



Submission to the Senate Education and Employment References Committee

Inquiry into the Feasibility of, and Options
for, Creating a National Long Service
Standard, and the Portability of Long
Service and Other Entitlements

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RECOMMENDATIONS

1. The Senate support the establishment of a national LSL standard subject to the following conditions:
 - *The national standard adopt the most beneficial provisions available to employees under the existing statutory schemes.*
 - *Harmonisation/transition arrangements not result in a decrease in current entitlements for current or future employees.*
 - *There is no ‘grandfathering’ of entitlements for existing employees.*
2. The Senate support the establishment of portability of long service leave schemes.

A. Introduction

The Australian Nursing and Midwifery Federation (ANMF) is the national union for nurses, midwives and assistants in nursing with branches in each state and territory of Australia. The ANMF is also the largest professional nursing organisation in Australia. The ANMF's core business is the industrial and professional representation of its members.

As members of the union, the ANMF represents over 240,000 registered nurses, midwives and assistants in nursing nationally. They are employed in a wide range of enterprises in urban, rural and remote locations, in the public, private and aged care sectors including nursing homes, hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, and off-shore territories and industries.

The ANMF welcomes the opportunity to make this submission to the Senate Education and Employment References Committee Inquiry into the Feasibility of, and Options for, Creating a National Long Service Standard, and the Portability of Long Service and Other Entitlements.

We note the 2014 paper by the McKell Institute (in conjunction with Macquarie University and the Centre for Workforce Futures), *The Case for a National Portable Long Service Leave Scheme in Australia*¹ and commend it to the Committee. That paper sets out the history of long service leave (LSL) in Australia, the reasons why changing work and employment patterns should lead to a new approach to LSL accrual and portability, the background to current portable schemes and the administrative and actuarial options for future portable long service leave schemes. It is a comprehensive paper which provides cogent, credible arguments and design options in relation to portable LSL.

The ANMF believes that long service is a valuable and valued entitlement. However, since the inception of LSL in the nineteenth century the circumstances of work and society have changed immeasurably. Work has changed dramatically (both in its complexity and intensity), work is less secure, changes of employment (and employer) are more frequent and workers are more often required to reskill in order to obtain and retain employment.

¹ *The Case for a National Portable Long Service Leave Scheme in Australia*, The McKell Institute, 2014, (with Macquarie University and the Centre for Workplace Futures), authored by Professor Ray Markey and eight others.

Demographically, women are now as likely to work as men, and with an aging population there is an increasing focus on caring for older relatives as well as child raising (both of these responsibilities fall disproportionately to women at different stages of their working lives, and in terms of older relatives, disproportionately to those with nursing qualifications within families). Indeed, with an aging workforce and governments increasingly under revenue pressure, all workers, including nurses and midwives, are going to be increasingly required to work beyond the age of 60 or even 65 years of age.

All of these factors make entitlement and access to long service leave even more important today – whether to give workers a break to re-train, to give them some added income while searching for new jobs, to recharge in the middle of a long working life or to enable them to provide respite or nursing care for loved ones at crucial times.

B. Nursing workforce data

According to Australian Institute of Health and Welfare (AIHW)² data for 2014 almost half (48.3%) of all nurses and midwives work part time hours of less than 35 hours per week with 11.2 percent working less than 20 hours per week. The average hours worked overall is 33.6 hours per week. The AIHW data does not categorise employment data by employment type, however a significant number of nurses and midwives will be in insecure employment defined variously as casual employment, fixed term contract arrangements or temporary/hire arrangements.

Unpublished data collected from the *ACTU Working Australia Census 2011* specific to nursing provides a useful indicator of the range of different arrangements in nursing employment. Over 6000 nurses responded to the survey; 20% held more than one job and 16% were employed on a casual, fixed term, temporary hire or contract basis. Of those working on a casual basis, 47.5% had worked 2 to 3 jobs in the last 12 months while approximately 10.2% worked 4 or more jobs in the last 12 months.

Workforce data collected in the residential aged care sector³ provides a detailed picture of employment arrangements for nursing and personal care workers. Overall 72% of the

² AIHW 2014 *Nursing and Midwifery Workforce 2013* <http://www.aihw.gov.au/workforce/nursing-and-midwifery/>

³ Debra King; Kostas Mavromaras; Zhang Wei et al, National Institute of Labour Studies (NILS), Flinders University, *The Aged Care Workforce, 2012: final report*. Publisher: Australian Department of Health and Ageing

direct care workforce work part time hours; 18.7% are casual employees with only 9.5% working full time.

Approximately half nursing and care employees work between (56.4%) 16 to 34 hours per week; 4% work less than 16 hours per week. This data also shows that 10% of all direct care employees have more than one job. (Nearly double the level in the general population; 5.4% (ABS 2011)).

Of those with multiple jobs, more employees have jobs outside the aged care sector than in residential aged care.

C. Mobility of the nursing workforce

Nursing employment encompasses a broad range of work settings including hospitals, rural and remote nursing posts, indigenous communities, schools, prisons, aged care homes, the armed forces, universities, mental health facilities, statutory authorities, general practice offices, businesses, professional organisations and peoples' homes.

Nurses and midwives currently make up 58% of the registered health workforce and, as a profession are recognised as highly mobile across all areas and sectors of nursing employment.

Nurses and midwives are predominantly women, currently making up 90% of the nursing workforce. As almost 48% are under the age of 45, it can be expected many will interrupt their working life to have children, a situation that can arise several times during their career. In addition to potential breaks in employment, hours and patterns of work may vary at different points in time depending on family circumstances.

D. A national long service leave standard

The starting point in considering the introduction of a national standard LSL arrangement is whether such an arrangement would result in a broad based industrial and economic benefit.

Certainly a nationally consistent LSL scheme could potentially streamline current arrangements for both employers and employees, particularly those operating in various state and federal jurisdictions.

Further a national standard may also simplify the administrative arrangements for industry wide portability of long service leave schemes.

However the Productivity Commission (2015) in its review of the workplace relations framework were of the opinion that justification for changing existing LSL arrangements remained open to debate. In its view, *“any change would produce winners and losers, and this may explain why there has been little appetite by states to change the status quo. Overall, there remains some uncertainty about the net benefits of moving to a uniform system, the appropriate transition to any such standard, and the scope for some more minor simplification of the current system”* (Productivity Commission, 2015, p. 20).

The Productivity Commission 2015 identified ‘grandfathering’ existing entitlements as one option to transition to a national uniform LSL entitlement.

Given the diverse legislative LSL arrangements existing across the states and territories as set out in the table below, it is difficult to envisage the introduction of national scheme not resulting in changes to current employee entitlements. This is an issue of fundamental importance for the ANMF in its consideration of the overall benefits of a national LSL standard.

| State | Legislation | Qualifying Period | Entitlement |
|------------------------------|-------------------------------|-------------------|-------------|
| New South Wales | Long Service Leave Act 1955 | 10 years | 2 months |
| Victoria | Long Service Leave Act 1992 | 15 years | 13 weeks |
| Queensland | Industrial Relations Act 1999 | 10 years | 8.667 weeks |
| Western Australia | Long Service Leave Act 1958 | 10 years | 8.667 weeks |
| South Australia | Long Service Leave Act 1987 | 10 years | 13 weeks |
| Tasmania | Long Service Leave Act 1976 | 10 years | 8.667 weeks |
| Australian Capital Territory | Long Service Leave Act 1976 | 7 years | 6.06 weeks |
| Northern Territory | Long Service Leave Act 1981 | 10 years | 13 weeks |

The ANMF submits that a national NES based LSL standard must, as a minimum, maintain existing LSL entitlements for current and future employees and, as a consequence this effectively means a national standard must adopt the ‘highest common denominator’ in respect to the existing statutory schemes. To do otherwise will result in a reduction for some existing and/or new employees.

Having regard to the foregoing, ANMF would only be supportive of a national LSL standard subject to the following conditions:

1. *The ANMF would not support any harmonisation arrangements that would see a decrease in current entitlements for current or future employees.*
2. *The ANMF would not support 'grandfathering' existing entitlements for current employees.*

E. Portable LSL schemes

The ANMF supports the principle of the portability of entitlements over an employee's life across all industries.

The ideal position for nurses, midwives and assistants in nursing is a flexible, seamless health system in which moving employment between employers can be achieved without losing entitlements or having to 'cash them out' when it is not the intention to either cease employment or to take LSL at that point.

ANMF supports the establishment of a portable LSL scheme to cover all nurses, midwives and assistants in nursing across the health industry (broadly defined), including public and private acute health, public and private aged care and the community sector.

Our support for such a scheme is based on a range of reasons including that:

- Nurses, midwives and assistants in nursing are employed in the nursing/health industries for all of their working lives in most cases. It makes sense that long service leave is based on service to the industry, not service to a particular employer;
- The common funding source of most health providers is either State or Commonwealth funding (and health insurance in the private sector) and it would be relatively easy administratively to establish provided there was sufficient seed funding;

- It is desirable to ensure that there are minimal barriers to mobility for nurses and midwives both within the public sector and between the public sector and the private sectors (including both the for-profit and not-for-profit health and aged care providers). Lack of portability of LSL creates an artificial barrier which acts as a disincentive to move and potential discrimination when nurses do move employment;
- A significant minority of nurses and midwives are employed in two or more jobs – about 10% of the workforce;
- Lack of portability affects the ability for nurses and midwives to take career breaks, especially to re-skill and up-skill which is becoming increasingly important in the health industry, and
- The lack of true portability disadvantages women in particular, especially those who take a short career break (a) beyond paid and unpaid parental leave provided under industrial instruments, to be the primary carer for a child or children or (b) increasingly, to look after aging parents.

In Australia portable long service leave schemes have a demonstrated history of success. The development in the 70s and 80s of portable building and construction long service leave funds in all states and territories and, subsequently, portable funds for contract cleaners and security staff in some states/territories, shows that it can be done. These funds are highly successful, work well administratively and have been financially sustainable.

The model preferred by the ANMF to cover nurses, midwives and assistants in nursing is the defined benefit fund model outlined below as Option B in the previously cited McKells Report and which is the foundation of the existing portable LSL schemes.

[OPTION B – The Industry-based Defined Benefit Fund Model \(See McKells Report pages 14 -18\)](#)

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.

The ANMF sees governance arrangement for the portability scheme being a statutory body or company with a representative Board (involving both public and private sector employers and the ANMF). From our perspective it is important that both employers and unions representing the workforce in the industry concerned are involved in the consultation and decision-making around such an important entitlement.