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ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

Inquiry into portability of long service leave entitlements

Sydney — 1 December 2015

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Professor Raymond Markey, Director and Professor of Employment Relations, Department of Marketing and Management, and
Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University.

The CHAIR — Good afternoon Raymond and Shauna and I would like to welcome you and introduce myself. My name is Nazih Elasmar, Dee Ryall is the Deputy Chair, Don Nardella, Jeff Bourman, Peter Crisp, Chris Fyffe and Cesar Melhem. I have to read this for you. Welcome to the public hearing for Economic, Education, Jobs and Skills Committee Inquiry into the portability of long service leave entitlement. All evidence taken at this hearing is protected by parliamentary privilege in accordance with reciprocal provisions and the statutes in Australian jurisdiction as if you were giving evidence in Victoria. Any comments you make outside the hearing may not be afforded such privilege. Any reporting of these proceedings enjoys qualified privilege for fair and accurate reporting as if the proceedings were in Victoria. Hansard is recording today's proceedings. We will provide the proofed versions of the Hansard transcript so you can correct any typographical error and I invite you to make an opening statement and members of the Committee will have some questions for you. Thank you. Please state your name before we start for the Hansard.

Professor MARKEY — Raymond Markey. I should start. Thank you for hearing us. We provided a written submission to the Committee and that was based on a report we had done previously for the McKell Institute and had updated that. We strongly believe that whatever decision you make should be based on evidence and where the evidence is insufficient we would recommend that you commission the research to get the evidence. One of the things which has concerned us with many of the submissions you have received is that they are not based on much evidence in fact. There are three main questions that we address. One is the benefits of long service leave to employees, employers and the community. Second, what are the costs of portable long service leave to employers. And thirdly, if there is sufficient time and if you ask questions perhaps, if Parliament decides that it is desirable to provide portable long service leave what is the best method of doing so?

Let me talk about the benefits for employees, employers and the community generally. If we look at the original purpose of long service leave in the legislation in a number of jurisdictions you will have noticed that it was threefold. The first was to reduce labour turnover, the second to provide a reward for long and faithful service and the third briefly to provide a respite halfway through working life. What I think is notable about those three original aims, going back to the 1950s, is that they are of mutual benefit to employers and employees. Reducing labour turnover is essentially in an employer's interests, the other benefits are perhaps more in the employee's interests. So I think from the outset there were mutual benefits and that's something I want to return to in the modern context or where I think that is still the case.

Over time, however, long service leave has evolved and has been used for a number of purposes beyond those original motivations for introducing schemes. One is taking a career break for recreational purposes, especially when employees are in danger of burn out. Another is taking a career break to retrain or improve skills on the part of an employee. Another to take extended leave due to illness or disability when sick leave runs out. Another is taking leave to care for others, that is caring for ageing parents for example. Another is extended parental leave after the birth of a child. Another is providing additional redundancy pay when workers are made redundant and finally, supplementation of retirement savings. These are all of the ways in which we know long service leave is also used these days by employees. That needs to be seen in a much broader context.

The first aspect of that context is the fact that we are working longer and longer. It's not just that the population is ageing, but Federal Government policy settings are encouraging people to work for a longer period and in fact 67 is going to be the new pension age and then 70 down the track. This is a worldwide trend. So we have longer working lives and you will have seen some of the figures that we provide in the written submission which show that the median age of workers has increased substantially. It's only two to three years across the whole population but that's in fact very substantial and that's happened over the last 10 to 20 years and the years in which people are in the workforce has increased substantially. So that's one thing that's important.

The other thing that's important, and it also relates to federal government and state government policy settings is female labour force participation. The Australian Government has policies to encourage women with family responsibilities to remain in the workplace and this is considered desirable across the board for the careers and the lives of women but also for overall labour force participation, especially as the population ages and there is the possibility of a smaller base providing the taxation revenue to support people on welfare. So more people in the workforce, better female labour force participation. Another thing which we also address in the written report is labour force mobility. Labour force mobility since the 1990s has increased.

I'm not just talking about casualization in the workforce necessarily, I'm talking about how long employees stay with employers and you will have seen some of the figures in the report that about 20 per cent of the workforce is with their current employer for less than 12 months and if we look at those who are with their current employer less than 10 years, which is the threshold for many long service leave provisions, I know some are a bit lower as well but that's the threshold for many, it's 25 per cent only of the workforce who are with their current employer for more than 10 years. So labour force mobility has certainly grown. Another aspect of long service leave is that it provides a means for compulsory savings and there's a number of studies by Members Equity Bank showing that people tend to have low levels of voluntary savings and that their superannuation provisions, as we are all aware, are so often inadequate when they retire.

This assists in boosting those savings and also like superannuation provides a pool of savings which are used for investment purposes in the economy more widely. Another thing about long service leave generally is that it can be used very flexibly and the number of uses I have indicated already is a manifestation of that. It depends on the needs of the individual worker but that's one of its great strengths. We actually don't know enough about how people actually do use their long service leave and this is an area of potential research but the last ABS survey on the topic was 1989. So we haven't got precise figures, but we know the range of areas where people use it, we just don't have the statistics on it. So it would be good to do more research on that.

I have been talking principally about employees' benefits but you will note that at the beginning when I talked about the motivations for long service leave in the '50s I noted that it had mutual benefits for employers as well. Many of the benefits for employees that I've noted are in fact benefits for the community and the economy as a whole and for employers. For example, keeping people in the workforce for longer, with a decent break given that people are working much longer than they used to, is to the benefit of the whole economy. Increased labour force participation on the part of women is to the benefit of the whole economy and to employers who can keep valuable employees. Another thing which we mentioned in our report which I don't think anyone else has is this concept of flexicurity and I don't know how familiar you are with that. It's a European concept and its established policy in the European Union these days.

When they introduced it 25 years ago they were looking for ways of increasing flexibility in the workplace and reducing opposition on the part of employees to change and innovation in the workplace which may endanger their jobs even. So flexicurity is meant to bring two things together. Flexibility and security. Flexibility for employers in moving employees from one job or maybe making them redundant altogether as economic circumstances and business circumstances change. But also providing a measure of income security and even employment security in different jobs for employees. So the way they do that is that they have funds contributed to by the state and by employers which support active labour market programs and that allows for employees who are made redundant in one organisation not to be thrown onto the scrapheap to have their income secure for a period where they undergo retraining and you will have noticed that I have already said that this is one of the uses of long service leave.

I think this is something which is to the benefit of employees and employers. I think it has the potential to improve flexibility and long service leave is very well suited to take up that role. When it was introduced originally, long service leave was intended to address a shortage of labour in the 1950s. This may occur again with an ageing workforce but as far as evidence for retention of labour and the use of long service leave for that we don't have much hard evidence on that. I notice that in some of the reviews of existing portable schemes employers do say in construction in particular and in the coal mining with the federal scheme that one of the benefits is labour retention. But there isn't hard data on it and if this was important for you to follow through, that is something that should be followed through with further research.

It would be possible to do it. We've got—if you're interested in exploring it we've got suggestions as to how you might do that. Just a couple of more quick points and I had better hand over to Shauna. There is flexibility for employers with coping with economic cycles, with shedding staff and there's also a potential benefit for employers which is hard to quantify but a lot of international evidence suggests that if you have a workforce and a workplace which provides a healthy work environment for employees it will improve productivity and decrease workers compensation and other health and safety costs. So in so far as long service leave contributes to a healthier workforce, if they have a break mid-career in a very long working life now, that's a benefit for employers and the community as well.

Just one final thing. The employment impact and this is not benefit but I just want to anticipate what some people suggest frequently when there are improvements to employee entitlements such as portable long service leave. I have done a lot of work on the impact of penalty rates and minimum wage regimes on employment and there is virtually no evidence that there is a negative employment impact from small increases in employee entitlements. There is no evidence with something like long service leave or penalty rates. There is some evidence with minimum wages internationally and it shows no impact and the only impact, and even this is contested, is that there may be a substitution effect that employers may be more inclined to replace young labourers with older workers if there's an increase in the minimum wage. Even that is contested, it's not clear cut. So no overall impact on employment levels from any of the evidence about small improvements in employee entitlements. I will leave it there and hand over to Shauna.

Ms FERRIS — When I was first asked me to come along I thought: what could I tell you that would be most helpful to you in making a good decision in this area? I just want to tell you what research I think is available so that you can make decisions that are based on evidence. I agree with Ray, I've been a bit worried that some of the submissions are based on assertions instead of evidence. Being an academic I'd rather have some evidence. I think, as Ray said, what we want to do is look at what are the benefits of long service leave? What are the costs? And—if you do decide that it's worthwhile, that the benefits outweigh the costs—what is the cheapest and most efficient way of implementing the portable scheme?

So on the first question: what are the benefits? Ray has already explained to you what long service leave is used for. In fact when I was doing the McKell paper I also got a grant from the Actuaries Institute. They very kindly funded me to look into long service leave. So the first thing I did was try and collect all the evidence I could find about what long service leave is actually used for in practice, compared to what it theoretically was used for back in the 1950s. So I've written a little paper, *Long service leave: Past, present and future*, which has been published in the Actuaries Journal trying to summarise the evidence. I would have to say the evidence is quite scanty. There has been very little research into how people use their long service leave, but they do seem to be using it for a very wide range of purposes. It's often used to cover really serious needs like providing money in redundancy, helping people take maternity leave, carers leave when they need to look after a family member, those kind of benefits. And I think one of the things which was very concerning is that most people do not have enough voluntary savings and they do find themselves in difficulties pretty quickly when they're out of the workforce. I'm happy to give you a copy of that paper if you are interested in it. I've got a copy here.

The next thing I wanted to talk about was the cost. Okay, maybe long service leave does have benefits but a lot of the submissions from the employers seem to say that it would be very expensive and have negative effects on the employers and therefore long term negative employment impacts. So while I was getting ready for this presentation I looked at the Australian Industry Group's submission and I would have to say that I think it is seriously flawed in its estimates of how much it would cost and grossly exaggerates the costs. If you are interested I would be happy to give you a submission on where I think there are flaws in their methodology.

Similarly the Productivity Commission was quoted in reports, quoted in some of the submissions. The Productivity Commission report quotes some numbers from the McKell report. That part of the report was actually written by me and I have to say I think the Productivity Commission has slightly misinterpreted the McKell report—I think it is misleading actually. I would suggest if you do want to know how much portable long service leave will cost you get an actuarial report written by some people who are very good at doing this kind of calculations. Fortunately there have already been six reports by actuaries into the expected costs of portable long service leave in the community sector because they were all done back in 2010, one by PricewaterhouseCoopers and two other actuarial firms have also done costings and their numbers are much lower than the numbers that are presented in some of the submissions that have been given to you. If you want I can explain to you what causes the differences between the numbers. I have written up some slides if you're interested in just a quick summary.

I have written down what I think the differences in the costings are. So what I'm saying is some of the submissions you have been given have, in my opinion, seriously overestimated the cost of portable long service leave—I think you need to have an accurate estimate of the cost before you make a decision as to whether it's worthwhile on a cost benefit basis.

The third question is, the last thing, is the scheme design. If you do decide to go ahead with it, should you create another scheme similar to the CoINVEST scheme for the building and construction workers?

This is another area where I did some research which was funded by a grant from the Actuaries Institute. What I did was, I went and collected annual reports and actuarial reports from all of the portable long service leave schemes in Australia, mostly construction industry, contract cleaners, security guards in the ACT, community service workers in the ACT, going back 10 years. I went through all the actuary's reports, all the annual reports, trying to identify what were the strengths and weaknesses of each of these schemes. So I looked at their solvency, their investment strategies, their financial stability, their administration costs, their corporate governance, all sorts of issues that I thought would be helpful in evaluating how well they worked. I have written a paper about this, it's rather long, it's 47 pages. I brought it along with me today. I presented it at a conference a few months ago but it hasn't been published yet. But it might be helpful to you.

I've noticed in a lot of the submissions you have received there, have been a lot of criticisms from people about CoINVEST and some of the administrative difficulties. Some of these are common in other schemes around Australia and some of them are not really CoINVEST's fault, they are faults in the way the scheme was set up. The scheme was set up, I think, without really thinking through how to make the rules simple and easy to administer, and is just causing a lot of difficulties. In my report I point out some of these problems. If you are going to set up another scheme in for community services sector I think you really need to think through the design of the scheme before you go ahead to keep the costs down. If you make a system complex it makes it expensive and it's also irritating for the people who have to work with it to deal with very complicated schemes.

If you like I can just explain now where I think the costings information that you've been given is wrong, but if you prefer I can put that in a written submission later on?

Mr NARDELLA — If you go through it quickly I reckon.

Ms FERRIS — Okay, I can do it fast. My first question is how much would it really cost to provide portable long service leave? In Victoria you get two months of long service leave after 10 years. So the cost of providing that at the end of 10 years would be two-twelfths of a year's salary which is 17 per cent roughly, 16 and two thirds really but say 17 per cent. That's what we're aiming for. At the end of 10 years we want 17 per cent of salary. So if you spread that over 10 years the employer is going to be putting in 1.7 per cent of salary each year, roughly after 10 years he'll have 17 per cent. So that's basically it's going to cost 1.7 per cent per annum but there are a lot of little adjustments that actuaries make, as shown in this table.

So the first thing is you have to allow for the fact that salaries are going up a little bit over this 10-year period, so that will push up the costs a little bit. If you allowed for salary increases to go up by about

3 per cent a year that would push the cost up to 1.9 per cent of salary per annum. You would also need to build in a little bit for administration expenses. If you have a large well-run scheme the admin expenses are about 0.1 per cent of salary, so that total levy gets up to 2 per cent.

But there are also offsetting advantages. All that money—if you put it into a pre-funded scheme—is going to be earning interest, hopefully at at least 5 per cent per annum (or at least above the salary inflation rate). So once you take account of all that investment income coming in it will cut the cost back down to about 1.5 per cent of salary per year.

The next part is a bit of actuarial terminology, it's called *withdrawal surplus*. What this means is that some people who are members of the scheme drop out before they qualify for LSL benefits. That money is retained in the fund and provides an extra source of funding for all the people who remain in the fund. So we call that *withdrawal surplus* because every time somebody leaves before qualifying, there is a benefit to the fund. Now the amount of withdrawal surplus will vary—I've got question marks in there (in the table)—because that will depend very much on the staff turnover and the rules of the fund that you bring in. If every single person gets a benefit, if it's 100 per cent portable, then there is no withdrawal surplus. If it's a portable scheme within a particular industry like community services, well, there will be some withdrawal surplus because a lot of people work in the community services sector for just two or three years and they will never qualify for a benefit, even under a portable scheme. So the overall upshot is, I think, that the cost is likely to be less than 1.5 per cent. But it will depend on individual industry, what their typical staff turnover patterns are and what the rules of the portability are.

Ms RYALL — Can I just ask a question about the cost to the employer. So you might say it's a set amount but we have just heard for example from some other witnesses that have talked about cross border and compliance costs, particularly in security but compliance costs for the business and so forth. So there is additional on costs to a business on top of their existing—what they would have if they were doing it themselves. So is that taken into consideration?

Ms FERRIS — Yes. Well, I'll get to that in a minute but the admin expenses there (as shown in the table) would be the rough admin expenses if it was being run as a portable long service leave fund. If long service leave is being controlled by the employer on an individual basis they have some internal costs for setting up the administration of these payments.

Ms RYALL — Well it's the same for all their staff.

Ms FERRIS — If they work with the portable scheme they have the cost of providing the information and transferring data back and forth.

Ms RYALL — Especially if it's for some staff, not for others, for some states, not for others. A whole lot of things.

Ms FERRIS — Yes, that's exactly right but if you design the scheme well it should be clear and simple and keep costs as low as possible.

Ms RYALL — No, no, I'm just looking at the cost to the employer, aside from the scheme, the cost to the employer.

Ms FERRIS — Yes, this (the figures in the table) just looks at what the levy would be.

Ms RYALL — Okay.

Ms FERRIS — So if you look at, for example, the actuaries' estimates for the community services portable long service leave scheme done back in 2010—and it's all summarised in the Pricewaterhouse report—they said the numbers in there vary depending upon what assumptions you make about staff turnover and investment returns and so on: but they say the levy will be between 1.3 and 1.5 per cent of salary.

So is that all okay? Do you want to ask me anything about that?

The next question is: of course that's the total cost, the question is how much extra that is compared to what the employer is already paying now, right? Because that's what you really want to look at: the incremental cost associated with introducing portability. The answer is basically it's very difficult to answer this unless you know the staff turnover. If you have an employer who has a stable workforce where everyone stays more than seven years, portability costs are nothing. I mean the employer is already paying everybody LSL, the extra cost of portable LSL to the employer is roughly zero. In fact for reasons I won't go into you could actually have a reduction in these costs but I won't try and explain.

Mr NARDELLA — I think that the debate we've been having is exactly that, so I think you do need to explain why.

Ms FERRIS — Okay. It's really with—it could be a **…**

MR MELHEM — It's in the costs report.

Ms FERRIS — Okay, for an employer—an employer who has currently got everybody getting LSL, right? His employees will be getting exactly the same benefits, but if he's an employer who is in a pool where he's pooled in with all the other employers and they (the other employers) have a lot of staff turnover he will be getting some withdrawal surplus from the other employers. If they have high staff turnover the money from their employees who quit goes into the pool and is used to reduce this employer's benefits. So for example the actuary who did this work back in 2008 for the Human Services Department said for this type of employer their costs could actually go down by 0.2 per cent.

Ms RYALL — Having said that we've just had a witness earlier that said no, we won't reduce costs, we'll just expand the scheme, there is no way we'll reduce costs to the participants in the scheme.

Ms FERRIS — That will depend on how you set up the rules of the scheme.

Mr NARDELLA — He didn't take it on an actuarial point of view or having done research, that was his view.

Ms FERRIS — If you want a well-written technical report …

Mr NARDELLA — That was his assumption, it wasn't done on any evidence.

Ms RYALL — But having said that just to clarify he is on the oversight group to the organisation that runs it.

Ms FERRIS — There will be a withdrawal surplus. What the rules of the fund say—what will happen to that surplus—that's up to you guys to decide.

Ms RYALL — Well, yes.

Ms FERRIS — I mean in the paper written by the actuary for the previous actuarial study he assumed that all that surplus would go back into the fund and be redistributed among all the employers.

Ms RYALL — Have they done it since 2008, I mean we're talking significant years ago that would actually bring in the reality of whether these get reduced or increased or what happens?

Ms FERRIS — The actuaries actually did those reports on a wide range of different assumption, they asked …

Ms RYALL — Just over the last seven years where you can actually see whether increases have happened or the reality of those things?

Ms FERRIS — That doesn't actually exist.

Ms RYALL — Sorry?

Ms FERRIS — That scheme wasn't implemented in 2008.

Ms RYALL — No, no, I'm talking about this data now about the different schemes and whether they have actually increased?

Ms FERRIS — I'll get to that in a minute.

Ms RYALL — I'm just saying since the …

Ms FERRIS — The construction and industry scheme …

Ms RYALL — 2008 data, what's happened?

Ms FERRIS — If the employer has a workforce at present where everybody needs to be employed for ten years to get LSL—like, you know, in a fast food restaurant, where nobody stays for more than six months, that means no one is getting any long service leave at present, the employer has zero long service leave costs virtually. If you introduce portable long service leave, that's going to cost him about 1.3 to 1.5 per cent of salaries. So the conclusion of this is you can't really estimate how much it's going to cost additionally to the employer unless you have data on the staff turnover and current LSL costs. You can get that data from the ABS labour mobility studies, it will be different for every industry, it would take a bit of work to pull out the numbers.

Ms RYALL — I'll have to hire an actuary.

Ms FERRIS — I don't want to push my profession too much but this is what we're good at. I just want to quickly say what I think is wrong with the Australian Industry Group estimates because when I read their submission they said in their introduction, 'Portable long service leave schemes are four times as costly as traditional long service leave schemes,' and in my humble opinion I don't think they're right. Those calculations have a couple of flaws in them, so I'll just quickly tell you what I think the flaws are. If you look at the numbers that they gave you. First of all they calculated how much the portable scheme would cost and then they compared it to what the current system is and they said the current scheme costs four billion—sorry, the portable scheme would cost four billion, whereas the current scheme costs less than one billion. So they reach the conclusion that the portable scheme would cost four times as much as the current scheme. Now I'll tell you what I think is wrong. This number of four billion is much too high and this number of 0.9 billion is much too low and so if you trust these figures I think you're going to reach the wrong conclusions.

Ms RYALL — That was based on the **…**

Ms FERRIS — CoINVEST.

Ms RYALL — The CoINVEST.

Ms FERRIS — Right, that's exactly correct. The first problem is that this number of 2.7 per cent, it should be more like 1.5 per cent. Now, the reason they use 2.7 per cent is because they're using the CoINVEST levy. That is inappropriate for this comparison in my opinion, because first of all CoINVEST benefits are 50 per cent higher than other Victorian workers. CoINVEST pays three months' long service leave every 10 years, whereas the average Victorian worker under the state entitlements only gets two months. So the CoINVEST levy is automatically going to be 50 per cent higher than other portable long service leave schemes.

The second problem is the CoINVEST levy is unusually high at present because they lost so much money during the GFC, they had negative returns in 2008 and 2009. That led to a fund deficit and they're now catching up by increasing the levy. So this is the CoINVEST levy rate.

Between 1993 and 2003 the levy was zero. They had made so much money from investment surplus they charged nothing to the employers. After the surplus was used up the levy rate went up to 1.5 per cent, which is probably around what the long term average rate would be based on the benefits at that time. It went up in 2005–2006. I'm not really sure about this but I think that might have been when the benefits were increased.

MR MELHEM — Yes, prior to 2006.

Ms FERRIS — So that would push their levy rate up to 2 per cent.

MR MELHEM — Yes.

Ms FERRIS — During 2009 they put it up to 2.7 per cent because they lost a lot of money during the GFC. Now this raises another issue: if you do have a portable scheme—what is the appropriate investment strategy?

Mr NARDELLA — And risk.

Ms FERRIS — And amount of risk.

Mr NARDELLA — Just clarifying.

Ms FERRIS — I myself would be of the opinion of choosing a conservative investment strategy. Because choosing a high risk profile gives you better long term average returns but it also increases the volatility of the levy. In my opinion employers who are paying the levy do not want to see this kind of volatility in their levy rates, so I think that's one thing you need to carefully consider: is what the appropriate investment strategy should be for these funds.

Okay, so that 2.7 per cent of total salary (as shown in the table) is in my opinion—it's too high. 1.5 per cent would be a better number. The second problem is in their costing of the current long service leave rules which they said was 0.9 billion and in my opinion that's too low.

The CHAIR — Can I ask you how much you've got to go because the members would like to ask some questions.

Ms FERRIS — Okay, I'll finish after this slide. The reason why this is too low is because they only looked at the costs for people with more than seven years of service. That is not a sensible approach. All the workers who have less than seven years of service, some of them will drop out but a lot of them will in fact stay in business and qualify. So a sensible employer must be putting aside money for at least a proportion of those people under seven years of service and that hasn't been included in this calculation. So without putting too much—I think you need to get a proper estimation of this done by someone who is a qualified actuary to work out what the correct cost should be. You can't really make the cost benefit decision unless you know the correct costs, that seems sensible to me.

Okay, so the last thing I wanted to say was two things that I think are important in looking at the administration costs. First of all there are economies of scale. I would be worried if you were going to be setting up a lot of little portable schemes for a lot of different industries because then you'll have a lot of small funds which are inefficient to run. This is exactly what happened in the superannuation system back when compulsory super was first set up, there were a lot of separate industry funds, a lot of them were too small to be efficient. Eventually over the years they amalgamated and the costs are now much lower. Cost control

I think is really important if you're going to do this.

Ms RYALL — I just thought it was important to clarify interest before we start off on the questions and that is we're well aware the McKell Institute was established to help the Labor party reconnect with its voter base and its clearly got listed who the members are and Professor Markey you're down as a member of the team according to the website of the McKell Institute.

Mr MELHAM — Do we need to go through this?

Ms RYALL — No, it's just a declaration of interest, that's all.

Professor MARKEY — I noticed that on the website.

Ms RYALL — Okay, well it just says you are a member of the team.

Professor MARKEY — Yes.

MR MELHEM — I don't think we need to go through this.

Ms RYALL — I understand, I'll leave it at that.

Professor MARKEY — There is one thing I could add though, just to clarify it. The Institute funds independent research, our research was independent as are speakers they've had, I don't know if you checked that?

Ms RYALL — As I said, the establishment of it was for that purpose and that's well-documented and I wanted to make that clear before we now commenced our questions.

There was a point in your submission where you said there is potential for the total costs of employers to increase. However, this is off-set by investment income, tax benefits and other potential cost off-sets. I wanted to know what off-sets and what tax benefits and what investment income?

Ms FERRIS — Well one of the things that you have to think about for the portable long service leave fund is what the tax treatment would be for the levies in the fund—I don't really know what the CoINVEST is, I think there was some dispute about it.

Ms RYALL — I think this was in as a general statement.

Ms FERRIS — So the question is if the tax …

Ms RYALL — Tax off-sets, investment income, tax benefits, potential cost off-sets and I just wanted to know what they are specifically.

Ms FERRIS — Okay, so the only thing I would say about the tax is if the employer puts the money into a bank account outside of a portable long service leave fund and earns income. I'm assuming that he pays tax on that income: but if he puts it into a portable long service leave fund and doesn't have to pay tax then that’s a tax saving, does that make sense? But that would depend on how the government decides that the portable long service leave fund should be taxed.

Ms RYALL — I figured you must have examples here but just in a, you know, the off-sets, the tax benefits, the potential cost estimates, the investment income and the tax benefits and so forth and I just—it wasn’t clear what these are?

Ms FERRIS — Yes, the actual costings suggest that the portable long service leave fund will probably—I think they assume that they will be able to earn a higher investment return than the employer, but of course —

Ms RYALL — What tax benefits?

Ms FERRIS — Are we talking about the tax benefits?

Ms RYALL — Yes, it says a number of things including tax benefits.

Ms FERRIS — Yes, so the tax benefits—I tried to explain, I must not have done it very well.

Ms RYALL — No, no, I heard what you said, put it in, if you get a percent—some interest in …

Ms FERRIS — So the question is: does the money—the money saved up for the long service leave benefits—is it accumulating in a taxed environment or an untaxed environment? So at the moment if the employer just puts it in a bank account and saves it up he is earning—the employer is earning—interest on the money that he has invested and he presumes he’ll be paying tax on that investment income. If on the other hand he put it into a portable long service leave fund which was not paying tax, that fund would be earning investment income at a tax free rate.

Professor MARKEY — If the employer is making ongoing contribution at a proportion of salary that becomes part of the tax equation as it occurs too whereas that’s not the case, they would be paying tax on that, so say it’s 1.5 per cent they’d be paying tax on that as well if there wasn’t a portable fund.

Ms RYALL — If they’re segregating out, that’s not coming out of their—you know, depending on as you say where they put the money they’re going to pay company tax and so forth.

Professor MARKEY — Not if they’re making the contribution—an ongoing contribution.

Ms RYALL — No, no but what I’m saying is if they’re doing it themselves you know their cost of business and also their administrative costs and so forth as well aren’t necessarily—are actually claimable if you like. So we’re talking a very small scale tax benefit here, I just thought there must be some tax rules that actually say there’s a …

Ms FERRIS — That's for the Victorian Government to decide how the tax rules would be applied to the contributions that are made into the portable fund and how the portable fund itself will be taxed, so I don’t think …

Mr CRISP — Is that a Victorian Government decision or a Commonwealth responsibility under tax law?

Ms FERRIS — I think there's been some disputes about that in the past, I wouldn't like to comment, that's not my area of expertise.

Ms RYALL — No, I'm just saying when you cost it here as you know there's potential for total cost of employers to increase but that's off-set and I think if you're going to make that statement it's got to be absolutely crystal clear what those are and how much.

Ms FERRIS — I think I would need to do some more work on that to try and clarify that.

Professor MARKEY — Just to add, I mean the off-sets, apart from tax the other off-sets were already explained in what Shauna went into in detail.

Ms RYALL — No, you're talking here—on your comments in your submission it says that any costs to the employer will be off-set by investment income, tax benefits and other potential cost off-sets. So I was asking …

Professor MARKEY — And that's what Shauna referred to in detail with—apart from the tax she covered all of that in her presentation.

Ms FERRIS — I have to say the administration cost is probably something you need to worry about.

Ms RYALL — That's it.

Ms FERRIS — I know when you talk to—when some people on our research team talked to people—it is very important to try and make the administration costs and the complexities for the employer as minimal as possible. All of the existing portable long service leave funds work very hard at trying to automate all processes. Employers often have to provide this kind of information about all their staff to the workers comp authorities as well. So they have to keep good records of their staff.

Ms RYALL — We have heard from witnesses just before in relation to security and small business and the additional costs of compliance for things like cross border for having different income, IT etcetera.

Ms FERRIS — At the CoINVEST office, the CoINVEST people told me that they are undertaking a streamlining process where all the different state organisations are trying to set up a common system.

Ms RYALL — I think we're at cross-purposes.

Mr NARDELLA — That was just an interesting point you made in terms of you need to comply with WorkCover and their compliance.

Ms FERRIS — So you have to keep pretty good records.

Mr NARDELLA — Yes, and if you could use that as well for long service leave then that would be a saving as well, so yes, that was a good point.

Ms FERRIS — You have to streamline it as much as you can.

Mr NARDELLA — Yes, that's right.

Ms FERRIS — So that's why I think it needs to be very carefully designed.

Mr NARDELLA — Yes.

Mr CRISP — I'm interested in the impact of a transportable scheme on employee loyalty.

Ms FERRIS — No, I think there have been a lot of assertions about whether long service leave encourages employee retention, to what extent. But I haven't seen any real proper research on that. There may be some research that I'm not aware of, of course, but I think that would be an area where you would need to look at the impact of long service leave on employee retention. You could do—there's a few different ways you could do that, for example you could look at resignations—resignation patterns. If resignation rates are low just before the qualifying date and then spike up after the qualifying date that would be some evidence that people were being influenced by their long service leave entitlements in deciding whether to change jobs. You would also want to look at whether employers sacked people just before they qualify: you would have to look at the redundancy rates where people leave work involuntarily and see how those patterns change over time around the qualifying date. But as far as I know no one has done that research.

Professor MARKEY — Just one thing to add, with the original portable scheme that was introduced in the mining sector which is the only one that's national, loyalty of employees to the industry rather than individual employers and I think to some extent in the construction industry state schemes that was the idea, so that the industry as a whole benefits from keeping expertise in the sector is the argument there.

Professor MARKEY — The Fair Work Commission has also flagged that it's something that should be looked at at a national level. I think ultimately it is something that should happen nationally. Maybe the model is something like what happened with health and safety legislation, that there be some bringing together at a national level of standards.

Mr NARDELLA — It collapsed because of Victoria's intransigence, the standardisation of that area.

Professor MARKEY — At a national level there are some issues as to whether it's constitutionally possible for the federal government to just do it anyway.

Mr CRISP — But it happened to the mining industry.

Professor MARKEY — That was considered special at the time. I think it was the Menzies Government that brought that in too actually. But it was certainly supported by both sides of the House at the time.

Ms FYFFE — In your submission you argue that the retail accommodation sector is highly mobile and casualised workforce would benefit from portable long service leave, but these industries also employ a lot of students, a lot of backpackers who have no intention in staying in those industries for a long time, so what strategies could be implemented to lower the costs for the employers for those workers who have no intention of staying in that industry?

Professor MARKEY — Can I just correct one thing about 20 per cent of the workforce in that sector would be student dependent. I mean the proportion of people who are in that category is actually not the largest at all. The larger proportion of people in one or two income families with children. So it's not quite accurate where you're starting from.

Ms FYFFE — I was talking about retail accommodation sector. A lot of places where you have backpackers coming in, doing work for the period of time that they can to extend their stay here but have no intention of course of continuing it and of course leave the country. So employers will be paying long service into the fund for those people and there's no way they're going to benefit from it.

Professor MARKEY — Well as I said it's a small proportion in the restaurant food services area you're talking about, I'm not across the agriculture area.

Ms FYFFE — There's a lot of casualization and a lot of students and backpackers working in …

Professor MARKEY — I have just done a study on that in the Fair Work Commission and it was accepted by all parties, employers and unions so there's nothing wrong with the data on that, but I can't address the agriculture sector, I'm not across the stats on that.

Mr NARDELLA — But are you able to provide those figures to the Committee?

Professor MARKEY — Yes.

Ms FYFFE —Whether you're looking at a small minority compared to a city based business, when you're in the rural industries and as lot of—the majority of these are, you know you've got to think about those costs because the cost to the employers is very high.

Ms FERRIS — I'm not sure whether you're talking about a 100 per cent portable long service leave scheme or portable within this industry.

Ms FYFFE — Your submission actually touches on so much in that you are arguing that industries such as retail accommodation and food should also benefit.

Ms FERRIS — Yes, well I think this is a problem. If you have a defined benefit fund which has a lot of employees in the fund with different staff turnover patterns there will be cross-subsidies between employers. This is one of the problems, as we pointed out in our submission, with the defined benefit fund approach. If you put a lot of employers in one fund with different industry patterns—with different staff turnover patterns—there will be cross-subsidies and that's one of the disadvantages of doing this. That's why we suggested there could be two other possible models that might be fairer and have less cross-subsidiaries. These models are discussed in the McKell report. These models are either a superannuation based system, or what we call the ADF model. These are both systems for providing compulsory benefits that don't have these cross-subsidiaries between employers and I think that these two models should definitely be considered. You don't want to put a lot of employees in a scheme where some employers would have a large withdrawal surplus and other ones wouldn't and that money gets redistributed. I think that's a good point.

Ms FYFFE — My personal opinion, and no one else has discussed this, is that perhaps this needs to be looked at in the way that superannuation is looked at.

Ms FERRIS — Exactly, that's one of the things we talk about in the McKell report.

Ms FYFFE — That it's something you're recouping when you leave the country if you're a backpacker or if you're out of the workforce or whatever.

Ms FERRIS — Yes.

Ms FERRIS — Yes. That's what we said: there are a lot of design issues. If you do decide portable long service leave is desirable for most of the workers you really need to think about this design—this is what I call it, design issues as to how they're going to work and that is definitely a flaw in your defined benefit system.

Ms FYFFE — So part of the salary package so if you're paid X amount part of that is long service leave, as your super comes out of your salary package so what your take home pay actually becomes a little bit less.

Ms FERRIS — One of the models we suggest is that the long service leave levy goes into something like a superannuation fund, a certain percentage goes in. When you qualify for long service leave after 10 years' service, or meeting one of the other conditions such as losing your job, then you can access it. So that would be an alternative model. A third model would be what we call the ADF model where the employer pays a pro-rata benefit: if a person leaves before qualifying the employer pays their normal pro-rata benefit and it goes into a special long service leave account which they can access later on when they actually need the long service leave. So one model (the superannuation model) would be just paying regular contributions into a long service leave fund and the other one (the ADF model) would be the employer makes a payment when the employee exits which is more similar to the current system.

The CHAIR — Cesar?

Mr MELHEM — I would just comment on the backpackers for example you might do an exclusion for example, because they're not going to get the long service leave you might say 'We'll make an exclusion'. Look, can I just say this. First I want to thank you for the work you've done and I think it's been one of the highlights and a lot of good work was done on that, I'm just making a comment, and I'd appreciate whatever materials you have. I'm very impressed with the work you've done.

Ms FERRIS — Thanks for listening to us.

Ms FYFFE — You've just raised a thousand new questions in my mind.

Ms FERRIS — If you want to know anything I'll be happy to answer questions.

Mr NARDELLA — You talk in your paper about the inequality—Inequality especially for women workers and the casualization of the workforce for women. Do you want to further expand on that in terms of how that is inequitable and how that affects our society.

Ms FERRIS — Well, women are less likely to get long service leave because they have more broken careers—they leave work when they have kids, they leave work when they have to look after elderly relatives. They have higher turnover and therefore they're less likely to qualify for long service leave that depends on staying in one job for a very long time. I think in some of the uses for long service leave that we discussed, are definitely used to help women balance family and work life. Just having that flexibility to take some time off when there is a crisis is, I think, sadly probably more important for women than for men because the burden of caring for other people does fall on women more than men.

Professor MARKEY — Just to add to that, I mean it's part of the wage differential between men and women which we seem to be stuck with in Australia currently. This is one more entitlement which women don't get the same access to because of their labour market record as much as men do and because of the nature of the industries they're in.

Ms RYALL — In your submission you state there is no evidence that portable long service leave will have a disproportionately negative impact on small business. I would suggest that's because there's no evidence across all industries and if you've got liquidity constrained businesses that might struggle to implement, and I can't accept the fact that it's a no cost issue.

Ms FERRIS — I know but it's the cost of providing information to the fund.

Ms RYALL — Yes, but in addition if you're normally in a sector where people don't stay too long and they leave, then that money you would invest back into your working capital and to training new staff and so forth. But the thing is that in liquidity constrained businesses they will struggle, particularly in small business struggle to pass that cost on and we have just heard in tender environments, in a range of environments to pass that onto the client or sorry the customer and so I beg to differ on the point that there is no evidence. It might be that there is no data to suggest, so I would agree with you there is no data to suggest but I think to say that there's no impact, I would probably say there's no data to suggest that there's either no impact or is an impact, there's just an absence of data.

Ms FERRIS — I would definitely agree that there needs to be a lot more research into compliance costs and looking at it from the employer point of view.

Ms RYALL — But in a small business where they're constrained …

Ms FERRIS — I think one of the things that's important in looking at contract cleaners for example—which is now a portable benefit in New South Wales, Queensland and the ACT—one of the reasons that was brought in is because some employers wanted, it because some of the employers in that industry were kind of fly-by-night organisations that did not provide entitlements to their workers.

Ms RYALL — I think that is another issue.

Mr NARDELLA — Hang on, Dee.

Ms RYALL — It's my question.

Mr NARDELLA — I know but she hasn't finished the answer.

Ms FERRIS — Yes, so the employers who were responsible and were providing entitlements to their workers were suffering a disadvantage because their labour costs were higher because they were paying people the benefits that they were entitled to. So some of those employers wanted to have a levy scheme so that those irresponsible employers would be forced to provide the legal entitlements.

Ms RYALL — I hear you, I hear you, that's a bit different to the question—the statement and the question that I was asking.

Ms FERRIS — So there are some costs.

Ms RYALL — We have had witnesses here who have said it can be a make or break situation for many small businesses which actually will, you know, it's either go out of business or fail to comply and if they fail to comply then that's poor practice. If they go out of business then it costs jobs, and so I really just wanted to—rather than go on to the others I really just wanted to challenge that, that there's no evidence it's disproportionately negative impact. I would suggest there is no evidence to say that it will …

Ms FERRIS — I think there is definitely room for more research there.

Ms RYALL — Yes.

Professor MARKEY —There's also no evidence even that small businesses are more likely to go out of business.

Ms RYALL — Because there's no evidence.

Professor MARKEY —No evidence about the weight of which small and larger business are volatile …

Ms RYALL — No, but I'm talking about a portable long service leave scheme, there is not that evidence —

Professor MARKEY — There is no reason to believe that small businesses are more vulnerable even because they are no more likely to go out of business than a large business. The only reason it's inflated is because micro-businesses with no employees are often counted, they're volatile.

Ms RYALL — I think it's the additional compliance cost to a lot of small businesses end up being the straw that breaks the camel's back—my point was more just about that statement.

Ms FERRIS — What are the extra compliance costs? Now the extra compliance costs should be that they are keeping good records which they should keep for workers comp anyway.

Ms RYALL — We've run out of time so it was more about that statement rather than you know how we fixed any problems.

Ms FERRIS — I agree that those compliance costs should be quantified and taken into account.

Ms RYALL — I think we need considerable new data.

The CHAIR — As an alternative to portable long service leave, would it be feasible to introduce legislation requiring businesses that win tenders to recognise workers' prior service?

Ms FYFFE — For instance contract cleaners, when someone loses a contract and someone else takes the contract over.

Mr BOURMAN —Yes, transmission of entitlements.

Ms FYFFE — Would they have to carry forward the benefits?

Ms FERRIS — I think you'd have to ask a lawyer whether that's feasible, I wouldn't say that's my area of expertise.

Professor MARKEY — I was warned of a question on that but I mean it's not something that we've really looked at so I hesitate to give an answer. It sounds viable but it needs looking at.

Ms FERRIS — If one company buys another company they have to take over their long service leave liability but this is different and I think you would need to ask a legal person about hat.

The CHAIR — If you have no other questions? Professor, thank you very much for your time and your evidence.

Professor MARKEY — It's been interesting.

Ms FERRIS — Good luck with your deliberations, I'm sure it's going to be very difficult.

Witnesses withdrew.