

The Senate

Education and Employment
References Committee

Feasibility of, and options for, creating a
national long service standard, and the
portability of long service and other
entitlements

February 2016

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RECOMMENDATIONS

Recommendation 1

2.83 The committee recommends that the states, territories and commonwealth undertake a review of the current LSL system in Australia, and considers developing a nationally consistent scheme. Development of a nationally consistent scheme should involve extensive consultation of both employer and employee groups.

Recommendation 2

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.

Recommendation 3

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.

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.

-
- 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).

CHAPTER 2

Nationalising long service leave

History of long service leave

2.1 The history of long service leave (LSL) is important in understanding the ideological viewpoints driving debate about its future. The history of LSL has featured heavily in arguments both for and against the extension of portability of LSL entitlements to people who do not remain with one employer for enough time to be eligible for traditional LSL entitlements.

2.2 In considering the history of LSL in Australia and whether changes are necessary, the Australian Chamber of Commerce and Industry (ACCI) noted:

Paid long service leave is unique to Australia and New Zealand and an informed policy discussion regarding changes to the nature and structure of long service leave should involve consideration of the historical origins of long service leave as an employment entitlement.¹

2.3 In Australia, LSL has existed since the 1860s when it was designed to allow people to return to their home country once a decade. In this respect, LSL has long been considered a reward to people who demonstrated loyalty by remaining with their employer for considerable periods of time. It also served the practical purpose of refreshing the workforce as well as retaining skills and expertise with a particular employer.

2.4 Thus, as noted by the Australian Industry Group (AiGroup) in its submission, the conception of LSL was intrinsically linked to its original purpose:

The fundamental purpose of long service leave is to reward an employee with a period of rest after a long period of loyal service with one employer. Consistent with this fundamental purpose, long service leave was conceived in Victoria in the 1860s to give the workforce of that time the opportunity to periodically make the long journey back to their home countries.²

2.5 The extension of LSL beyond the public sector to the private sector occurred in the 1940s 'via inclusion in private sector awards with entitlements created through the processes of conciliation and arbitration'.³ These entitlements were 'based on continuous service with one employer'.⁴

1 Australian Chamber of Commerce and Industry, *Submission 20*, p. 7.

2 Australian Industry Group, *Submission 7*, p. 5.

3 Australian Chamber of Commerce and Industry, *Submission 20*, p. 8.

4 Australian Chamber of Commerce and Industry, *Submission 20*, p. 8.

2.6 The key characteristic of LSL as originally designed was therefore that it was available to certain employees who remained with a single employer for a significant amount of time.

2.7 Beyond this traditional construct, some portability schemes developed in industries where there existed unique employment arrangements.⁵ In these cases, portability was designed to allow eligible workers continuity in accruing LSL, despite the fact that they may not have spent the mandated length of time with a single employer.

2.8 Portability is seen as especially important for workers in industries such as the building and construction industry, whose nature means that workers do not usually work for a single employer for long periods of time, but who may be employed over many years on a project basis, or in some other way routine to that industry.

2.9 In its submission ACCI explains the rationale for portability of LSL:

Portable long service leave schemes ... are generally understood to have been designed in response to the unique nature of industries in which employees are typically engaged on a project basis and move from employer to employer as one project is completed and another starts. However, the rationale for portable schemes does not exist in industries that lack this predominant character.⁶

2.10 The McKell Institute, an independent public policy institute, produced a report in June 2013 entitled 'The Case for a National Portable Long Service Scheme in Australia' (the McKell report).⁷

2.11 The McKell report argues for a national portable long service scheme which would cover all workers. It cites three benefits of providing long service leave to workers:

- to reduce labour turnover;
- to provide a reward for long and faithful service; and
- to enable employees halfway through their working life to recover their energies and return to work rewarded, refreshed and reinvigorated.⁸

5 See list of industry or occupation based portable schemes in Department of Employment, *Submission 33*, p. 14.

6 Australian Chamber of Commerce and Industry, *Submission 20*, p. 10.

7 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 (accessed 16 December 2015).

8 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 (accessed 16 December 2015), p. 10.

2.12 The McKell report notes the third reason 'is becoming increasingly important to Australian workers' as they spend a larger proportion of their lives in employment, and are working to an older age.⁹

2.13 The McKell report also suggests that high mobility in the workforce has resulted in a low proportion of workers being able to access LSL benefits – 'some due to employment choices and others for structural reasons'.¹⁰

2.14 The Australian Nursing and Midwifery Federation (ANMF) submitted:

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.

...

All of these factors make entitlement and access to long service leave even more important today...¹¹

2.15 The Motor Trade Association of South Australia (MTA) states:

While the MTA does not argue in this submission that there should be a change to the proposed quantum of LSL entitlement, it is worth the Committee making note of the need to revisit this issue at a further date given that the original rationale for LSL may no longer be applicable to the modern workplace relations system.¹²

2.16 Thus, changes in labour market mobility in Australia since the inception of LSL in the 1860s may mean that LSL no longer has the same relevance it once did and that it should be viewed in a fresh context, consistent with current workforce realities. This includes recognising the importance of the individual worker and the way in which individuals participate in the workforce.

9 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 (accessed 16 December 2015), p. 10.

10 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 (accessed 16 December 2015), p. 10.

11 Australian Nursing and Midwifery Federation, *Submission 14*, pp 3-4.

12 Motor Trade Association of South Australia, *Submission 24*, p. 8.

The long service leave system

2.17 The current LSL system is by all accounts, complex. There are multiple working parts and the system is non-uniform across jurisdictions and industries.

2.18 A starting point for understanding LSL arrangements is the National Employment Standards (NES) which includes a long service leave standard to provide an employee leave after a long period of working for the same employer.¹³ This was designed to be a transitional standard, pending the development of a uniform national long service leave standard.

2.19 While the NES sets out minimum employment standards, a worker's terms and conditions of employment generally come from an award or agreement.¹⁴

2.20 Most entitlements to long service leave come 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; and
- how much long service leave the employee gets.¹⁵

2.21 The Productivity Commission has outlined the relationship between the NES and various legislation, noting the complexity and unevenness of these arrangements:

Whereas the NES provisions on other leave entitlements are quite specific and self-contained — for instance stipulating that all full time national system workers are entitled to four weeks paid annual leave per year or up to 12 months unpaid parental leave — the NES provisions on LSL are neither. They provide only for a 'transitional' Entitlement to LSL for the workers who would have otherwise been covered by a pre-reform award or enterprise agreement. Most employees in the national system derive their LSL entitlement from state and territory legislation...

This complicates the task of determining the specifics of a worker's entitlement. The employer must first check whether the worker is covered by an agreement made either prior to January 2010 that remains in effect, or by an 'award based transitional instrument'. Where an agreement has lapsed,

13 The NES consist of ten minimum standards of employment. The NES apply to all employees covered by the national workplace relations system, regardless of the applicable industrial instrument or contract of employment. Terms in awards, agreements and employment contracts cannot exclude or provide for an entitlement less than the NES, and those that do have no effect. Fair Work Commission, <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/introduction-to-the-national-employment-standards> (accessed 16 December 2015).

14 Fair Work Commission, <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/introduction-to-the-national-employment-standards> (accessed 16 December 2015).

15 Fair Work Commission, <https://www.fairwork.gov.au/leave/long-service-leave> (accessed 15 February 2016).

and so does not cover the worker, and/or where the relevant instrument does not specify the worker's LSL entitlement, as is commonly the case, the employer must abide by the relevant state or territory's legislation instead. The reliance on state and territory legislation has resulted in considerable variation in LSL arrangements and entitlements across Australia.¹⁶

2.22 The table below sets out the long service leave entitlements for each state and territory. The committee notes significant differences in qualifying period and entitlement across jurisdictions.¹⁷

Table 16.1 Long service leave entitlements^a

<i>State</i>	<i>Legislation</i>	<i>Qualifying Period</i>	<i>Entitlement</i>
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

^a This table does not show the rate at which additional entitlements accrue for service in excess of the qualifying period. There are also some exceptions. For instance, in most states, there is separate legislation for the construction industry, while Commonwealth public servants are covered by the *Long Service Leave (Commonwealth Employees) Act 1976* (Cth) rather than LSL legislation in the ACT.

Sources: Casey, McLaren and Passant (2012); Workplaceinfo (2015a).

2.23 By way of comparison, in New Zealand LSL 'is not a legal requirement but may be negotiated between an employer and employee as an additional entitlement under their employment agreement. How long an employee has to work to qualify for long service leave will depend on what is agreed between the employee and employer'.¹⁸

2.24 Submitters to this inquiry have suggested that Australia's complex and non-uniform arrangements regularly causes confusion for both workers and employers, and can also lead to unintended errors in dealing with LSL entitlements for

16 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), pp 520-521.

17 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. 521.

18 New Zealand at Work, <http://www.dol.govt.nz/workplace/knowledgebase/item/1314> (accessed 22 January 2016).

individuals. This is particularly so for employers which operate their business across multiple jurisdictions.

2.25 Master Builders Australia 'acknowledges that the lack of uniformity, as a result of inconsistent State and Territory legislation, can pose a challenge to some employers who operate across the jurisdictions'.¹⁹

2.26 The MTA also notes challenges in its submission:

Currently, the NES maintains the status quo of various industrial instruments that applied as of 1 January 2010, without any consistency. It is a transitional arrangement pending the development of a uniform NES-LSL.

...

Determining the appropriate LSL instrument under the NES can be complex, especially where pre-reform Federal LSL awards are involved. The applicability of a particular award or other LSL instrument to an employee is often unclear, confusing and adds to business compliance costs. A more simplified and easy to apply approach should be a feature of any transitional arrangement to a new LSL standard under the NES.²⁰

2.27 The committee notes that criticism and concern about the current arrangements is widespread across both employee and employer groups. For example, the AiGroup states:

Australia's long service leave laws are a mess. The interaction between the long service leave provisions in the NES, State and Territory laws and enterprise agreements is so complex that employers and employees find it difficult to navigate and determine entitlements.²¹

2.28 In its submission, the Australian Council of Trade Unions (ACTU) discusses both traditional and portable LSL schemes in terms of overall complexity of the system:

The transitional position adopted in respect of the NES reflects the complexities associated with the regulation of LSL throughout Australia. There are differences in the minimum level of entitlement to LSL under the different schemes in existence, reflecting the fact that, historically, LSL entitlements have been contained in State and Territory legislation, State and Commonwealth industrial awards and Commonwealth legislation.

...

A further layer of complexity is added by the operation of the portable LSL schemes applying to the building and construction, coal mining, security and contract cleaner industries. These schemes operate on an entirely

19 Master Builders Australia, *Submission 10*, p. 4.

20 Motor Trade Association of South Australia, *Submission 24*, p. 9.

21 Australian Industry Group, *Submission 7*, p. 9.

different basis to the traditional statutory LSL schemes, in that they recognise service with (potentially) multiple employers allowing employees to accrue an entitlement based on service in an industry or sector.²²

2.29 Jobwatch Employment Rights Legal Centre echoes this sentiment in its submission:

The National Employment Standards contain long service leave as a minimum standard, however, the Fair Work Act leaves the matter of determining long service leave up to the states where a Modern Award does not discuss long service leave. Most Modern Awards do not contain long service leave, therefore the matter is left up to state legislation meaning that across different states, different entitlements apply even within the same or substantially same occupation. Therefore, there is somewhat of an absurdity in calling an entitlement a National Employment Standard where it is not employed evenly across the Commonwealth. What this implies is that the long service leave entitlements as they stand are incomplete, and action is needed to standardise the system.²³

2.30 The South Australian Wine Industry Association (SAWIA) supports a move to nationally harmonised long service leave (under certain circumstances), in light of practical difficulties employers can experience in determining correct entitlements:

One of SAWIA's larger members recently experienced a number of challenges determining the correct long service entitlements for interstate employees despite having advanced and modern payroll software and significant in-house payroll and IT expertise. Further, medium sized businesses with interstate employees are more likely to utilise a standard payroll system which in SAWIA's experience cannot easily manage the required calculations for either accrual or the payment for taking annual leave, particularly where there has been a change in employment status.

In SAWIA's experience, even with the highly sophisticated payroll software, determining long service leave entitlements for each relevant jurisdiction and payments far too often involves a degree of manual processing where employees in multiple locations are involved. This is an example of unnecessary red tape, loss of productivity and costs for businesses of all sizes.²⁴

2.31 The information provided to the committee from a range of representative groups highlights the significant challenges that can exist for employers trying to navigate the LSL system as it currently stands, particularly those employers who operate across more than one jurisdiction. This leads to the question of whether the LSL standard should be nationalised.

22 Australian Council of Trade Unions, *Submission 19*, p. 16.

23 Jobwatch Employment Rights Legal Centre, *Submission 15*, pp 4-5.

24 South Australian Wine Industry Association, *Submission 22*, p. 2.

Should the LSL standard be nationalised?

2.32 In light of the inherent complexities with navigating the current LSL arrangements in Australia, numerous submitters suggested that implementing a national LSL standard would help ensure consistency between jurisdictions and simplify the system. In turn, this would reduce the risk of errors in calculating workers' entitlements.

2.33 In its 2015 Workplace Relations Framework inquiry report²⁵, the Productivity Commission noted that several major employer groups and unions supported moving to a uniform national standard:

Many submitters recognised the benefits of moving to a uniform national standard. The Australian Council of Trade Unions (ACTU) argued that 'the missing element in the comprehensive suite of minimum standards set out in the [National Employment Standards] is long service leave'. Without agreeing on the specifics of any entitlement, the Australian Workers' Union, the Australian Industry Group, the Australian Mines and Metals Association and the Victorian Government joined the ACTU in endorsing, in principle, a national approach.²⁶

2.34 This is consistent with the information provided by submitters to this inquiry who have argued that consistent arrangements should be adopted to simplify the LSL scheme. Further, some submitters have suggested that nationalising the system is the natural starting point for LSL reform in Australia:

Examining the possible creation of a national LSL scheme, should come before any consideration of portability and is, we argue, entirely severable from any consideration of portability.²⁷

2.35 AMMA strengthened its argument for nationalising the LSL system in Australia, by pointing out that Australia 'has all but achieved a national workplace system with the exception of a couple of areas, one of which is LSL'²⁸ and suggests simplifying the system as a priority:

AMMA and its members are of the conviction that a single national, non-portable, LSL standard is achievable in Australia, and should be pursued.

The best minds of the Australian workplace relations policy community are quite capable of analysing/deconstructing existing variable state and

25 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).

26 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. 522.

27 Australian Mining and Minerals Association, *Submission 11*, p. 9.

28 Australian Mining and Minerals Association, *Submission 11*, p. 10.

territory LSL schemes, and coming up with options to transition to a single national standard which retains its foundation in the accrual of extended service with a single employer.²⁹

2.36 The ANMF suggests that a 'nationally consistent LSL scheme could potentially streamline current arrangements for both employers and employees, particularly those operating in various state and federal jurisdictions'.³⁰ Similarly, the National Farmers' Federation (NFF) argues that '[a]doption of a national long service leave standard should be a priority, to reduce complexity and compliance costs'.³¹

2.37 A number of submitters note that this issue is not new, referring to previous discussion about reforming LSL. For example, the Recruitment and Consulting Services Association of Australia and New Zealand (RCSA):

RCSA support the harmonisation of regular long service leave entitlements within Australia, as proposed during the establishment of the National Employment Standard under the Fair Work Act 2009.

The maintenance of a state based system of long service leave results in unnecessary confusion and administrative cost for employers that employ employees across state borders.³²

2.38 Similarly, the NSW Farmers Federation discussed the complexity of current arrangements and noted that a review of the Fair Work legislation in 2012 recommended a national standard for LSL be established.

NSW Farmers fully supports the creation of a national standard for LSL to ensure consistency across the states and to help reduce complexities for employers operating in more than one state or territory. There are national minimum standards relating to other types of leave (e.g. annual leave and personal/carer's leave), so a national standard should also apply to LSL, especially given that there are similar themes that can be found across the jurisdictions.³³

2.39 The Health Workers Union – Victoria (HWU), added:

Australia has multiple legislative frameworks relating to long service leave operating across its states and territories. This makes the existing long service leave provisions in Australia highly complex and inflexible.

...

Notwithstanding, National standards would provide greater flexibility for employment across different states and territories and reduce the

29 Australian Mining and Minerals Association, *Submission 11*, p. 21.

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

31 National Farmers' Federation, *Submission 31*, p. 9.

32 Recruitment and Consulting Services Association, *Submission 13*, p. 2.

33 NSW Farmers Federation, *Submission 25*, p. 6.

administrative burden for employers who operate across more than one jurisdiction.³⁴

2.40 The evidence strongly suggests that there is broad support for a nationalised LSL standard, in light of the non-uniform and complex arrangements currently in place. The key rationale for a nationalised system would be to simplify the current arrangements and ensure that both employers and workers are better able to understand and apply LSL entitlements, regardless of jurisdiction. Nationalisation would be especially helpful to those employers who engage workers across multiple jurisdictions.

2.41 It would appear a logical starting point of any reform of LSL in Australia to consider standardising arrangements across all jurisdictions. Successful simplification of standard LSL arrangements would be likely to make the administration of portable LSL easier to deal with.

Challenges of achieving a national LSL standard

2.42 Evidence received by the committee suggests almost universal acceptance that current LSL arrangements are unduly complex and that strong support exists for a national approach to be adopted.

2.43 The Department of Employment (the department) submitted that a 'national long service leave standard has been considered by governments for some time' and during a 2012 Fair Work Act Review, development of a national standard had broad support with stakeholders expressing a preference to simplify the LSL system.³⁵

2.44 However, a number of submitters, including the department, point out that achieving a nationalised standard will not be easy at a practical level because of a range of significant challenges, including the multi-jurisdictional nature of the current LSL arrangements, cost to employers and potential loss of entitlements by some workers:

The key challenge in establishing a national long service leave standard is that state and territory governments maintain primary responsibility for long service leave entitlements. In order to achieve a national standard, the state and territory governments will need to reach consensus on the provisions, such as the quantum of leave and qualifying periods. This will be difficult, considering the differences in the entitlements between jurisdictions. Achieving a uniform standard based on an average of the current range of entitlements could, for example, result in some employers having higher costs and some employees receiving lower entitlements than under their current arrangements.³⁶

34 Health Workers Union, *Submission 29*, p. 37.

35 Department of Employment, *Submission 33*, p. 4.

36 Department of Employment, *Submission 33*, p. 5.

2.45 The department set out other potential challenges that would need to be considered in nationalising a LSL standard:

- state and territory laws also include a range of entitlements relating to termination of employment and other matters, such as cashing out of leave;
- a number of possible legislative approaches to developing a national standard, including establishment in Commonwealth legislation or harmonisation through the state and territory systems. Given national system requirements, the state and territory governments would need to be consulted and agree to implement a national standard;
- any approach would require appropriate transitional arrangements for employees entitled to long service leave under state and territory legislation or the NES. These may raise constitutional issues, such as obligations in relation to acquisition of property and state based differences;
- transitional arrangements are likely to be administratively complex, as they would require employers and employees to comply with multiple legislative instruments during the transition period. The transition period would also be prolonged, as long service leave entitlements crystallise and then can be taken over a period of many years; and
- depending on the approach, the development of a national standard may continue to require both Commonwealth and state enforcement agencies, as with the current arrangements.³⁷

2.46 The Media, Entertainment and Arts Alliance (MEAA) notes the complexity of the process has probably led to a delay in dealing with the issue of nationalisation of LSL, however, it suggests this delay can be positive, in that it will allow more time to properly consider all of the issues:

As is well-known, there are current national minimum standards for a range of leave entitlements under the National Employment Standards (NES). The absence of such a protection for LSL is regrettable. The lack of activity in developing a standard from 2010 to the present date has delayed what all interested parties believe will be a complex process requiring extensive consultation.

It is possible, however, that the delay in developing a uniform national LSL standard will enable greater consideration of the need for more equitable thresholds to LSL entitlements and considered treatment of the question of how to ensure Australia's highly mobile workforce are able to access LSL when working for a single employer over an extended period is impossible.³⁸

2.47 Master Builders Australia has shared feedback from its members about the current LSL arrangements:

37 Department of Employment, *Submission 33*, p. 5.

38 Media Entertainment and Arts Alliance, *Submission 9*, p. 4.

Feedback from our members has suggested the current administrative models, across the jurisdictions, work well and are not considered overly burdensome in their current form.

The key challenge remains, however, to take exiting State based construction industry LSL schemes, some of which function very well, to a national level, without forfeiting the benefits which have already accumulated under existing autonomous State based schemes.³⁹

2.48 The HWU has set out the challenges it sees in standardising LSL arrangements:

The impact of varying state and territory long service leave arrangements on a NPLSL scheme administered by the Commonwealth will prove to be a particularly difficult matter to resolve. There [are] a number of considerations that must be carefully thought through and negotiated between the states and the commonwealth.

From a practical point of view, are we going to establish a uniform legislation or will we be asking the states to refer their powers to the commonwealth?

This issue may prove difficult to resolve given that Western Australia have not referred their workplace relations powers (in relation to constitutional corporations) to the Commonwealth. All the other states have done this. All the states will need to refer their long service leave laws to the Commonwealth if we are to have any chance of creating uniform legislation.⁴⁰

2.49 The Health Services Union (HSU) clearly articulated the view that the Commonwealth must overcome constitutional difficulties with legislating for LSL by working with states and territories to come to an agreement about a national LSL standard.

While the remainder of this submission focuses on the elements of our preferred PLSL scheme, it is worth dwelling briefly on the overdue need for a uniform long service leave standard within the NES. Indeed, a uniform LSL standard remains a key piece of unfinished business leftover from the introduction of the Fair Work Bill 2008.

At present, there are three ways an employee's LSL entitlement is determined:

- State and Territory LSL Laws
- A Federal Pre-Modern Award (which would have covered an employer and their employees before 1 January 2010)
- A registered agreement

39 Master Builders Australia, *Submission 10*, p. 9.

40 Health Workers Union, *Submission 29*, p. 42.

We recognize that the Commonwealth's power to legislate in this arena is constitutionally questionable. As such, we recommend that the Commonwealth stay fast to the commitments made during the introduction of Fair Work Bill and work with state and territory governments to develop a uniform minimum LSL standard.⁴¹

No worker should be worse off

2.50 In spite of widespread support for nationalisation of LSL standards, some submitters expressed a view that consistency should not come at the cost of any worker being worse off under new arrangements, for example, because changes result in an increase in qualifying period or decrease in leave period.

2.51 The Productivity Commission discussed the glacial rate of progress in developing a national standard since the 2012 review, indicating that a national standard will involve compromise that may not suit all stakeholders:

However, there has not been significant progress towards a national standard since the review, largely because the adoption of a standard will entail losers as well as winners. Businesses operating mainly in one state would not want to emulate higher cost arrangements in another, while employees (and their representatives) in a state with more generous entitlements would not want to relinquish these to achieve uniformity.⁴²

2.52 In considering how to mitigate the risk of negative effects on some workers, the ACTU suggests that a 'highest common denominator' approach should be adopted to ensure that no worker is worse off under any new scheme, arguing:

It is imperative that any generalised national LSL scheme should not be introduced to the detriment of workers who already have the benefit of a superior LSL scheme; it must not disentitle classes of employees already entitled to something better. Such an outcome would be perverse and contrary to the goal of generalising an inherently beneficial scheme.⁴³

2.53 The ACTU explained further at the committee hearing on Friday, 5 February 2016 in Canberra:

We say that, in a developed country like Australia, workers' conditions ought to progressively move forwards, not backwards. Any national long service leave standard ought not to displace any superior entitlements in existing state and territory schemes. Our preferred option is that a national standard be developed that incorporates the highest common denominator approach, drawing on the South Australian and Northern Territory schemes

41 Health Services Union, *Submission 34*, p. 6.

42 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. 526.

43 Australian Council of Trade Unions, *Submission 19*, p. 20.

regarding the core entitlements and elements of other state and territory schemes regarding elements such as the level of pro rata access.⁴⁴

2.54 United Voice articulated its support for the ACTU's argument:

The ACTU also notes that any generalised national scheme should not be introduced to the detriment of workers who already have access to a superior long service leave scheme. United Voice supports that recommendation.⁴⁵

2.55 The ANMF noted the Productivity Commission draft report which suggested that 'any change would produce winners and losers,' and stated:

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.⁴⁶

2.56 The MEAA also adopted this view:

MEAA supports the development and implementation of a (long-awaited) National Long Service Leave standard that also provides for portability of 'Accrued Employment Leave' on an industry-by-industry or generalised basis. This would require a condition that where the Standard is less beneficial than a current employee is entitled to, the standard will not apply.⁴⁷

2.57 Similarly, the Australian Manufacturing Workers Union (AMWU) stated:

No worker should be worse off, or have a reduced entitlement for Long Service Leave under any new arrangements. It is vital that workers who have accrued an entitlement under the current arrangements are able to maintain those entitlements.⁴⁸

2.58 The HSU stated:

With regard to what a final standard might look like, the HSU recommends a 'highest common denominator' approach, whereby the most generous elements of current state and territory statutory LSL schemes are amalgamated into a new minimum national standard. This approach would

44 Mr James Fleming, Legal and Industrial Officer, Australian Council of Trade Unions, *Committee Hansard*, 5 February 2016, p. 2.

45 United Voice Australia, *Submission 28*, p. 3.

46 Australian Nursing and Midwifery Federation, *Submission 14*, p. 6.

47 Media, Entertainment and Arts Alliance, *Submission 9*, p. 4.

48 Australian Manufacturing Workers' Union, *Submission 16*, p. 11.

ensure that workers currently living in jurisdictions with more generous LSL provisions would not be left worse-off.⁴⁹

2.59 One of the ways in which a national LSL standard could be achieved without negatively affecting any current employees, would be to grandfather existing entitlements. This would mean that any new national standard would apply only to new workers. The Productivity Commission explained:

One option, which may bring any proposal for a nationally uniform LSL entitlement closer to consensus, would be to agree to 'grandfather' existing entitlements. Grandfathering would mean that the new national standard, once agreed, would apply only to new hires, *not* to existing jobs. This would remove the prospect of current workers losing their present entitlements, and of course employers having to countenance sudden increases in what they might owe to their workforce. The proportion of workers initially covered by the new national standard would be low. However, it would expand over time, as some workers move to new jobs and as new workers enter the labour force and others retire.⁵⁰

2.60 While grandfathering may provide an elegant solution for achieving consistency across jurisdictions, it is not palatable to all stakeholders. For example, the QNU noted the PC's report and added:

This would mean that once the states agree to a new national standard, these arrangements would only apply to new employees, not to existing employees. The current workforce would not lose its entitlements, but new employees would attract the new national standard. While we welcome further discussions around LSL with other state and territory governments, we reiterate we would not accept any reduction in entitlements for existing or new employees.⁵¹

2.61 The ANMF also indicated that it '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.⁵²

2.62 While there is clearly an appetite amongst stakeholders for nationalisation of LSL, it is unlikely to be supported by employee groups if it resulted in workers being

49 Health Services Union, *Submission 34*, p. 6.

50 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. 528.

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

52 Australian Nursing and Midwifery Federation, *Submission 14*, pp 6-7.

worse off because their entitlements are less beneficial under a new system. This is irrespective of whether other workers gain in a nationalised system.

Cost to employers

2.63 Some submitters indicated that they would not support nationalisation of the LSL standard if it resulted in increased costs for employers.

2.64 Queensland Advocacy Incorporated (QAI) is an 'independent, community based systems and individual advocacy organisation and a community legal service for people with disability'.⁵³ QAI articulated its support for a nationalised LSL scheme, but raised concerns about costs to employers, pointing out that some employers in the social and community service sector already operate on slim or no profit margins:

While we support the validity and importance of both a national long service leave standard and the portability of long service leave entitlements, we consider that issues concerning who pays for these entitlements are issues of vital significance that must be addressed. The resolution of these issues is important for employers within the social and community service sector, many of whom operate on slim or no profit margins. It is particularly important for people with a disability, so that it does not become a further stumbling block to the ability to employ skilled workers.⁵⁴

2.65 The Australian Hotels Association (AHA) indicated that it supports ACCI's submission and notes that many of its members are small, locally owned businesses serving their surrounding communities. Further, that 'AHA members operate highly labour-intensive businesses and as such are significantly impacted by cost increases relating to employment'.⁵⁵

2.66 In its submission, the Motor Trade Association (MTA) emphasised the importance of small businesses to employment in Australia and the relative effects that sudden and significant changes in cost can have to those businesses. The MTA expressed a preference 'for a national system that emphasizes consistency, transparency and minimises the cost to small and medium sized businesses, particularly in the automotive trades'.⁵⁶

2.67 The MTA further suggested that '[m]ajor workplace entitlement changes must be thoughtfully managed to ensure the ongoing health of the small business sector is front of mind throughout the transition process'.⁵⁷

53 Queensland Advocacy Incorporated, *Submission 5*, p. 2.

54 Queensland Advocacy Incorporated, *Submission 5*, pp 3-4.

55 Australian Hotels Association, *Submission 18*, pp 1-2.

56 Motor Trade Association of South Australia, *Submission 24*, p. 4.

57 Motor Trade Association of South Australia, *Submission 24*, p. 5.

2.68 These submissions raise an important point - any additional operational costs for employers can have a disproportionate impact on small businesses.

2.69 However, concerns about cost to business was not limited to small or medium enterprises, but applied more broadly. For example, ACCI stated that it would 'be unable to support the establishment of a national long service leave standard that would impose additional costs on businesses which would be in no better position as a result'.⁵⁸

2.70 ACCI further suggested the transitional costs to an employer of moving to a nationalised LSL standard should be considered, and questioned whether these costs are justifiable, given that 'the overwhelming majority of employers only operate in one jurisdiction'.⁵⁹

2.71 The Housing Industry Association (HIA) outlined how the building and construction industry is unique in terms of both its employment structure and LSL scheme. In discussing a national LSL standard, the HIA provides a non-exhaustive list of issues that would need to be considered, and indicates qualified support:

HIA is broadly supportive of measures to simplify and streamline long service leave arrangements. A national approach to long service leave should however be focussed on removing unnecessary regulation, reduce red tape and the administrative burden on business.

HIA does not support a nationally consistent long service standard being achieved at any cost, particularly if merely leads to the highest common dominator [sic] being adopted as the new minimum entitlement.⁶⁰

2.72 The evidence received suggests that the potential costs to employers of nationalising the LSL system – particularly small businesses - could have a significant impact that could have a flow-on effect on workers. Thus, any new system should be balanced so that it does not disproportionately affect employers.

Alternative views

2.73 While the committee noted that amongst submitters there is generally strong support for a nationalised LSL scheme, it also noted that a number of submitters do not support nationalisation. The lack of support is based on a perceived lack of need because the current system working as it should, and also because nationalising LSL would increase costs and be unduly complicated to achieve.

2.74 For example, the Victorian Automobile Chamber of Commerce (VACC) stated in its submission:

58 Australian Chamber of Commerce and Industry, *Submission 20*, p. 4.

59 Australian Chamber of Commerce and Industry, *Submission 20*, p. 4.

60 Housing Industry Association, *Submission 6*, p. 9.

The MTAs are not aware of any collective support between State and Territory Governments towards a single national long service leave scheme. Movement towards a unified model would inevitably lead to the question of which model should be applied. The MTAs (and likely other employer organisations) consider the South Australian model, for example, as uncompetitive and too generous to employees at industry's expense. On the other hand, unions are likely to support a model similar to South Australia and oppose more balanced entitlements.

The MTAs are highly sceptical of attempts to further nationalise employee entitlements after the Modern Awards experience. Despite promises at the time that employers would be no worse off under a federal Modern Award, the reality has seen the introduction of significant new employee entitlements in the automotive industry without any move towards compensation through productivity increases. For example, a recent decision by Justice Buchanan in the Federal Court of Australia interpreted the National Employment Standards to override provisions relating to annual leave loading on termination that have existed in the Vehicle Manufacturing, Repair, Services and Retail Award 2010 (VMRSR Award) and its predecessors since the early 1970s.⁶¹

2.75 Based on the actuarial data it supplied in its submission, the Australian Road Transport Industrial Organisation (ARTIO) states:

ARTIO submits that the current state legislative regimes are working precisely as intended, in that around 40% or just over 4 million workers can expect to take long service leave at some time during their working life.⁶²

2.76 Finally, the Australian Federation of Employers and Industries (AFEI) argues:

The process of amalgamation of existing employment provisions, either through the ever ongoing making of modern awards or via legislation (including work health safety legislation) has resulted in a 'cherry picking' approach and a highest common denominator outcome in Australian workplace regulation. This outcome would be replicated in the formulation of any national long service leave standard. This unwarranted cost impost on employers is unacceptable. Formulating a national long service leave standard is a high risk process, even if undertaken to 'harmonise' the provisions of different jurisdictions, and can only produce an outcome that is detrimental to employers.⁶³

2.77 While not explored in this report, the committee notes that a number of submitters have suggested preferred national LSL standards. For example, ACTU has suggested a standard of 13 weeks' leave after 10 years;⁶⁴ AiGroup suggests the

61 Victorian Automobile Chamber of Commerce, *Submission 23*, p. 4.

62 Australian Road Transport Industrial Organisation, *Submission 4*, p. 11.

63 Australian Federation of Employers and Industries, *Submission 12*, pp 3-4.

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

'national standard should reflect the previous federal award long service leave standard, i.e. 13 weeks long service after 15 years of service, with pro-rata entitlements after 10 years;'⁶⁵ the NFF suggests the standard should reflect 'the most common entitlement of one month's leave for each five years of service, with a qualifying period of 7 years'.⁶⁶

2.78 The committee notes these suggestions, but makes no findings in relation to a preferred national standard.

Committee view

2.79 The committee notes the complexity of the current LSL arrangements and accepts that inconsistencies across jurisdictions have the potential to cause confusion and lead to unintentional errors in calculating LSL entitlements. The committee is of the view that a nationally consistent LSL standard would help alleviate this problem.

2.80 However, the committee also acknowledges that nationalising the LSL standard is not a simple matter, and that states, territories and the commonwealth would need to work together to reach an agreement that should not impose a prohibitive cost burden on employers or result in any workers being worse off under a new scheme.

2.81 The committee is persuaded that grandfathering is a sensible solution that should be explored in developing a nationalised LSL standard, because all new workers (nationally) would start out on the same footing. Over time, the differences between old and new workers would diminish as people leave the workforce. This would be an equitable approach that would see no worker worse off, and many likely to be better off in the future.

2.82 The committee is of the view that any changes to LSL arrangements should be carefully considered and managed in a thoughtful way designed to minimise negative effects on business, being particularly mindful of the vulnerability of the small business sector.

Recommendation 1

2.83 The committee recommends that the states, territories and commonwealth undertake a review of the current LSL system in Australia, and considers developing a nationally consistent scheme. Development of a nationally consistent scheme should involve extensive consultation of both employer and employee groups.

65 Australian Industry Group, *Submission 7*, p. 8.

66 National Farmers Federation, *Submission 31*, p. 9.

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.¹

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.²

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.³

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

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.⁴

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.⁵

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.⁶ 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.⁷

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'.⁸

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.⁹

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

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.¹⁰

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.¹¹

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.¹²

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

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.¹³

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.¹⁴

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).¹⁵

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.¹⁶

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.

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'¹⁷ 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.¹⁸

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 2014.¹⁹

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.²⁰

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

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.²¹

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.²²

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...²³

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.²⁴

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

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.²⁵

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.²⁶

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'.²⁷ 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 2014.²⁸

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'.²⁹

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.¹⁹ 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.³⁰

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,

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.³¹

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...³²

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.

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.³³

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'.³⁴

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?³⁵

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).³⁶

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'.³⁷

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:

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.³⁸

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.³⁹ 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.⁴⁰

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

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.

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

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.⁴²

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'.⁴³ 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.⁴⁴

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.⁴⁵

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.

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.⁴⁶

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"'⁴⁷

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,'⁴⁸ 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'.⁴⁹ It supports its argument with data provided from the Aged Care Workforce Census and Survey conducted by the National Institute of Labour Studies.⁵⁰

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'.⁵¹

Automotive industry

3.74 The Victorian Automobile Chamber of Commerce (VACC)⁵², 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.⁵³

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.⁵⁴

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'.⁵⁵ 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'.⁵⁶

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.⁵⁷

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

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'.⁵⁸

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.⁵⁹ Master Builders Australia provides similar evidence in its submission.⁶⁰

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'.⁶¹ 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.⁶²

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'.⁶³

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',⁶⁴ and characterises the introduction of any new portability scheme for workers as 'another payroll tax on employers'.⁶⁵

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

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.

accommodation from major hotel and motel chains, to serviced apartments and backpacker accommodation.⁶⁶

3.86 The AAA does not support extending portable LSL to the sector arguing that it would not benefit the accommodation sector⁶⁷ 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.⁶⁸

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.⁶⁹

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'.⁷⁰ 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,

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.⁷¹

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.⁷²

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.⁷³

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.⁷⁴

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.

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.⁷⁵

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:

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 (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).⁷⁶

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'.⁷⁷ Further, that LSL essentially becomes a 'universal tax or payment on employment' which would increase already high labour costs and reduce competitiveness.⁷⁸

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.⁷⁹

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.⁸⁰

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'.⁸¹

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.⁸²

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.

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.⁸³

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'.⁸⁴

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'.⁸⁵ This, VACC argues, demonstrates that the automotive industry is 'especially vulnerable' to the 'additional operating expenses of portable LSL'.⁸⁶

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'.⁸⁷

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.⁸⁸

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'.⁸⁹

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.⁹⁰

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.⁹¹

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

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.⁹³

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.⁹⁴
- The industry-based defined benefit fund model which would involve employers in the relevant industries being registered with a fund for their industry.⁹⁵
- 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.⁹⁶

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.

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 (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.⁹⁷ 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.

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

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.¹

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.²

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

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.

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

Australian Greens Additional Comments

1.1 The Australian Greens support the Committee report but take this opportunity to make a number of additional comments.

1.2 There is a high level of support for the creation of a national portable long service leave scheme to modernise the entitlement for our changing work environment through submissions to the inquiry. In its submission, the Australian Manufacturing Workers Union states:

"A portable entitlement to LSL is required if a new generation of workers are to have access to Long Service Leave. A portable long service leave scheme (PLSL) is particularly important for workers in precarious and insecure employment like casuals and labour hire workers."¹

1.3 The Australian Greens believe we must progress with the creation of a national portable long service leave scheme.

1.4 There are multiple models for such a scheme to be established and administered, as discussed in the Australian Council of Trade Unions' submission.²

1.5 The Australian Greens believe we must have further consideration into which model would be the most efficient for governments, employers and employees.

Recommendation 1

1.6 The Australian Greens recommend that the government prepares a detailed proposal on a number of models that the national portable service leave scheme could take.

Recommendation 2

1.7 The Australian Greens recommend that the government agree to establish a national portable long service leave scheme.

Senator Janet Rice

1 Australian Manufacturing Workers Union, *Submission 16*, p. 2.

2 Australian Council of Trade Unions, *Submission 19*

APPENDIX 1

Submissions and Additional Information received by the Committee

Submissions

- 1 Mr David Colless
- 2 Finance Sector Union of Australia
- 3 Queensland Nurses' Union
- 4 Australian Road Transport Industrial Organisation ARTIO
- 5 Queensland Advocacy Incorporated
- 6 Housing Industry Association
- 7 Ai Group
- 8 Community and Public Sector Union CPSU
- 9 Media Entertainment and Arts Alliance MEAA
- 10 Master Builders Australia
- 11 AMMA
- 12 Australian Federation of Employers and Industries AFEI
- 13 Recruitment and Consulting Services Association RCSA
- 14 Australian Nursing and Midwifery Federation
- 15 Job Watch Inc
- 16 Australian Manufacturing Workers' Union AMWU
- 17 Aged Care Guild
- 18 Australian Hotels Association (Vic)
- 19 Australian Council of Trade Unions ACTU
- 20 Australian Chamber of Commerce and Industry
- 21 Accommodation Association of Australia
- 22 South Australian Wine Industry Association
- 23 Victorian Automobile Chamber of Commerce
- 24 Motor Trade Association of South Australia
- 25 NSW Farmers Association
- 26 United Services Union
- 27 Australian Services Union (ASU)
- 28 United Voice
- 29 Health Workers Union
- 30 CoINVEST Limited
- 31 National Farmers Federation
- 32 National Disability Services
- 33 Department of Employment
- 34 Health Services Union

Additional information received

The Case for a National Portable Long Service Leave Scheme in Australia, The McKell Institute.

Answers to Questions Taken on Notice

Answers to questions taken on notice at the Canberra public hearing, 5 February 2016.

APPENDIX 2

Public Hearing

*Friday, 5 February 2016
Senate Committee Room 2S1
Parliament House, Canberra*

Witnesses

Australian Council of Trade Unions (ACTU)

Mr Trevor CLARKE, Director, Industrial and Legal, Australian Council of Trade Unions

Mr James FLEMING, Legal and Industrial Officer, Australian Council of Trade Unions

Ms Erin KEOGH, Industrial Officer, United Voice Victoria

Mr Ben REDFORD, Assistant Branch Secretary, United Voice Victoria

AiGroup

Mr Stephen SMITH, Head of National Workplace Relations Policy, Australian Industry Group

Australian Chamber of Commerce and Industry

Mr Richard CALVER, Director, Workplace Relations, Australian Chamber of Commerce and Industry

Ms Alana MATHESON, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry

Department of Employment

Mr Adrian BREEN, Acting Chief Counsel, Workplace Relations Legal Group, Department of Employment

Mr Peter CULLY, Branch Manager, Workplace Relations Policy Group, Department of Employment

Dr Alison MOREHEAD, Group Manager, Workplace Relations Policy Group, Department of Employment