

# **Dissenting Report of Coalition Senators**

## **Historical Intention of Long Service Leave**

1.1 Long Service Leave (LSL) was originally devised to reward loyalty (and surety of employment upon return) for migrants who wished to make the long seafaring journey to visit their homeland. Recognising the purpose for which LSL was first provided and the modern improvements in the speed of travel, allowing for a period of time to return to Europe is no longer necessary to attract and retain workers in this country.

1.2 Coalition senators recognise that LSL still has a role to play as a reward for employee loyalty; a reward that benefits both the employer and employee. The employer benefits from the experience and loyalty of the worker. The worker benefits by an extended period of paid leave.

1.3 Industries which operate project-by-project have also extended original long service principles to accrue time at each project. In these industries – where the employer does not provide long service employment because of the nature of the work or the industry, portable leave schemes were instituted to ensure some parity between workers in itinerant industries and those in more stable industries. This is why there is an argument for portable schemes in the construction industry where the nature of the work is short periods of employment and it is, by and large, just not possible for a worker to show the loyalty of continuous unbroken employment over the required years.

1.4 However, it is a misstep and misappropriation of the rationale, purpose of and history behind long service leave, to seek to extend portability beyond workers in industries where an employer does provide the opportunity for long service employment.

1.5 Coalition Senators are concerned that an expanded portable LSL scheme would increase the cost of employing staff and would disproportionately and significantly impact on small business operators.

1.6 Increased costs make it more difficult for a small business to provide employment. A theoretical example is as follows: someone works for Kmart for six and a half years then goes to work for a small business that employs two people. After six months, the worker takes extended long service leave. This would have a huge impact on the small business which would have to find someone else for a short-term contract, train them and provide the employee who returns from long service leave with their job again.

1.7 Another notion raised which has an ambiguous meaning is 'insecure work'. The argument that there has been an increasing casualisation of the workforce in Australia is not based on known statistics. As the Department of Employment

indicated, the proportion of casual workers did experience an increase some years ago, but is now stable.<sup>1</sup>

1.8 Casual job share has in fact been falling in recent years and the 2015 Productivity Commission Workplace Relations Framework found that:

There is little evidence that the proportion of workers operating as independent contractors – a form also often, but dubiously, cited as insecure – has increased in recent years.<sup>2</sup>

1.9 Nonetheless, this assertion and its close cousin (asserting that casual-loadings do not compensate for ineligibility for certain entitlements), attempts to deny the validity of a form of work which serves a real and purposeful role in our work environment.

1.10 Coalition Senators recognise that casual loadings compensate workers for their ineligibility for broader entitlements available to other genres of work.

1.11 From students on weekends to fruit pickers employed during harvest – these casuals fill a certain type of demand. Casual work provides a flexibility of employment that industries and individuals require in different seasons of their operational and working life, respectively.

1.12 Another matter Coalition senators reject is the suggestion that to create new industry or other funds to manage portable leave payments, which provides further opportunities for the vested interests of unions to reap the benefits of financial commissions and payments. This is overreach by the union movement that is oblivious to the deleterious impact that will flow from such a large impost on employers.

### **Response to Recommendation 1**

1.13 Coalition senators note that national systems are not in place. In turn, it impractical to suggest that the Federation would be able to negotiate a simple outcome across jurisdictions.

1.14 Coalition senators acknowledge the potential benefits to a review of the nationally harmonised long service leave system. However, should a review take place, modelling on the costs of the infrastructure change (including legal and state consensus issues) should be part of that review to enable future law-makers to prioritise COAG agendas based on efficiency of change and wider justification in light of already functioning state systems.

1.15 State schemes are functioning well and most employers are state-based. The consensus required to bring about a national standard will be laborious and inevitably involve great costs. Those companies who operate in multiple states and must

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

2 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 25 February 2016), p. 109.

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negotiate varying LSL entitlements are unfortunately burdened with the lack of consistency. However, this is similar for all state legal issues that their businesses interact with and adapt to.

## **Response to Recommendation 2**

1.16 Coalition senators do not believe that ABS should consider the development of an insecure work indicator, nor in the outlaying of expense for modelling the impact of the extension of portability.

## **Conclusion**

1.17 Coalition senators believe that extending LSL entitlements will burden businesses at a time when we need them to be providing jobs.

1.18 While LSL has a cultural place in our history, to exceed the bounds of its intention is to place an expensive burden upon employers, at the risk of actual jobs, and with disincentives to fostering long-term careers.

1.19 The current entitlements landscape is currently heavily in favour of employees' extra entitlements, as opposed to measures that objectively improve productivity. This is a further 'punishment' on employers if their additional LSL obligations are not matched by increases in productivity.

1.20 Using the seven year retail example, logically, how anyone can be employed by one business for four and then move to a new employer and expect to only work three years before demanding full LSL? It is a wrongfully placed sense of entitlement, farcical and does not fall under the reasonable expectations workers should expect of their working lives.

1.21 If new entitlements are created, someone has to pay more – and we are not willing to place yet another disincentive for employers to employ staff than what already exists in our landscape.

1.22 People competing for jobs with similar work experience and skills would be unfairly discriminated against the closer they were to the seven year mark. Furthermore, how long of a break in between jobs is allowed before time is said to begin running again?

1.23 Any suggestion that industry funds should exact more fees for a new portability project is also of concern. If industry funds support unions and unions have a new fund to fudge figures on – we would be creating a disaster that Australian workplaces cannot afford, and risk a breach of trust that Australian employees should not bear in light of serious concerns regarding union administration.

**Senator Bridget McKenzie**

**Deputy Chair**

