

CHAPTER 1

Background to the inquiry

Inquiry terms of reference

1.1 On 9 November 2015, the Senate referred the following terms of reference to the Education and Employment References Committee for inquiry and report by the third sitting day of 2016:

The feasibility of, and options for, creating a national long service standard, and the portability of long service and other entitlements, with particular reference to:

- (a) the number of Australians in insecure work;
- (b) the extent and nature of labour market mobility;
- (c) the objectives of portable long service leave schemes, and the key components that might apply;
- (d) which sectors, industries or occupations may, or may not, benefit from such schemes;
- (e) the operation of a portable long service scheme, including:
 - (i) how and by whom such schemes might be run,
 - (ii) how such schemes could be organised, be it occupational, industrial or other,
 - (iii) the appropriate role for the Commonwealth Government in facilitating portable long service leave schemes,
 - (iv) the impact of varying state and territory long service leave arrangements on a potential national long service scheme administered by the Commonwealth,
 - (v) the capacity to operate such schemes within or across jurisdictions, including recognition of service; and
- (f) any other related matters.¹

1.2 On 30 November 2015 the Senate extended the report date to 25 February 2016.²

1 *Journals of the Senate*, 9 November 2015, pp 3308-3309.

2 *Journals of the Senate*, 30 November 2015, p. 3518.

Context and scope of the inquiry

1.3 Long service leave has existed in Australia since the 19th century, and is unique to Australia and New Zealand. It 'was conceived in Victoria in the 1860s – allow a predominately immigrant workforce ample time to make the lengthy voyages necessary to visit their home countries, without jeopardising their employment'.³

1.4 Long service leave has historically been contingent on a person staying with their employer for a set number of years – generally between seven to fifteen years – before they are eligible to receive long service leave. In most cases, if a worker leaves their employer before reaching the threshold number of years for long service leave, the process is reset.

1.5 However, there is recognition that long term employment with a single employer is largely a thing of the past, and some submitters to this inquiry have expressed concern that the changing nature of Australia's workforce, including greater workforce mobility, means that many workers are missing out on long service leave they would otherwise be entitled to access.

1.6 Exceptions exist where portability schemes enable workers to maintain their entitlements when they change employers. For example, the construction industry portable long service leave scheme recognises 'the unique nature of employment in the building and construction industry, whereby employees are typically engaged on a project basis and move from employer to employer as one project is completed and another starts.'⁴

1.7 In light of concerns expressed by submitters about workers missing out on long service leave entitlements, this report will outline arguments for and against extending portability.

1.8 An additional consideration is the nationalisation of long service leave standards. As of 1 January 2010, the National Employment Standards (NES) apply to all employees covered by the national workplace relations system, regardless of the applicable industrial instrument or contract of employment. Long service leave is one of the NES and gives an employee leave after a long period of working for the same employer.

1.9 However, most employees' entitlement to long service leave comes from long service leave laws in each state or territory. These laws set out:

- how long an employee has to be working to get long service leave (eg. after 7 years); and

3 Productivity Commission, *Workplace Relations Framework: Report No. 76*, 30 November 2015, <http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume1.pdf> (accessed 17 February 2016), p. 520.

4 Housing Industry Association, *Submission 6*, p. 10.

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- how much long service leave the employee gets.⁵

1.10 The system as it currently stands is complex and can be difficult for both workers and employers to navigate, particularly for employers who operate across jurisdictions. Because of this, many submitters are supportive of a nationalised standard for long service leave. This will be considered in this report.

1.11 The report will also look at a range of related issues, including the concept of insecure work and labour market mobility, and related issues.

Conduct of the inquiry

1.12 Notice of the inquiry was posted on the committee's website. The committee also wrote to key stakeholder groups, organisations and individuals to invite submissions.

Submissions and public hearings

1.13 The committee received 34 submissions. The submissions, answers to questions on notice, tabled documents and additional information are listed in Appendix 1.

1.14 The committee held a public hearing in Canberra on Friday, 5 February 2016. The witness list for this hearing is available in Appendix 2.

Acknowledgment

1.15 The committee thanks those organisations and individuals who contributed to this inquiry by preparing written submissions and giving evidence at the public hearing.

5 Fair Work Ombudsman, <https://www.fairwork.gov.au/leave/long-service-leave> (accessed 6 January 2016).

