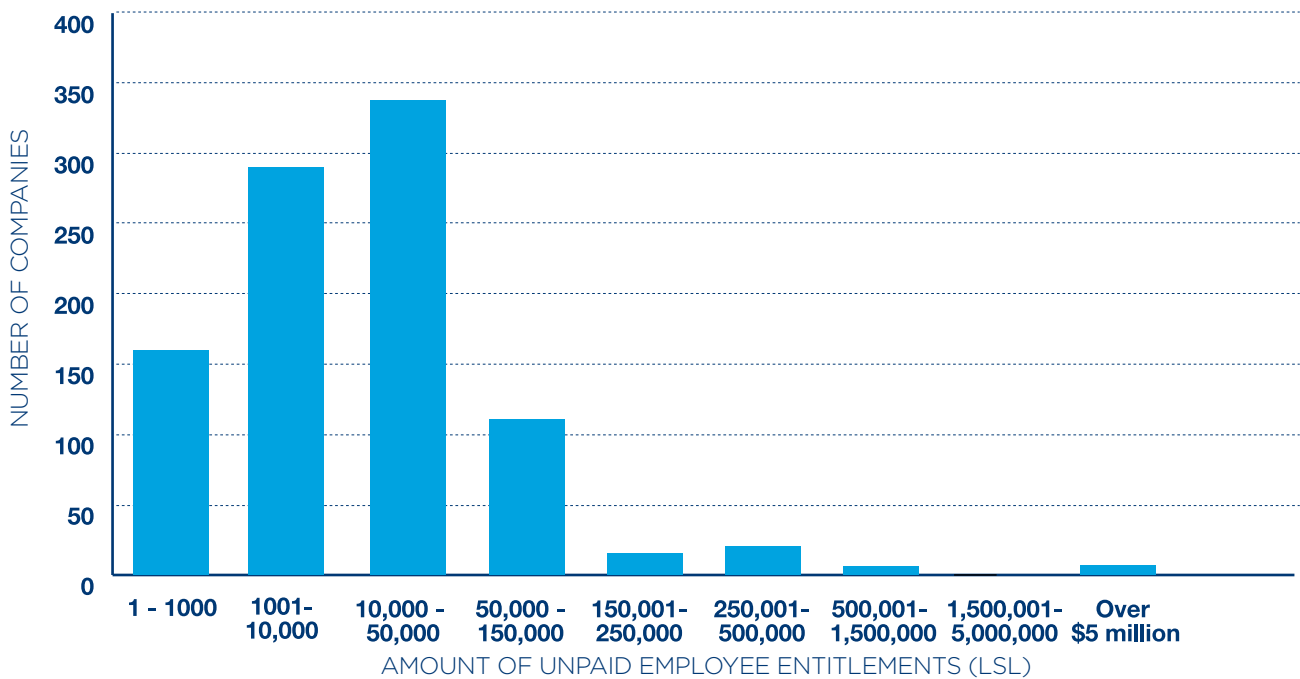
## 5. PROTECTION OF EMPLOYEE ENTITLEMENTS IN THE EVENT OF EMPLOYER INSOLVENCY

At present, employers use their business assets and/or cash flow to pay LSL benefits as they arise from time to time. This means that the security of employee entitlements may be threatened by the insolvency of the employer. If the employer becomes insolvent, then employees become creditors, with a claim against the employer's assets. However, under the current legislation, the employees do not have first priority. Under the Corporations Act 2001, the company's assets are firstly used to defray the liquidator's costs and secondly used to pay secured creditors. After these priority creditors are paid, there might not always be enough money available to cover employee entitlements in full.<sup>67</sup>

Once again, it is difficult to estimate the magnitude of the problem.

The Australian Securities and Investment Commission records data on corporate insolvencies. In the 2011/12 financial year, approximately 10,000 companies were placed under external administration. Most of these were small businesses with less than 20 employees.

**FIGURE 4.1**  
**UNPAID EMPLOYEE ENTITLEMENTS (LONG SERVICE LEAVE)**  
**ESTIMATES FROM EXTERNAL ADMINISTRATOR REPORTS 2011/12**



According to returns filed by external administrators, 947 of these companies (about 9.4%) had unpaid LSL liabilities, of varying amounts, as shown in the graph in Figure 4.1 above.<sup>68</sup> The ASIC data covers the insolvency of companies. However, only 33% of Australian businesses are companies; there are hundreds of thousands of businesses which are operated by sole proprietors, partnerships, or trusts. According to the Australian Bureau of Statistics, thousands of these businesses go out of business each year.<sup>69</sup> We do not have any data on unpaid LSL liabilities of these businesses.

The security of employees' LSL benefits was improved by the creation of the General Employee Entitlements and Redundancy Scheme (GEERS) in 2001. GEERS was initially set up as an administrative arrangement. The Fair Entitlements Guarantee Act 2012 (FEGA) now provides a formal legislative basis for these arrangements. Although the Fair Entitlements Guarantee has alleviated the risk of loss of employee entitlements, it does so by imposing a cost on the taxpayers. To some extent, this allows employers to transfer their financial

responsibilities to the government.<sup>70</sup>

From time to time, the government has considered various proposals for improving the security of employee entitlements in the event of employer insolvency. One approach would require employers to make contributions to a separate trust fund, which would hold assets sufficient to cover accrued employee entitlements. Employer groups have generally opposed generalising such proposals, on the grounds that they would impact on all employers when only a minority are likely to face insolvency. However, most objections of employer organisations have related to extra costs associated with insurance funds, rather than to employee entitlement trust funds.<sup>71</sup> Some trust funds of this kind have already been established; this is, in fact, the model used for existing industry-based PLSL schemes.

The established industry-based PLSL funds have already improved the security of employees' LSL entitlements. Employees of insolvent employers can usually claim their accrued LSL benefits directly from the industry-based funds.



## 6. PRUDENTIAL MANAGEMENT AND SOLVENCY

Section 4.2 describes three different models which may be used to implement PLSL entitlements. Whichever model is chosen, legislation will be necessary to ensure that the money held by the fund is managed properly and invested prudently. Any such fund should be subject to appropriate corporate governance standards (including fit-and-proper person requirements for those who manage the funds). If a defined benefit model of entitlements were to be adopted, the financial status of the fund should be monitored to ensure that the fund assets are sufficient to provide the benefits promised, with a high degree of certainty. In particular, the legislation should prevent any diversion of the fund's assets for other purposes. Any such diversion has the potential to undermine the solvency of the fund. This requirement would be analogous to the "sole purpose test" which already applies to all Australian superannuation funds.

## 7. UNCLAIMED MONEY AND LOST MEMBERS

Over time superannuation funds sometimes lose contact with their members. The money remains unclaimed long after the members would be entitled to claim their benefits. Similar problems are likely to arise in relation to PLSL benefits. In fact, it is clear that the established industry-based PLSL funds already hold millions of dollars in unclaimed money. When implementing PLSL rules, it would be desirable to incorporate measures to minimise the number of lost members.

## 8. ADMINISTRATIVE BURDEN FOR EMPLOYERS

Under the current (non-portable) LSL rules, each employer must retain records for their own employees, which does create an administrative burden for employers. In order to calculate LSL benefits correctly, they must keep records for all of their employees, throughout their entire period of employment and indeed for several years afterwards.<sup>72</sup>

If the legislation is changed to provide portable benefits, this could reduce rather than increase the administrative burden for employers. In the existing PLSL schemes the fund administrator keeps the records of the worker's employment history in one place. In this way the worker's records are also secure if one or more of his or her employers goes out of business.

## 9. ADMINISTRATION COSTS

The contribution required to provide fully vested and PLSL benefits is likely to be around either 1.75% to 2.5% of wages per annum, depending on the level of benefits provided.<sup>73</sup> For a full-time worker earning the average wage, the LSL contribution will be around \$1300 to \$1800 per annum. Of course, the annual contribution will be much lower for low-paid and part-time workers.<sup>74</sup> Although these contributions will gradually build up over time, the fund will also be diminished by payments made when the worker takes her/his LSL.

This suggests that any PLSL system will be required to administer a large number of relatively small sums. It is essential, therefore, to ensure that the funds are administered as efficiently as possible, in order to minimise costs to the employers and to maximise benefits for workers.

## 10. STABILITY OF EMPLOYER COSTS

Any well-run business needs to plan ahead: it must account for its labour costs, manage its cash flows, and monitor its liabilities. Therefore the employer's LSL costs should be as stable and predictable as possible.

If LSL benefits are provided on a defined benefit basis, the employer's contributions could fluctuate from year to year – potentially quite sharply. Although LSL levies are likely to represent a small component of an employer's labour costs, this might still cause problems for employers who are operating on thin margins. This potential problem, however, can be mitigated by holding a margin (reserve) of assets over accruing liabilities and setting the levy accordingly. (See Section 5.8 Defined Benefit Funds: Variability in the Levy Rate, for comments on the management of the variability of defined benefit levies).

If benefits are provided on an accumulation basis, then the employer's costs will be stable from year to year, i.e. contributions will be a fixed percentage of salaries. In an accumulation fund, the employees bear investment and inflation risks, not the employers.

In the superannuation industry, employers are given a choice: they can meet their Superannuation Guarantee obligations by providing either defined benefits or accumulation benefits.<sup>75</sup> Over the last 30 years, employers have shown a strong preference for accumulation funds. The number of defined benefit funds has steadily declined. It seems that most employers prefer to avoid the risk of variability in labour costs.

## 11. EMPLOYER CROSS-SUBSIDISATION

Under current arrangements, most employers provide non-PLSL benefits. Each employer provides benefits for its own employees – there are no cross-subsidies between different employers or different industries.

However, if LSL benefits are to be provided on a portable basis, via a centralised multi-employer fund, then cross-subsidies may arise. The money paid in by any one employer will not necessarily be used to provide benefits solely for its own employees. Such cross-subsidies are most likely to arise when one fund covers employers which have different patterns of staff turnover, different wage growth rates and/or different benefit entitlements (see Box 4.1).

A defined benefit fund is most likely to be successful when each fund contains a homogenous group of employers (e.g. all employers are in the same industry); and/or when the fund rules impose uniformity across all employees (e.g. benefits are based on standardised award rates of pay, instead of the rates actually paid by each employer). However this uniformity reduces workplace flexibility.

If the fund membership is too heterogeneous, and this creates cross-subsidies, then some employers are likely to object. AUSCOAL, which is one of the largest industry-based PLSL funds in Australia,

recently switched to a new model: for benefits accruing after 1 January 2012, the fund will provide benefits on an accumulation basis. The rationale for this change is to:

**“ Improve the operation of the scheme so that the amounts that employers are reimbursed from the Fund in respect of long service leave payments more closely correspond to the amounts that they have paid into the Coal Mining Industry (Long Service Leave) Fund by way of levy”.**<sup>76</sup>

If LSL benefits are provided on an accumulation basis, then cross-subsidisation is less likely to occur.<sup>77</sup>

## 12. FLEXIBILITY

Any PLSL system must be flexible. At present, each State and Territory has its own minimum LSL benefits. Each award can specify different LSL benefits. Each employer can negotiate a workplace agreement which provides different LSL benefits. Any LSL system which is portable across industries must allow for these variations.

In the future, changes to the National Employment Standards might lead to greater uniformity in benefit entitlements. But even if benefits become more uniform across the States, the system must still allow for flexibility, because the rules are likely to change from time to time. Any PLSL system must be flexible to allow for changes in the rules, without creating excessive complexity. In defined benefit funds, rule changes often require “grandfathering” of pre-existing entitlements, and this may lead to greater complexity in the calculation of benefits. Accumulation funds are generally more flexible.

**BOX 4.1**  
**CROSS SUBSIDIES IN DEFINED BENEFIT FUNDS**

**EXAMPLE A:**  
**Cross subsidies caused by differential withdrawal patterns**

Employer A and Employer B both have 100 employees, who are all earning the same rate of pay. Both employers pay the same amount of levies into the defined benefit LSL fund each year. All of these payments are pooled into one fund, which will be used to pay LSL benefits. Employer A has high staff turnover and most of his/her employees leave service before qualifying for any benefits. Most of its employees do not receive any money from the LSL fund. All of Employer B's workers remain in service for 10 years and become eligible to receive benefits from the fund. Effectively, Employer A's levies are providing benefit payments to Employer B's employees.

**EXAMPLE B:**  
**Cross subsidies caused by differential wages growth**

Employer C and Employer D both have 100 employees, who are all earning the same rate of pay. Both employers pay the same amount of levies into the defined benefit LSL fund each year. All of these payments are pooled into one fund, which will be used to pay LSL benefits. All of the workers remain in service with the same employer for many years, and they all decide to take their long service leave just prior to retirement. Employer D decides to give all of its workers a 10% pay rise shortly before they take leave. Hence, they all become eligible for higher LSL payments.<sup>78</sup> Employer C and Employer D have both made the same contributions into the fund, but Employer D's employees will receive higher benefits. Effectively, Employer C is subsidising benefits for Employer D's employees.

Note that this problem is likely to arise if a single fund contains workers from different industries, and one industry is experiencing more rapid wage increases than other industries.

**EXAMPLE C:**  
**Cross subsidies between new and old employers**

Employers E,F, and G contribute to an LSL fund for several years. The fund has low levy rates. Unfortunately, the LSL fund develops a deficit. The deficit might arise because the levy rate has been kept too low; or because the fund suffers investment losses.

In order to fund the deficit, and return the fund to solvency, the levy rate is doubled for the next five years.

A new employer, Employer H, enters the industry. The new Employer is required to pay an abnormally high levy in order to pay for LSL benefits for workers who were previously employed by Employers E,F, and G.



## 4.2 Comparison of alternative models

The following section uses these criteria to assess the likely effectiveness of three different models as the basis for designing a nationally-consistent PLSL scheme. Each model assumes the operation of a number of different funds, largely industry-based, as with superannuation. A further option might be the creation of a single national fund for all employees, on a defined benefit or accumulation basis, but this was not considered in detail because of our judgment that it seems an unlikely choice in the contemporary public policy environment, and because there are strong models already provided in the superannuation approach. In each of the three models examined in detail the objective is the provision of fully vested and PLSL benefits. Each model has different advantages and disadvantages, for employers and employees:

- OPTION A: The ADF model;
- OPTION B: The Defined Benefit Fund model; and
- OPTION C: The Accumulation Fund model.

### 4.2.1. Option A: The ADF model

The ADF model is based on the system of Approved Deposit Funds (ADFs) established in the superannuation industry during the 1980s.

Prior to 1984, superannuation benefits were usually paid as a lump sum benefit to the employee, whenever they left service due to resignation, retrenchment, or dismissal. Many employees simply spent their lump sum, instead of transferring the money into their new employer's superannuation fund. The government wanted to encourage workers to save their superannuation payments for retirement, so legislation was passed to create Approved Deposit Funds (also known as Rollover Funds or ADFs). Employees who left service could

roll over their lump sum benefit into an ADF. The ADF simply invested the money in an accumulation-style account on behalf of the employee until the employee was eligible to receive their benefit.<sup>79</sup>

A similar model could be adopted for PLSL benefits:

- Relevant legislation or awards could be amended to require the payment of an LSL benefit whenever an employee leaves service after completing more than a specific "vesting period" of service;
- Initially, the vesting period would be set at 5 or 7 years, i.e. to match current State LSL legislation. The vesting period would gradually be reduced so that employees with shorter periods of service would become eligible for pro rata benefits;
- The lump sum would represent any LSL benefit which had accrued during this period of employment, adjusted to allow for any LSL leave which had already been taken while the employee was still in service;
- The accrued benefit payable at exit would be calculated using a defined benefit formula, based on the employee's wages at the date of exit, in line with existing legislation, awards and/or workplace agreements;
- The lump sum benefit would not normally be payable in cash (unless the employee met a LSL condition of release, see below). Instead, the benefit would be automatically rolled over into any ADF specified by the employee;
- Each worker would have just one ADF account for LSL benefits. If the worker worked in a series of different jobs, all LSL payments would be made into the same ADF account. If the worker worked in two or more part-time jobs, the LSL payments would be made into the same ADF account. This rule would help to prevent the proliferation of multiple small accounts;
- Each employer would provide the ADF with information about the period of service applicable to each lump sum payment. The ADF would be required to maintain records





sufficient to determine the worker's eligibility for LSL cash payments in the future;

- The ADF would invest the money on behalf of the account-holder, and credit investment earnings to the account. The ADF would also deduct administration fees from the account;
- Cash payments from the ADF to the worker would be subject to "LSL preservation requirements", similar to the preservation requirements applicable to superannuation benefits. The LSL benefit would not become payable in cash until the worker met an "LSL condition of release", e.g. when the worker took his/her LSL, became permanently disabled, reached retirement age, or died. The preservation rules would also specify the amount payable if the worker only took part of their accrued LSL (e.g. took only one month of leave when they were entitled to take two months). The worker's employer would be required to verify that a condition of release has been met (e.g. by certifying that the worker is taking LSL);
- The LSL ADF provider would be required to meet registration, reporting, and corporate governance requirements, similar to those imposed on the ADFs that hold superannuation savings. Financial institutions would be required to apply for permission to manage LSL ADF accounts. The Australian Prudential Regulatory Authority (APRA) would set standards for authorisation and would monitor ADF providers. Banks, life insurers, and superannuation funds would be eligible to offer LSL ADFs, as long as they met the authorisation standards;
- Each employee would have just one LSL ADF account. If the employee received benefits from several different jobs, all benefits would be payable into the same account. This would reduce administrative expenses and reduce the risk of "lost members". It would also centralise record-keeping for each employee, and hence make it much simpler to assess eligibility for LSL payments.



**Assessment of the ADF model against specified criteria**

**1. TRANSITIONAL ARRANGEMENTS**

The ADF model could be implemented with relatively little disruption to employers, who would continue to hold LSL provisions internally. There would be no impact on the employer's cash flows until an employee exited from service or took LSL. The amount payable at that time by the employer to the ADF fund would be calculated on a defined benefit basis, consistent with current LSL legislation. Under this model, employers would not incur any additional LSL costs for employees who already meet the current vesting standards. However, employers would be subject to additional costs to pay for short-service employees who were previously ineligible for LSL benefits.

This model could be implemented progressively, by changing the vesting period. In many States, pro rata benefits are available after 5 or 7 years' service.<sup>80</sup> The vesting period could be gradually reduced over time. This would "phase in" the cost to employers of providing PLSL. This might be achieved via the National Employment Standards.

**2. SIMPLICITY**

In general, the ADF method would be simple and easy to understand, for both employers and employees.

The calculation of cash benefit payments could require some thought for those employees who have accrued benefits across two or more jobs. If the employee takes only part of their accrued leave, it would be necessary to devise rules to determine the amount of LSL payable by the current employer and the amount payable from the ADF. These considerations are illustrated in Box 4A.1.



**BOX 4A.1  
SIMPLICITY OF BENEFIT CALCULATIONS UNDER THE ADF MODEL**

Mr Smith works in Job A for five years and accrues one month of LSL. When he quits this job, a lump sum benefit of \$3000 is paid into an ADF, and over the next 10 years this accumulates to \$5000. Mr Smith then works in Job B for 10 years and accrues an additional 2 months of leave. While still working in this job, he opts to take LSL for just 2 months. What benefit should be payable to cover the 2 months of leave?

Should he receive all the money in his ADF account, which represents approximately one month's LSL from his prior job; plus receive one month's LSL from Employer B? Employer B would then retain a liability to pay an additional month of LSL at a later date. Note that the account balance might be insufficient to provide a month's wages.

Should he receive 2 months' LSL benefit from Employer B, leaving his ADF account intact until he takes additional LSL at a later date?

### 3. ADEQUACY OF BENEFITS

As noted previously, for our purposes, defined benefits are more suitable than accumulation benefits, in the sense that defined benefits provide an amount which allows the employee's income to be maintained during the period of leave. The ADF system provides a mix of defined benefits and accumulation benefits.

A worker who remains in the same job over the long term, and takes their LSL while in service, will receive a defined benefit.

A more mobile worker who changes jobs from time to time would receive a defined benefit whenever they leave any job. These benefits would not be payable in cash, but would be rolled over into an ADF. The benefits will accumulate with interest (less fees and charges) until the worker meets an LSL condition of release (e.g. s/he takes leave). This means that the worker will be exposed to investment risk from the date of leaving each job up to the date they take their LSL. If the ADF can earn net investment returns exceeding the worker's pay increases, then the LSL account should be more than sufficient to provide the worker's usual income during periods of leave. However, the account may be insufficient for this purpose if there are poor investment returns and/or large pay rises. The worker might take one month's LSL, but the account balance might be less than a month's wages. It would be important to keep this risk in mind when choosing an investment strategy for the ADF.

### 4. COMPLIANCE

Under the ADF method, employees would rely on their employers to provide the correct benefit payments, as specified in the legislation, whenever the employee leaves service and/or takes LSL. The Commonwealth and State employment inspectorates would continue in their current roles, i.e. providing information to employers and employees, conducting targeted inspections, responding to complaints, and taking action to

enforce compliance where necessary. As noted previously, this may or may not be effective in ensuring high levels of compliance.

The ADF model does not include any additional measures to ensure that employers meet their LSL obligations. This is a weakness of this model, in contrast to some of the alternatives described below.

Compliance problems might also arise in relation to payments from the ADF to employees. Employees might seek to bypass the LSL preservation requirements, to obtain early access to their accounts. For example, workers might "quit their job", claim a pro rata LSL benefits, and then "recommence work" with the same employer a few days later. As a result, LSL savings might be used for purposes other than LSL. This has been a problem in relation to the early release of retirement savings in the superannuation industry. In some cases, such as financial hardship, early release might be permitted by regulation, but this creates an additional administrative burden (i.e. in assessing the validity of hardship claims).



## **5. PROTECTION OF EMPLOYEE BENEFITS IN THE EVENT OF EMPLOYER INSOLVENCY**

The ADF model does not require employers to pre-fund the LSL benefits, therefore it may not provide good protection against the lost entitlements in the event of insolvency.

If a worker has remained in the same job for many years building up their LSL entitlements, they will be vulnerable to a loss of all their benefits if their employer becomes insolvent.

On the other hand, workers who have changed from one employer to another will have better security, because the ADF will hold assets sufficient to provide all the LSL benefits which arose from prior employment. Their loss will be limited to the amount of LSL accrued with their most recent employer.

Workers would continue to rely on the Fair Entitlements Guarantee for compensation for any lost entitlements.

## **6. PRUDENTIAL MANAGEMENT AND SOLVENCY**

Under the ADF model, there would be strong prudential controls to protect LSL accounts. Financial institutions would be required to apply for permission to manage these accounts. The ADF would be required to meet registration, reporting and corporate governance requirements, similar to those imposed on the ADFs that hold superannuation savings. APRA would set standards for authorisation and supervise ADF providers.

## **7. UNCLAIMED MONEY AND LOST MEMBERS**

Over time, the ADFs will probably lose contact with many of their account-holders. Some workers will inevitably forget that they hold any money in an LSL account, and will fail to claim their benefits, even when they are entitled to do so. This has been a common problem in the superannuation industry. The problem of lost members is likely to be even more severe for LSL accounts, when relatively small sums may be untouched for many years. In the case of superannuation, the Australian Tax Office attempts to help people find their lost accounts. If the ADF LSL model is adopted, then similar measures should be taken to minimise the number of lost members.

## **8. ADMINISTRATIVE BURDEN FOR EMPLOYERS**

The ADF model would not impose a significant additional burden on most employers, compared to the current LSL arrangements. There would be some additional paperwork: whenever an employee left service, the employer would be required to make a payment to an ADF and provide some information about the worker's length of service. And whenever an employee wanted to access money in their LSL account, his/her employer would be required to provide information to the ADF to verify that the employee had met a condition of release (e.g. the employee was indeed taking leave).

## **9. ADMINISTRATION COSTS**

Under this model, the ADFs would deduct administration fees from each LSL account. These administration fees are likely to have a significant impact on the adequacy of benefits for mobile workers. The ADF system is likely to produce a large number of small accounts. For small accounts, annual administration fees may well exceed investment returns, which means that the account would diminish over time (see Box 4A.2).

## BOX 4A.2 ADMINISTRATION COSTS OF SMALL ACCOUNTS UNDER THE ADF MODEL

Ms Jane Doe is a part-time worker earning \$20,000 per annum. She accrues LSL at the rate of 2 months per 10 years' service. Ms Doe resigns from her job after 2 years, and under the new portability rules she would be entitled to a benefit of \$667. This sum is rolled over to an ADF LSL account. The fund invests her money to earn 4% interest, which amounts to about \$27 per annum. However the fund charges administration fees of \$50 per annum. At the end of the year, her balance has reduced instead of increasing. This erosion of savings might continue for several years, until she is eligible to take leave.

Similar problems arose in the superannuation system when compulsory contributions were first introduced in the late 1980s/early 1990s. The small accounts problem is likely to be even more severe for LSL contributions, because the LSL benefits are much smaller than superannuation benefits. LSL benefits accrue at about 1.67% or 2.5% of pay per annum, compared to 9% of pay for compulsory superannuation benefits. Furthermore, people will be able to make withdrawals from LSL accounts whenever they take leave, and this will tend to prevent the build-up of larger accounts over time. As a result, many LSL accounts will have small balances, which may be gradually eroded by administration charges.

The superannuation industry has developed a number of methods for dealing with the small accounts problem:

- Member protection rules limiting the administration fees for small accounts;
- Retirement Savings Accounts (RSAs) that charge low fees but also provide low returns;
- Amalgamation of Accounts that encourage customers to combine separate small accounts into one larger account wherever possible;
- Benefits of less than \$200 may be paid in cash (no requirement to preserve small benefits); and
- Compulsory contributions are not required for people who earn less than \$450 per month.

These measures might have alleviated the small accounts problem but none of them provide a wholly satisfactory solution. For example, member protection rules usually require larger accounts to cross-subsidise the administration costs of small accounts.

Retirement Savings Accounts provide a low-risk (capital guaranteed) vehicle for super superannuation savings, and they are designed especially for small accounts. However, the administration costs for RSAs are relatively high. According to the most recent Rice-Warner survey, RSAs fees were approximately 2.3% p.a. – much higher than the average fees for the typical retail fund or industry fund.<sup>61</sup> Moreover, because low-fee accounts such as Retirement Savings Accounts usually have low investment returns, the account balance is unlikely to grow quickly enough to keep pace with pay rises. RSAs have not been very popular and currently have only a small share of the superannuation market.

Theoretically, market forces would put downwards pressure on administration fees. The workers would be entitled to transfer their LSL accounts from one ADF to another, on request. If workers shopped around for the best deal, then the ADFS would compete to offer the lowest fees. However, the Cooper Review of the superannuation







industry found that that most people do not pay much attention to fees, nor do they shop around for the best deal. As a result, "... the model of member driven competition through 'choice of fund' has struggled to deliver a competitive market that reduces costs for members."<sup>82</sup> As a result, the Cooper Review recommended the introduction of MySuper products, which are designed to be simple, low cost vehicles for superannuation savings.

A study of superannuation fund operating costs for the MySuper product was conducted by Deloitte as part of the Super System Review. If the ADF model is to be adopted to provide LSL benefits, then it would be desirable to conduct a similar study for the proposed system.

## 10. STABILITY OF EMPLOYER COSTS

Under this model, LSL benefits are not prefunded. Employers would have to pay LSL benefits whenever an employee took LSL and/or left service. Under the current system, employers already manage these cash flow issues.

## 11. EMPLOYER CROSS-SUBSIDISATION

The ADF model would not create cross-subsidies between different employers and/or different industries. Each employer would pay benefits for his/her own employees.

## 12. FLEXIBILITY

This system would be flexible by allowing for different LSL rules for different employees in different jurisdictions, occupations and industries. If one group of workers negotiated higher LSL benefits with their employer (e.g. by including bonuses or commission in the definition of salary), these changes would only affect the benefits accrued while working with this specific employer. There would be no impact on the benefits which had been earned in any previous job, and no impact on any other employer's costs.

## Overall assessment of the ADF Model

### This model has many advantages:

- It could be phased in gradually over time;
- It is relatively simple to understand;
- It does not create a great deal of extra administrative work for employers;
- This system does not require pre-funding, therefore the employers' cash flows would not be affected until their employees left service or took LSL;
- It is flexible;
- It does not create cross-subsidies between different employers or industries;
- It reduces (but does not eliminate) the risk of loss of entitlements due to employer insolvency; and
- It could make use of existing infrastructure, i.e. it would not be necessary to create new organisations to provide ADF LSL accounts.

### However this model does have significant weaknesses:

- The administrative costs are likely to be high relative to the size of the account balances, and this will erode workers' LSL benefits;
- Financial institutions may be reluctant to offer products which are likely to have low balances and hence limited profitability;<sup>83</sup>
- Workers who hold money in ADF accounts are exposed to investment and inflation risks: so the account balance might not always be sufficient to provide a replacement of income when the worker takes leave;

- This model does not incorporate any additional mechanisms for ensuring that employers will comply with their LSL obligations (other than the existing compliance checks performed by Fair Work Australia); and
- Unless regulated to restrict payments to one ADF, this model could mean that workers end up with multiple LSL accounts in different ADF's. Multiple accounts would create problems in assessing eligibility for entitlements, and risk many workers losing track of their accounts and becoming "lost members" leading to lost monies, as occurs in the superannuation system.

#### 4.2.2. Option B: The Industry-based Defined Benefit Fund model

An alternative model could involve the creation of a range of industry-based defined benefit funds.

There are already more than a dozen established industry-based PLSL arrangements covering workers in the coal mining, construction, contract cleaning, community services and security industries (see Section 3). However, each of these industry-based PLSL funds provides only limited portability. Workers only accrue LSL benefits while working within the industry, and may forfeit their entitlements if they cease working in the industry prior to completing the vesting period of service. Workers who complete the vesting period, and then leave the industry, are usually entitled to claim a cash payout.

As outlined in Section 3, employers in the industries covered by existing schemes are required to be registered with the relevant fund. The employers periodically provide information about each employee and periodically pay levies to the fund administrators. Each fund is invested in line with a strategy determined by the Board and/or approved by the Minister or Trustee. When an employee becomes eligible for an LSL payment, a benefit may be payable directly from the LSL fund; or may be payable by the employer, who

then claims reimbursement from the fund.<sup>84</sup> The benefits payable are calculated in accordance with the relevant legislation and/or award. This currently means that LSL benefits are defined benefits (equal to the number of weeks of LSL multiplied by the weekly wages or salary).<sup>85</sup>

Each fund is periodically reviewed by an actuary. The actuary assesses the adequacy of the fund's assets, relative to the fund's liabilities, using reasonable assumptions about the future experience of the fund. The actuary might recommend an increase or a decrease in the levy rate, in order to maintain an acceptable level of solvency. The fund administrators play a role in ensuring that employers comply with their obligations, for example, educating new employers, inspecting records of registered employers, imposing financial penalties for late payments.

The established funds have limited portability. If a worker leaves the industry, then they either forfeit their entitlements or receive payment for any vested accrued benefits. If these schemes are extended to provide full portability, then presumably the LSL benefit entitlements would be transferred to a different industry fund. This would necessitate transfers of the corresponding sums between different funds, from time to time. For example, if a person working in the retail industry transferred to the hotel industry, LSL funds would be transferred from the retail industry fund to the hotel industry fund.

This would allow more workers to claim their LSL benefits, but the complexity of the administration would be increased, as assets and liabilities would be transferred from one fund to another.

Note that the established industry funds already make some arrangements for the transfer of entitlements between different funds. For example, the construction industry schemes have a reciprocal agreement to deal with workers who transfer from one State/Territory to another. Where a worker becomes eligible for an LSL payment under one scheme, and has previously worked in a different jurisdiction, each scheme fund must pay its own share of the benefit.

---

## Assessment of the industry-based PSL Model against specified criteria

---

PLSL schemes could be extended to a wider range of workers, simply by setting up new industry-based funds, one by one.

Note that this industry-by-industry approach was successfully used by trade unions in the 1980s in order to increase superannuation coverage across the community. The strongest unions set up their own industry funds, and negotiated to include superannuation benefits in awards. New schemes proliferated over several years, as other unions followed this example. This approach led to a sharp increase in superannuation coverage among Australian workers in a relatively short period. However this award-based approach did create some administrative problems. The Commonwealth government eventually decided that it would be preferable to introduce uniform national legislation for compulsory minimum superannuation contributions (i.e. the Superannuation Guarantee system which commenced in 1992).

Using this approach of extending LSL funds would probably require the co-operation of all the State governments, which might pose a challenge.

### 1. TRANSITIONAL ARRANGEMENTS

When a new industry-based PLSL scheme is created, the scheme covers all LSL benefits which are earned after the commencement date of the scheme. Employers continue to be responsible for paying LSL benefits earned prior to the commencement date. Therefore, both arrangements will run in tandem during a transitional period, which might last several years.

### 2. SIMPLICITY

At present, most of the industry-based schemes have a defined benefit structure. The same rules are applied to determine the benefits for all employees within the fund; and the same rules are used to determine the levy payable by all employers

within the fund.<sup>86</sup> Each scheme has its own rules, describing matters such as who is covered by the scheme, what counts for service, what components of salary are included for LSL purposes, how benefits are determined for people with variable hours, the treatment of various types of other leave when determining service, and the time limit for deregistration of employees.

If the system is extended to provide portability across industries, so that benefit entitlements can be transferred from one industry fund to another, then it might be difficult to work out consistent transfer rules. This is likely to create greater complexity (unless benefit entitlements are eventually standardised under the National Employment Standards).

For example, many universities currently allow transfer of entitlements when academic staff move from one institution to another. When a professor starts a new job, he or she is given credit for previous service and the previous employer pays a corresponding sum to the new employer. However, each university has different LSL rules, which may be embedded in workplace agreements. According to our interviews with university HR administrators, this diversity sometimes creates problems. The transfer system is still viable, but only because the number of such transfers is relatively low.

Alternatively, a worker who switches from one job to another might be allowed to build up entitlements in several different industry funds. This is the system which applies in the construction industry under interstate reciprocal arrangements. No inter-fund payments are made when the worker moves between States/Territories. But when the worker finally claims an LSL benefit, each fund pays its own share of that benefit. The fact that there are only a few industry funds allows this system to be workable. But if PLSL is extended to cover a wide range of industries, the system is likely to cause administrative complexity and higher administrative costs.

### 3. ADEQUACY OF BENEFITS

Most of the industry-based funds provide defined benefits, i.e. benefits are based on the employee's wages at the time leave is taken, which is consistent with the provisions specified by State/Territory legislation. This system also provides workers with a replacement of their normal income while they are on leave, which is a central purpose of LSL benefits.

### 4. COMPLIANCE

Each of the existing portable industry-based LSL schemes has been established by legislation (as described in Section 3 above). Employers have a legal obligation to make contributions to these schemes (the contributions are usually described as levies). Fund administrators are given powers to conduct investigations to ensure that employers are paying the appropriate sums.<sup>87</sup> Penalties may be imposed on employers who make late payments and/or otherwise fail to meet their obligations.

Whenever a new industry fund is created, employers in the industry must be identified. This is not a simple process. For example, this is a description of the process adopted by the NSW Long Service Leave Corporation when establishing a new fund for contract cleaners:

**“ The Contract Cleaning Industry Portable Long Service Scheme commenced operation on 1 July 2011. Scheme promotion became the Corporation’s responsibility from that date onwards with significant efforts made to identify industry employers and to advise them of their obligations under the Act.**

**Local councils, cleaning franchises, accounting and bookkeeping bodies and other organisations were issued with requests to advise their cleaning providers and members of the scheme’s existence and their obligations. A significant amount of research was undertaken – data was accessed from the Australian Business Register and more than 11,000 letters issued to industry participants. Further industry employers were identified using various directory and other sources. Editorials were also placed in the *InClean* magazine and the NSW IR email update service. In addition WorkCover NSW performed a mail-out on behalf of the Corporation to more than 1,700 workers compensation policy holders that were classified as being members of the contract cleaning industry. Scheme training was delivered to delegates of United Voice – the union representing the cleaning industry – and a presentation was delivered to the NSW Building Service Contractors Association of Australia annual general meeting.”<sup>88</sup>**

After the creation of an industry fund, the administrators must regularly update their records, looking for new employers who enter the industry, and identifying any employers who cease operations.

All of the PLSL schemes devote considerable resources towards ensuring compliance. Staff members attend trade shows, industry events and union meetings to provide information to employers and workers. They visit workplaces in order to raise awareness and provide information about the scheme. They publish bulletins and advertise in trade journals. Some schemes also allow workers to check their LSL records via the internet. This allows workers to detect errors, such as missing service periods.

Some of the PLSL schemes report that a high level of compliance has been attained; other schemes have reported problems in ensuring compliance. For example, under the Northern Territory construction industry fund, where employer levies are based on a percentage of costs for each construction project, the NT Auditor General has noted that it is difficult to be sure that levy income is being collected from every leviable project.<sup>89</sup>

Stronger enforcement measures may be necessary for some schemes. Legislation for the coal mining industry scheme has recently been amended to strengthen compliance in response to complaints from the CFMEU.<sup>90</sup> The scheme now requires employers to obtain an annual certificate from an auditor to confirm that they have paid the correct amount in levy payments and claimed the correct amount from the LSL fund in respect of LSL payments made to employees.

Most of the PLSL funds incur some legal expenses in order to enforce compliance. Legal action is always costly, but may be necessary in order to protect the revenue stream which provides LSL benefits to workers.

## 5. PROTECTION IN THE EVENT OF INSOLVENCY

Existing PLSL schemes provides a good level of protection for employee entitlements in the event of employer insolvency. Most of the PLSL funds pay workers their full LSL entitlements, even when the employer has gone out of business and/or failed to pay the correct amount in levies. Note that several of the established PLSL funds operate in industries where there is a relatively high level of employer insolvency, so this is an important advantage for the workers. For example, when the Oakdale Colliery was closed in May 1999, the employer became insolvent and was unable to pay employee entitlements of about \$6.3 million. Fortunately, the miners were covered by the Coal Industry Long Service Leave Fund, which ensured that members would receive their full LSL benefits.

If the scheme manages to attain a high level of compliance, collecting all levies in a timely fashion, then the LSL benefits for each employer should be fully funded, and the fund should not suffer significant additional costs in covering LSL benefits in respect of insolvent employers. However, there is a risk that employers who are facing financial difficulties will defer making levy payments to the fund. If an employer becomes insolvent while owing large sums to the fund, then other employers will be required to cover the shortfall in benefit payments.

This raises a legal issue: should the fund become a creditor, with a claim to the insolvent employer's remaining assets? If so, should the fund be a high priority creditor?

## 6. PRUDENTIAL MANAGEMENT AND SOLVENCY

Each scheme has a Board with some responsibility for the management of the scheme, although the roles vary in different jurisdictions. All of the State-based PLSL funds are also subject to some degree



of government oversight. For example, in some cases, the relevant State/Territory government Minister might have the power to determine the levy rate and the investment strategy for the fund.

The State/Territory governments might even have the authority to divert the fund's assets to uses other than the payment of LSL benefits.

For example, many of the PLSL funds earned excellent investment returns and built up large surpluses during the 1980 and 1990s. The NSW construction industry fund had a very large surplus, and the levy rate was reduced to 0% for several years. However, in 1996 the NSW government decided to take \$120 million out of the fund, in order to reduce the State's budget deficit. The following year, the government withdrew an additional \$60 million. Since the fund no longer had a surplus, it was necessary to reintroduce the levy, which was set at 0.2% of construction costs from 1 July 1997.<sup>91</sup> This "repatriation of funds" was quite controversial. The legislation which established the PLSL fund did not include any specific provisions for making such payments to the State. However, the government claimed that it had the legal powers to do so under the *Public Finance and Audit Act*.<sup>92</sup> The NSW fund now has a substantial deficit, and the fund actuary has recently recommended another increase in the levy rate.

The collapse of the Oakdale Colliery provides another example. Although the coal mining industry LSL fund was available to pay the workers their LSL benefits, the fund had no responsibility for paying any of the other entitlements. The unions representing these workers argued that the rules should be changed to allow the LSL fund to pay all of the workers' entitlements (including annual leave and redundancy pay). Initially the government refused to countenance any such payments. However, the unions ran a very effective campaign and called a one-day strike in support of the Oakdale miners. Soon afterwards, the government passed special amendments to the legislation, and the LSL fund paid several million dollars to Oakdale workers.

The investment of fund assets has also aroused some controversy from time to time. In 1999, the

body responsible for administering the Tasmanian construction industry PLSL scheme (TasBuild Ltd) proposed using its funds to support the development new major infrastructure projects. Tasbuild's chairman reportedly said that:

**“ TasBuild would assess every project brief received and funds made available would be at an extremely competitive interest rate.... developers should be mindful that TasBuild was committed to project development and job creation rather than a commercial rate of return. ...There are projects in Tasmania which are of a size that is either not sufficient to attract commercial finance or of a risk nature that they cannot gain financial support without further funds being introduced.... There are several good construction projects in Tasmania at present and TasBuild is keen to assist them get off the ground.”<sup>93</sup>**

Although these projects might be good for the Tasmanian economy, they might also reduce returns and increase risks for the LSL fund.

These examples all raise the dilemma of the 'sole purpose test' mentioned earlier. Should assets be invested to provide the best return for the fund? Or should assets be directed into socially desirable investments? If assets are used for other purposes, could this undermine the scheme's solvency?

This issue was identified by Commissioner Cole, in his 2003 review of PLSL funds in the Construction and Building Industry.





**“ Employers are required under long service leave legislation to contribute to long service leave for the purpose of funding their employee’s long service leave, yet much of the money contributed, or raised from capital investment of the long service leave fund, is used for other purposes. Money compulsorily acquired should be used for the purpose for which it is collected.”<sup>94</sup>**

Commissioner Cole recommended that *“the Commonwealth should encourage the States and Territories to ensure that the moneys held or received by long service funds should be used only for the purpose of paying employee’s long service leave entitlements.”<sup>95</sup>*

In some of the established industry funds, the government has the authority to change the employer’s levy rate from time to time. Usually, the rules will require an actuarial review, and the actuary will comment on the adequacy of the levy, and may recommend an increase or decrease in the rate. The government need not follow the actuary’s recommendation.

In practice, employers are naturally likely to oppose levy increases and may well express their views to those who are responsible for setting the levy rate. Any increase might be particularly problematic if the industry is going through a downturn. If the employers are successful in resisting levy increases, this may cause financial difficulties for the LSL fund. In order to balance the books, the scheme administrators might seek to reduce LSL benefits. A few PLSL funds have reduced benefits in recent years. In some cases, these benefit reductions simply unwound benefit increases that had been granted in a previous era, when the funds had a surplus. However, workers are likely to prefer a system which provides greater certainty in the level of benefits.

If this model is adopted, and more industry-based PLSL benefits are created, then the legislation should clearly specify the rules for the management of deficits. In particular, there should be clear guidelines for the determination of the levy rate; the circumstances which would justify a reduction in benefits; and the equitable treatment of employees in the event that a fund becomes insolvent.

As at 30 June 2012, both the NSW and Victorian Construction Industry LSL schemes had substantial deficits. (Victoria had a deficit of about \$160 million, relative to liabilities of \$823 million; NSW had a deficit of about \$139 million, relative to liabilities of \$734 million).

## **7. UNCLAIMED MONEY AND LOST MEMBERS**

The established industry-based PLSL schemes were designed to encourage people to remain in the same industry over the long term (i.e. the retention of workers was often a key rationale for the creation of these schemes). Therefore, in these schemes, workers lose their benefits if they leave the industry before completing the specified qualifying period. Workers are allowed to take temporary breaks from the industry without losing their entitlements.

For example, in the ACT Community Services Industry Scheme, a worker can take a break of up to four years without losing LSL benefits. If they return to work within that time frame, even as a casual or part-time worker, accrued entitlements will be retained. During this period, the worker is usually categorised as an “inactive worker”.<sup>96</sup> The worker will be deregistered and lose all benefit entitlements for past service if they take a longer break without having already qualified for an LSL benefit. If the worker re-enters the industry at a later date, they will start from scratch and gain no credit for past service.

The established PLSL schemes deregister thousands of workers each year.<sup>97</sup> A worker forfeits their entitlements upon deregistration. The money which had been set aside to pay their benefits can be used for other purposes, such as paying administration costs for the fund and/or reducing the employer levies.

For example, Queensland’s construction industry scheme deregistered 27,324 workers in 2011/12, which represents 10% of all workers who were registered at the start of the year. This reflects the impact of the boom/bust cycle on the construction industry. In the years prior to the Global Financial Crisis (GFC), many workers were attracted into the construction industry by high rates of pay. After the GFC many of those jobs disappeared and workers moved into other industries. Many of these workers would have forfeited their entitlement to LSL benefits. Others (those who remained in the industry long enough to complete the vesting period) would be eligible for some benefits, but they might well become “lost members”.

This creates some administrative difficulties.

In general, the fund has a liability to any member who does qualify for a LSL benefit by completing the specified qualifying period. The member’s benefit “vests” (and becomes a “vested benefit”) as soon as they complete this period. For example, in the NSW construction industry scheme, a worker is entitled to receive a LSL payment if they cease working in the industry after completing five years of service.

Consider the example of a worker who has completed five years of service. He loses his job and switches to a new line of work in another industry. Perhaps he intends to return to the construction industry at a later date, when the economy improves. Therefore he does not claim his LSL benefit. After a while, he may even forget about the LSL benefit. Perhaps he does not even realise that he has an LSL benefit. The LSL fund maintains records for this worker, showing a liability for their vested benefit. But years go by, and the benefit is never claimed. The fund loses contact with these members.

It seems that some of the established industry funds are holding large sums in reserve for these lost members. According to the 2012 actuarial report for the NSW construction industry scheme, the fund has liabilities amounting to \$72 million for vested benefits for workers who have not worked in the industry for more than four years, who have never claimed their benefits. The actuaries note



that: *“Although some of the out of force workers will resume work in the industry and become active workers again, it is likely that many of them will have lost contact with the Corporation and may never claim their benefit”.*<sup>96</sup>

As noted previously, similar problems have plagued the superannuation industry. Many employees simply lose contact with their superannuation fund, and never claim their benefits.

## 8. ADMINISTRATIVE BURDEN FOR EMPLOYERS

LSL legislation inevitably creates some paperwork for employers, even when the LSL benefits are not portable. Employers must keep records for every employee throughout their service, and indeed for several more years after the employee leaves service.

To some extent, the industry-based PLSL funds take over this record-keeping task. Each of the established portable industry-based funds has now established a central register and database to keep records of all registered employees and their benefits accrued. Each participating employer must pass on information to the central register. Most funds require monthly or quarterly returns from employers, which undoubtedly creates some additional work for employers. However, it is clear that administrators of the established PLSL schemes have taken steps to reduce the administrative burden for employers, as much as possible. Based on our interviews with employers who participate in these schemes, it appears that they have been quite successful in doing so.<sup>99</sup>

Most of the PLSL schemes allow employers to submit returns and make payments electronically. The funds have developed software which makes it very easy to input the required data. The administrators send staff members out to teach new employers how to use this software. Many of the fund administrators conduct customer service surveys, and the results are generally very positive. For example, 93% of employers responding to a recent survey expressed satisfaction with the operation of the Queensland construction industry scheme.<sup>100</sup>

To some extent, the burden of record keeping has been transferred from employers to the LSL fund administrators. Unfortunately, some employers do not provide accurate information to the LSL funds.<sup>101</sup> Of course, this creates extra work for the LSL funds.

Employers sometimes have difficulty in determining whether or not employees are covered by a particular industry-based fund. For example, this issue came up in the review of the Tasmanian scheme for building and construction workers. Employers complained about the “uncertain and complex definition of the construction industry”, which created confusion.<sup>102</sup> Did the scheme cover landscape gardeners? People who installed sprinkler systems? People who installed burglar alarms? Kitchen-makers? The following exchange illustrates some of the definitional difficulties.

**Extract from Hearings by  
The HOUSE OF ASSEMBLY  
SELECT COMMITTEE ON COSTS  
OF HOUSING, BUILDING AND  
CONSTRUCTION**

Mr BOOTH - Do you collect long service off someone who makes kitchens, for example?

Mr ATKINS (CEO of TASBUILD)- There is a subtlety in relation to kitchen manufacturers which we are wrestling with. A manufacturer of a flat-pack kitchen selling to the public, they generally wouldn't, but if the kitchen manufacturer also then installs then they would be covered. It is a moot point; one is deemed to be a manufacturer and the other one is deemed to be in the construction industry....

Mr BOOTH - Window manufacturers?

Mr ATKINS - On the same scenario, if they are just manufacturing and selling to builders and the public without any installation, then they are out, but if they are actually manufacturing and installing then they would be in.<sup>103</sup>

If many different industry-based PLSL schemes are created, each covering a different category of workers, these administrative complexities may become more burdensome for employers. Employers might be required to make contributions to different schemes for different employees. These issues are exacerbated when employers operate in two or more different jurisdictions, and each jurisdiction has a separate scheme.



## 9. ADMINISTRATION COSTS

The established PLSL schemes have taken pains to control administration expenses. Most funds encourage employers to provide returns electronically, which has streamlined administration for both employers and the fund's administrative staff. For the smaller funds, administration costs have been managed by sharing resources, for example, through the administration of multiple funds by a single body in Queensland and the ACT.

The construction industry LSL schemes in each State/Territory have set up a National Cooperation Project, and are currently working together to improve the efficiency of administration to achieve greater consistency between the different funds. The reasoning behind this initiative is *"to reduce operating costs and ensure that employers and workers who work across State boundaries are not disadvantaged by different processes and rules."*<sup>104</sup> Indeed, interviews with employer representatives identified inconsistencies between different schemes as an administrative burden for employers operating in multiple jurisdictions.

The Coal Mining Industry PLSL fund tries to reduce costs by taking advantage of synergies with the superannuation system. According to the annual report, the LSL fund employs AUSCOAL Services to collect levies and pay claims.

**" AUSCOAL Services Pty Ltd is also the administrator of the coal industry superannuation scheme and serves substantially the same employers and employees as are subject to the long service leave legislation...We believe that the close synergy between these administrations also continues to produce efficiencies and a benefit in administration costs...The Corporation regularly tests the costs of administration provided by AUSCOAL Services Pty LTD against the general marketplace to ensure they remain cost-effective."**<sup>105</sup>

Administration costs will vary between funds, depending on a range of factors, such as :

- the length of time the fund has been in operation;
- the number of registered employees;
- the proportion of active and inactive registered employees;
- the number of employers;
- the average size of the levy per member;
- the method of collection of the levies;
- the number of LSL benefit claims made;
- the turnover of employees and employers;
- the average rates of remuneration for the workers in each industry; and
- the amount of assets under management.

For example,

- the costs of education and monitoring compliance will vary depending on the number of employers;
- the cost of collecting contributions will vary depending on the method of payment (for example, some States determine levies as percentage of payroll, while others determine levies as a percentage of construction project costs, using local councils as agents to collect these levies);
- the cost of paying benefits will vary depending on the average length of service for fund members;
- the cost of managing the investments will vary depending on the amount of assets held in the fund; and
- the costs of auditing and actuarial reviews will be an overhead for every fund.

The annual reports for the established industry-based funds do not provide enough information to break down the cost structures in any detail.



Table 4.1 presents the expense ratios, measured as a percentage of assets, for existing PLSL funds. It shows that the NSW Cleaners and the ACT Community Services funds have high expense ratios. No doubt this reflects the fact that these are relatively new schemes. There are significant establishment costs for new schemes. For example, the Bendzulla feasibility study for the Victorian Community Sector scheme estimated establishment costs would be between \$500,000 and \$1 million. The establishment costs for the ACT Community Sector scheme were estimated to be \$500,000.<sup>103</sup> The newer schemes have not yet had time to build up a large amount of assets, so the ratio of expenses to assets will be higher than for long-established schemes. The Coal Industry has the lowest expense ratio, when measured as a percentage of assets.

Ideally we would also like to calculate the administrative costs per member in each fund. However, this is difficult because there are many different categories of members. A fund might include workers who are currently employed; members who are not currently employed in the industry but have been employed at some time within the last year; members who are not working in the industry any more, but are still on the register; and members who have not been employed in the industry for more than x years (deregistered members, who may or may not be included in the membership count).

**TABLE 4.1**  
**EXPENSE RATIOS (= EXPENSES / ASSETS \* 100) FOR INDUSTRY-BASED PLSL SCHEME**

FUND	DATE	EXPENSES (1000s)	ASSETS (1000s)	EXPENSES X 100 ASSETS
Coal Industry	2011	\$ 3,148	\$826,270	0.38
NSW Building and Construction	2012	\$15,100	\$601,800	2.51
NSW Building and Construction	2011	\$9,100	\$610,000	1.49
NSW Building and Construction	2010	\$10,200	\$663,700	1.54
NSW Cleaners	2012	\$1,600	\$7,100	22.54
Queensland Building and Construction	2012	\$8,705	\$642,162	1.36
Queensland Building and Construction	2011	\$9,746	\$509,910	1.91
Queensland Cleaners	2011	\$1,042	\$26,683	3.91
Queensland Cleaners	2010	\$840	\$20,678	4.06
South Australia Building and Construction	2012	\$1,448	\$85,460	1.69
South Australia Building and Construction	2011	\$1,272	\$80,930	1.57
South Australia Building and Construction	2010	\$1,221	\$69,630	1.75
South Australia Building and Construction	2009	\$1,080	\$58,750	1.84
Northern Territory Building and Construction	2012	\$1,469	\$53,490	2.75
Northern Territory Building and Construction	2011	\$1,409	\$41,906	3.36
Tasmania Building and Construction	2012	\$1,139	\$70,878	1.61
Tasmania Building and Construction	2011	\$,046	\$67,475	1.55
Western Australia Building and Construction	2012	\$4,033	\$268,877	1.50
Western Australia Building and Construction	2011	\$3,715	\$223,380	1.66
Australian Capital Territory Building and Construction	2012	\$1,408	\$67,169	2.10
Australian Capital Territory Building and Construction	2011	\$1,090	\$65,115	1.67
Australian Capital Territory Cleaners	2012	\$293	\$6,979	4.20
Australian Capital Territory Cleaners	2011	\$371	\$6,215	5.97
Australian Capital Territory Community Sector	2012	\$551	\$7,339	7.51
Australian Capital Territory Community Sector	2011	\$555	\$3,506	15.83
Victorian Building and Construction	2012	\$14,031	\$663,583	2.11
Victorian Building and Construction	2011	\$12,884	\$625,846	2.06

**TABLE 4.2**  
**EXPENSES PER ACTIVE MEMBER FOR INDUSTRY-BASED PLSL SCHEME**

FUND	DATE	EXPENSES (\$1000s)	MEMBERS WHO ARE CURRENTLY / RECENTLY EMPLOYED	EXPENSES PER ACTIVE MEMBER \$	AVERAGE BALANCE PER ACTIVE MEMBER \$ (SEE NOTE 1)
<b>Coal Industry (National)</b>	2011	3,148	44,880	70.14	18,421
<b>NSW Building and Construction</b>	2012	15,100	181,175	83.34	3,322
<b>NSW Cleaners</b>	2012	1,600	23,797	67.24	298 (new fund)
<b>Queensland Building and Construction</b>	2011	9,746	142,680	68.31	3,574
<b>Queensland Cleaners</b>	2011	1,042	14,396	72.38	1,853
<b>South Australia Building and Construction</b>	2012	1,448	19,250	75.22	4,439
<b>Northern Territory Building and Construction</b>	2011	1,409	n/a	n/a	n/a
<b>Tasmania Building and Construction</b>	2012	1,139	11,695	97.39	6,061
<b>Western Australia Building and Construction</b>	2012	4,033	69,619	57.93	3,862
<b>Australian Capital Territory Building and Construction</b>	2012	1,408	18,063	77.95	3,719
<b>Australian Capital Territory Cleaners</b>	2012	371	5,169	71.70	1,350
<b>Australian Capital Territory Community Sector</b>	2012	551	12413	44.39	591 (new fund)
<b>Victorian Building and Construction</b>	2012	14,031	120,039	116.89	5,528

Note 1: The average balance per member has been calculated by dividing the total assets by the estimated number of members who are currently employed. Some of the assets belong to members who are no longer working, who still have a vested LSL benefit in the fund. Therefore these figures overstate the average balance per member. The data provided in the fund accounts does not enable a more accurate estimate. Note that the average balance per member will also be affected by wage rates; by the proportion

of part-time-workers; and by the average length of service of members who remain in the fund.

Note 2: The Queensland Building and Construction fund membership numbers include members who received a service credit during the year plus anyone eligible for a pro rata benefit. Hence the membership numbers are overstated by an unknown amount relative to the other schemes.

The membership rules are different for each fund, and each fund has provided membership statistics based on its own classifications. We have attempted to assess the expenses per employed member, as shown in Table 4.2. But the inconsistency between funds means that these figures do not provide a reliable basis for comparisons.

If we look at expense rates per member, the coal industry expense rates are more in line with the other funds. The miners have higher average rates of pay, and higher average length of service, compared to other funds, and this has led to a much higher accumulation of assets per member. The figures shown in Table 4.2 indicate that some of the smaller funds have significantly higher expense ratios.

If the industry-based defined benefit model is adopted as the basis for expanding the availability of PLSL benefits to more workers, then administration costs may consume an even higher proportion of fund income. For reasons outlined above, this model relies on the assumption that each industry has its own LSL fund. This may well lead to a proliferation of small funds with a relatively

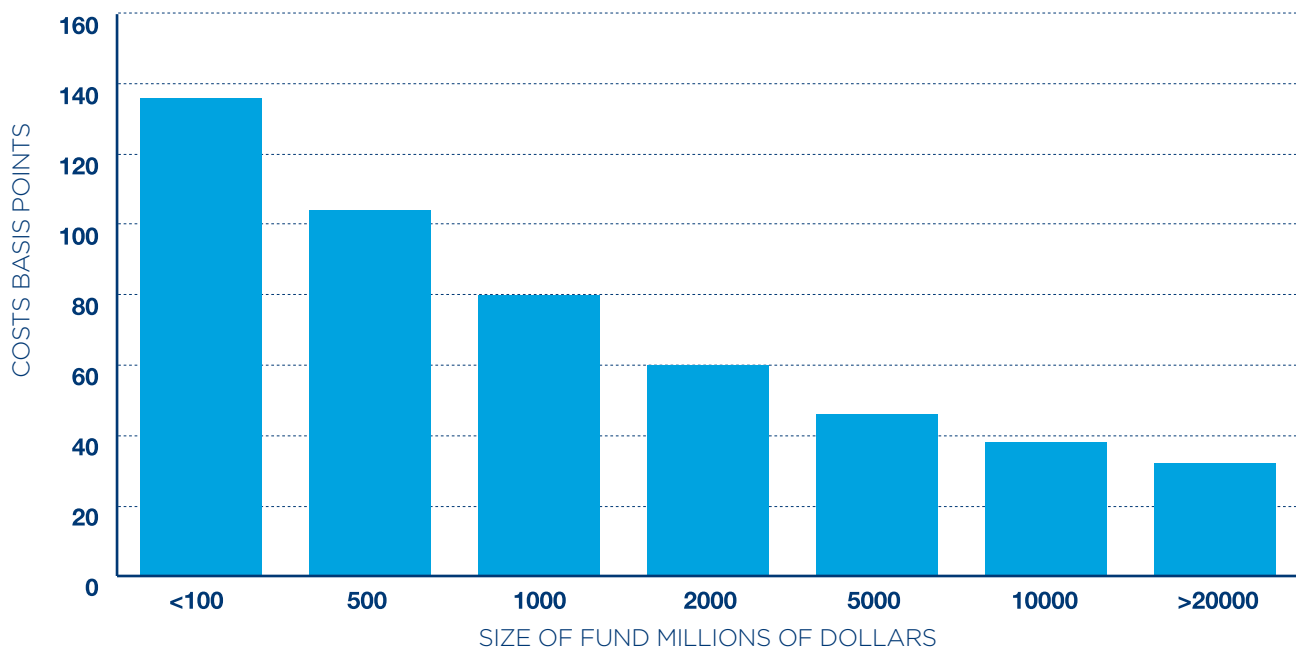
small number of members and a relatively low level of assets. This is likely to be economically inefficient, because small funds typically have higher per-capita costs. A 2007 study of the established industry-based PLSL schemes found that there were economies of scale in administration costs.<sup>107</sup>

This is consistent with experience in the superannuation industry. The Cooper Review of the efficiency of the superannuation system found that “scale matters”. The following graph gives the estimated costs for funds of different sizes.<sup>108</sup>

The compulsory superannuation system initially involved the creation of a multitude of relatively small industry-based superannuation schemes. Over the years, the smaller funds have amalgamated or been swallowed up by larger superannuation funds.

Before establishing new industry-based PLSL funds, it would be sensible to conduct a more thorough analysis of the administration costs – similar to the Deloitte Analysis which was prepared for the Super System Review. This information would be necessary in order to make an accurate assessment of the level of levies which would be needed to provide the minimum statutory LSL benefits.

**FIGURE 4.2**  
**ESTIMATED SUPERANNUATION FUND EXPENSES BY SIZE OF FUND**





## 10. STABILITY OF EMPLOYER COSTS

The creation of a new industry-based PLSL fund will affect each employer's cash flow.

Under this model, employers no longer incur LSL costs when an employee takes LSL or exits from service. Instead, employers are required to make regular periodical payments of LSL levies.<sup>109</sup> In other words, the LSL benefits will be funded in advance, well before the employee ever becomes eligible to take leave. In recent years, when new PLSL schemes have been proposed, some employers have objected to the imposition of such levy payments on the ground that some businesses would not be able to afford the levy payments. This was the view expressed by some employer representatives in the community services sector, the cleaning industry, and the securities industry, when new schemes were proposed.

The industry-based schemes were all designed to provide defined benefits. In a defined benefit fund, the employer's costs will vary depending on the experience of the fund in relation to factors such as the benefit rules, investment returns, salary growth rates, administration costs, and employee working patterns and turnover (the impact of these variables is described in Section 5 of this report). An actuary can provide an estimate of the levy rates required to provide the promised benefits, based on reasonable assumptions about future experience. However, the fund will require regular actuarial reviews in order to re-assess the progress of the fund and review the adequacy of the levy rate. Most of the established PLSL funds require an actuarial review every three years (or more frequently).

Several of the PLSL schemes have experienced significant changes in the levy rates over the years. Although employers are usually pleased when levy rates drop, they are naturally unhappy when levy rates increase, particularly if rates increase during economic downturns when employers are already facing difficult trading conditions.

Levies are likely to be particularly volatile in industries which are cyclical, such as the construction industry. During boom times the

workforce expands, the workers build up large LSL entitlements, and the LSL fund builds up large liabilities. When markets crash, funds suffer large investment losses, which creates large deficits. At the same time, many employers go out of business and the workforce shrinks. At this stage, a relatively small number of employers will be asked to pay higher levies, in order to pay off the LSL deficit. The surviving employers face higher costs when they are already struggling to stay in business. Any new company which commences operations will face high costs, to pay for LSL benefits accrued by other employers in the past. Without careful management, a defined benefit fund may exacerbate negative business cycles.

This is evident in the case of the Tasmanian construction industry fund, which has experienced wide fluctuations in levy rates over the years. From October 1998 to June 2006, employers paid just 0.7% of wages, which dropped to just 0.3% from July 2006 to March 2009.<sup>110</sup> After the fund suffered quite severe investment losses during the global financial crisis, the levy increase was necessary to restore the solvency of the fund, increasing to 0.6% from April 2009 and then jumped sharply to 2.0% six months later. Many employers were upset by the sharp increases in the LSL levy rate. In evidence to the Parliamentary Inquiry, one employer complained that his LSL levy had increased from \$115 per month in 2008 to \$889 in 2011. New employers entering the industry in 2010 were particularly unhappy about paying off deficits which had arisen before they joined the fund:

**“ Current employers are now being charged a 700 per cent increase to pay for the global financial crisis and in many cases to pay for long service leave entitlements that might have been from six or eight years before, from other employers.”<sup>111</sup>**

Defined benefit funds are also vulnerable to the risk of wage and salary increases, e.g. as a result of a boom in the construction industry. When there are large increases in the level of remuneration, then defined LSL benefits will also increase sharply. This may force an increase in levy rates, to cover the increased benefits.

The variability of levy rates will be influenced, to some extent, by management decisions. As an example, consider a fund which has earned excellent investment returns, so that the fund has a surplus of assets over liabilities. The board of the fund has two options: set aside the surplus as a buffer against future adverse experience and maintain a stable levy rate, or spend the surplus by cutting the levy rate and increasing benefits. The second option may well be quite attractive to both employers and employees, whose views will both be represented on the board. However, if this strategy is adopted, then a cut in the levy rate may well be followed by a sharp increase if the fund subsequently suffers any adverse experience.

It is clear that in the past, many of the industry-based PLSL funds have adopted policies which have tended to increase the variability of the levy rates. According to the Cole Royal Commission, several of the construction industry funds cut levies and increased benefits during the prosperous 1990s, but were forced to increase levies during the economic downturn of 2001/02.

Appendix 3 shows the variability in the levy rate for the industry-based funds.

This pattern is quite consistent with the experience of many defined benefit superannuation funds over recent years. Many employer-sponsors cut their superannuation contributions whenever the fund had a surplus, thereby maintaining fund assets at a level only slightly higher than fund liabilities. As a result, a large number of defined benefit superannuation funds were in an unsatisfactory financial position in the aftermath of the GFC.<sup>112</sup>

There are measures which can be taken to reduce the volatility of levy rates in defined benefit funds: for example the fund might adopt a low-volatility investment strategy. But this stability comes at some cost (e.g. lower long term average returns).

The volatility of contribution rates is discussed in Section 5.

## 11. EMPLOYER CROSS-SUBSIDISATION

When LSL is not portable, each employer pays the LSL costs for their own employees. Different employers will incur different costs, reflecting the wage increases and staff turnover in their own business. However, in a PLSL which operates on a defined benefit basis, the same levy rate is applied to all employers, and these levies are pooled. All benefits are paid from the central pool. There is no direct link between the contributions made in respect of any employee and the benefits that they receive. Some will receive more than they pay; others will pay more than they receive. This creates the potential for cross-subsidies between employers.

These cross-subsidies may be considered desirable and introduced into the rules quite deliberately. For example, in some funds, the rules allow apprentices to accrue LSL benefits, even though employers are not required to pay levies for apprentices. This reduces the cost of employing apprentices, which is considered to be beneficial for the industry. However, there might be simpler, more transparent methods of providing such subsidies.

Some cross-subsidies may arise as a result of employer insolvency. The PLSL funds generally provide LSL benefits for employees of insolvent employers. If an employer becomes insolvent while owing levies to the fund, then other employers will inevitably be required to cover the shortfall. However, the established industry-based funds generally have quite a low level of bad debts as a result of employer insolvency: therefore this has not been a serious problem for these funds.

As explained previously, there might be cross-subsidies between different generations of employers. If a fund develops a large deficit for benefits owing to past-service employees, it will be compelled to increase levy rates. Any new-entrant employers will be paying higher rates to cover the deficits incurred by previous generations and of course this is even more likely to be a problem if levy rates have been kept at artificially low rates

in the past). As an example, consider the coal industry PLSL fund. Prior to 1992, the scheme was severely underfunded, and as a result a large deficit developed. After a review of the scheme, employer levies were increased to 5%, consisting of 2.8% to cover the current year's liabilities and 2.2% to make up for the deficit. New entrants to the industry in the 1990s had to pay for losses accrued by other employers in the 1980s.

Other cross-subsidies may arise from differences in wages growth. In a defined benefit fund, LSL benefits depend on the worker's wages at the date LSL is paid. Those employees who get large pay increases obtain better benefits than those who have no increase in wages. If both types of workers are included in the same defined benefit fund, and the same levy is paid in respect of both types of workers, then there will be cross-subsidies between the employers of these two groups. (See Table 4.1 for a numerical illustration).

In any LSL fund, the level of cross-subsidy will depend on the diversity of the employees and employers. If all the employers belong to the same industry, and all employers in the industry have very similar wage rates and staff turnover patterns, then cross-subsidies are reduced. But if the fund covers a wider range of employers, then cross-subsidies are likely to be more of an issue. It would be theoretically possible to reduce cross-subsidies by charging different levies to different employers, based on their own employees' LSL costs, but this would make the levy system much more complex and difficult to administer.

The existence of cross-subsidies was considered to be an undesirable feature of the coal industry PLSL scheme, which was previously a defined benefit fund. In response to employer concerns about cross-subsidies, the industry has now switched to an accumulation-type scheme for all service after 1 January 2012. Each employee now has an individual account. When an employee takes LSL, the fund will pay no more than the balance of their account.<sup>113</sup>

Cross-subsidies may also arise if employers work out how to "game the system". For example, suppose that a worker is temporarily employed in

an exceptionally high-paying job (e.g. a construction job in a remote location). This worker might realise that it is beneficial to claim LSL benefits immediately after completing this job, before returning to work in a job which has a lower rate of pay.<sup>114</sup> This type of behaviour would increase the benefit costs for the LSL fund, which could put a strain on the fund's solvency.

This type of behaviour could be avoided by making LSL payments based on standardised rates of pay (instead of the employees' actual remuneration); and/or apply a cap to the LSL pay rates. For example, the Northern Territory construction industry fund uses a fixed rate payment system for LSL benefits based on average weekly earnings in the industry. According to an actuarial review of the scheme, this system provides a number of benefits: *"The use of a fixed rate for benefit payments establishes equity between workers in different parts of the industry, simplifies administration of the scheme and removes some potential abuses of the scheme such as artificially inflated salaries for benefit payment purposes"*.<sup>115</sup> However, this means that the LSL benefit would not be sufficient to provide a replacement of normal income levels.

An alternative approach, which has been adopted in some of the established industry-based funds, uses averaging, i.e. the LSL benefit is based on the average rate of pay over the previous year.

## 12. FLEXIBILITY

Ideally, our LSL system should be flexible. The system should allow for differences in LSL entitlements for different employers. And it should allow for changes in LSL entitlements over time.

Industry-based defined benefit funds are not very flexible. The same standard formula is usually used to calculate benefit payments for all employees, for all employers.

This became an issue when the Victorian government was considering the establishment of a PLSL scheme for Community Sector Workers. The proposed scheme would have provided LSL benefits at the minimum level required by law (i.e. two months leave after ten years). But about 90%

of Community Sector Workers employees were already on awards or agreements which provided a higher level of benefits. This meant that the employers would have had to administer two long service leave systems, the portable base-level LSL and the employer-specific LSL. The PLSL scheme could be redesigned to provide more flexible benefits (essentially taking over the administration of the employer-specific benefits) – but this would have increased the administration costs.<sup>116</sup>

---

### Overall assessment of Option B: Industry-based Defined Benefit PLSL funds

---

#### Industry-based PLSL funds have the following advantages:

- The defined benefit structure provides benefits which are suitable for our purposes, i.e. providing a replacement of normal income while the employee is on LSL;
- The established industry-based funds have been successful in developing administration systems which minimise the administrative burden for employers;
- The larger industry-based funds have apparently been able to keep administration costs at about 1.5% to 2% of assets or less;
- The established funds have devoted resources towards improving compliance, i.e. ensuring that workers receive their entitlements; and
- Improved compliance also provides a level-playing field for employers, i.e. by limiting the risk that irresponsible employers will be able to undercut responsible employers.

#### However this option also has disadvantages:

- Defined benefits superannuation funds were traditionally created by a single employer-sponsor paying standardised benefits on behalf of its own long-serving employees. Defined benefit funds are more difficult to manage when there are multiple employers with a diverse group of employees who are frequently switching between funds;

- If new schemes are created for each industry, this will create administrative difficulties, e.g. if workers accrue benefits in multiple industries across multiple jurisdictions;
- If new schemes are created for each industry, it is likely that many of these schemes will be too small to operate efficiently. If they are unable to attain economies of scale, employers will have to pay higher contributions in order to cover higher administration fees;
- The defined benefit structure might create cross-subsidies between different employers and different generations of employees;
- Based on the experience of the established PLSL schemes, the levy rate is likely to vary over time, creating difficulties for employers. This problem is likely to be more severe in cyclical industries and/or in funds which adopt more volatile investment strategies;
- Defined benefit funds may develop large deficits (especially if there is pressure to keep levy rates low); it would be desirable to have clear-cut rules for the management of fund surpluses and deficits (which might entail benefit reductions); and
- Defined benefit schemes are less flexible than accumulation schemes, i.e. less able to cope with variations in entitlements across different categories or workers, and less able to cope with changes in entitlements over time.

If this option is adopted, it would be desirable to introduce “sole purpose” rules to ensure that LSL fund assets are used solely for the purposes of providing LSL benefits.

### 4.2.3. Option C: The Accumulation model

PLSL benefits could be provided by requiring employers to make regular contributions for all eligible employees. The minimum amount of the contribution would be determined by the National Employment Standards. These contributions would be payable into designated LSL accounts administered by superannuation funds and/or authorised financial institutions.

- The money held in the account would be invested on behalf of the account holder and investment earnings would be credited to the account;
- Administration fees would be deducted from the account;
- The account-provider would be required to maintain records sufficient to determine the worker's eligibility for LSL cash payments in the future;
- Cash payments from the LSL account to the worker would be subject to "LSL preservation requirements", similar to the preservation requirements applicable to superannuation benefits. The LSL benefit would not become payable in cash until the worker met an "LSL condition of release", e.g. when a worker took LSL, became permanently disabled, reached retirement age, or died. The preservation rules would also specify the amount payable if the worker only took part of their accrued LSL (e.g. took only one month of leave when they were entitled to take two months). The worker's employer would be required to verify that a condition of release has been met (e.g. by certifying that the worker is taking LSL);
- The LSL account-provider would be required to meet registration, reporting, and corporate governance requirements, similar to those imposed on the financial institutions that hold superannuation savings. APRA would set standards for authorisation and would

monitor account-providers. Banks, life insurers, and superannuation funds would be eligible to offer LSL accounts, as long as they met the authorisation standards;

- The employee would be entitled to choose the LSL account-provider and to transfer the LSL account from one provider to another. This would enable the employee to combine LSL payments from two or more employers into one account. This would improve the efficiency of the system, i.e. minimising administration fees; and
- If the employee did not exercise the right to choose, then the employer would be required to make payments to an LSL account administered by a default account-provider. The default account-provider would be chosen according to the same principles which are applied to choose a default superannuation fund.

In practice, of course, the employer's administrative burden would be reduced if there was consistency between the superannuation system and the LSL system.

It would be necessary to carefully consider the tax treatment of these LSL accounts. As noted previously, the established industry-based PLSL schemes are not required to pay any tax on levies received or on the investment income earned. However LSL benefits are taxed in the hands of recipients when the benefits are ultimately paid. The tax treatment of these accounts will, of course, affect the costing of the LSL benefits. If the LSL accounts are taxed, then the employers will have to pay a higher rate of contributions in order to fund the same level of benefits. The impact of taxes is discussed in more detail in Section 5.

If the LSL accounts are given favourable tax treatment, then it will be necessary to impose some limits on the amounts paid into these accounts. The annual contributions should not exceed the amount needed to fund the accruing LSL entitlements (e.g. fixed as a percentage of wages or salary).



Compulsory superannuation is set up under the Commonwealth government’s taxation powers. If an employer does not pay superannuation contributions, then it is liable to pay additional taxes; the additional taxes are high enough to provide an incentive for employers to pay the contributions. Similarly, superannuation funds must comply with the Superannuation Industry (Supervision) Act, because non-complying funds might risk losing their tax concessions.

It is not entirely clear that the Commonwealth could treat compulsory LSL in the same way under its taxation powers. The issues and possible approaches have already been canvassed at the beginning of Section 4 in relation to compulsory LSL generally.

## 1. TRANSITIONAL ARRANGEMENTS

If this model is adopted, then it will cover all LSL benefits which are earned after the commencement date of the scheme. Employers would continue to be responsible for paying LSL benefits earned prior to the commencement date. Therefore both arrangements will run in tandem during a transitional period which might last several years.

## 2. SIMPLICITY

This model would be simple for workers to understand. The LSL account is simply a special-purpose savings account, with restrictions on withdrawals.

The Super System Review found that many Australian workers do not pay much attention to their superannuation accounts, and they simply join the default fund and accept the trustee’s default investment strategy. Since LSL accounts balances are likely to be even smaller than superannuation balances, it seems likely that workers will also be “disengaged” from the LSL accounts.

The Super System Review noted that:

**“ If members are not interested, then the system should still work to provide optimal outcomes for them.”<sup>117</sup>**

Ideally, the same principles should be applied to the design of LSL savings accounts. The LSL accounts should as simple as possible: low cost, low risk products without any “bells and whistles”, consistent with the MySuper products recommended by the Super System Review. The LSL savings accounts would have a single diversified investment strategy; no entry fees; no commissions or fees for advice; and streamlined reporting to members.

## 3. ADEQUACY OF BENEFITS

This model would provide accumulation-type benefits, instead of defined benefits.

If a worker took all of the accrued long service leave at the end of ten years, he or she would be entitled to all of the money held in the LSL account. This amount would be the accumulated value of past contributions, plus investment income, less fees and taxes (if applicable). This sum might not be sufficient to provide the usual level of income during the period of leave.

The accumulation benefit is likely to be inadequate if the worker’s remuneration has increased at a rate which exceeds the net growth rate of the account balance (where the net growth rate depends on investment income less fees and taxes). That is, the worker will bear the risks.

The magnitude of these risks would be affected by the investment strategy which is adopted for these accounts. Superannuation savings have a long term time horizon, so superannuation funds often adopt a balanced asset allocation as a default strategy. LSL accounts are likely to have a much shorter time horizon, so a more conservative (low-risk, low-return) investment strategy might be more appropriate.

However, if the expected investment returns are low, then slightly higher employer contributions would be required in order to provide the same level of expected benefits.

There is a trade-off between the cost to the employers and the risks to the employee. If the employer pays a slightly higher contribution rate, then there is obviously a smaller risk that the account balance will be insufficient to provide the worker’s normal income while on leave.

#### 4. COMPLIANCE

Ideally we would like to find a way to make sure that employers pay the correct LSL contributions into an account for each employee. However, the compliance mechanism will depend on the legal framework for the new LSL system.

At present, Fair Work Australia is responsible for ensuring compliance with National Employment Standards, including payment of LSL benefits.

On the other hand, the compulsory superannuation system relies on the taxation system to ensure compliance. If an employer fails to make compulsory superannuation payments, then the employer is required to pay additional taxes. The employer has a financial incentive to make the superannuation contributions, in order to avoid the tax. Similarly, superannuation funds must comply with the provisions of the *Superannuation Industry (Supervision) Act* – otherwise the fund might be subject to financial penalties (even the loss of tax concessions). As a result, the Australian Taxation Office is primarily responsible for ensuring compliance.

In 2010 the Inspector General reviewed the ATO's administration of the Superannuation Guarantee Charge. The Inspector General found that the SG system worked well for the majority of Australians, but there were some problems. It was difficult to determine the level of non-compliance. In many cases, the ATO only became aware of non-compliance when an employee complained. But this is not a reliable means of detecting non-compliance. Employees might not know that the employer was supposed to be making contributions; might not be aware that the employer was failing to make contributions; or might be afraid to complain. Although the ATO was attempting to introduce more pro-active methods of detecting non-compliance (e.g. data matching and risk analytics). However, the enforcement of compliance is often time-consuming and expensive.<sup>118</sup>

The Inspector General noted that certain categories of workers had a higher risk of missing out on their superannuation contributions: low paid workers, young people, contractors and casuals, employees working in micro-businesses, and employees

working in particular sectors – arts and recreation services; transport, postal and warehousing sectors; accommodation and food services; and the agriculture, forestry and fishing sector.

The Inspector General made a number of recommendations for improving compliance, including stricter financial penalties for employers who fail to meet their obligations.

No doubt there will be similar problems in enforcing compliance with any compulsory LSL scheme. Therefore the development of effective monitoring, enforcement, and deterrence measures should be incorporated into any new LSL legislation.

#### 5. PROTECTION IN THE EVENT OF INSOLVENCY

Under this model, the LSL benefits are prefunded, so the employee is (theoretically) protected against the risk that the employer will become insolvent. Assuming that the employer pays contributions on a quarterly basis, the employee's losses would be limited to approximately three months of LSL contributions.

In practice, of course, this will depend on the efficacy of compliance enforcement. In the superannuation system, many employers fail to pay their contributions on time and in full. Employers who are experiencing financial difficulties are particularly prone to delay payment of compulsory superannuation contributions for many months and even years. Employees often suffer substantial losses when employers become insolvent.<sup>119</sup> It seems likely that similar problems will affect LSL contributions.

The *Fair Entitlements Guarantee Act 2012* (FEGA) currently provides protection for employees' LSL entitlements in the event of employer insolvency. Under this model, we would expect that FEGA's annual costs would be lower (hence reducing the impost on Australian taxpayers, who ultimately provide the funding for FEGA). However, FEGA would presumably still cover any unpaid LSL contributions and lost interest earnings on those contributions. This would require an amendment to the FEGA legislation.

## 6. PRUDENTIAL MANAGEMENT AND SOLVENCY

At present, superannuation can be provided by regulated superannuation funds (under a trust structure) or by authorised financial institutions such as banks and building societies (via Retirement Savings Accounts). Superannuation funds and authorised RSA providers are monitored and supervised by the Australian Prudential Supervision Authority. Fund members and RSA account holders have the added protection of certain government guarantee arrangements.<sup>120</sup>

Similarly, LSL savings accounts could be administered by superannuation funds or by authorised financial institutions. Financial institutions would be required to apply for permission to manage these accounts. They would be required to meet registration, reporting and corporate governance requirements, similar to those imposed on the superannuation funds and RSA providers. APRA would be responsible for the prudential supervision of LSL account-providers.

## 7. UNCLAIMED MONEY AND LOST MEMBERS

As noted previously, the superannuation system has experienced some difficulties in relation to unclaimed money and lost members. As at June 2009, there was almost \$13.6 billion held in superannuation accounts for lost members. The Super System Review recommended that the objective should be *“to reconnect members and their accounts quickly and efficiently and to introduce measures that make this less likely to occur in future”*. A number of new measures have been adopted to meet these objectives, e.g. the use of Tax File Numbers and improved electronic record-keeping with standardised formats.

If the proposed LSL system is integrated with the superannuation system, then these same measures should be extended to LSL savings accounts, in order to minimise the number of lost LSL accounts.

## 8. ADMINISTRATIVE BURDEN FOR EMPLOYERS

Employers would be expected to pay compulsory LSL contributions into the LSL savings account on a regular basis. The LSL contributions would be a fixed percentage of the employee’s wages or salary.

The employers’ administrative burden could be minimised by integrating the LSL system with the superannuation system.

It would take some work to develop consistency between the two regimes, e.g.

- Consistent definition of eligible employees;
- Consistent definition of salary for superannuation and LSL purposes; and
- Consistent frequency and timing of contribution payments.

If this could be achieved, then the employer could simply make LSL payments along with compulsory superannuation contributions, without a substantial additional administrative burden.

In response to the recommendations arising from the Super System Review, the superannuation industry is currently working to develop a more streamlined, efficient “back-office” payments system.

**“ SuperStream is a package of measures designed to bring the back-office of superannuation into the 21st century. Its key components are the increased use of technology, uniform data standards, use of the tax file number as a key identifier and the straight-through processing of superannuation transactions.”<sup>121</sup>**

SuperStream is expected to reduce the administrative burden for employers, as well as cutting costs significantly.

Ideally, any LSL savings account should be established with similar administrative efficiencies in mind.

## 9. ADMINISTRATION COSTS

The proposed LSL savings accounts would be similar to the MySuper accounts, i.e. a low cost, low risk product without any “bells and whistles”. The LSL savings accounts will have a single diversified investment strategy; no entry fees; no commissions or fees for advice; and streamlined reporting to members.

Therefore the estimated costs for the MySuper product should give a rough guide to the costs of the LSL savings accounts. Deloitte provided an estimate of the expected costs of the MySuper product for the Super System Review. Costs were divided into two categories:

- Operating costs expressed as dollars per member; and
- Investment management costs expressed as a percentage of assets.

Deloitte found that economies of scale had a strong influence on operating costs. For a large fund (more than 800,000 members) the operating costs were estimated at \$74 per member per annum; but for a small fund, the operating costs were estimated to be \$262 per member per annum.

The investment costs will depend on the investment strategy: e.g. passive or active funds management, conservative or balanced asset allocation. An active investment management for a conservative asset allocation was expected to incur costs of between 20 basis points (for a very large fund with assets of \$20 billion or more) up to 47 basis points (for a small fund with less than \$100 million in assets).

Note that there are some significant differences between LSL savings accounts and superannuation funds, which will affect costs. In particular, LSL savings accounts will have much lower balances than superannuation accounts, on average. Therefore the Deloitte report on the MySuper product cannot be relied upon to estimate the costs of the LSL savings accounts.

The proposed LSL savings accounts might also be compared to Retirement Savings Accounts

(RSAs). RSAs were designed to be low-risk (capital guaranteed) accounts suitable for people with low balances. The average RSA balance is about \$10,000. According to Rice Warner’s 2008 survey of Superannuation Fees, the average RSA expense charges were about 2.3% of assets. However, RSAs have not been a very popular product, and only a few financial institutions provide RSAs (and most of these are credit unions).

If the government decides to adopt this model for PLSL, it would be desirable to conduct a thorough actuarial review of the expected costs. In particular, it would be important to examine any possible synergies between the LSL system and the superannuation system, which could be used to reduce costs.

Minimisation of administration costs will be particularly important for part-time workers and low paid workers. As an example, suppose that the LSL contribution is just 2% of annual wages of \$20,000, i.e. \$400. An annual administration fee of say \$100 would consume a large proportion of the worker’s LSL savings. (Refer to the discussion of the Small Accounts Problem in Section 4.2)

## 10. STABILITY OF EMPLOYER COSTS

This model would require employers to make contributions as a fixed percentage of wages and salaries. Hence the employer’s LSL costs would be quite stable and predictable from year to year.

## 11. EMPLOYER CROSS-SUBSIDISATION

This model requires each employer to make contributions for its own employees. Hence this model does not create any substantial cross-subsidies between employers and/or industries.

However, note that there might be some small amount of cross-subsidisation between accounts via administration charges, e.g. if large accounts are required to pay higher administration fees to provide “member protection” for smaller accounts.

## 12. FLEXIBILITY

The LSL savings account model is quite flexible in many respects.

Firstly, it can be extended to cover a wider range of workers, e.g. self employed people. Some of the established industry-based PLSL funds already provide accumulation accounts which provide LSL benefits for self employed contractors.

Secondly, it would allow for variations in benefit levels. For example, at present, South Australia and the Northern Territory require employers to provide 3 months LSL per ten years of service, while other States only allow 2 months LSL per ten years of service. Under this model, employers in South Australia and the Northern Territory would simply be required to make contributions at a higher rate, reflecting the higher level of benefit accruals.

---

### Overall assessment of Option C: The Accumulation Model

---

#### The advantages of this model are:

- It is simple to understand;
- Assuming that the administrative arrangements can be integrated with the superannuation system, the administrative burdens for the employer should be acceptable;
- Assuming that the LSL savings account is designed to be a low cost, no-frills product; that the industry can achieve economies of scale in providing these products; and that there are synergies with superannuation; then the administration costs should be lower than Option B;
- The employers cost is stable and predictable;
- It avoids cross subsidies between employers and industries; and
- It is flexible.

#### On the other hand, this model also has some disadvantages:

- The legal framework for creating this system has not been specified and it might be difficult to achieve consensus;
- It would require some additional resources to monitor and enforce compliance;
- Accumulation benefits may not provide a replacement of income during leave – the risks are passed to the employees; and
- As with Options A and B, the system is vulnerable to the “small accounts problem”, i.e. relatively high administration costs for accounts with small balances.





# Costing of long service leave obligations

This section examines the cost of funding a defined benefit PLSL fund. The following analysis is not intended to recommend a levy rate for any specific fund. The levy rate will vary from one fund to the next, depending on a number of different variables. The following analysis is intended to help the reader understand the most important influences on the cost of providing LSL benefits.<sup>122</sup> As a basic principle, over the long term, the income received by any fund must cover the payments made from the fund according to the following formula:

**Employer levies PLUS investment income on assets must be sufficient to cover Benefit Payments PLUS Administration Expenses PLUS Tax.**

The employer's levy is the balancing item in this equation. Therefore the levy rate will depend on the following factors:

- The accrual rate for LSL benefits provided;
- The growth in wages over time (which affects the amount of the benefit);
- The investment returns of the fund (net of tax on investment income);
- The timing of LSL benefit payments;
- The number of people who exit from the fund before qualifying for an LSL benefit (which will depend on staff turnover, as well as death and disability rates);
- Administration costs; and
- Taxes.

Different funds have different benefit rules, investment strategies, wages growth and staff turnover rates. Therefore, different LSL funds require different levy rates. It is impossible to make precise estimates of the levy rate, unless the rules of the fund are known and detailed demographic information is available about the fund's membership.

We will estimate the levy rate for a hypothetical group of new entrants, i.e. people who are just starting work, with no retrospective entitlements to LSL benefits for previous service. The levy is calculated as a percentage of the employees' ordinary earnings each year, payable monthly.<sup>123</sup> This exercise is designed to estimate the long term average expected cost to the employer. In a defined benefit scheme, the levy rate is likely to fluctuate over time, depending on the experience of the scheme. For example, if the fund earns higher than expected investment returns, then it might be possible to reduce the levy (perhaps only temporarily). However, if wage increases are higher than expected, then the cost of benefit payments will increase and it might be necessary to increase the levy.

Since the levy rate depends on the experience of the fund, defined benefit LSL schemes will require actuarial reviews at regular intervals, in order to assess the adequacy of the levy rate and recommend changes in the levy rate if necessary. This issue is discussed below under the heading *Variability in the Levy Rate*.



## 5.1 The rate of accrual of LSL benefits

The levy rate will depend on the benefit accrual rate, i.e. the amount of LSL which is earned for each year of service.

We can calculate the annualised accrual rate as the number of months leave per 10 years of service, divided by 10 years, divided by 12 months. For example:

If the fund provides 2 months of LSL for 10 years' service (as with NSW, Victoria, WA, Queensland, Tasmania and the ACT), then the accrual rate is 1.67% ( $2/10 \div 12 = 0.0167$ );

If the fund provides 3 months of LSL for 10 years' service (as with SA and the NT), then the accrual rate is 2.50% ( $3/10 \div 12 = 0.025$ ).

The accrual rate gives us a "first approximation" of the levy rate. It is the rate which would be payable if we ignored the impact of investment income, salary growth rates, administration costs, and staff turnover (see Box 5.1).

### BOX 5.1 LEVY CALCULATION IGNORING SALARY INCREASES, INVESTMENT RETURNS, EXPENSES, AND EXITS

#### EXAMPLE A: Accrual rate 1.67%

Suppose that Mr Smith earns \$60,000 per annum (\$5,000 per month). Suppose that he will be entitled to 2 months LSL after 10 years (accrual rate 1.67%). His employer contributes 1.67% of his wages into the LSL fund each year, i.e. \$1,000 per annum. At the end of 10 years, the fund holds \$10,000. This is just enough to cover Mr Smith's LSL benefit, i.e. it provides 2 months' pay at \$5,000 per month.

#### EXAMPLE B: Accrual rate 2.50%

Suppose that Ms Doe earns \$60,000 per annum (\$5,000 per month). Suppose that she will be entitled to 3 months LSL after 10 years (accrual rate 2.5%). Her employer contributes 2.5% of her wages into the LSL fund each year, i.e. \$1,500 per annum. At the end of 10 years, the fund holds \$15,000. This is just enough to cover Ms Doe's LSL benefit, i.e. it provides 3 months' pay at \$5,000 per month.



## 5.2 Investment returns relative to wage increases

In practice, of course, the levy rate is also affected by a number of other factors, including wage increases and the investment returns on the fund. In a defined benefit scheme, the LSL benefit will be calculated based on the worker's wages at the date they take leave. The previous examples assumed that the worker's pay remains unchanged throughout their career; it would be more realistic to allow for wage increases of say 4% per annum. The accrued benefit entitlements at the start of the year will increase by 4% during the year.

We should also allow for investment returns on fund assets. The above examples ignored investment income. It would be more realistic to allow for investment returns of say 4% per annum. Therefore the assets held by the fund at the start of the year will increase by 4% per annum. In this case, we have assumed that assets and liabilities are both growing at the same rate, i.e. both are increasing at 4% per annum. Under these circumstances, investment income on the assets will be enough to pay for almost all of the extra benefit payments.<sup>124</sup> As a result, it would not be necessary to make significant changes in the levy rate.



### BOX 5.2 ALLOWING FOR SALARY INCREASES AND INVESTMENT RETURNS; IGNORING EXPENSES AND EXITS

#### EXAMPLE A: Accrual rate 1.67%

Suppose that Mr Smith earns \$60,000 per annum (\$5,000 per month) in the first year. He gets a pay rise of 4% at the end of each year. By the end of 10 years, his pay has increased to \$88,815 p.a. (\$7,401 per month). At that time, Mr Smith will be entitled to take 2 months leave, and his LSL benefit payment would be \$14,802. The employer's levies will be invested in a fund which earns 4% per annum. If his employer contributed 1.67% of his wages into the LSL fund, this would not be quite enough to cover the expected benefit payments. But if the employer contributes at a slightly higher rate of 1.71%, then at the end of 10 years, the fund will hold \$14,869. This will be more than enough to pay Mr Smith's LSL benefits.

#### EXAMPLE B: Accrual Rate 2.5%

Suppose that Ms Doe also earns \$60,000 per annum (\$5,000 per month) in this first year. She also gets a pay rise of 4% at the end of each year. By the end of 10 years, her pay has increased to \$88,815 p.a. (\$7,401 per month). At that time, Ms Doe will be entitled to take 3 months leave, and her LSL benefit payment would be \$22,203. The employer's levies will be invested in a fund which earns 4% per annum. If her employer contributed 2.50% of her wages into the LSL fund, this would not be quite enough to cover the expected benefit payments. But if the employer contributes at a slightly higher rate of 2.56%, then at the end of 10 years, the fund will hold \$22,260. This will be more than enough to pay Ms Doe's LSL benefits.



In general, if investment returns match wages growth rates, then the levy rate would be only slightly higher than the benefit accrual rate (ignoring other factors such as expenses and exits, which are described below). However, past experience shows that on average, over the long term, investment returns usually exceed wages growth rates. If so, then the fund investment income would be more than is necessary to cover the increasing LSL liabilities. The additional investment income could be used to reduce the employer levy. As an example, suppose that wages grow at 4% p.a. but the fund can earn investment returns of 6% p.a. (see Box 5.3).

When actuaries are costing LSL schemes, they must make some assumptions about the expected investment returns ( $i\%$  p.a.), relative to the expected wages growth ( $f\%$  p.a.). If the actuary assumes a high “gap” between  $i\%$  and  $f\%$ , then the estimated levy will be lower (other things being equal). The examples in Box 5.3 show that the levy rate will depend on the rate of investment returns relative to the wages growth rate (the difference between these two rates is commonly called “the gap”). When estimating the levy, the actuary will make an assumption about the appropriate “gap”.

This raises the question: what “gap” assumptions are reasonable? There is no simple answer to this question. Different assumptions will be needed for different industries. Long term prediction of wages growth is difficult, because wages growth rates will vary from one industry to another and also over time (as the economy moves through booms and busts), and will depend on bargaining between employers and employees. In many industries, wages for individuals will also increase over time as a result of promotions (e.g. older and more experienced workers will have higher pay than workers who have relatively less experience).

Long term prediction of investment returns is also difficult, because financial markets are inherently volatile. Moreover, the expected rate of return will depend on the investment strategy adopted by the fund managers. Funds which adopt a higher-risk strategy might have higher expected long term average returns, producing a higher “gap” (but the returns are more likely to fluctuate from year to year).

### BOX 5.3

#### ALLOWING FOR SALARY INCREASES AND INVESTMENT RETURNS WITH A 2% GAP; IGNORING TAX, EXPENSES, AND EXITS

##### EXAMPLE A: Accrual rate 1.67%

Repeat Example A in Box 5.2 for Mr Smith, but assume that investment income is 6% instead of 4%. The employer contributes at the accrual rate, 1.67% per annum. At the end of 10 years, the fund holds \$15,985, compared to the LSL liability of \$14,802. The fund has built up a surplus of assets. If the employer levy had been set at just 1.55% instead of 1.71%, this would have been enough to pay Mr Smith’s full LSL benefit.

##### EXAMPLE B: Accrual rate 2.5%

Repeat Example A in Box 5.2 for Ms Doe, but assume that investment income is 6% instead of 4%. The employer contributes at the accrual rate, 2.50% per annum. At the end of 10 years, the fund holds \$23,929, compared to the LSL liability of \$22,203. The fund has built up a surplus of assets. If the employer levy had been set at just 2.32% instead of 2.50%, this would have been enough to pay Ms Doe’s full LSL benefit.

##### EXAMPLE C: Gap of 4% (rather than 2%)

Repeat Example B above (Box 5.3), but assume that investment income is 8% instead of 6%. Assume the employer continues to pay levies of 1.70% per annum. At the end of 10 years, the fund holds \$23,212, compared to the LSL liability of \$14,802. The fund has built up a large surplus of assets. If the employer levy had been set at just 1.41% instead of 1.70%, this would have been enough to pay Ms Doe’s full LSL benefit.



Actuaries often use stochastic investment models to make their “best estimate” of expected long term returns for particular investment strategies. These models are based on studies of the historical performance of different types of assets (e.g. shares, property, bonds). However these models cannot really predict the future, so there is a great deal of uncertainty about both wages growth rates and investment returns. Actuaries usually provide estimates on a range of different assumptions in order to show how the employer levy would be affected by changes in the assumptions. These are called “sensitivity tests”. Table 5.1 shows the impact of different gap assumptions, which demonstrate that the higher the gap, the lower the levy rate. (Note: At this stage, we are still ignoring the impact of expenses and exits.)

Clearly, it requires some judgement to choose the most appropriate financial assumptions for any fund. Different assumptions will be suitable for different funds. No set of standard assumptions

will be suitable for all funds, since different funds have different investment strategies. Net investment returns will also be affected by any taxes which are applied to investment returns.<sup>125</sup>

As a rough guide to the assumptions which are typically used in practice, we can look at actuarial assumptions currently used by established PLSL schemes in their most recent actuarial reviews. Gap assumptions of 2% p.a. to 4% p.a. are common. If we adopt assumptions at the more conservative end of this range, then the levy rate (ignoring timing of payments, withdrawals, and expense) would be approximately

- 1.55% of wages to provide benefits with an accrual rate of 1.67%;
- 2.32% of wages to provide benefits with an accrual rate of 2.50%.

However, we still need to adjust for the timing of benefit payments, withdrawal surplus, and expenses.

**TABLE 5.1**  
**LEVY RATES REQUIRED TO ADDRESS THE WAGES GROWTH/INVESTMENT RETURNS GAP**

ACCUAL RATE	WAGES GROWTH (F)	INVESTMENT RETURNS (I)	GAP (I - F)	LEVY REQUIRED
<b>2 months per 10 years' service</b>	4%	4%	0%	1.71%
		5%	1%	1.63%
		6%	2%	1.55%
		7%	3%	1.48%
		8%	4%	1.41%
<b>3 months per 10 years' service</b>	4%	4%	0%	2.56%
		5%	1%	2.44%
		6%	2%	2.32%
		7%	3%	2.22%
		8%	4%	2.11%



NO

NO  
ENTRY



## 5.3 Length of time until payment of benefits

The levy rate will be also affected by the timing of LSL payments. In the above examples, we have assumed that the worker takes their LSL after 10 years' service.<sup>126</sup> In reality, they might take their accrued benefit at an earlier date or at a later date, which will affect the employer's costs. If workers take their benefits at an earlier date, the cost will increase. If workers delay taking their benefit, then the cost will be reduced.

The timing of payments has an impact on investment income. If the worker takes their benefits at the end of 10 years, the fund can earn investment income on its assets for 10 years. If the worker delays taking their LSL, the money remains invested for a longer period, and the fund earns additional investment income, which will naturally have a beneficial impact on the fund's financial position. The example in Box 5.4 shows that the fund will make a profit if the worker defers their leave (this assumes that the fund's investment returns exceed the increase in wage rates, i.e. there is a positive "gap").

Conversely, fund rules which allow early payment of benefits would normally have a negative impact and would be likely to increase the cost of the scheme. In order to estimate the cost of the LSL benefits, we would need to analyse the timing of LSL payments. There are many factors which affect the timing of LSL payments.

### **Fund rules regarding qualifying period**

**for taking LSL in service:** Different funds have different qualifying periods for taking LSL. Some funds allow workers to take LSL after completing 5 years service, some require 7 years, and some require 10 years. Others allow early payment subject to the permission of the employer.

**Fund rules for early payments:** Most LSL schemes allow pro rata payment of benefits prior to completion of the qualifying period, under certain circumstances, e.g. when the

### BOX 5.4 ALLOWING FOR SALARY INCREASES AND INVESTMENT RETURNS AND TIMING OF PAYMENTS; IGNORING EXPENSES AND EXITS

Suppose that Mr Smith has now completed 10 years' service. He is entitled to a benefit of \$14,802. We will assume that fund has assets of exactly \$14,802 available to pay his benefit. If Mr Smith takes his LSL immediately, he will receive \$14,802 and the fund will have \$0 left over.

Now suppose that Mr Smith decides to wait a year to take his LSL. At that time he decides to take 2 months leave. Since he has received a pay rise of 4% during the year, the fund must pay a benefit of \$15,395 ( $=14,802 \times 1.04$ ). However, the fund will earn 6% interest on its assets during the year. By the end of the year, the fund will have \$15,690 ( $=14,802 \times 1.06$ ). After paying out Smith's LSL benefit, the fund will have \$295 left over as surplus ( $\$15,690 - \$15,395 = 295$ ). This surplus money could be used to reduce the employer's levy.

worker permanently leaves the workforce (or leaves the specified industry), dies, becomes disabled, or retires after reaching retirement age.

**LSL patterns:** Based on the data from the established PLSL schemes, it is clear that many workers do not take their LSL as soon as they are entitled to do so and even defer taking LSL until they retire.

**Fund rules for payments while working:** Some LSL schemes might allow a worker to apply for a LSL benefit payment, even though they do not actually take LSL. This practice is known as "cashing out" and is very likely to bring forward benefit payments, which imposes a higher cost on the fund (compared to funds which do not allow cashing out).

An understanding of historical payment patterns would enable us to make a better estimate of the costs of any LSL schemes. Unfortunately, at present there is relatively little data available on the timing of LSL payments. The actuarial reports on the long-established industry-based PLSL schemes contain some data on payment patterns. However, there is no reason to assume that this data would be a reliable guide to payment patterns in other industries.

The introduction of a national PLSL scheme would probably affect payment patterns. At present, many workers receive their LSL benefits when they change jobs. A national scheme would enable workers to roll over their LSL entitlement to their next employer, instead of taking a cash payment at resignation, which might lead to a delay in payments. On the other hand, if workers are allowed to take their cash payment on resignation, many workers will prefer to use their LSL benefit as a de facto redundancy payment, to cover living expenses during the transition between jobs.

LSL payment patterns vary over time, in line with economic conditions. There is a higher rate of LSL payouts during downturns in a particular industry because people would tend to take their benefits at an earlier date. For example, the construction industry LSL funds experienced an increase in claims after the GFC caused a slowdown in the construction industry. The scenarios in Box 5.5 can help us to understand the financial impact of LSL payment patterns.

In practice, of course, any fund will have a range of workers of different ages and different working patterns – so the cost would lie somewhere between the two extreme scenarios presented. The results would also be affected by any changes in the financial assumptions (i.e. the gap between wages growth and investment returns).

Given the lack of data on payment patterns, it would be more prudent to calculate levy rates on the assumption that workers take their LSL benefits as soon as they are entitled to do so. If subsequent experience shows that workers tend to defer payment, then the rates can be revised later. The rates given in Boxes 5.2 and 5.3 were calculated

assuming that people work for 10 years, on average, before taking LSL benefits, and then take further LSL benefits at 10-year intervals. Funds that allow “cashing out” of LSL benefits would probably need a slightly higher rate, whereas funds which do not allow cashing out would be able to reduce their levy rate

### BOX 5.5 IMPACT OF LSL PAYMENT TIMING

Mr Smith and Ms Doe are both young people, just about to start work. They both will remain in the workforce for the next 35 years. They will accrue LSL at the rate of 2 months of LSL for each 10 years of service and continue to accrue service while on leave. Their salaries will increase at 4% per annum and the LSL fund will earn investment returns of 6% per annum.

Mr Smith takes his LSL as soon as he is entitled to do so. His fund has generous rules, so he takes one month of leave every 5 years. Ms Doe never takes long service until she retires after 34.5 years of service, at which point she takes 7 months of accrued LSL. The annual levy needed to fund Mr Smith’s benefit is 1.62%. The annual levy needed to fund Ms Doe’s benefit is 1.18%.

## 5.4 Exits: Number of people who exit from the fund before qualifying for an LSL benefit

The cost of any LSL scheme will also depend on the proportion of workers who exit from the fund before qualifying for a benefit. Suppose that employers have been making contributions for a group of employees, and the fund has built up enough assets to pay LSL benefits for all the employees. If one of the employees resigns before qualifying for a LSL benefit, then the money which had been set aside for their benefit is now available to pay benefits for other workers. Therefore the employers' levy can be reduced.

The amount of money released when an employee exits without receiving any benefits is often called a "withdrawal surplus". If the actuaries can make a reasonably reliable estimate of the number and timing of such exits, then they can take credit for these savings in advance. The levy rate can be reduced now, in the expectation of future withdrawal surpluses. The amount of withdrawal surplus will depend on the portability rules of the LSL fund. For example:

- **Non-portable LSL** – If LSL are not portable, employees lose their entitlements if they leave their job prior to completing the qualifying period. Employers with high levels of staff turnover will benefit from large withdrawal surpluses.
- **Portable within an industry** – If LSL benefits are portable within an industry, employees lose their entitlements if they leave the industry prior to completion of the qualifying period, and/or if they are deregistered after taking a long break from working in the industry. If people tend to leave the industry after short periods of service, then industry-based funds will benefit from withdrawal surpluses.
- **Portable across industries** – If LSL benefits are completely portable across industries, without risk of deregistration under any circumstances, then employees will always retain their entitlements. There will be no withdrawal surplus.

### 5.4.1. Non-portable LSL

At present, only a few industries provide PLSL benefits (e.g. coal mining, construction, contract cleaning). If LSL benefits are not portable, then employees will generally only be eligible for LSL benefits if they remain with the same employer for several years.<sup>127</sup> The rules vary: some States provide pro rata LSL benefits to people who leave after 5 years' service, while others provide pro rata benefits after 7 years' service.<sup>128</sup> As discussed in Section 2, only 25% of employees have remained with the same employer for 10 years or more, and 44% have been employed by the same employer for at least 5 years. For industries with high staff turnover rates (e.g. retail, accommodation and food services), non-portable LSL arrangements will allow substantial reductions in LSL costs for employers, because only a small proportion of workers would remain with one employer long enough to qualify for LSL benefits.

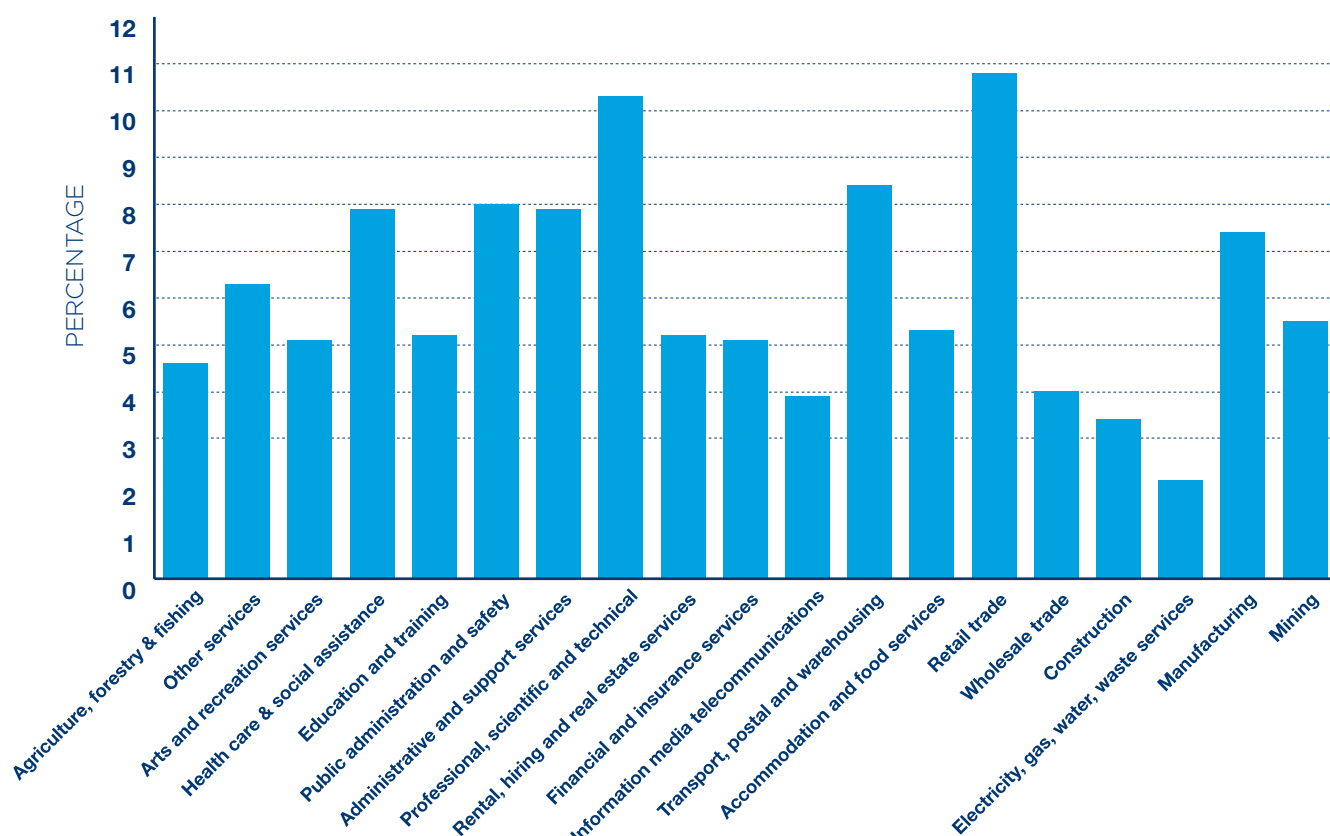
### 5.4.2. PLSL within industry

The established industry-based PLSL schemes allow workers to retain their entitlements when they change jobs, as long as they remain within the same industry. For example, a construction worker who works on several different construction projects, for different employers, will continue to accrue LSL entitlements. However, if the worker leaves the industry before completing the qualifying period, they will lose their entitlements.

In practice, workers will often have discontinuous periods of employment: a worker might be out of work for several months between jobs. The worker will retain their accrued LSL entitlements during these break periods, but if the break is too long, then the LSL fund will assume that the worker has left the industry. If the worker has not completed the qualifying period (i.e. the worker has no vested benefits), then they will be deregistered and will lose



**FIGURE 5.1**  
**PERCENTAGE OF WORKERS WHO CHANGE INDUSTRY IN ONE YEAR, BY INDUSTRY**  
**(ABS LABOUR MOBILITY DATA 2012)**



their accrued LSL entitlements. Most of the industry funds allow a break of up to 4 years, although the coal mining fund allows breaks of up to 8 years.

Whenever a worker is deregistered, the LSL fund will benefit financially, i.e. there will be a withdrawal surplus. This surplus can be used to reduce the employer levy. The annual reports of the construction industry LSL funds indicate that there are a large number of deregistrations each year. We would expect the rates of deregistration to be even higher in industries which have higher staff turnover (e.g. contract cleaning and community services). When the Victorian government was considering the introduction of a portable industry scheme for community care workers, the actuarial costings were based on assumptions of withdrawal rates between 5% and 12% per annum.<sup>129</sup> At present, there is little published data on exit rates for other industries. However, data from the Australian

Bureau of Statistics indicates that many workers do switch industries when they change jobs. Of the 1.2 million workers in 2012 who had changed employer or business during the previous 12 months, 57% of these had changed from one industry to another.<sup>130</sup> Once again, these rates vary across different industry groups (see Figure 5.1).

The amount of withdrawal surplus for any industry-based fund would depend on the rates of exit from the industry. Some industry-based LSL funds would have high levels of deregistration and would be able to reduce levy rates accordingly. LSL funds in other industries would have more stable membership and would not benefit from large withdrawal surpluses. In order to estimate the amount of withdrawal surplus for any industry scheme, it would be necessary to collect and analyse more data about job mobility patterns.<sup>131</sup>

### 5.4.3. PLSL across industries

If portability of LSL entitlements was allowed across industries, workers would not be deregistered as a result of switching from one industry to another. Therefore funds would not benefit from withdrawal surplus when workers switched jobs. When designing this scheme, it would be necessary to consider the position of people who leave the workforce completely. Suppose that a worker works for a few years, in a variety of jobs, and then leaves the Australian workforce for several years (e.g. due to family responsibilities or working overseas). Should they forfeit their accrued LSL entitlements after a specified period? For reasons described previously, this rule would be difficult to implement. If the rules allow the worker to retain their benefit entitlements under all circumstances (even while out of the workforce), then there will not be any withdrawal surplus.

## 5.5 Administration expenses

The employer's levy will also need to cover the LSL fund's administration expenses. We can use the established industry-based schemes to provide a benchmark for administration costs.

As noted previously, administration costs will vary between funds, depending on a range of factors: the length of time the fund has been in operation; the number of registered employees; the proportion of active and inactive registered employees; the number of employers; the average size of the levy per member; the method of collection of the levies; the number of LSL benefit claims made; the turnover of employees and employers; and the amount of assets under management.

Each of the established PLSL funds has a regular actuarial review, which includes an assessment of administration expenses. The actuarial reviews



for the construction industry funds typically allow for administration costs between 0.1% and 0.3% of the worker's wages. However, smaller funds may have higher per-capita administration costs. A 2007 study of the established industry-based PLSL schemes found that there were economies of scale in administration costs.

**“ In general, the larger the scheme, the lower the cost per worker. For small schemes (less than 10,000 active workers), management and administration costs are about \$150 per worker. For schemes with between 10,000 and 20,000 workers, these costs are between \$40 and \$60 per worker. For schemes with more than 20,000 workers, these costs are about \$40 per worker (reducing to about \$25 per worker for a very large scheme).”** <sup>132</sup>

The smaller industry-based funds attempt to reduce overheads by sharing resources with the larger funds, e.g. the contract cleaners fund in Queensland contracts out its administration to the construction industry fund; the ACT has set up one statutory authority to administer all four of its industry-based funds.

It would be desirable to obtain actuarial advice in order to determine the fairest method of charging for administration costs. For example, the administration costs might be charged as a percentage of employer wages or a flat annual charge per employee. A flat fee per employee would tend to increase costs for those employers who employ a lot of part-time and casual workers, but this might be a fairer reflection of the costs incurred by the fund (see Box 5.6 for an illustration).

### BOX 5.6 ALLOCATION OF ADMINISTRATION COSTS

Suppose that employer A has 10 full-time employees earning \$50,000 each (total wages \$500,000). Employer B has 20 part-time employees earning \$25,000 each (total wages \$500,000). The LSL fund has administration expenses of \$1000. If the fund covers administration costs by charging 0.1% of wages, then both employers will pay \$500 per annum towards these expenses. If the fund covers administration costs by charging a fee per person, then Employer A will only pay \$333 and Employer B will pay \$667.

Administration costs will also reflect the quality of services provided. For example, many of the established industry-based funds employ staff to train employers about their obligations; to inform employees about their entitlements, to inspect workplace records, and to take legal action against recalcitrant employers. Although these services may increase expenses in the short term, they also help to protect the funds' revenue stream: otherwise, poor compliance might lead to a reduction in income.

The design of the LSL benefits will affect the administration costs. If the benefit rules are complex, if the rules are ambiguous, or if the system requires multiple transfers of money between different entities, then the administration costs will inevitably increase.

These figures represent the ongoing annual costs for an established fund. A new fund would also need additional funding to cover establishment costs, which may be quite substantial. For example, the feasibility study for the Victorian community sector fund estimated that the establishment costs would be between \$500,000 and \$1,000,000.<sup>133</sup>

## 5.6 Taxes

The established industry-based PLSL schemes are not required to pay tax on their levy income or on their investment income.

We have not allowed for tax in our estimate of the cost of LSL benefits. If PLSL funds are required to pay tax, then it would be necessary to increase the levy rates to cover these tax payments.

The employer's costs will also be affected by the availability of tax deductions for the payment of levies into the fund, and this is considered in Section 6.

## 5.7 Overview of levy costs

The cost of LSL benefits will depend on the level of benefits provided, the fund's investment returns relative to wages growth, the timing of benefit payments, the amount of withdrawal surplus, and the administration costs. We have estimated the long term average levy rate based on the following assumptions:

- The fund can earn investment returns which exceed the rate of wages growth by 2% p.a.;
- Benefits are paid to an employee after every 10 years of service, on average;
- There is no significant amount of withdrawal surplus;
- Ongoing administration costs are between 0.1% and 0.3% of workers' wages;
- Establishment expenses are not included; and
- Funds do not have to pay tax.

Under these assumptions:

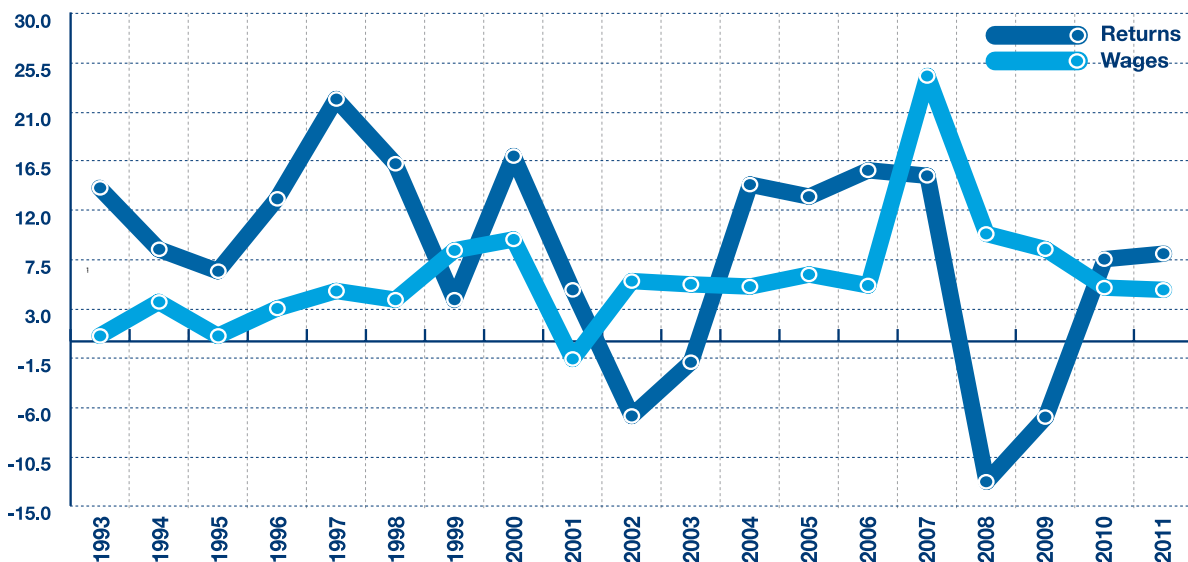
- A fund which provides 2 months LSL after 10 years of service would require a levy rate between 1.6% and 1.9% of worker's wages; and
- A fund which provides 3 months LSL after 10 years of service would require a levy rate between 2.4% and 2.7% of workers' wages.

These figures are purely indicative. They should not be relied upon as a guide to the levy rate required for any specific fund. In order to estimate the costs for any specific fund, a full actuarial review should be conducted, taking account of the rules of the fund and the demographics of the fund membership.

## 5.8 Defined Benefit Funds: Variability in the levy rate

We have estimated the long term average levy rate which would be needed to fund LSL benefits. However, in a defined benefit fund, levy rates might vary widely over time, in response to experience. In our calculations, we assumed that wage increases would be 4% per annum and investment returns would be 6% per annum. In practice, of course, both wage rates and investment returns can be volatile. To illustrate this volatility, Figure 5.2 shows the wage growth rates and investment returns from one of the construction industry LSL funds (see Box 5.7 for more details).<sup>134</sup> The average "gap" was 1.6% over a 20-year period, which was quite consistent with the actuary's valuation assumptions. But the annual "gap" varied from +17.5% (in 1997) down to -22.6% (in 2008).

**FIGURE 5.2**  
**WAGES GROWTH AND INVESTMENT RETURNS WA CONSTRUCTION INDUSTRY LSL FUND**





The other construction industry funds also experienced wide fluctuations in wages growth and investment returns. As a result, the levy rates in all of these funds have varied quite widely over the years. At times, the funds had large surpluses and the levy rate was reduced (even down to 0% in some funds); at other times, the funds experienced large deficits and the levy rate was increased sharply. Each fund's administrators must devise a risk management plan for dealing with these fluctuations in experience:

- The fund administrators might adopt a conservative investment policy, investing in less volatile asset classes. However, we would expect that this would produce lower long term average investment returns, so a higher long term average levy would be necessary to fund the benefits;<sup>135</sup>
- The fund administrators can adjust the levy rate each year, with the intention of eliminating surpluses or deficits over a fairly short period (say 5 years). This may well create business-planning difficulties for the employers who are paying the levy;
- The fund administrators can maintain a stable levy rate, allowing the fund to build up large surpluses or deficits which may last for several years. However, the existence of a large deficit might create concerns about the security of workers' entitlements;<sup>136</sup> or
- The fund might aim to build up a surplus of assets in the early years, in order to provide

a buffer against future adverse experience. This may be done by charging an initial levy rate which is higher than the estimated long term average rate and/or by retaining any investment surplus arising from better-than-expected investment performance. Some of the PLSL funds have set funding targets of 110% or 120% of liabilities in order to provide such a buffer.

The volatility of the levy rate will also be affected by any changes in the benefit entitlement rules. Theoretically, in a defined benefit fund, worker's benefit entitlements should not be affected by adverse investment returns, because the employers bear the investment risk. In practice, however, employers may resist levy increases. In the past, some PLSL funds responded to investment losses by changing benefit entitlements, e.g. increasing benefits when the fund has a surplus and cutting benefits when the fund has a deficit. This means that the workers bear some of the investment risk. (By comparison, in an accumulation fund, workers bear all of the investment risk.) Although the above-mentioned measures may help to smooth out levy rates over time, it is impossible to eliminate all fluctuations. The levy rate will reflect the experience of the fund.

Volatility in the levy rate is also more difficult to manage when a fund's revenue base is cyclical or declining. Suppose that a particular industry is booming, and a large number of workers accumulate LSL benefits. Suppose that the fund then suffers large investment losses, creating a large deficit. If the industry is stable, then these



losses can be spread across a large number of employers, i.e. the levy rate would increase by a relatively small amount. But what if the industry is facing profitability problems, and the number of employers in the industry declines? A smaller number of employers must pay higher levies in order to cover the fund's deficit.

Clearly, in a defined benefit system, employers bear the risk of volatility in levy rates. Many employers are unwilling to accept such risks. In the superannuation industry, employers have demonstrated a strong preference for accumulation benefits. The number of defined benefit superannuation funds has declined steadily over the last 20 years.<sup>137</sup>The trend towards accumulation benefits has been particularly strong amongst smaller employers.

## 5.9 Accumulation funds: Risks to employees

We have estimated the long term average costs for defined benefit funds. How would the costs be affected if PLSL is provided by means of an accumulation fund? In an accumulation fund, the workers will bear the investment risk. If there are poor investment returns, then the workers' accounts may not provide enough money to provide a replacement income during periods of LSL.

As a result, it might be preferable to adopt a low-risk investment strategy. Since low-risk investments are expected to produce lower long-term returns, it would be sensible to use a lower long-term "gap" to calculate the cost of providing LSL benefits. If we assume that the long term investment returns are roughly equal to long term increases in remuneration (i.e. a 0% gap), then the required contribution rates would increase slightly – e.g. under these assumptions:

- A fund which provides 2 months LSL after 10 years of service would require a levy rate between 1.8% and 2.1% of worker's wages; and
- A fund which provides 3 months LSL after 10 years of service.

### BOX 5.7 QUEENSLAND CONSTRUCTION INDUSTRY<sup>138</sup>

Prior to 2007, there was a boom in the Queensland Building and Construction Industry. In 2007, the actuary pointed out that the boom was causing a build-up of LSL liabilities:

- Wages rates had increased significantly;
- More and more people were working in the construction industry (new members were registering with the LSL fund); and
- Workers were remaining in the industry for longer periods, hence more people were becoming eligible for benefits.

Those who were eligible to take LSL were too busy to take leave, so they delayed taking up their entitlements.

During the GFC, the LSL fund suffered investment losses which created a \$57 million deficit in the fund. By 30 June 2008, the ratio of assets to liabilities ratio was just 83%. At the same time, there was a downturn in the construction industry. In 2009, the actuary determined that a levy increase was necessary.

"The Actuary's projections found that, at the current levy rate (0.2% of construction costs), the Scheme is unlikely to attain a sound financial position within the next ten years, "unless there is a confluence of a number of favourable factors. Should the levy rate not be raised, the Scheme will have continuously unfunded liabilities, being unable to meet its liability to pay long service leave benefits to workers in the building and construction industry in Queensland, and thus being unable to fulfil the function for which it was established. Having a continued period of unfunded liabilities could result in the dissolution of the Scheme."

In accordance with these recommendations, the levy rate was increased from 0.2% to 0.3% of construction costs.

# Tax implications & advantages for employers of a nationally consistent PLSL scheme

Currently employers, required to prepare accounts, recognise a liability to pay LSL to employees over an employee's period of service and then claim that liability as an expense in the accounts each reporting period. However for income tax purposes no deduction is available in accordance with section 26-10 of the *Income Tax Assessment Act 1997* ('ITAA1997') until the LSL benefit is actually paid out to the employee or until the employer makes a leave transfer payment. As a result there is often a mismatch between the liability recognised by the employer in the accounts and the amount actually claimed as an income tax deduction in any particular reporting period.

By way of comparison where an employer makes a LSL contribution to a worker entitlement fund,<sup>139</sup> under an industrial instrument, the contribution is treated by the employer as an expense in the accounts and is also eligible for an income tax deduction in accordance with section 8-1 of the ITAA1997.<sup>140</sup> Section 26-10 of the ITAA 1997 does not apply in this instance as the contribution paid to the fund is 'not an outgoing for leave'. To be eligible for a deduction under section 8-1 the contributions to a worker entitlement fund must be non-refundable and made directly to actual member accounts.

A nationally consistent PLSL scheme ('the scheme') in which employers pay a levy into the scheme to cover the estimated cost of LSL liabilities and employees are paid their LSL entitlements out of the scheme would ensure that the amount provided for LSL in a particular year is tax deductible in that

year. The availability of an income tax deduction for a levy paid to the scheme is supported by the ATO's approach to worker entitlement funds as it is envisaged that the scheme would have similar characteristics. The Commonwealth Government could legislate to make the position clear in this respect. In addition, because the LSL is actually paid directly to the member of the scheme, employers would not have to include these payments in their workers compensation calculations.

Another tax issue that needs to be considered relates to the question of whether a levy paid by an employer to the scheme would constitute the provision of a fringe benefit and be subject to fringe benefits tax at a flat 46.5%. Section 59PA of the *Fringe Benefits Tax Assessment Act 1986* provides that a contribution by an employer to an 'approved worker entitlement fund'<sup>141</sup> on behalf of its employees and in accordance with an industrial instrument will be an exempt benefit. Accordingly it could be argued that an exemption from fringe benefits tax should apply to the scheme on the same basis as the current exemption for approved worker entitlement funds. If an employer levy paid to a scheme is treated as an exempt benefit for FBT purposes then it would also be excluded from a liability to State payroll tax.

The treatment of existing worker entitlement funds in relation to the Superannuation Guarantee Charge could also be applied to the proposed scheme. Interpretative decision ATO ID 2005/33 states that in the ATO's view neither the worker entitlement

fund or the employer have an obligation to make superannuation contributions in accordance with the *Superannuation Guarantee (Administration) Act 1992* ('SGAA') on LSL payments made to an individual from the fund.

A number of worker entitlement funds have received class rulings from the ATO confirming that a payment of LSL from the worker entitlement fund to an employee will receive the same tax treatment as if it had been paid directly by the employer. In addition contributions by the employer to the worker entitlement fund are not assessable to the fund.<sup>142</sup> Along the lines of the current tax treatment of worker entitlement funds a nationally consistent PLSL scheme, if structured appropriately, would provide an upfront income tax deduction in respect of an employer's liability to pay LSL as well as payroll tax and workers compensation payment savings.

Further tax incentives could be explored to neutralise any increased costs for small employers. These could include the following:

- company tax reductions linked with the cost of a levy; and/or
- a refundable tax offset for a significant proportion of the levy payments an employer would be liable for, equivalent to a deduction of 120%. This mechanism would adopt the model used for the Research and Development tax incentive (offset).



# Conclusion & Recommendations

This report responds to a need recognised in the Fair Work Review for streamlining and consolidating a uniform and minimum LSL standard as part of the National Employment Standards. The report investigates the available means for achieving this end in a way that is equitable for all workers. It also identifies both the wider benefits for employers, government and the community, and ways of minimising the cost burdens on employers.

LSL is a well-established employee entitlement in Australia, with origins in the 19th century. Since then the entitlement has continuously evolved to extend benefits to a wider range of employees, reduce the qualifying and vesting periods, and increase the amount of leave granted. This has occurred through State legislation, the award system and some collective agreements. This report presents a case for the continued evolution and expansion of coverage as part of the National Employment Standards and through supportive legislation by government.

LSL has become well established in Australia because of a high degree of community consensus regarding its benefits. Traditionally one of the primary rationales for LSL is to *enable employees partway through their working life to recover their energies and return to work renewed, refreshed and reinvigorated*, which positively impacts on employee health and well-being and potentially improves effectiveness at work, and hence productivity.

This objective has become increasingly important in Australia because workers are spending longer proportions of their lifetimes in employment.

A related trend is that growing numbers of workers are remaining in the workforce at older ages, and public policy has sought to encourage this trend in regard to superannuation, tax, and old age pension eligibility.

This trend for longer lifetimes in employment means that it is becoming more important than ever before for employees to have a sustained period of recovery and renewal from work midway through their working life. However, this trend is on a collision course with another major trend in the labour force: mobility.

Australian workers are highly mobile between employers as a result of changing career patterns, rapidly shifting sectoral labour demand, and the demand for workplace flexibility that has resulted in a significant increase in casual and part-time employment. Almost one in five workers have been employed by their current employer for less than one year.

Labour mobility has many positive effects. It allows labour to move between different sectors as structural economic shifts occur with corresponding changes in sectoral labour demand. It facilitates flexibility at the organisational level. Labour mobility is also associated with productivity in the economic concept of “creative destruction”, whereby innovation occurs through new firms displacing old.<sup>143</sup> In addition, it also allows employees to develop varied careers. However, for workers, labour mobility is not always a matter of choice: 37% of those who left their jobs between 2010 and 2012 did so involuntarily.

Labour mobility has major implications for access to LSL because 10 years is the standard qualifying period for LSL. Three in four workers remain with their employer for less than 10 years, including many who have been in the workforce for much longer. The low prevalence of long-term employment relationships limits access to LSL entitlements to a fraction of the Australian workforce.

This lack of accessibility is also highly gendered. Women are far more likely than men to be in casual or part-time employment, and therefore are less likely to be employed with one employer for 10 years or more. Women are therefore less likely to be able to access LSL.

In response to this situation PLSL schemes have emerged for a limited number of occupations. These schemes are widely available to public sector workers in all Australian jurisdictions. In the private sector PLSL first became available through awards in the coal mining industry from 1949. Other instances have occurred at a State or Territory level, in building and construction from the 1970s, in contract cleaning from 1999, and, in the ACT, in the highly casualised community services and security industries.

The reviews of established PLSL schemes and stakeholder representatives of employers, employees, and administrators involved in their management generally present a positive view of these schemes. In particular, they generally see the advantages of PLSL as outweighing its costs. A number of interviewees (including employer representatives) said that PLSL allows workers to receive their LSL entitlements, and that the levy system is an effective way of collecting funds without imposing an administrative burden on employers. They also identified advantages in relation to employee attraction and retention, improved health and safety outcomes, greater mobility and flexibility, productivity, reduction of non-compliance problems because employers pay for entitlements as they accrue, reduction of free-riding amongst employers because all are obliged to fund LSL entitlements, greater cost certainty, and tax benefits. However, some interviewees said that the obligation to make LSL payments into industry funds effectively imposes an additional

cost burden on employers operating in industries where the profit margins are typically very small.

There are a number of extra benefits of PLSL schemes. A considerable body of research indicates the importance of leave generally for employee health, well-being and work/life balance. Long hours without significant leave periods has been associated with stress-related illness, which can also represent a cost for employers through higher levels of claims for workplace accidents, illness and mental health issues. Regular leave has also been associated with greater employee motivation and productivity.

Wider benefits still could be expected if PLSL was extended to employees as a whole. European experience suggests that the tourism and hospitality sectors may benefit from extended leave provisions. The Commonwealth government, and taxpayers, would save a substantial and growing financial outlay for the LSL component of the Fair Entitlements Guarantee in the case of business insolvencies. PLSL funds would also benefit the economy generally by contributing substantially to national saving and investment, in the same way that superannuation funds have contributed.

Building on the experience from existing PLSL schemes, and with the superannuation industry, we investigated how PLSL might be designed to cover all employees. There are three aspects to this task.

First, the Constitutional power of the Commonwealth to establish PLSL funds with compulsory employer levies may be challenged by the States. Commonwealth powers in the sphere of leave and industrial relations generally have grown in recent times, particularly through the corporations power. An alternative approach would



be to develop cooperative arrangements with the States whilst the Commonwealth institutes model legislation; this approach was used for occupational health and safety.

Secondly, portability requires full vesting of each worker's LSL entitlements to a pro rata benefit whenever they leave service, even after a short period of service. Over time, effectively the "vesting period" would be reduced to zero. Each employer would have a liability to pay a specified amount in respect of the LSL entitlements accruing for each worker during each worker's period of employment.

Thirdly, it would be necessary to develop rules for the payment of LSL benefits and the transfer of leave entitlements. At present, pro rata LSL benefits are paid in cash when an employee leaves service; and the employee cannot transfer their leave entitlements to their next employer. However, under a PLSL scheme, a worker might not take cash payment when they leave their job. Instead, the money set aside to pay their accrued benefits would be held in reserve. Questions arise as to whether portability should allow the worker to choose either alternative, or whether there should be restrictions in the payment of cash pro rata benefits.

LSL entitlements are usually determined on a defined benefit basis. When an employee takes leave, they receive a benefit which is equal to the number of weeks of LSL taken multiplied by their weekly wages at the date the benefit is taken. Alternatively, employers might fund LSL payments on an accumulation basis. The employer would periodically pay contributions, equal to a fixed percentage of salary, into an employee's LSL account. The contributions would accumulate with interest, less administration fees. When the employee takes leave, they would be entitled to withdraw money from their account. Under an accumulation arrangement, the contribution would need to be set at a level expected to provide an adequate LSL benefit.

We considered three approaches for designing a national uniform approach to PLSL to extend it to all workers, including casual and part-time. These are:

- **Option A: The Approved Deposit Fund (ADF)** model similar to those in the superannuation industry. These provide for employees to receive defined benefit-based lump sum entitlements from employers when they exit a job, and roll them over into an ADF where the money is invested in an accumulation-style account until the employee is eligible to receive LSL. Employees with a number of jobs would have all entitlements paid into the one account.
- **Option B: The Industry-based Defined Benefit Fund Model** involving the creation of a range of industry-based defined benefit funds. There are already more than a dozen established industry-based PLSL arrangements, however, each of these provides only limited portability. Workers only accrue LSL benefits while working within the industry, and may forfeit their entitlements if they cease working in the industry prior to completing the vesting period of service. Workers who complete the vesting period and then leave the industry are usually entitled to claim a cash payout. If these schemes are extended to provide full portability, then presumably the LSL benefit entitlements would be transferred to a different industry fund if a worker shifted employment to a different industry.
- **Option C: The Accumulation Model** would require employers to make regular contributions for all eligible employees into designated LSL accounts administered by superannuation funds and/or authorised financial institutions. (The minimum contribution would be determined by the National Employment Standards.) Account funds would be invested on behalf of the account holder and investment earnings would be credited. Administration fees would be deducted. The account-provider would be required to maintain records sufficient to determine the worker's eligibility for LSL cash payments in the future. The employee would be entitled to choose their LSL account-provider and to transfer their LSL account from

one provider to another. This would enable an employee to combine LSL payments from two or more employers into one account.

We used the following criteria for identifying the factors that would allow for the design of a nationally consistent PLSL scheme that would accommodate the needs of these stakeholders:

- Transitional arrangements;
- Simplicity;
- Adequacy of benefits;
- Compliance;
- Protection in the event of insolvency;
- Prudential management and solvency;
- Payment of benefits (unclaimed money/lost members);
- Administrative burden for employers;
- Administration costs;
- Stability of employer costs;
- Employer cross-subsidisation;
- Flexibility.

We found different mixes of advantages and disadvantages for each model. These vary between employers and employees to some extent. In a defined benefit system employers bear the risk of volatility in levy rates if a fund's revenue base is cyclical or declining. In an accumulation fund, the workers will bear the investment risk. If there are poor investment returns, then the workers' accounts may not provide enough money for a replacement income during periods of LSL.

Employers will naturally be concerned about the additional cost of LSL benefits, therefore we have provided cost calculations for typical LSL benefits. These illustrate the factors which are likely to affect the overall cost, including benefit accrual rates, investment returns, wage increases, benefit design, workforce mobility, leave taking patterns, and administrative arrangements.

It would be necessary to carefully consider the tax treatment of PLSL accounts. Established industry-based PLSL schemes are not required to pay tax

on levies received or on the investment income earned. However, LSL benefits are taxed in the hands of recipients when the benefits are ultimately paid. The tax treatment of these accounts will, of course, affect the costing of LSL benefits. If LSL accounts are taxed, then employers will have to pay a higher rate of contributions in order to fund the same level of benefits. If LSL accounts are given favourable tax treatment, the annual contributions should not exceed the amount needed to fund the accruing LSL entitlements (e.g. fixed as a percentage of wages or salary).

There are further tax implications of a positive nature for employers. Currently employers required to prepare accounts recognise a liability to pay LSL to employees over an employee's period of service and then claim that liability as an expense in the accounts each reporting period. However, for income tax purposes no deduction is available until the LSL benefit is actually paid out or until the employer makes a leave transfer payment. As a result there is often a mismatch between the liability recognised by the employer in the accounts and the amount actually claimed as an income tax deduction in any particular reporting period.

A nationally consistent PLSL scheme would ensure that the amount provided for LSL in a particular year is tax deductible in that year. An income tax deduction for a levy paid to the scheme is supported by the ATO's approach to worker entitlement funds as it is envisaged that the scheme would have similar characteristics. The Commonwealth Government could legislate to make the position clear in this respect. In addition, because the LSL is paid directly to the member of the scheme, employers would not have to include these payments in their workers compensation calculations.

Another tax issue relates to the question of whether a levy paid by an employer would constitute the provision of a fringe benefit and be subject to fringe benefits tax (FBT) at a flat rate of 46.5%. It could be argued that exemption from FBT should apply on the same basis as the current exemption for approved worker entitlement funds. If an employer levy paid to a scheme is treated as an exempt



benefit for FBT purposes then it would also be excluded from liability to State payroll tax.

The treatment of existing worker entitlement funds in relation to the Superannuation Guarantee Charge could also be applied: that neither the worker entitlement fund nor the employer have an obligation to make superannuation contributions on LSL payments made to an individual from the fund.

ATO class rulings have confirmed that a payment of LSL from a worker entitlement fund to an employee will receive the same tax treatment as if it had been paid directly by the employer. In addition, contributions by the employer to the worker entitlement fund are not assessable as income to the fund. A nationally consistent PLSL scheme, if structured appropriately, would provide an upfront income tax deduction in respect of an employer's liability to pay LSL as well as payroll tax and workers compensation payment savings.

Further tax incentives could be explored to minimise any increased costs for small employers. These could include company tax reductions linked with the cost of a levy.

We conclude that a national uniform system of PLSL accessible to all workers would be of great benefit; not only to employees, but also for employers, government and the community and economy generally. This system could build on extensive experience from existing PLSL schemes and the superannuation system, which provide strong viable models. PLSL should be introduced as part of a collaborative process between stakeholders and all levels of government, with supportive tax measures to minimise cost to employers and ensure full value of entitlements to employees.

# Recommendations

- 1** That the Commonwealth government legislate for a uniform minimum Long Service Leave standard as part of the National Employment Standards.
- 2** That the Commonwealth government find ways to extend coverage of Long Service Leave through a portable scheme to include the large proportions of the workforce who are mobile between employers as a result of changing career patterns, rapidly shifting sectoral labour demand, and the growth of workplace flexibility through casual and part-time employment.
- 3** That the name for this employee benefit be changed to Accrued Employment Leave in recognition that it would no longer be tied to service with one employer.
- 4** That the Commonwealth government initiate a consultative process involving State and Territory governments and employer and employee representative groups to determine the most effective mechanisms for implementing portable long service leave and to broaden the level of community support.
- 5** That the Commonwealth government adopt a model for Accrued Leave Funds based on one, or a combination of, models successfully employed in the superannuation industry, namely Approved Deposit Funds, industry-based Defined Benefit Funds, or Accumulation Funds.
- 6** That the Commonwealth government consider the ways of minimising extra business costs, especially for small and medium sized enterprises, through favourable tax treatment of portable long service leave accounts in specified funds, tax offsets linked with the cost of a levy in the form of reduced company tax.
- 7** That the stakeholders consider an agreement for a one-off wage offset for the first year of an employer levy, to the extent of 1-2% of anticipated wage increases, to assist with the transition.
- 8** That existing portable long service leave arrangements in some sectors, whether established by State legislation or industrial instruments, be allowed to persist within the new system, at least for a transitional period.

# Appendices

## APPENDIX 1. MEANING OF 'ORDINARY PAY' OR 'REMUNERATION' IN PLSL STATUTES.

### 1. Examples of Definitions Used in Construction Industry Schemes.

#### 1.1 Victorian Scheme

Rules of the Construction Industry LSL Fund (as at 7 April 2009)

s. 18 'ORDINARY PAY'

18.1 In this Part 6 of these Rules, 'Ordinary Pay' of a Worker in respect of whom any entitlement to Long Service Leave Benefit or pay in lieu of Long Service Leave Benefit accrues means the total amount of remuneration actually received by him during a week calculated as at the date of the taking of the leave by the Worker or as at the time of his death (as the case may be), but does not include:

- (a) any remuneration paid in respect of work performed by the Worker outside his normal weekly number of hours of work;
- (b) any allowance paid in respect of fares or travelling expenses; or
- (c) any loading paid in respect of remuneration paid during the taking of any annual leave;

18.2 For the purpose of the definition of 'Ordinary Pay' in rule 18.1:.....

- (b) where no normal weekly number of hours is fixed for a Worker under the terms of his employment the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during that period of twelve months; .....

#### 1.2 Queensland Scheme

Building and Construction Industry (PLSL) Act 1991

##### s. 59 Amount of long service leave payment

(1) In this section—

**LSLP** (long service leave payment) means the amount of long service leave payment.

**P** (pay), in relation to an application by a registered worker under section 56, means the lesser of the following amounts—

- (a) the amount of ordinary pay for a normal working week that is, in the authority's opinion, payable to the registered worker;
- (b) the amount fixed under section 59A(1).

**relevant award or agreement** means the relevant building and construction industry award or agreement.....

##### s. 59A Maximum amount of ordinary pay for normal working week

- (1) For section 59(2), if P is an amount greater than \$1400, P is fixed at—
  - (a) for the period from commencement of this section until 30 June 2009—\$1400; or
  - (b) for any later financial year—the amount notified by the Minister by gazette notice.
- (2) As soon as practicable after 1 January in each year, the authority must review the cap and recommend the change to the cap that the authority considers appropriate.....



---

### 1.3 ACT Scheme

---

Long Service Leave (Portable Schemes) Act 2009  
(Schedule 1)

**Rate** is—

- (a) if the registered worker is receiving compensation under the Workers Compensation Act 1951—the weekly average of the ordinary remuneration received by the worker during the 4 quarters before the injury to which the compensation relates happened; or
- (b) in any other case—the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:
  - (i) the most recent 2 quarters of service as a registered employee before the designated day;
  - (ii) the most recent 4 quarters of service as a registered employee before the designated day.

---

### 1.4 South Australia Scheme.

---

Construction Industry LSL Regulations

**s. 6—Ordinary weekly pay**

Pursuant to section 4(3)(d) of the Act—

- (a) the following payments made to or for the benefit of a construction worker must be included for the purposes of a determination or calculation under section 4(3):
  - (i) any payment related to annual leave (other than a payment in the nature of an annual leave loading);
  - (ii) any payment related to sick leave;
  - (iii) any payment related to a day off work for a public holiday;
  - (iv) any payment related to a rostered day off work;
  - (v) any industry allowance or tool allowance;
  - (vi) any compensation by way of income maintenance paid in respect of a compensable disability under the Workers Rehabilitation and Compensation Act 1986 (but not if the period, or the aggregate of separate periods, for which the compensation has already been paid exceeds 2 years); and
  - (vii) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.
- (b) the following payments made to or for the benefit of a construction worker must be excluded for the purposes of a determination or calculation under section 4(3):
  - (i) any payment in the nature of an annual leave loading;
  - (ii) any payment in respect of overtime;
  - (iii) any payment in the nature of a bonus;
  - (iv) any site allowance;
  - (v) any payment made on the retirement or retrenchment of the worker, or in relation to any redundancy, other than for back-pay;
  - (vi) any payment in respect of fares or in the nature of a travelling allowance;
  - (vii) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.

## 2. Examples of Definitions Used in Contract Cleaning Schemes.

### 2.1 ACT Scheme

Long Service Leave (Portable Schemes) Act 2009 (Schedule 2)

**Rate** is the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:

- (a) the most recent 2 quarters of service as a registered worker before the designated day;
- (b) the most recent 4 quarters of service as a registered worker before the designated day;
- (c) the most recent 20 quarters of service as a registered worker before the designated day;
- (d) the most recent 40 quarters of service as a registered worker before the designated day.

### 2.2 Queensland Scheme

Contract Cleaning Industry (PLSL) Act 2005

#### s. 73 Amount of long service leave payment

(1) **R** means the annual rate of pay that is payable for the classification level at the time the application under section 71 is made.

(4) In this section—

**classification level** means a classification level under an industrial instrument prescribed under a regulation.

**moderated wages**, of a registered worker for a return period, means the ordinary wages earned by the registered worker during the return period divided by the annual rate of pay that is payable for the classification level at the end of the return period.

### 2.3 NSW Scheme

Contract Cleaning Industry (PLSL Scheme) Act 2010

**s.66 R** is the highest of the weekly averages of the ordinary remuneration received by the registered worker during each of the following periods that applies to the worker:

- (a) the most recent 2 quarters of service as a registered worker before the designated day,
- (b) the most recent 4 quarters of service as a registered worker before the designated day,
- (c) the most recent 20 quarters of service as a registered worker before the designated day,
- (d) if relevant—the most recent 40 quarters of service as a registered worker before the designated day

#### s.68 Deemed minimum and maximum rates of pay

- (1) Despite section 66, the regulations may make provision for the determination of minimum and maximum amounts for R for the purposes of the formula in that section.
- (2) The Minister is to consult with the Committee before recommending the making of a regulation under this section.
- (3) The Committee is to advise and make recommendations to the Minister on the operation of, and any amendment to or repeal of, any regulation made under this section.

## APPENDIX 2. ACTUARIAL ESTIMATES OF ADMINISTRATION COSTS AS A PERCENTAGE OF WORKER'S WAGES

FUND	NUMBER OF EMPLOYEES	ESTIMATED ADMINISTRATION COSTS (% WAGES)	SOURCE
<b>Coal Mining</b>	44,880	0.10%	2011 Actuarial Report (notes that actual administration expenses have been within this budget)
<b>ACT Community Services (Initial costing)</b>	6,600	0.20% <sup>1</sup>	Updated Actuarial Assessment of the Costs of a PLSL Scheme for the Community Service Sector 2009
<b>Victoria Construction</b>		0.23% / 0.25% <sup>2</sup>	2012 Actuarial Report
<b>Victoria Community Sector (proposed)</b>		0.10% <sup>3</sup>	Actuarial feasibility study for proposed scheme 2008
<b>Western Australia</b>		0.10%	2012 Actuarial Report

Note: Other schemes' actuarial estimates were not available.

### APPENDIX 3. ATO LIST OF APPROVED WORKER ENTITLEMENT FUNDS (PER ATO WEBSITE 4 MARCH 2013)

<b>The Alsynite Employees' Entitlement Trust</b>	1 April 2005
<b>AMCA ACT Industry Development Training and Redundancy Trust</b>	1 April 2005
<b>Australian Construction Industry Redundancy Trust</b>	1 April 2003
<b>The Austral Refrigeration Employees' Entitlement Trust</b>	1 April 2005
<b>BERT Fund No.2</b>	1 April 2003
<b>Building Industry Redundancy Scheme Trust</b>	1 April 2003
<b>CFMEU Mining &amp; Energy Employees' Entitlement Trust</b>	9 October 2006
<b>Contracting Industry Redundancy Trust (Queensland)</b>	1 April 2003
<b>Construction Industry Complying Portable Sick Leave Pay Scheme</b>	1 April 2003
<b>Electrical Industry Severance Scheme</b>	1 April 2003
<b>Ensham Production and Engineering Employees' Leave Entitlements Trust</b>	1 April 2006
<b>Fisher &amp; Paykel Termination Funding Trust</b>	28 April 2009
<b>J&amp;P Richardson Industries Group Employee Entitlement Trust</b>	1 April 2003
<b>John Holland Group Worker Entitlement Fund</b>	24 May 2010
<b>KBAus Employees' Entitlement Trust (Knorr-Bremse Australia Pty Ltd)</b>	1 April 2006
<b>Mechanical and Electrical Redundancy Trust</b>	1 April 2003
<b>Metal and Engineering Construction and Contracting Industries Complying Portable Sick Leave Pay Scheme</b>	1 April 2003
<b>National Entitlement Security Trust</b>	1 April 2003
<b>The Port Kembla Coal Terminal Employees' Entitlements Trust</b>	1 April 2005
<b>Professional Employees Entitlements Trust</b>	9 October 2006
<b>Redundancy and Employee Entitlements Fund</b>	1 April 2006
<b>Redundancy Payment Approved Worker Entitlement Fund 1</b>	1 April 2003
<b>Redundancy Payment Approved Worker Entitlement Fund 2</b>	1 April 2003
<b>Secure Employee Entitlements Trust</b>	1 April 2003
<b>Severance payment scheme - Electrical Contractors Association of Western Australia (Inc)</b>	1 April 2003
<b>Shaw's Darwin Transport Employees' Entitlement Trust</b>	11 March 2009
<b>Tronics Employee Entitlement Scheme Trust</b>	1 June 2005
<b>Trust Employees' Entitlement Service</b>	1 April 2004
<b>Victorian Contract Cleaning Industry Portable Long Service Leave Fund</b>	1 April 2003
<b>WA Construction Industry Redundancy (No. 2) Fund</b>	1 April 2003

## APPENDIX 4. VESTING REQUIREMENTS UNDER STATE LEGISLATION FOR MINIMUM LSL ENTITLEMENTS

STATE OR TERRITORY	MINIMUM PRO RATA ENTITLEMENTS ON LEAVING SERVICE
<b>Australian Capital Territory</b>	Employees who have completed 5 years continuous service, but less than 7 years, are entitled to pro rata payments after five years service, if (a) the employee dies (b) the employee resigns due to illness or incapacity (b) the employee resigns due to domestic or other pressing necessity (c) the employee's services have been terminated by the employer for any reason other than serious and wilful misconduct. An employee who has more than 7 years continuous service is entitled to a pro rata payment for any unused LSL, on leaving employment for any reason.
<b>NSW</b>	Employees who have completed 5 years continuous service, but less than 10 years, are entitled to pro rata payments after five years service, if (a) the employee dies (b) the employee resigns due to illness or incapacity (b) the employee resigns due to domestic or other pressing necessity (c) the employee's services have been terminated by the employer for any reason other than serious and wilful misconduct. An employee who has more than 10 years continuous service is entitled to a pro rata payment for any unused LSL, on leaving employment for any reason.
<b>Northern Territory</b>	Employees who have completed 7 years continuous service with one employer, but less than 10 years service, are entitled to pro rata long service leave payments only on (a) death (b) illness or incapacity (c) domestic or pressing necessity (d) the employee's services have been terminated by the employer for any reason other than serious and wilful misconduct. An employee who has more than 10 years continuous service is entitled to a pro rata payment for any unused LSL, on leaving employment for any reason (with some restrictions if terminated due to serious misconduct)
<b>Queensland</b>	Employees who have completed 7 years continuous service with one employer, but less than 10 years service, are entitled to pro rata long service leave payments only on (a) death (b) illness or incapacity (c) domestic or pressing necessity (d) dismissal for a reason other than the employee's conduct, capacity or performance (e) unfair dismissal. An employee who has more than 10 years continuous service is entitled to a pro rata payment for any unused LSL, on leaving employment for any reason.
<b>South Australia</b>	Employees who have completed 7 years continuous service, but less than 10 years, is entitled to pro rata long service leave payments (unless dismissed for serious and wilful misconduct). An employee who has more than 10 years continuous service is entitled to a pro rata payment for any unused LSL, on leaving employment for any reason.
<b>Victoria</b>	Employees who have completed at least 7 years service are entitled to a pro rata long service leave payment for any unused long service leave. This applies on death, resignation, or termination.
<b>Western Australia</b>	Employees who have completed 7 years continuous service, but less than 10 years, is entitled to pro rata long service leave payments (unless dismissed for serious and wilful misconduct). An employee who has more than 10 years continuous service is entitled to a pro rata payment for any unused LSL, on leaving employment for any reason.



# Acknowledgements

The authors wish to acknowledge the invaluable contributions of the following research assistants:  
(Tony) Shunquan Zhang, Dr Joseph McIvor and Dr Jan Zwar.

This paper uses unit record data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey. The HILDA Project was initiated and is funded by the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and is managed by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute). The findings and views reported in this paper, however, are those of the authors and should not be attributed to either FaHCSIA or the Melbourne Institute.

# Footnotes

1. See Fair Work Act Review (2012) *Towards More Productive and Equitable Workplaces: An evaluation of the Fair Work Legislation*, Australian Government, pp. 22 and 101.
2. Noel Towell, 'Long Service Leave is Redundant: Libs', *Canberra Times*, 9 May, 2012, <http://www.canberratimes.com.au/act-news/longservice-leave-is-redundant-lib-20120508-1ybe3.html>; 'MP's Plea – Long Service Leave', *The Advertiser*, 24 January 2009, p. 20; Shaun Anthony, 'Scrap leave scheme: Review', *The West Australian*, 13 November 1996, p. 37.
3. These are the reasons given in the NSW Parliament prior to the introduction of the LSL legislation in 1955. (cited in T Cole, *Final Report of the Royal Commission into the Building and Construction Industry*, Commonwealth of Australia, Canberra, February 2003, Volume 10, page 217, viewed 23 February 2011, <http://www.royalcombcgi.gov.au/hearings/reports.asp>).
4. ACTU, *Independent Inquiry into Insecure Work, Lives on Hold: Unlocking the Potential of Australia's Workforce*, Melbourne, 2012.
5. The eligibility age for withdrawing lump sum superannuation benefits is commonly known as the preservation age.
6. ABS 2012a.
7. For males aged between 15 and 24 the employment to population ratios increased between 2001 and 2006 before falling back to below 2001 levels between 2006 and 2011. For 25 to 29 year old males the employment to population ratios were almost identical for all three census years.
8. Source: Authors' calculations based on ABS (2012a).
9. For females aged between 15 and 24 the employment to population ratios increased between 2001 and 2006 before falling back to slightly below the 2001 level between 2006 and 2011.
10. Source: Authors' calculations based on ABS 2012a and ABS life tables.
11. The 2011 figures may be a slight underestimate. They were calculated by applying 2011 data on labour force participation to the 2009-11 life table. The life table was the most recently available estimate at time of writing. Ideally 2010-2012 life tables should be used in the calculations.
12. Australian Bureau of Statistics, Labour Mobility, Cat. 6209.0 (2012).
13. These statistics are based on the employees' own understanding of their entitlements. It is possible that some of them might not be aware of their entitlements.
14. The HILDA survey collects information on the length of time Australians have been employed by their current employer and the total number of years they have spent in paid employment over their lifetime. It should be noted that both these variables do not make the distinction between full-time employment and part-time employment. Moreover there is no distinction between work experience in Australia and work experience outside Australia. Information on individual durations of service with previous employers is not available from the survey.
15. The term "employed" used here includes employers and the self-employed as well as employees.
16. It should be noted that the subset of this group whose 10 years of lifetime employment include fewer than 10 years full-time work in Australia would not have been eligible under a portable scheme. A second subset would have been eligible for LSL with a previous employer by virtue of ten or more years of full-time service in Australia with that employer.
17. 45.8% of current full-time employed.
18. 38.0% of current full-time employed.
19. *Compendium of Workers' Compensation Statistics, Australia 2009-10*. Safe Work Australia, 2012, p6.
20. For example, employers in the university sector, local government and maritime services have arranged to provide portability to cover employees who switch jobs within the industry sector. David Quinn-Watson (Bendzulla Actuarial Pty Ltd), 2007, Feasibility Study into a Portable Long Service Leave Scheme for the Community Services Sector in Victoria, reports that 15% to 20% of community care organisations in Victoria had already established portability arrangements with other similar organisations.
21. *NSW Hansard*, Mr Paul Lynch, Minister for Industrial Relations, 24 November 2010.
22. *NSW Hansard*, Mr Paul Lynch, Minister for Industrial Relations, 2 September 2010.
23. *NSW Hansard*, The Hon Sophie Cotsis, 1 December 2010, Legislative Council.
24. *NSW Hansard*, Mr Paul Lynch, 2 September 2010.
25. *NSW Hansard*, Mr David Harris, 24 November 2010.
26. *NSW Hansard*, The Hon Greg Pearce, 1 December 2010, Legislative Council.
27. The appendix to the URBIS report includes all comments made by the survey respondents.
28. 2010 report on *Community Services Sector Portable Long Service Leave*, written by PriceWaterhouseCoopers for the Victorian Department of Community Services Community Sector Investment Fund.
29. Shaun Anthony, 'Scrap leave scheme: Review', 13 November 1996, *The West Australian*, p 37.
30. Review of Funding Arrangements for Long Service Leave in the Black Coal Mining Industry: Report to the Minister for Workplace Relations and Small

- Business: June 1998
31. *Miners' long service in the spotlight*, By Robert Skeffington, 24 November 1997, *BRW*, p38. Axe miners' long service fund: report Katharine Murphy, 7 December 1998, *The Australian Financial Review*, p4; 'CFMEU preparing for year of clashes with fed govt', By Denis Peters, 4 January 1999, AAP. It is possible that this decision was influenced by the collapse of the Oakdale colliery in May 1999. See below for a description of these events.
  32. Chapter 12, page 244 of the *Final Report of the Royal Commission into the Building and Construction Industry*. This chapter contains a thorough review of the development of these schemes.
  33. For example: F. Jones, R. J. Burke, and M. Westman (eds), *Work-life balance : a psychological perspective*, New York, NY: Psychology Press, 2006; C. J., Hobson, L. Delunas, and D. Kesic, 'Compelling evidence of the need for corporate work/ life balance initiatives: results from a national survey of stressful life-events', *Journal of Employment Counseling*, 2001, vol. 38, no. 1, pp. 38-44, doi: 10.1002/j.2161-1920.2001.tb00491.x; D. E. Guest, 'Perspectives on the Study of Work-life Balance', *Social Science Information*, June 2002, vol. 41, no. 2, pp. 255-279, doi: 10.1177/0539018402041002005; B. Pocock, 'Work-life "balance" in Australia: Limited progress, dim prospects', *Asia Pacific Journal of Human Resources*, August 2005, vol. 43, no. 2, pp.198-209, doi: 10.1177/1038411105055058; H. Hvid, and P. Hasle, *Human development and working life*, Aldershot: Ashgate Publishing Limited, 2003.
  34. See Safe Work Australia (2013) *The Incidence of Accepted Workers' Compensation Claims for Mental Stress in Australia*, p vii
  35. See above.
  36. See Australian Bureau of Statistics (2010) *Work-related Injuries 2009-10*. ABS cat. No. 6324.0 Canberra: ABS.
  37. G. Cairncross and I. Waller, (2004) 'Not Taking Annual Leave: What could it cost Australia?', *Journal of Economic and Social Policy*, Volume 9, Issue 1, Article 3.
  38. See B. Pocock, N. Skinner, and S. Pisaniello (2010) *Working Hours, Holidays, and Working Life: The Participation Challenge*, Australian Work and Life Index.
  39. Tourism Australia, (2009), *No Leave, No Life: Research Findings*, <http://www.noleavenolife.com/pdf/Research%20lo-res.pdf>.
  40. Pocock, Skinner, and Pisaniello (2010) *Working Hours, Holidays, and Working Life: The Participation Challenge*, p. 7.
  41. See for example, Safe Work Australia (2006) *Work-Related Fatigue: Summary of recent regulatory developments*.
  42. P. Smith (1993) 'I've worked shifts in the blast furnace for fifteen years – so what can you tell me about OHS?' in Quinlan M (ed) *Work and Health*, Macmillan, Sydney, p. 119.
  43. Cairncross and Waller, (2004) Not Taking Annual Leave: What could it cost Australia? *Journal of Economic and Social Policy*, Volume 9, Issue 1
  44. No leave, No Life Website (tourism australia): [www.noleavenolife.com](http://www.noleavenolife.com) and research findings <http://www.noleavenolife.com/pdf/Research%20lo-res.pdf>; Eldborough, B (2010) 'Kick Back with old-time summer holiday', Sunday Times (Perth), January 10, available at [http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=SU\\_NTIPO020100109e61a0004w&pp=1&fcpil=en&napc=S&sa\\_from=](http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=SU_NTIPO020100109e61a0004w&pp=1&fcpil=en&napc=S&sa_from=); Hospitality Magazine (2009) 'Cutting annual leave stockpile would save jobs', Hospitality Magazine, February 23, available at <http://www.hospitalitymagazine.com.au/management/cutting-annual-leave-stockpile-would-save-jobs>; Lindstrom, A, (2005) 'Pursuing the non-takers of annual leave', *Traveltrade*, 29 June, available at [http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=TRVTRD0020050721e16t00020&pp=1&fcpil=en&napc=S&sa\\_from=](http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=TRVTRD0020050721e16t00020&pp=1&fcpil=en&napc=S&sa_from=); Travelpress (2006) 'New mindset Needed on Leave', *Travelpress*, May 25, available at [http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=TPRESS0020060525e25p00004&pp=1&fcpil=en&napc=S&sa\\_from=](http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=TPRESS0020060525e25p00004&pp=1&fcpil=en&napc=S&sa_from=); Tourism Australia (2006) 'Media Release: No Leave, No Life', AAP MediaNet Press Releases, May 2, available at [http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=AA\\_PMPR0020060502e252000b5&pp=1&fcpil=en&napc=S&sa\\_from=](http://global.factiva.com.simsrad.net.ocs.mq.edu.au/aa/?ref=AA_PMPR0020060502e252000b5&pp=1&fcpil=en&napc=S&sa_from=).
  45. Emmerson, R. (2009) 'Time for a long service leave-led recovery', *The Advertiser*, February 22, available at <http://www.dailytelegraph.com.au/news/long-service-leave-led-recovery-push/story-e6freuy9-1111118933563>
  46. Euroline: European Industrial Relations Observatory on-line, *Working time developments 2011*, accessed 1 May 2013 at <http://www.eurofound.europa.eu/eiro/studies/tn1204022s/tn1204022s.htm>; R. Ray and J. Schmitt, *No-vacation nation USA – A comparison of leave and holiday in OECD countries*, European Economic and Employment Policy Brief, no. 3, ETUI-REHS, 2007, accessed 1 May 2013 at [www.law.harvard.edu/programs/lwp/papers/No\\_Holidays.pdf](http://www.law.harvard.edu/programs/lwp/papers/No_Holidays.pdf).
  47. van Gilder Cooke, S. (2012) 'Bon Voyage! Why Europe's Vacation-Loving Ways Make Economic Sense', *Time*, 19 March, available at <http://www.time.com/time/world/article/0.8599.2109263.00.html>.
  48. EHR, 'Manageing pay differences across countries to attract and retain top talent' accessed 1 May 2013 at <http://www.expatica.com/hr/story/Manageing-pay-differences-across-countries-to-attract-and-retain-top-talent.html>; also see references in note 41 above.
  49. '13th Salary in Brazil', *The Brazil Business*, accessed 1 May 2013 at: [thebrazilbusiness.com/article/13thsalary-in-brazil](http://thebrazilbusiness.com/article/13thsalary-in-brazil); T. G. Santos, 'Employers reminded to give 13th-month pay', *Philippine Daily Inquirer*, 20 November 2012, accessed 1 May 2013 at [business.inquirer.net/93940/employers-reminded-to-give-13th-month-pay](http://business.inquirer.net/93940/employers-reminded-to-give-13th-month-pay); Singapore Government Ministry of Manpower website, *Annual Wage Supplement*, accessed 1 may 2013 at [www.mom.gov.sg/employment-practices/employment-rights-conditions/salary/Pages/variable-wage.aspx](http://www.mom.gov.sg/employment-practices/employment-rights-conditions/salary/Pages/variable-wage.aspx).
  50. There were some limitations on the level of benefits provided. FEAGA Benefits are calculated using a maximum weekly wage of \$2,364 (roughly \$123,000 p.a.) to be indexed in line with average weekly earnings. Although FEAGA fulfils the objective of providing greater security for employee entitlements, there are some concerns about the cost to taxpayers. The cost of FEAGA is likely to fluctuate from year to year; and the cost might increase sharply if a major employer becomes insolvent: for example, the collapse of ABC Learning in 2009 cost an

- estimated \$70 million. See Steve O'Neill (2011) Meeting Employee Entitlements in the Event of Employer Insolvency, Parliamentary Library Background Note, 4 April 2011. Data is taken from O'Neill, Steve (2011) *Meeting Employee Entitlements in the Event of Employer Insolvency*, Parliamentary Library Background Note, 4 April 2011.
51. Madeleine Heffeman, 'Hike in payouts puts focus on scheme', *Sydney Morning Herald*, 22 April 2013, accessed 23 April 2013, available at <http://www.smh.com.au/business/hike-in-payouts-puts-focus-on-scheme-20130421-2i8a9.html>.
  52. I. Bickerdyke, R. Lattimore and A. Madge (2000), 'Business Failure and Change, An Australian Perspective', Productivity Commission Staff Research Paper, found that in other countries with similar schemes, costs fluctuate substantially from year to year, moving up and down in line with the business cycle.
  53. J. Bishop and N. Cassidy, N (2012) 'Trends in National Saving and Investment', *Reserve Bank of Australia Bulletin*, May, available at <http://www.rba.gov.au/publications/bulletin/2012/mar/2.html>; E. Connolly and M. Kohler (2004) 'The Impact of Superannuation on Household Saving', *Reserve Bank of Australia Research Paper* 2004-01, available at <http://www.rba.gov.au/publications/rdp/2004/pdf/rdp2004-01.pdf>; E. Connolly (2007) 'The Effect of the Australian Superannuation Guarantee on Household Behaviour', *Economic Analysis Dept: Reserve Bank of Australia*, <http://www.rba.gov.au/publications/rdp/2007/pdf/rdp2007-08.pdf>; J. Freebairn (2004) 'Some Long-Term Labour Market Effects of the Superannuation Guarantee', *The Australian Economic Review*, vol. 37, no. 2, pp. 191-7; D. Gruen and L. Soding (2011) 'Compulsory Superannuation and National Saving', *2011 Economic and Social Outlook Conference*, Australian Treasury, available at <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2011/Economic-Roundup-Issue-3/Report/Compulsory-superannuation-and-national-saving>; H. Higgs and A. C. Worthington (2012) 'Economies of Scale and Scope in Australian superannuation (pension funds)', *Pensions*, vol. 17, no. 4, pp. 252-259;
  54. Australian Bureau of Statistics (2012) 8165.0 – *Counts of Australian Businesses, including Entries and Exits Jun 2007-Jun2011*, available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8165.0>
  55. Australian Bureau of Statistics (2012) 6248.0.55.002 – *Employment and Earnings, Public Sector, Australia, 2011-12*, available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6248.0.55.002>
  56. Australian Bureau of Statistics (2012) 8155.0 – *Australian Industry 2010-2011*, available at [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/FDDC3A890FA7E7C8CA257A24001D9707/\\$File/81550\\_2010-11.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/FDDC3A890FA7E7C8CA257A24001D9707/$File/81550_2010-11.pdf)
  57. Australian Bureau of Statistics (2012) 8165.0 – *Counts of Australian Businesses, including Entries and Exits Jun 2007-Jun2011*, available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8165.0>
  58. The minimum vesting period varies from State to State, and awards and workplace agreements may incorporate different vesting requirements.
  59. It is interesting to note the similarity to superannuation resignation benefits. Prior to the introduction of award superannuation in the mid-1980s, many superannuation funds provided very poor benefits to those who resigned after short periods of service. In many cases, employees who had not completed at least 5 years of service did not receive any employer-funded superannuation benefits on resignation. Minimum vesting requirements were introduced in 1986 (under the regulations to the Occupational Superannuation Standards Act).
  60. Note: It may be necessary to review the taxation of LSL benefits, i.e. the tax payable when a benefit is paid to the workers. At present, benefits taken while in service are taxed differently to lump sum payments on termination. How will this be affected by portability?
  61. B. Dabscheck, *Australian Industrial Relations in the 1980s*, Oxford University Press, Melbourne, 1989, pp. 100-11; B. Dabscheck, *The Struggle for Australian Industrial Relations*, Oxford University Press, Melbourne, 1995, p. 75.
  62. Some of the industry-based portable LSL funds provide accumulation benefits to certain categories of workers, e.g. contractors.
  63. Since some workers have variable hours, the weekly wage may be determined by averaging over a specified period. Each State has its own rules to deal with variable working patterns.
  64. This assumes that the definition of wages used to calculate the benefit matches the employee's normal income. If the employee's normal income includes payments which are not included in the benefit definition, e.g. overtime payments or bonuses, then the LSL benefit may not provide full income replacement during the period of long service leave.
  65. Report on the preliminary outcomes of the Fair Work Ombudsman Sham Contracting Operational Intervention, Fair Work Ombudsman, 2011; Report on the National Cleaning Services Campaign, 2010-1022, from the Fair Work Ombudsman (2011), published on the FWO website. Problems have been identified with 'phoenix' companies in building and construction, where companies self-liquidate designed to evade payment of tax obligations and employee entitlements (including LSL benefits). See T Cole, *Final Report of the Royal Commission into the Building and Construction Industry*, Commonwealth of Australia, Canberra, February 2003, viewed 23 February 2011, <http://www.royalcombc.gov.au/hearings/reports.asp> (Vol. 8).
  66. Inspector General of Taxation, (2010), *Review into the Australian Taxation Office's Administration of the Superannuation Guarantee Charged*, [http://www.igt.gov.au/content/reports/super\\_guarantee/superannuation\\_guarantee.pdf](http://www.igt.gov.au/content/reports/super_guarantee/superannuation_guarantee.pdf).
  67. See *Employee Entitlements and Corporate Insolvency and Reconstruction*, (2005) by Justice Simon Whelan, Supreme Court of Victoria, and Leon Zweir for a description of the legal issues. [http://www.law.unimelb.edu.au/files/dmfile/Protectionofemployeeentitlements\\_final\\_12.pdf](http://www.law.unimelb.edu.au/files/dmfile/Protectionofemployeeentitlements_final_12.pdf).
  68. Australian Securities and Investment Commission (2012), *Australian Insolvency Statistics*, available at [www.asic.gov.au](http://www.asic.gov.au). External administration includes creditors' voluntary liquidations, court liquidations, receiverships, and voluntary administrations. In 2010/11, about

- 78% of companies which were placed under administration has less than 20 employees. 97% of the insolvent companies were expected to return less than 11 cents in the dollar to unsecured creditors. ASIC Report 263, Insolvency statistics: External administrators' reports 1 July 2010–30 June 2011–November 2011.
69. Australian Bureau of Statistics (2012), Counts of Australian Businesses, Including Entries and Exits, ABS 8165.0.
  70. Chapter 10, *The Treatment of Employee Entitlements, Corporate Insolvency Laws: A Stocktake, Parliamentary Joint Committee on Corporations and Financial Services, 2004*
  71. Australian Law Reform Commission (1988) *General Insolvency Inquiry* (The Harmer Report); Chapter 10, The Treatment of Employee Entitlements, *Corporate Insolvency Laws: A Stocktake, Parliamentary Joint Committee on Corporations and Financial Services, 2004*; see also I. Bickjerdyke, R. Lattimore and A. Madge (2001), 'Safeguards for Workers Entitlements', Agenda, Volume 8, Number 1, pp. 155-170; G. Langton, C. Latham, J. Linklater, C. Westman, and D. Wickham, (2003), 'Protecting Employee Entitlements in the Event of Employer Insolvency', presentation to the Institute of Actuaries of Australia, available at [www.actuaries.asn.au](http://www.actuaries.asn.au); I. Bickjerdyke, R. Lattimore and A. Madge (2000), 'Business Failure and Change, An Australian Perspective', Productivity Commission Staff Research Paper.
  72. Under NSW legislation, employers are required to hold records for six years after the worker resigns or is terminated. South Australia only requires records to be kept for three years.
  73. Refer to Section 5 for a description of the factors affecting the cost of benefits. This costing assumes that all benefits will be fully vested, i.e. workers will not forfeit their leave entitlements when they leave work after a short period of service. At present, LSL is not fully vested, so the average cost of LSL is significantly lower than 2% in industries which have staff turnover.
  74. As at November 2012, full-time adult average weekly earnings were estimated at \$1393. The average for all adult workers (full-time and part-time) was \$1080 per week. (Australian Bureau of Statistics, Cat. 6302.0, November 2012).
  75. Where employers provide accumulation benefits, the minimum contribution rate is currently set at 9% of ordinary time earnings. Where employers provide defined benefits, the benefits provided must have a long term average expected employer cost equal to 9% of ordinary time earnings. The method of calculating the long term average expected cost is set out in the regulations to the Superannuation Guarantee Administration Act and actuarial standards.
  76. Explanatory Memorandum for the Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2011, Parliament of Commonwealth of Australia (Senate).
  77. Note: there might still be cross subsidies in expense charges, see the Section 5 (Costing) for a description of this issue.
  78. Note that the differential wage increases may be caused by business pressures, e.g. Employer D might operate in an area where there is greater competition for skilled labour. However, in some cases Employer D might be deliberately gaming the system to obtain extra benefits for his own employees. Such behaviour has been observed in at least one multi-employer defined benefit superannuation fund.
  79. According to the latest APRA statistics, there were only 258 ADFs in 2004, but only 77 were still in operation in 2012. The ADFS had approximately 7000 accounts, averaging about \$19,400 each. Most superannuation funds now allow their fund members to leave their benefits in the same fund even after they change jobs, and most funds now accept transfers from other superannuation funds. As a result of this improved portability of benefits, ADFs are no longer necessary for the superannuation system.
  80. In some States, vesting depends on the reason for exit, i.e. voluntary resignation or termination. A summary of vesting standards is given in Section 5.
  81. *Super Fees Fall five percent*, Press release, 3 July 2012, [http://www.ricewarner.com/images/newsroom/1343712408\\_2012\\_MR\\_Superannuation%20Fees%20Trend%20Downward%20Final.pdf](http://www.ricewarner.com/images/newsroom/1343712408_2012_MR_Superannuation%20Fees%20Trend%20Downward%20Final.pdf).
  82. The Cooper Review of the Superannuation System found that competition has failed to deliver optimal outcomes for superannuation fund members. See Super System Review (Cooper Review) Final Report: Part I Overview and Recommendations. (2010). Refer to Section 3.3, *Why Hasn't Competition Delivered Optimal Outcomes Already?*
  83. The government has already created two special-purposes savings accounts: Retirement Savings Accounts and First Home Savers Accounts. Only a few financial institutions have been willing to provide these products. The Super System Review noted that there are only ten financial institutions which provide RSAs, and most of these are credit unions: "there has been little incentive for issuers to create and distribute them using the existing product distribution model because of the low balances involved". Super System Review Issues Paper Phase 3: Structure. Similarly, a relatively small number of financial institutions offer FHSAs. At least two large financial institutions have now ceased offering this product.
  84. When the LSL benefit includes some component which had accrued prior to the commencement of the industry-based arrangements, it is often simpler to allow the employer to make a payment of the whole sum and then claim a reimbursement of the proportion accrued after the introduction of the industry-based arrangements.
  85. The Coal Mining Industry (Long Service Leave Funding) Corporation is an exception. In relation to benefits earned after 1/1/2013, the employer will receive no more than the accumulated value of the employee's LSL account. If this is insufficient to pay the LSL amount required under the law, then the employer must make up the shortfall.
  86. Some funds do allow contractors to participate in the fund, as a separate category of membership, with accumulation-based benefits.
  87. In some States, the levies for the construction industry schemes are calculated as a percentage of building costs and the levies are collected via local councils.
  88. 2012 Annual Report of the Long Service Leave Corporation.



89. NT Build Triennial Actuarial Review, 11 November 2011
90. The Actuarial Report indicates that the fund has a liability of approximately \$22 million in respect of employers who have not made any levy payments, but are entitled to claim LSL payments from the fund.
91. L. Allen, 'Anger over return of long service leave levy in NSW', *The Australian*, 7 July 1997, p. 34.
92. B. Lagan, 'Plan To Plunder \$400m Nest Egg Angers Builders', *Sydney Morning Herald*, 9 March 1996, p. 3.
93. 'Long-service funds to boost building work', *Hobart Mercury*, 30 November 1999, p.6.
94. T.R.H. Cole (2003), *Final Report of the Royal Commission Into the Building and Construction Industry*, Volume 10, p. 250. [http://www.royalcombc.gov.au/docs/finalreport/V10Funds\\_PressFinal.pdf](http://www.royalcombc.gov.au/docs/finalreport/V10Funds_PressFinal.pdf).
95. T.R.H. Cole (2003), *Final Report of the Royal Commission Into the Building and Construction Industry*, Volume 10, p. 13, paragraph 40; and recommendation 167, p. 250.
96. Note that the break period varies from one scheme to another. For example, the Coal Mining Industry scheme allows for a break of up to 8 years.
97. Note: some of the schemes have only been in operation for a few years, hence they have not yet deregistered any workers.
98. Professional Financial Services Pty Ltd (2012), Long Service Corporation Actuarial Valuation of Building and Construction Industry Long Service Payments Fund as at 30 June 2012, pp. 27-28.
99. Some employers noted that they generally have to keep employee records for other purposes, such as calculating worker's compensation premiums – so the LSL requirements do not require a lot of extra work.
100. QLeave Annual Report 2011-2012, Building and Construction Industry.
101. Erratic record keeping is more likely to be a problem in States where the levy is calculated as a percentage of project costs instead of a percentage of wages.
102. Parliament of Tasmania, House of Assembly Select Committee on Costs of Housing, Building and Construction, *Interim Report* (2011).
103. Parliament of Tasmania, House of Assembly Select Committee on Costs of Housing, Building and Construction Hearings held in HOBART 25 January 2011.
104. Coinvest Annual Report 2012, p. 3.
105. Coal Mining Industry (Long Service Leave Funding) Corporation Annual Report 2011, p. 4.
106. The feasibility studies for the ACT Community Services Scheme and the Victorian Community Services Scheme also indicate that the establishment costs of a new scheme would be substantial. The Bendzulla feasibility report estimated establishment costs of between \$500,000 to \$1 million for the Victorian scheme (which did not proceed). The establishment costs for the ACT Community Sector scheme were estimated to be \$500,000.
107. David Quinn-Watson (Bendzulla Actuarial Pty Ltd), 2007, Feasibility Study into a Portable Long Service Leave Scheme for the Community Services Sector in Victoria.
108. Super System Review, Appendix, Deloitte Report. These figures relate to a MySuper product which offers a passive balanced investment strategy, and includes operating costs, investment costs, and intrafund advice. Note also that comparisons of expenses rates between LSL funds and superannuation funds might be misleading. Superannuation funds do not have a legal responsibility to check whether employers are paying the correct contributions, nor do they have any legal authority to do so. On the other hand, LSL funds appear to devote a great deal of resources in educating employers and employees, and enforcing compliance (by legal action if necessary).
109. As noted in Section 3.3.7, at present each State has different rules for the frequency of payments and reporting of employee service.
110. The benefit accrual rate was also increased effective from 1 January 2006.
111. Parliament of Tasmania, the Report of the Select Committee on the Costs of Housing, Building, and Construction in Tasmania, Interim Report, 2011.
112. Australian Prudential Regulation Authority (APRA) Annual Report, 2012. <http://www.apra.gov.au/AboutAPRA/Publications/Pages/Annual-Report-2012.aspx>.
113. The changes are described in the 30 June 2011 Actuarial Review of the Coal Mining Industry (long Service Leave) Fund, by Mercer Consulting, dated 8 May 2012. There are transitional arrangements which will allow for the phasing in of the new system. See also the Explanatory Memorandum to the COAL MINING INDUSTRY (LONG SERVICE LEAVE) LEGISLATION AMENDMENT BILL 2011 which states that "One of the key changes to the scheme agreed by the IWP is in the calculation of the amount that an employer is to be reimbursed. The intention is that the reimbursement amount in respect of a long service leave payment made to an employee should correspond more closely to the amount that has been paid into the Fund in relation to that employee."
114. Discussions with stakeholders indicate that this type of gaming behaviour has indeed been observed in some of the industry-based schemes. This type of gaming behaviour has also been observed in defined benefit superannuation funds which pay benefits based on final salary at or near retirement.
115. Actuarial Report for NTBuild, 2008, by John Rawsthorne (Cumpston Sergeant).
116. PriceWaterhouseCoopers report for the Department of Human Services Community Sector Investment Fund, *Community Services Sector Portable Long Service Leave*, May 2010.
117. Super System Review: Final Report- Part 1, p. 1
118. Inspector General of Taxation, (2010), *Review into the Australian Taxation Office's Administration of the Superannuation Guarantee Charge*, [http://www.igt.gov.au/content/reports/super\\_guarantee/superannuation\\_guarantee.pdf](http://www.igt.gov.au/content/reports/super_guarantee/superannuation_guarantee.pdf)
119. Inspector General of Taxation, (2010), *Review into the Australian Taxation Office's Administration of the Superannuation Guarantee Charge*, [http://www.igt.gov.au/content/reports/super\\_guarantee/superannuation\\_guarantee.pdf](http://www.igt.gov.au/content/reports/super_guarantee/superannuation_guarantee.pdf).
120. Banks and other authorised depository Institutions are covered by the Financial Claims Scheme. APRA-regulated

superannuation funds may be eligible for compensation when a fund suffers losses due to fraud or dishonest conduct, under Part 23 of the Superannuation Industry (Supervision) Act. Note that Self Managed Superannuation Funds (SMSFs) are NOT regulated by APRA and are not covered by any guarantee scheme. The proposed LSL model would not allow SMSFs to administer LSL savings accounts.

121. Super System Review: Final Report – Part 1, p. 1
122. For those who would like to develop a more sophisticated understanding of the process, a few actuarial assessments of the costs of different funds reports are publicly available. For example, the Victorian Department of Human Services published an actuarial assessment of the cost of a proposed portable LSL scheme for the community sector; and the ACT published an actuarial assessment of the cost of the community services scheme established in 2010. Both actuarial reports provided a detailed description of the methodology used for costing.
123. The estimated levy rates would increase slightly if payments are made quarterly, half yearly, or annually.
124. There would be a relatively small variation in the levy rate, resulting from any differences in the timing of levy payments and the timing of wage increases during the year.
125. At present, the industry-based portable LSL funds do not pay tax on investment income. The issue of taxation of some of these funds has arisen from time to time in the past.
126. And we have also implicitly assumed that employers who remain in service over the longer term will take their additional LSL at 10-yearly intervals.
127. Some awards allow pro rata payments on death or disability for employees with short periods of service, but only a small number of workers would qualify for such payments.
128. Refer to the Table of State Legislation on LSL Benefits for details.
129. PriceWaterhouseCoopers report for the Department of Human Services Community Sector Investment Fund: Community Services Sector Portable Long Service Leave (2010).
130. Australia Bureau of Statistics Labour Mobility (2012) (ABS 6209.0).
131. The Actuaries Institute is currently funding research on this topic.
132. David Quinn-Watson (Bendzulla Actuarial Pty Ltd), 2007, Feasibility Study into a Portable Long Service Leave Scheme for the Community Services Sector in Victoria.
133. Bendzulla Feasibility Report 2007
134. Note that the sharp increase in wages in 2007 was the result of a rule change. Prior to 2007 benefits were based on the default wage rate; thereafter it was based on the actual rate.
135. Investment risk can also be managed by the use of derivatives, but this also imposes a cost on the fund.
136. This issue of security of worker entitlements is discussed in the section of this report Models of Scheme Administration.
137. Many of the old defined benefit funds are closed to new members. Employees who joined the fund before a specified date are allowed to retain their defined benefits, but all new employees are provided with accumulation benefits.
138. This description of events is based on the Regulatory Impact Statement provided in support of the levy increase in 2009. Building and Construction Industry (Portable Long Service Leave) Amendment Regulation (No. 1) 2009 - Regulatory Impact Statement for SL 2009 No. 308.
139. Employers are required to make annual leave and long service leave contributions to a worker entitlement fund on behalf of its workers to meet its legal obligations under an industrial instrument.
140. ATO Interpretive Decision ATO ID 2004/489.
141. List of Approved Worker entitlement funds provided at Appendix One.
142. ATO Private Ruling Authorisation Number 94062 'Contributions are not income'.
143. J.A. Schumpeter. (1994) [1942]. *Capitalism, Socialism and Democracy*. London: Routledge.
144. This assumes that the proposed fund would cover community care workers, aged care workers, and child care workers. Higher rates would be required if the fund did not cover all categories, i.e. if the fund had a smaller number of members.
145. Actual Expenses over 3 years to 30 June 2012 were 0.23% of worker's wages; the actuaries used an assumption of 0.25% in their projections
146. The initial feasibility study (Bendzulla 2007) suggested that the administration costs would be between 0.1% and 0.5%, depending on the coverage of the scheme. If the scheme only covered 10% of the sector workforce, then the administration costs would be at the high end of the range, i.e. 0.50%.







MACQUARIE  
UNIVERSITY



CENTRE FOR  
WORKFORCE FUTURES