

# Chapter 3

## Portability of long service leave

### Introduction

3.1 Portability of entitlements allows workers to take accrued leave with them when they change jobs. Leave entitlements are a financial liability on businesses, and entitlements such as annual leave are often paid out when a person leaves an employer, rather than passed on to the next employer - although there are exceptions.<sup>1</sup>

3.2 LSL is generally not portable because it is designed to be accessed after a long period of continuous employment with a single employer. If a worker leaves an employer before they reach the threshold period of time, in most cases they lose any accrued LSL and must start again. Making LSL portable would allow workers to take any accrued LSL with them when they move jobs, rather than having to start again.

3.3 The committee found that submitters and witnesses to this inquiry are deeply divided on the issue of portability of LSL. Some firmly believe that LSL should be portable for all workers, whilst others are of the view that portability should not be extended under any circumstances. Reasons vary, and include issues of equity, cost and the traditional purpose of LSL.

3.4 In a few cases, submitters suggested portability should only exist where necessary, such as in particular industries whose nature tends to preclude workers from ongoing employment with a single employer for long periods of time, despite working in the industry for a long time.<sup>2</sup>

3.5 Arguments for extending portability of the LSL scheme are largely based on the right to equal access to the full range of employment benefits, including LSL. Some submitters see no reason why any worker should miss out because of their particular working arrangement, and believe it can only benefit Australia for workers to take regular, paid breaks after long periods of work.

3.6 The ACTU argues:

Long service leave is a basic workplace entitlement. It has existed in this country for over 150 years and in fact predates federation. However, despite long service leave being a well-established community standard, fundamental changes to the nature of work have created structural barriers that prevent equal access to it.<sup>3</sup>

3.7 The ACTU further argues:

It is our strong submission that all sectors, industries and occupations in the contemporary labour market will benefit from the creation of a generalised

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1 For example, some types of leave may be portable across the public sector.

2 For example, the building and construction industry.

3 Mr James Fleming, Legal and Industrial Officer, Australian Council of Trade Unions, *Committee Hansard*, 5 February 2016, p. 1.

entitlement to portable long service leave. We believe it is a clear role of government to facilitate the introduction of a generalised system of portable LSL entitlements. A national portable LSL standard should build on and supplement a generalised national LSL scheme.<sup>4</sup>

3.8 The committee received evidence in support of portability of LSL entitlements that traversed a range of issues, as well as arguments against extending portability. Most pronounced were issues raised about the number of Australians in insecure work and about the extent and nature of labour market mobility. In addition, ideology and cost were raised. These will be discussed in this chapter.

### **Insecure work**

3.9 Insecure work is a term used by some submitters to describe work that does not offer reliability to a worker in areas such as hours, pay and conditions. The term connotes a level of uncertainty in employment and income, and a lack of worker control over these things.

3.10 In its submission, the ACTU suggests that insecure workers 'include those experiencing working time insecurity due to irregular, excessive or insufficient hours and/or fluctuating pay and income,' and indicates that permanent employees may also experience insecure work if they engage in excessive hours.<sup>5</sup>

3.11 Excessive or insufficient hours are considered to contribute to work insecurity because they prevent 'workers from exercising control over their working hours, with flow on effects' on areas of their life such as work/life balance, family and social life.<sup>6</sup> Thus, insecure work involves work in which the worker has little control over core elements such as their working hours or income.

3.12 The ACTU commissioned an independent inquiry into insecure work in 2011 and its report was published in 2012 - *Lives on Hold: Unlocking the Potential of Australia's Workforce* (Lives on Hold report). The ACTU states that this is 'the most extensive assessment of insecure work in Australia to date,' and noted the inquiry defined insecure work as:

...poor quality work that provides workers with little economic security and little control over their working lives. The characteristics of these jobs can include unpredictable and fluctuating pay; inferior rights and entitlements; limited or no access to paid leave; irregular and unpredictable working hours; a lack of security and/or uncertainty over the length of a job; and a lack of any say at work over wages, conditions and work organisation. These challenges are most often associated with non-permanent forms of employment like casual work, fixed-term contracts, independent contracting and labour hire – all of which are growing.<sup>7</sup>

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4 Australian Council of Trade Unions, *Submission 19*, p. 19.

5 Australian Council of Trade Unions, *Submission 19*, p. 7.

6 Australian Council of Trade Unions, *Submission 19*, p. 7.

7 Australian Council of Trade Unions, *Submission 19*, pp 3-4.

3.13 Unsurprisingly, a number of submitters looked to this definition for guidance in discussing the matter, and expressed concern about the levels of insecure work in Australia, pointing out that workers in some types of employment, including casual or non-ongoing employment, routinely miss out on LSL entitlements.

3.14 The Australian Services Union referred specifically to the Lives on Hold report, arguing that a huge percentage of the workforce in Australia is not engaged in permanent full-time work, and thus, is unable to access LSL:

In the report Lives on Hold: Unlocking the potential of Australia's workforce, it was found that approximately 40% of workers were in employment other than permanent full-time, i.e. casual, part time, contract, or other non-standard employment arrangements.

These changed employment conditions have clearly contributed to the decrease in many workers being able to access long service leave. As stated by Dave Oliver, ACTU in the Victorian Government's inquiry into portability of long service leave entitlements 'we are now seeing the emergence of two classes of worker out there: you are either a permanent employee and you have security and a whole range of benefits, or you are transient employee who has none'.<sup>8</sup>

3.15 The Queensland Nurses Union (QNU) discussed insecure working arrangements, describing a situation where there are 'haves' and 'have nots' with respect to secure employment arrangements:

The new divide in the Australian workforce is between those who are in full-time permanent employment and those who work on the periphery in various insecure arrangements of casual, contract or labour hire. Many do not know the hours they will be required to work from week to week, often juggle multiple jobs and are frequently in low paid positions in restaurants, catering or retail.<sup>9</sup>

3.16 Similarly, the HSU discussed the growing prevalence of insecure work in the health and community services sectors which involves employment modes that circumvent LSL provisions:

Anecdotal evidence emerging from NDIS trial sites is that employees are being employed as casuals or on possibly illegitimate zero or minimum hours contracts as part-time employees, thereby avoiding casual loadings and minimising paid leave entitlements. The HSU is also hearing increasing reports that workers are lucky to be engaged in even a part-time capacity. Compounding this challenge is the fact that while government funding for health and community services programs is growing, it is failing to keep pace with demand. Our members are finding themselves bearing the consequences of this collision between service expansion and rationed funding by means of lower real wages, increasing casualization [sic] and

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8 Australian Services Union, *Submission 27*, p. 5.

9 Queensland Nurses Union, *Submission 3*, p. 6.

narrowing career pathways. In short, these changes are increasing the level of insecure work.<sup>10</sup>

3.17 The United Services Union noted that the notion of insecure work is viewed very differently from different perspectives:

Employers and employer lobby groups often describe insecure employment as 'flexible work practices' but it is the employer, not the employee which gains the most from such 'flexible' practices. This needs to be addressed by the Committee's report as the employers preferred 'flexibility' often results in the employees' insecure employment.<sup>11</sup>

3.18 This evidence suggests a major disconnect between the key groups of worker and employer representatives, in terms of understanding and agreement about what makes work insecure, and how different types of working arrangements affect the individual worker.

3.19 In addition to general concerns about the growing incidence of insecure work, some submitters pointed out that women are more likely to be affected for reasons such as maternity leave and other carer's duties, and therefore extending portability of is especially important to women in the workforce. For example, the ASU notes:

The recent 2015 report *The desirability of extending portable long service leave* found women are particularly likely to benefit from a portable long service leave scheme. This is because women are over-represented in casual or part-time employment without long service leave benefits when compared to men, and are also less likely to be employed with one employer for 10 years or more.<sup>12</sup>

3.20 In discussing the effects of insecure work on women, the ANMF echoes this evidence, arguing that various family responsibilities disproportionately fall to women, making them particularly vulnerable in the workforce, and therefore increasing the importance of extending portability of LSL to capture this group of workers:

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

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10 Health Services Union, *Submission 34*, p. 4.

11 United Services Union, *Submission 26*, p. 4.

12 Australian Service Union, *Submission 27*, p. 5.

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.<sup>13</sup>

3.21 The ANMF notes the prevalence of women in the nursing and midwifery sector:

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.<sup>14</sup>

3.22 While not expressing a view about women in particular, the QNU notes the prevalence of women in nursing and midwifery and the proportion of part-time workers in the sector:

Nursing and midwifery is a distinctly feminised workforce (around 90% are women) with a high proportion of part-time workers (around 60% of Enrolled Nurses and 45% of Registered Nurses) (Australian Institute of Health and Welfare, 2013).<sup>15</sup>

3.23 Jobwatch also acknowledges that there are certain industries or sectors with a predominance of female employees, and argues that the advantages of a portable LSL scheme, amongst other things can only serve to be beneficial to women. In considering the objects of portable LSL schemes, Jobwatch submits that advantages of portable LSL include that it:

Strengthens female workforce participation by supporting women to return to the workforce after leaving employment for child rearing purposes.<sup>16</sup>

3.24 In discussing the public sector, the CPSU noted:

Mobility has consistently been higher for women than for men. During 2014–15, the mobility rate was 1.8 per cent for women and 1.3 per cent for men (up from 1.1% and 1.0% respectively during 2013–14).

3.25 Thus, it is clear that women form a particular group of worker that can be considered vulnerable to insecure work, and for whom a portable LSL scheme would be extremely beneficial.

3.26 In addition to concerns expressed about the existence of insecure work and how it precludes some workers from accruing and accessing LSL, some submitters drew the committee's attention to the numbers of people in insecure work – both generally and in particular industries - suggesting prevalence of these arrangements is on the rise in Australia.

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13 Australian Nursing and Midwifery Federation, *Submission 14*, p. 4.

14 Australian Nursing and Midwifery Federation, *Submission 14*, p. 5.

15 Queensland Nurses Union, *Submission 3*, p. 5.

16 Jobwatch, *Submission 15*, p. 7.

3.27 For example, the ACTU argues that 'the number of Australians in insecure work has risen dramatically in recent decades'<sup>17</sup> and supports the extension of portability of LSL so that all workers receive equal entitlements to LSL:

The ACTU supports the establishment of a national long service leave ('LSL') standard and a national long service leave portability scheme. As we discuss below, a national portable scheme is necessary to ensure equal access to long service leave, particularly in the face of the dramatic increase in the number of Australians in insecure work.<sup>18</sup>

3.28 Although its submission focusses largely on labour hire employment, the AMWU provides the following outline of the number of Australians in insecure work:

There are millions of Australians currently engaged in insecure employment. These include 2.3 million casual employees, 125,000 labour hire workers, 356,000 fixed term contract workers and 439,000 independent contractors that have only one contract. Together, these 3.22 million Australian workers make up 28% of all employed persons in August 2014.<sup>19</sup>

3.29 In spite of evidence provided to the committee about the nature of insecure work, not all submitters accept the term 'insecure work' as being a valid description for workers who are not engaged in permanent work with regular hours.

3.30 Some submitters argue that as there is no standard definition or legal framework supporting the term, 'insecure work' is not an accurate or useful way of describing the various working arrangements discussed above.

3.31 For example, in addressing this inquiry's Terms of Reference, ACCI sought to qualify the use of the term:

It is also noted that the Inquiry is seeking information about the number of Australians in 'insecure work'. It is important to recognise from the outset that this is not a term defined within law and a person's perception regarding the level of security in their work is subjective.<sup>20</sup>

3.32 During a hearing on 5 February 2016 in Canberra, the committee asked the Department of Employment whether it recognised the term 'insecure work' or whether it was considered a useful concept. The Department responded:

We use the term following the ABS. We have definitions of casual work, part-time work, full time work and other forms of employment that go to the nature of the employment relationship. There is not actually an

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17 Australian Council of Trade Unions, *Submission 19*, p. 3.

18 Australian Council of Trade Unions, *Submission 19*, p. 3.

19 Australian Manufacturing Workers' Union, *Submission 16*, p. 3.

20 Australian Chamber of Commerce and Industry, *Submission 20*, pp 4-5.

employment contract called 'insecure work'. We go by what the ABS uses for its definitions.<sup>21</sup>

3.33 In discussing whether it is useful concept, the Department suggested:

Certainly some people use the concept as a level of abstraction higher than what exists in the ABS terminology. It is not a term that we would think points to a particular legal aspect of a contract.<sup>22</sup>

3.34 Objection or resistance to the use of the term 'insecure work' because of the lack of a standard definition is clearly a key issue for some submitters in the debate about LSL portability.

3.35 The committee notes that the ACTU acknowledges that a standard indicator for insecure work would be useful:

We consider there would be some value in the ABS investigating how it might develop an insecure work indicator. Such an indicator could show the percentage of all workers who are in insecure work using objective measures...<sup>23</sup>

3.36 In light of the evidence and arguments in relation to insecure work, it appears that achieving consensus on this issue could be assisted by the ABS developing a standard definition that could be used to assess whether a worker is in insecure work. Development of a definition should be approached with extensive consultation across industries, employer groups and unions.

### **Labour market mobility**

3.37 A key pillar of the argument for extending LSL portability to enable workers access to it is that labour market mobility has changed over time and fewer people are working for long periods with a single employer. Conversely, more people are changing jobs more frequently, work is intensifying and people are working for longer as the population ages.

3.38 The ACTU offers the following clarification about what labour market mobility encompasses:

The term 'Labour market mobility' or 'labour mobility' generally refers to the movement of workers within the labour market, whether it be between jobs or occupations or between geographical regions.<sup>24</sup>

3.39 However, views about labour market mobility are distinctly split between those submitters who believe that the workforce has changed - and continues to change - hugely, leading to increased insecurity and casualization, and those

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21 Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, *Committee Hansard*, 5 February 2016, p. 17.

22 Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, *Committee Hansard*, 5 February 2016, p. 17.

23 Australian Council of Trade Unions, *Submission 19*, p. 7.

24 Australian Council of Trade Unions, *Submission 19*, p. 8.

submitters who do not believe that this has occurred, or that it has not had a significant effect on the LSL.

3.40 While many submitters argue that the dynamics of the Australian workforce is changing with an increase of mobility between employers, a number of submitters argue that in fact, the most recent statistics provided by the ABS does not demonstrate that this is the case. These views will be explored in this section.

*The extent of labour market mobility*

3.41 Building on concerns about the growing incidence of insecure work, however defined, some submitters have also argued that Australia's workforce is becoming increasingly mobile and that this is not to the benefit of workers. Increased labour market mobility means - amongst other things - that more workers are deprived of the opportunity to accumulate and access LSL.

3.42 In evidence to the committee at a public hearing, United Voice opined:

The current long service leave system fails a large part of the work force that work in volatile, insecure work where labour mobility is at its highest. This growing section of the workforce is denied their long service leave entitlement.<sup>25</sup>

3.43 The ASU argues that the Australian workforce is dramatically changing, with an increase in labour market mobility, intensification of work and longer working lives. These things, it argues, means that the approach to LSL should also change to enable more workers to be able to access LSL.

The dynamics of the Australian workforce is changing. For most Australian workers, the reality is that their working lives will be characterised by regular mobility among employers both within and between industries, as well as by longer working hours and longer working lives.

Labour mobility rates amongst Australian workers are high. In 2013, 22 per cent of employees had been with their current employer for less than 12 months, whilst a further 37% per cent of all employees had been with their current employer for less than 5 years.

Whilst labour mobility can provide many positive effects, a major implication of it, is the ability to accrue and access long service leave, as the standard qualifying period is usually 10 years (with prorated entitlements after a lesser period, typically 7 years).

The case for a national portable long service leave scheme is gaining momentum with many acknowledging the fact that workers are no longer staying in the same job with the same company for their entire working lives.<sup>26</sup>

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25 Ms Erin Keogh, Industrial Officer, United Voice Victoria, *Committee Hansard*, 5 February 2016, p. 2.

26 Australian Services Union, *Submission 27*, p. 4.

3.44 In its submission, the ACTU discusses casualization of the workforce and states that '[I]labour mobility and work insecurity have the potential to undermine workers' potential to accrue long service leave'.

3.45 The ACTU also refers to the findings of the Lives on Hold report, arguing that casualization and the growth of non-permanent forms of employment is taking place 'under the radar'.<sup>27</sup> It provides the following evidence to support its concerns about growing casualization:

The number of casual employees in Australia, for example, almost tripled between 1982 and 1999, rising from just below 700,000 to almost 2 million. Casual density, the proportion of casual jobs out of all jobs, grew from 15.8 percent in 1984 to a peak of 27 percent in 2000-2003, before becoming relatively stable at about 24 per cent between 2005 to 2014. This relative stabilisation was thought to be explained partly by the growth of other forms of insecure work, such as fixed-term contracts, labour hire and independent contracting, which have given employers other options for minimising costs and shifting risks on to their employees. The latest ABS statistics, released in November 2015, show that casual density has continued to increase again, rising from 23.8% of all workers in August 2013 to 24.1% at August 2014.<sup>28</sup>

3.46 Further, the ACTU suggests that the 'rise in casual employment coincides with an ongoing decline in the level of full-time permanent employment'.<sup>29</sup>

3.47 Another concern of the ACTU related to the growing incidence of casual employment is the increased length of time people are spending in casual employment:

According to the Australian Workplace Relations Study ('AWRS') of 2013-2014, the mean employee tenure for all employees is 5.76 years and 5.62 years for part-time employees.<sup>19</sup> A feature of the increased casualisation of the workforce is that many workers are working as casual employees on a long-term basis. Hence, casual employment tenure increased to 4.09 years as at the same date.<sup>30</sup>

3.48 This suggests that people sometimes remain in a cycle of casual employment, unable to access different types of leave, including LSL. However, it is important to note that this does not provide information about whether people are remaining in casual employment by choice or for other reasons.

3.49 QAI, an organisation providing advocacy services to people with disability, has given evidence in its submission about the challenges for workers – both workers with a disability and their carers - who find themselves on the treadmill of casual or part time work where they receive a lower level of basic employment benefits,

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27 Australian Council of Trade Unions, *Submission 19*, p. 4.

28 Australian Council of Trade Unions, *Submission 19*, p. 4.

29 Australian Council of Trade Unions, *Submission 19*, p. 5.

30 Australian Council of Trade Unions, *Submission 19*, p. 8.

including leave. QAI makes the important point about the way in which this type of work is devalued, and consistent with other evidence provided during this inquiry, indicates that women workers are disproportionately represented in casual and part time work:

There are some significant, ingrained problems associated with part-time and casual work; it is highly precarious and insecure, with limited rights and entitlements. Yet it is in part-time and casual work that people with disability and their carers, and to a lesser but still significant extent people who work for NGOs and NFP organisations, are overwhelmingly concentrated. The concentration of female carers in part-time and casual work has strengthened the gender divide within the labour market and the associated significant gender wage disparity.

The vast majority of part-time and casual workers work in precarious and insecure employment. The situation is particularly dire for casual workers, who make up a significant portion of the Australian workforce. Casual workers generally lack basic employment benefits such as leave entitlements and superannuation and are often barred from accessing legal remedies in the event of an unfair termination or redundancy. The payment of casual loading is insufficient compensation for the associated loss of rights and security casual work entails.

Part-time workers, both individually and in the industries they dominate, are undervalued. Part-time workers can be offered fewer opportunities for career progression and promotion. This is particularly inappropriate given that the rise in the incidence of casual working arrangements has been largely driven by corporate demand, to enable businesses the flexibility to respond cost-effectively to changes in market demand with fluctuating workforce sizes.<sup>31</sup>

3.50 In considering casualisation of the workforce, the USU notes in particular the lack of guarantee of pay or leave:

Casual employees receive no paid personal/carers leave or annual leave (although in some states casuals are eligible for long service leave), have no guarantee of regular hours, termination or redundancy pay. As compensation for leave casuals are paid a loading under the Fair Work Act.

If the lack of paid leave is taken as a definition of casual employment, according to the Australian Bureau of Statistics (ABS) 2,305,600 people out of a workforce of 9,585,100 could be defined as casuals...<sup>32</sup>

3.51 In contrast to these arguments, other submitters argue that in fact, the Australian workforce has remained fairly stable and is not grossly changing to one of insecure work and casualization. Some submitters argue that the notion that labour market mobility is increasing is not borne out by the data.

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31 Queensland Advocacy Incorporated, *Submission 5*, p. 7.

32 United Services Union, *Submission 26*, p. 2.

3.52 In its submission, the department quoted ABS data as indicating the stability of casual employment:

ABS data suggests that casual employment has remained steady for around a decade at approximately 24 per cent. The ABS measures casual employment as employment without leave entitlements.<sup>33</sup>

3.53 At the committee's public hearing, the department went on to note that the rise of casual work is historical, and that it is 'now a stable feature of the Australian employment market'.<sup>34</sup>

3.54 In contrast, the ACTU stated:

The issue of casualisation does not become less relevant merely because the big bump of an increase took place several years ago. The question we really ask about that is: is it good enough for us to say that 24 or 25 per cent – a quarter – of the working people today have no long service leave?<sup>35</sup>

3.55 However, the department also notes that the true nature of labour mobility is difficult to pin down:

Employees can change both occupation and industry, or just occupation within an industry, or stay in the same occupation but change industry. For example, 'industry' is based on what an employer does (a construction firm or a mining firm), but occupation is based on a person's individual work (being an engineer in either of those industries).<sup>36</sup>

3.56 Further, the department noted data that suggested that 'the younger an employee is, the more likely they are to change employers' and the 'propensity to change jobs declines with age'. While this phenomenon was not explored, it may be that it occurs for simple reasons such as there being more young people engaged in casual employment during their student years.

3.57 The Productivity Commission discusses casual and part time work, and concludes that 'the notion that people are increasingly switching employers and jobs is not borne out by trends over the past two decades'.<sup>37</sup>

3.58 Some submitters suggested that casuals are entitled to LSL but that casual loadings in any case, compensate for a lack of other entitlements, including LSL. This issue was explored at the committee's public hearing:

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33 Department of Employment, *Submission 33*, p. 8.

34 Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, *Committee Hansard*, 5 February 2016, p. 18.

35 Mr Trevor Clarke, Director, Industrial and Legal, Australian Council of Trade Unions, *Committee Hansard*, 5 February 2016, p. 5.

36 Department of Employment, *Submission 33*, p. 11.

37 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. 116.

Casual loading does not, in many instances, compensate for long service leave. In fact, under a number of the statutes, casuals are recognised as qualifying for long service leave, and that is part of the mess. It is whether or not those casuals can be considered to have undertaken continuity of service.

These things are complicated.<sup>38</sup>

3.59 Job satisfaction is subjective and many people choose to pursue and remain in casual and other mobile types of employment arrangements for a range of reasons. Notwithstanding, the committee is concerned that many workers find themselves experiencing a level of job mobility - and therefore insecurity - that is not of their choosing, and that this effects their ability to accrue and access LSL.

### **Particular industries**

3.60 The Terms of Reference for this inquiry asked which sectors, industries or occupations may or may not benefit from portable LSL schemes. This issue was not explored in depth during the inquiry, however the committee notes some examples provided by submitters who both support and argue against extending portability in their particular sector.

3.61 For the purpose of this report, the committee has included information about the healthcare sector, automotive industry, accommodation sector, building and construction industry and mining industry.

#### *Healthcare sector*

3.62 Information from the healthcare sector was received by the committee, and covered nursing and midwifery, as well as aged care. Interestingly, views differed amongst the various representative groups about whether portability of LSL should be extended, and a number of disparate concerns were raised.

3.63 In its submission, the QNU provides data on different sectors where people work for longer or shorter periods with a single employer.<sup>39</sup> The QNU concludes:

Within nursing and midwifery the private and aged care sectors would benefit most from a portable LSL scheme. Nurses and midwives working in the public sector have portability within Queensland Health, the major employer. There is no recognition of prior service for the purposes of long service leave between sectors.<sup>40</sup>

3.64 Similarly, the ANMF provides nursing workforce data that indicates 'almost half (48.3%) of all nurses and midwives work part time hours of less than 35 hours per

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38 Mr Richard Calver, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Committee Hansard*, 5 February 2016, p. 14.

39 Queensland Nurses Union, *Submission 3*, pp 7-10.

40 Queensland Nurses Union, *Submission 3*, p. 10.

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week with 11.2 percent working less than 20 hours per week. The average hours worked overall is 33.6 hours per week'.<sup>41</sup>

3.65 This acknowledges an inequity between those health care workers who are working in the public sector and those who are not and suggests that a significant number of nurses and midwives are in insecure employment arrangements. This is concerning as nurses and midwives are predominately women, and women have already been identified in this report as being particularly vulnerable to insecure work, and thus, less likely to be able to access LSL.

3.66 Further, in the residential aged care sector, '72% of the direct care workforce work part time hours; 18.7 are casual employees with only 9.5% working full time'. In addition, around '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'. ABS data provided by ANMF indicates this is nearly double the level in the general population.<sup>42</sup>

3.67 The ANMF supports portable LSL which would cover 'nurses, midwives and assistants in nursing across the health industry, including public and private acute health, public and private aged care and the community sector'.<sup>43</sup> It prefers a defined benefit fund model (that will be discussed later in this chapter), and opines that:

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.<sup>44</sup>

3.68 The HSU based its argument for extending portability of LSL to the healthcare sector on issues of equity, noting the importance of these workers to the community, and the high labour market mobility in the sector which leads to workers missing out on LSL.<sup>45</sup>

3.69 The HSU outlines specific benefits to the healthcare sector:

- Improving worker retention in industries with high levels of labour mobility. This has benefits for employers by increasing the overall supply of skilled workers.
- Providing the flexibility for workers to take time out of the workforce to improve their skill through formal education and training or to take on caring responsibilities.

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41 Australian Nurses and Midwifery Federation, *Submission 14*, p. 4.

42 Australian Nurses and Midwifery Federation, *Submission 14*, pp 4-5.

43 Australian Nurses and Midwifery Federation, *Submission 14*, p. 7.

44 Australian Nurses and Midwifery Federation, *Submission 14*, p. 7.

45 Health Services Union, *Submission 34*, p. 5.

- Productivity gains as a result of workers being able to take a sustained break from a long period of work.<sup>46</sup>

3.70 In direct contrast, the Aged Care Guild (the Guild) opposes extending portability of LSL to its sector because it 'would become an immediate cost and balance sheet issue for the most recent employer of an aged care worker, and is counter intuitive to the notion of rewarding "long service"'<sup>47</sup>

3.71 The Guild argues that there is simply no need to extend portable LSL to the residential aged care sector, and that the introduction of such a scheme would place 'additional red-tape and cost burden on the aged care sector,'<sup>48</sup> noting that the sector is already facing serious challenges.

3.72 The Guild provides information about the residential aged care workforce, indicating that it is 'not precarious by nature' and that 'unlike some other industries, the residential aged care workforce is not transient or project-based, which means that the majority of employees are entitled to LSL'.<sup>49</sup> It supports its argument with data provided from the Aged Care Workforce Census and Survey conducted by the National Institute of Labour Studies.<sup>50</sup>

3.73 Finally, the Guild suggests a moderate approach, where a 'stable financial and regulatory environment is essential if future community demand for aged care services are to be met'.<sup>51</sup>

#### *Automotive industry*

3.74 The Victorian Automobile Chamber of Commerce (VACC)<sup>52</sup>, including the Tasmanian Automobile Chamber of Commerce (TACC) provided a combined submission with several other automotive organisations – Motor Trader's Association of NSW and Motor Trader's Association of Western Australia (collectively, MTAs), and outlined industry concerns about nationalising LSL and extending portability of LSL.

3.75 VACC points out that the automotive industry is largely made up of small businesses with between one and 19 employees, with a much smaller proportion of medium to large business, and the remainder operating as sole traders in Victoria.<sup>53</sup>

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46 Health Services Union, *Submission 34*, p. 5.

47 Aged Care Guild, *Submission 17*, p. 1.

48 Aged Care Guild, *Submission 17*, p. 2.

49 Aged Care Guild, *Submission 17*, p. 1.

50 Aged Care Guild, *Submission 17*, p. 2.

51 Aged Care Guild, *Submission 17*, p. 3.

52 VACC is the peak body for the repair, service and retail sector of the automotive industry in Victoria and Tasmania, *Submission 23*.

53 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 2.

3.76 VACC supports neither the nationalisation of LSL, or extending portability of LSL, and the industry's concerns centre on the effects of additional costs to businesses, especially small business:

Long service leave poses significant financial, administrative and productivity costs on employers. The 2015 Automotive E-Scan survey ranked labour costs as the fourth biggest issue affecting the automotive industry in Australia.<sup>54</sup>

3.77 In considering extending portability of LSL, VACC also noted the real risk of portability creating cash flow problems for some businesses, particularly small businesses 'which deal with smaller sums and profit margins than larger businesses'.<sup>55</sup> In support of this argument, VACC noted that a Nielsen Report indicated that the 'automotive industry is especially vulnerable to restrictions on cash flow posed by the additional operating expenses of portable long service leave'.<sup>56</sup>

#### *Construction industry*

3.78 Portable long service leave in the construction industry recognises long service in the industry, rather than loyalty to a single employer. In its submission, the HIA concisely outlines the development and rationale for portable LSL in the construction industry:

PLSL schemes were established to recognise 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.

The 2002 Cole Royal Commission identified the following key factors that led to the introduction of the PLSL schemes in the construction industry:

- The strategic nature of the industry;
- High union density and industrial strength;
- A well-established industry focus; and
- Patterns of employment in the industry.

Beginning with Tasmania in 1971, every state and territory now has a portable long service leave scheme in place for certain workers in the construction industry; the status quo is an acknowledged feature of the industry.<sup>57</sup>

3.79 In noting the unique nature of the industry, HIA also points out concerns about the way in which portable LSL operates, including the exposure of employers when a worker who may have been with an employer for a relatively short period of time, decides to take their LSL. HIA states that the impact of this 'is not just

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54 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 11.

55 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 12.

56 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 12.

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

productivity losses whilst that business backfills the worker in question, but there are other on-costs as well'.<sup>58</sup>

3.80 Portable LSL in the construction industry is usually funded by either a contribution from employers based on wages of the eligible employees, or via project based levy collected at development application or building permit stage.<sup>59</sup> Master Builders Australia provides similar evidence in its submission.<sup>60</sup>

3.81 According to the HIA, 'the project levy based model is usually less paperwork intensive for small business employers as it applies automatically. At the same time, project levies represent a direct additional cost on delivering construction and new housing'.<sup>61</sup> HIA opposes the extension of the portable LSL scheme to the residential building industry, stating:

These obligations are unrealistic for small business and reflect the industrial and bargaining environment under which such agreements were struck.<sup>62</sup>

#### *Accommodation industry*

3.82 The committee received evidence from submitters about the accommodation industry.

3.83 The Australian Hotels Association (AHA) indicated that while the 'hotel industry is significant employer' and 'some hotels are 'large-scale operations with hundreds of employees that form part of national or international chains, many AHA members are small, locally owned businesses serving their surrounding communities'. Further, AHA pointed out that hotels are 'highly labour-intensive businesses and as such are significantly impacted by cost increases relating to employment'.<sup>63</sup>

3.84 Similarly, the Accommodation Association of Australia (AAA) suggested that extending portability of the LSL scheme 'would have a negative cash-flow effect on businesses and act as a disincentive to creating long-term careers within a business',<sup>64</sup> and characterises the introduction of any new portability scheme for workers as 'another payroll tax on employers'.<sup>65</sup>

3.85 In its submission, the AAA discusses the importance of tourism to Australia and its significant contribution to the economy, noting that the accommodation industry is an important employer in Australia and encompasses a variety of

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

59 Housing Industry Association, *Submission 6*, p. 12.

60 Master Builders Australia, *Submission 10*, p. 8.

61 Housing Industry Association, *Submission 6*, p. 12.

62 Housing Industry Association, *Submission 6*, p. 14.

63 Australian Hotels Association, *Submission 18*, p. 2.

64 Accommodation Association of Australia, *Submission 21*, p. 2.

65 Accommodation Association of Australia, *Submission 21*, p. 3.

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accommodation from major hotel and motel chains, to serviced apartments and backpacker accommodation.<sup>66</sup>

3.86 The AAA does not support extending portable LSL to the sector arguing that it would not benefit the accommodation sector<sup>67</sup> and summarising its reasons in its submission, including:

Portable long-service leave schemes are unnecessary in the accommodation industry because there is no evidence of employers failing to meet long-service leave obligations, sufficient protection exists in law to deal with recognition of long-service leave benefits on transmission of a business, casual employees are paid a loading that fairly compensates for any perceived insecurity and are recognised proportionately for long-service leave, long-service leave is seen as an incentive to stay with a single employer and the need to pay into a fund the amount of the starting balance for current benefits already accrued would have a crippling impact on employers and could result in job losses.<sup>68</sup>

### *Mining industry*

3.87 The mining industry is exceptional in that, as with the building and construction industry, it has its own portable LSL scheme, reflective of the unique nature of the industry. The mining industry arrangements were not generally discussed in depth, but the committee finds it useful to set out the key elements of the arrangements in this report.

3.88 The department's submission is helpful in setting out the legislative backdrop for the black coal mining industry's portable LSL arrangements.<sup>69</sup>

3.89 The industry was an early adopter of portable arrangements, with LSL having been introduced in 1949, 'after the Miners' Federation lobbied colliery proprietors, coal industry groups and federal and state governments for the entitlement'.<sup>70</sup> The department noted:

The parties emphasised that the cost could not be carried by individual colliery owners and would need to be shared by the industry. The Commonwealth Government at the time agreed to provide the machinery for running such a scheme and, along with other complementary measures,

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66 Accommodation Association of Australia, *Submission 21*, pp 3-4.

67 Accommodation Association of Australia, *Submission 21*, p. 5.

68 Accommodation Association of Australia, *Submission 21*, p. 1.

69 The Coal Mining Industry Long Service Leave Fund is established by the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Coal LSL Act) as a means of funding long service leave to those employed in the black coal mining industry in NSW, Queensland, WA and Tasmania. The Coal Mining Industry (Long Service Leave Funding) Corporation administers the Fund. The board is made up of employer and employee representatives. Administration costs for the scheme were \$5 million in 2013-14; Department of Employment *Submission 33*, p. 15.

70 Department of Employment, *Submission 33*, p. 15.

introduced the States Grants (Coal Mining Industry Long Service Leave) Act 1949 to form a statutory scheme. With this scheme, the Commonwealth collected an excise per ton of coal produced and made grants to the states, which was used to reimburse employers for their long service leave liability.

...

By 1990 there was an accrued unfunded liability for untaken long service leave that the coal excise could not cover. The unfunded liability was estimated at \$250 million, and the Commonwealth Government sought to recover this liability through the establishment of a Commonwealth statutory scheme that collected funds based on a levy on employers.<sup>71</sup>

The legislative framework enables:

- the raising of levies by the Commonwealth on employers of persons in the black coal mining industry; and
- the making of appropriations to the Coal Mining Industry Long Service Leave Fund to form assets from which reimbursement payments are made.<sup>72</sup>

3.90 The department explained that since 1993, employers have been required to pay a levy of payroll into the fund managed by the Corporation, which can use the levies to pay LSL entitlements and invest for the future.<sup>73</sup>

3.91 The department also notes that:

... the entitlement to long service leave under the Coal LSL Act overrides any entitlement in the Fair Work Act or in state or territory laws. It does not override entitlements or rights under an industrial instrument, as the Act establishes a minimum entitlement to long service leave (see sections 39E, 39EA and 39EB of the Act). Employers are reimbursed for long service leave payments made to eligible employees.<sup>74</sup>

3.92 In its submission, AMMA notes changing labour markets and labour mobility and suggests that these will change further, but argued that this does not justify extending LSL portability because the two are not linked.

3.93 This evidence demonstrates that different industries operate in vastly different ways, such that a 'one size fits all' approach to consideration of LSL portability may not be appropriate. This being the case, in considering the extension of portability to all workers, care should be taken to properly consult widely so that all relevant issues are factored in to any major decisions that may affect both business and workers.

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71 Department of Employment, *Submission 33*, p. 15.

72 Department of Employment, *Submission 33*, p. 15.

73 Department of Employment, *Submission 33*, p. 16.

74 Department of Employment, *Submission 33*, p. 16.

3.94 For example, given the critical role that nurses and carers play in our communities, and the nature of the health sector workforce including its large proportion of women, consideration should be given to extending portable LSL to this sector so that these workers can plan to periodically take an extended paid break. However, in light of the potential cost to the sector and the flow on effects this could have, any move to portable LSL in the health sector should be approached with due care and consideration for both employers and workers.

### **The argument against portability**

3.95 While many submitters are supportive of extending portable LSL to all workers, a significant portion of submitters opposed its introduction, although many of these also supported nationalisation of the LSL standard. In arguing against portable LSL two main themes emerged – cost and ideology.

3.96 The additional financial cost of extending portable LSL to all workers is of great concern to some submitters. It is argued that the cost burden would be detrimental for business and was likely to have flow-on effects to workers as businesses will be left with less financial resources, and will essentially be constrained from investing in staff.

3.97 Second, a number of submitters argued that extending portable LSL to all workers would be counter-intuitive to the purpose of LSL, which is to reward loyal, long-serving employees after a threshold period of time.

3.98 The committee will consider the argument against portability, below, focussing on these two areas.

#### *Cost*

3.99 Possibly the strongest argument against extending portability to all workers is that of the additional cost burden it would impose on employers. Costs involve the need to put money aside to pay for LSL for each employee, as well as the cost of administration of portable LSL schemes.

3.100 The McKell report noted potential disadvantages of LSL portability included administration costs for employers which may be pronounced during transition periods for new schemes, the cost of providing benefits for employees who leave after a short period of service, and prefunding impact on business cash flows.<sup>75</sup>

3.101 However, submitters also raised concerns about the cost to Australia's competitiveness, given our relatively high labour market costs, and therefore the cost to the community because these costs can affect employment.

3.102 AMMA argues that the cost is high when a contingent liability turns into an absolute one and explains:

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75 McKell Institute, *The Case for a National Portable Long Service Scheme in Australia*, June 2013, [http://mckellinstitute.org.au/wp-content/uploads/2013/06/McKell\\_Portable\\_LongService.pdf](http://mckellinstitute.org.au/wp-content/uploads/2013/06/McKell_Portable_LongService.pdf) (accessed 16 December 2015), p. 12.

LSL is unique in that it is (with a very few exceptions) contingent on a service threshold being met, both for being paid out pro-rata on termination and for triggering the actual taking of leave. Where employment terminates prior to the pro-rata payout threshold being met, quite rightly monies remain with the employer.

A portable LSL scheme, either for an industry or universally for all employment fundamentally changes this. It makes what is currently a contingent or conditional liability (extended service being required for LSL) into an absolute liability (OLSL is payable on all hours worked, from day one of employment).<sup>76</sup>

3.103 AMMA argues that extension of portability to all 'universalises the proportion of employees for whom LSL payments must be made, increasing labour costs'.<sup>77</sup> Further, that LSL essentially becomes a 'universal tax or payment on employment' which would increase already high labour costs and reduce competitiveness.<sup>78</sup>

3.104 AMMA suggests that in addition to the direct cost of additional LSL contributions an employer would be required to make to cover LSL for all employees, there would be a significant opportunity cost because the employer would have less money to invest and realise gains.<sup>79</sup>

3.105 The AiGroup estimated that:

... the cost burden on employers if portable long service leave entitlements were to be provided to all Australian workers would be more than four times the cost burden imposed by the general long service leave laws in Australia.<sup>80</sup>

3.106 AiGroup indicates that the actual cost of implementing a portable long service leave scheme would cost Australian employers over \$16 billion per year, and would damage the Australian economy, leading to adverse effects on Australian workers through 'lower employment, downsizing and plant closures'.<sup>81</sup>

3.107 It was suggested at the committee's public hearing by the AiGroup that extending portability beyond what already exists, is

...effectively putting a nearly three percent tax on employment, and that is going to have a massive impact on jobs. You cannot just put a three per cent cost on business and expect that to not have any impact on its ability to employ people.<sup>82</sup>

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76 Australian Mining and Minerals Association, *Submission 11*, p. 23.

77 Australian Mining and Minerals Association, *Submission 11*, p. 23.

78 Australian Mining and Minerals Association, *Submission 11*, p. 24.

79 Australian Mining and Minerals Association, *Submission 11*, p. 24.

80 Australian Industry Group, *Submission 7*, p. 20.

81 Australian Industry Group, *Submission 7*, p. 4.

82 Mr Stephen Smith, Head of National Workplace Relations Policy, Australian Industry Group, *Committee Hansard*, 5 February 2016, p. 13.

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3.108 ARTIO opposes an extension of portable LSL, citing high costs as a consideration:

The minimum cost of doing so, being in the order of \$660M per annum to the freight and logistics industry, would limit funds available for new investment and job growth.

The cost to the Australian economy of around \$9 billion is extreme and clearly unaffordable.<sup>83</sup>

3.109 It is not clear to the committee how ARTIO arrived at the figures quoted to establish a portable LSL scheme.

3.110 VACC opines that portable LSL 'risks creating problems of cash flow for some businesses. This is particularly relevant for small businesses, which deal with smaller sums and profit margins than larger businesses'.<sup>84</sup>

3.111 In support of its view, VACC goes on to reference results of a telephone survey of VACC members as part of the 2014-15 Annual Wage Review and says that the 'automotive industry, outside the major manufacturers, consists predominantly of small businesses'.<sup>85</sup> This, VACC argues, demonstrates that the automotive industry is 'especially vulnerable' to the 'additional operating expenses of portable LSL'.<sup>86</sup>

3.112 Concerns about the costs to employers of extending LSL portability is not limited to just the impact of employers having to set funds aside for future payment of LSL to workers. The potential impact on labour costs and competitiveness was explored by a number of submitters.

3.113 For example, ACCI argued that, given the uniqueness of LSL, 'an expansion of this entitlement will have the effect of increasingly [sic] already high labour costs by global standards, impacting Australia's international competitiveness and attractiveness as a location for investment'.<sup>87</sup>

3.114 AFEI suggests:

The most significant consideration must be the impact of increasing benefits and entitlements on productivity and our competitive position. We are already uncompetitive in many areas... We do not need to add to this burden of disadvantage with yet another unaffordable increase in labour costs.<sup>88</sup>

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83 Australian Road Transport Industrial Organisation, *Submission 4*, p. 10.

84 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 12.

85 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 12.

86 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 12.

87 Australian Chamber of Commerce and Industry, *Submission 20*, p. 14.

88 Australian Federation of Employers and Industries, *Submission 12*, p. 4.

3.115 The AAA raised concerns that the costs of a portability scheme 'would simply reduce operating cash flow in an already seasonal business'.<sup>89</sup>

3.116 The committee notes the concerns raised by some submitters about the additional costs that may be incurred by businesses if LSL portability is extended to all workers. While the committee accepts that these costs are a genuine concern to business, it is of the view that consideration of extending portability to all employees is worthwhile and that stakeholders should work together to find a way to extend portability of LSL, whilst being sensitive to business realities.

#### *Ideological objections*

3.117 Aside from arguments against portability of LSL on the basis of cost, many submitters reject extending portability to all workers for ideological reasons which are tied intrinsically to the original purpose of LSL.

3.118 Ideological arguments against LSL rely heavily on the acceptance of the traditional purpose of LSL to provide a reward to loyal, long-term workers, and conversely, an incentive for workers to stay with their employer for long periods of time. Those submitters opposing extending portability of LSL essentially argue that universal portability is in direct conflict with the purpose of LSL.

3.119 At the public hearing, ACCI stated:

A key characteristic of the current long service leave regime which would be lost with the benefit of portability is the benefit that employers derive – that is, that in accumulating long service leave, the employee has given long service to an employer, providing the employer with continuity, stability and greater productive benefits.<sup>90</sup>

3.120 The AFEI strongly objected to the extension of LSL portability to all workers, arguing that, not only is it costly, but that it defeats the inherent purpose of LSL:

Long service leave is a costly workplace entitlement with significant financial impact in terms of both financing and managing absence. The principle underpinning the provision of long service leave is that it is leave with pay given to employees in recognition of long and continuous employment with one employer. It is not a reward for being in the workforce. This principle was enunciated with the introduction of long service leave in each jurisdiction and should be adhered to if long service leave is to be retained in those jurisdictions, despite the emergence of limited, industry specific long service leave schemes in recent years.<sup>91</sup>

3.121 AMMA refers to statements made by the McKell Institute,<sup>92</sup> consistent with the McKell report recommendations which acknowledge that portable LSL would no

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89 Accommodation Association of Australia, *Submission 21*, p. 5.

90 Ms Alana Leigh Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Committee Hansard*, 5 February 2016, p. 10.

91 Australian Federation of Employers and Industries, *Submission 10*, p. 1.

92 Australian Mining and Minerals Association, *Submission 11*, p. 5.

longer be LSL and should be called something else. The McKell Institute recommends:

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.

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.<sup>93</sup>

3.122 In short, it is the view of some submitters that to extend LSL to all workers essentially defeats the purpose of rewarding long-term, loyal workers after a period of time.

*Suggested models for change*

3.123 The committee notes that submitters have suggested ways in which portability schemes might be managed. In particular, the ACTU has suggested three models for portability of long service leave:

- The approved deposit fund model which is based on Approved Deposit Funds or Rollover Funds, established in the superannuation industry during the 1980s.<sup>94</sup>
- The industry-based defined benefit fund model which would involve employers in the relevant industries being registered with a fund for their industry.<sup>95</sup>
- The accumulation model which involves employers making regular contributions for all eligible employers into designated LSL accounts administered by superannuation funds and/or authorised financial institutions.<sup>96</sup>

3.124 These options were not considered in any depth during the committee's public hearing, and the committee makes no findings on a preferred model, but notes that any future model should be designed only after extensive consultation with employer and employee groups.

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93 McKell Institute, *The Case for a National Portable Long Service Scheme in Australia*, June 2013, [http://mckellinstitute.org.au/wp-content/uploads/2013/06/McKell\\_Portable\\_LongService.pdf](http://mckellinstitute.org.au/wp-content/uploads/2013/06/McKell_Portable_LongService.pdf) (accessed 16 December 2015), p. 20.

94 Australian Council of Trade Unions ACTU, *Submission 19*, p. 24.

95 Australian Council of Trade Unions ACTU, *Submission 19*, pp. 24-25.

96 Australian Council of Trade Unions ACTU, *Submission 19*, pp.25-26.

## Conclusions

3.125 The committee's inquiry identified two key issues that employer and employee groups are grappling with in relation to LSL: nationalisation of the LSL standard, and portability of LSL entitlements.

3.126 On the first of these issues, the evidence received has demonstrated that while there is a disparity of views about LSL as a whole, most submitters agree that the current LSL arrangements are complex and can lead to confusion in determining a worker's entitlements to LSL. This being the case, support for nationalisation of the LSL standard is widespread.

3.127 On the second issue, the way forward is less clear. Strong arguments have been made about the benefits of a period of paid leave for workers after many years in the workplace, noting that the workforce has changed since the inception of LSL in Australia in the 1860s.<sup>97</sup> This suggests that it is time for fresh consideration of what LSL means in Australia.

3.128 In spite of the potential benefits to workers, two main objections to extension of LSL to all workers have been made - cost to employers and because the traditional purpose of LSL is to reward workers who work continuously with a single employer over a long period of time.

3.129 The committee also learned that a number of particular industries and sectors have portable LSL arrangements available to their workers. However, support for extension of these schemes is not universal, generally because of the associated cost.

3.130 The committee considered the range of arguments made about portability of LSL and concludes that in the first instance, nationalisation of the LSL standards – while challenging – would benefit both employers and workers.

3.131 On the issue of extending portability of LSL to all workers, the committee concludes that it would be useful to properly investigate the potential costs to employers of extending portable LSL to all workers. This step would pave the way for a meaningful discussion in the future, about whether extension of entitlements can be achieved without damaging Australia's business sector or putting jobs at risk.

## Recommendations

**3.132 The committee recommends that the ABS considers whether the development of an insecure work indicator would be useful in understanding exactly what insecure work means in Australia. The process for doing so should involve extensive consultation.**

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97 For example, the ACTU notes: 'The contemporary Australian labour market is vastly different from that of fifty years ago' and is of the view that while the purpose of LSL has not changed, it the Australian workforce has changed – and in a way that necessitates fresh consideration of what LSL means in Australia. Australian Council of Trade Unions, *Submission 19*, p. 15.

**3.133 The committee recommends that detailed modelling be undertaken by the government to determine the potential cost to employers of extending portable LSL entitlements to all workers. This should involve consideration of the cost of staff turnover including rehiring, training and loss of corporate knowledge, against the cost of establishing a portable LSL scheme.**

**Senator Sue Lines**

**Chair**

