

CORRECTED VERSION

ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

Inquiry into portability of long service leave entitlements

Sydney — 1 December 2015

Members

Mr Nazih Elasmr — Chair

Ms Dee Ryall — Deputy Chair

Mr Don Nardella

Mr Jeff Bourman

Mrs Christine Fyffe

Mr Cesar Melhem

Mr Peter Crisp

Staff

Executive Officer: Ms Kerry Riseley

Research Officer: Ms Marianna Stylianou

Witnesses

Ms Helen Westwood AM, Organiser, Australian Services Union, NSW and ACT.

Ms RYALL — Thank you, Helen. My name is Dee Ryall, Deputy Chair of the Committee. The Chair will be joining us shortly, Nazih Elasmr. On my left is Don Nardella, Jeff Bourman, Cesar Melhem, Christine Fyffe and Peter Crisp. Just the formalities if I can go through. Welcome to the public hearing for the Economic, Education, Jobs and Skills Committee Inquiry into portability of long service leave entitlement. All evidence taken at this hearing is protected by parliamentary privilege in accordance with reciprocal provisions in statutes in Australian jurisdictions as if you were giving evidence in Victoria. Any comments you make outside of this hearing may not be afforded such privilege. Any reporting of these proceedings enjoys qualified privilege for the fair and accurate reporting as if the proceedings were in Victoria and Hansard is here today recording our proceedings and will provide for you a proofed versions of the Hansard transcript from today and you will be able to correct any typographical errors in that. I would like to invite you to make a short presentation for about maximum 15 minutes or 10 minutes actually and the Committee will then have a number of questions that they would like to ask you in response to that. So thank you.

Ms WESTWOOD — Thank you very much Madam Deputy Chair. My name is Helen Westwood, I'm an organiser with the Australian Services Union New South Wales and ACT Services Branch. I will refer to it as the ASU from hereon. I have responsibility for our community sector members in the ACT and the ASU welcomes the opportunity to appear before the Inquiry today. I will make a brief opening statement and I think it will probably be about five minutes at the most.

Ms RYALL — Sure.

Ms WESTWOOD — The ASU in New South Wales and ACT has members in a number of service industries including water, transport, airlines, IT and social and community services, often referred to as SACS. It is our members in the social and community services division employed in the ACT who are covered by the ACT community services portable long service leave scheme. I will focus on the characteristics of the community services sector for the purpose of your inquiry. ASU SACS members work in non-government organisations including those that support people experiencing or at the risk of experiencing crisis, disadvantage, social dislocation, marginalisation. These include disability services, child protection, youth and family, health, mental health and alcohol and other drug services, community and neighbourhood centres, migrant and settlement services, homelessness, housing and tenancy, community legal services, Aboriginal services, women's services, policy advocacy and campaigning, employment services, community transport and aged care.

In the federal jurisdiction these services are funded primarily through the Department of Social Services and also through the Department of Health, the Department of Education and the Attorney General's Department. In New South Wales these services primarily receive funding through the Department of Family and Community Services, FACS, the Department of Health and Transport for New South Wales. In the ACT those services are primarily funded through the Directorate of Community Services and there are also fewer grants through ACT Health and other ACT Government community grants programs. SACS organisations in New South Wales and the ACT have been directly and indirectly affected by multiple reforms in the funding and procurement of social and community services at the commonwealth, state and territory level.

Generally workers in the social and community services sector are paid according to the Social Community Home Care and Disability Services Industry Award. Enterprise agreements are not that

common although certainly some do exist and I can talk about those if you wish. Even in sectors that still have enterprise agreements, wages tend to be pegged relatively close to the SCHADS award wage rates. As demonstrated in the equal pay case in addition to the gendered nature of the work in SACS and its characterisation as a caring profession, this reliance on the award has contributed to a devaluation of work in social and community services and depressed wage growth comparative to other industries.

The equal remuneration order is rectifying this situation to an extent. The sector's reliance on the award, however, means that wage costs are relatively fixed and also likely to be as low as possible within the parameters of the Fair Work Act which does create limited opportunities for efficiencies for some organisations. Despite the relatively low pay and often difficult working conditions workers in the social and community services sector are skilled workers, they are more likely than other industries to hold post-school qualifications with 64 per cent having at least a certificate and the number holding bachelor's degrees has increased quite considerably actually.

Workers in the social and community services sector also tend overwhelmingly to be women and they also do tend to be older than average. Worryingly although this should not come as a surprise the social and community services sector is ageing and has below average participation of younger workers when compared to other industries. In addition part time and casual employment is more common than permanent full time work in SACS. Social and community services are primarily small employers. In 2010—that's the last reliable data we have which was done actually for the equal pay case—but in 2010, 71.8 per cent of organisations have workforces of one to 19 employees. 24.9 per cent have between 20 and 199, and only 3.3 per cent employed a workforce greater than 200. That has changed a little because as you know governments I think are really trying to encourage larger organisations to attract funding, but it's still pretty consistent with those sort of figures if you look at the nature of the organisations that employ community services workers.

In addition to primarily small employers social and community services organisations are also generally not-for-profit. This means that almost all grant funding is allocated to service provision rather than operational costs or securing profits. In fact most funding in family and community services, that's the New South Wales department is allocated on a 70/30 split with the majority spent on wages and the rest on capital works and maintenance. Recent changes in the tender processes have opened up the sector to full profit providers and they are expressing interest in entering the industry. While profit motive in an industry relying on government funding is itself problematic, it is also difficult to see precisely how a business can expect to make a profit without negatively impacting worker working conditions and therefore service delivery.

Our community services members in the ACT are the ASUs only members who are part of a mandatory portable long service leave scheme. The ASU welcomed the establishment of the scheme in the ACT and is supported by our members because without this scheme most of these members would have spent over 10 years, in some over 15 years in the sector without ever qualifying for a long service leave entitlement, and that ends my opening statement.

The CHAIR — Thank you, Helen, and thank you Dee for starting the procedure. How well is a portable long service leave scheme for community services in the ACT you just mentioned, and have your members raised any concerns?

Ms WESTWOOD — It's very well supported by our members. They in fact you talk to individual workers—and in the ACT we actually have a number of our members who originally were case workers and have actually made their way up to CEOs of organisations and are still members of our union and when you talk to those workers as well as people who are still case workers they talk about the benefits there. All the organisations both members—when I've spoken to individual members that I've talked to, our members who head organisations say that it certainly does attract staff. It enables them to attract staff and to retain staff because one of the issues in the ACT is that they are really competing with the Commonwealth Public Service and that was one of the triggers for establishing this scheme for community services workers ahead of some of the others. The community services and childcare workers both entered this scheme at the same time in the ACT in 2010.

The CHAIR — Thank you. Question?

Mr NARDELLA — So you've had experience in terms of being established in the ACT, one of the concerns of the Committee is that if it's introduced then all these small companies will go bust. Did any small company go bust with the introduction of long service leave scheme or not-for-profit organisation go bust because of introduction of a long service leave scheme in the ACT?

Ms WESTWOOD — No, no, and look the point they made to me was it was already a requirement. I mean they should always have been ensuring that long service leave entitlements were set aside from recurrent funding and expenditure. I think the truth is in practice a lot of organisations didn't start to do that until their staff were there for five years or in excess of five years. Now of course with this scheme the levy is paid from day one.

The CHAIR — Peter.

Mr CRISP — I'm interested in the financial impact on the not-for-profit sector. It's been argued that the community services organisations will be financially disadvantaged if portable long service leave was introduced in Victoria. How does the not-for-profit sector in the ACT manage with this additional cost within the structure of the service delivery?

Ms WESTWOOD — They certainly budget for it. It's not been an impediment to them continuing to provide quality services. But there certainly was some opposition at the beginning when it was first mooted and in particular as I understand it the disability sector there are a number of organisations that were concerned because they felt that up until this scheme they were actually able to profit from that long service leave entitlement that workers never realised because they would move on. Sometimes they'd move on after just a few years, so they would profit from that and yes they were—there is no doubt they expressed concern but—and I did, I actually spoke to one of our strongest disability advocates in the ACT just a few days ago and she said look, there was this concern but since it's been introduced and it's been operating now in its fifth year those concerns have disappeared and people see it now as a real way of attracting staff, that's what they say to me.

Mr CRISP — To follow that, how does the roll out of the NDIS affect those community service sectors and portable long service leave?

Ms WESTWOOD — The roll out of the NDIS, the effect we're seeing is the same in New South Wales as it is in the ACT. In New South Wales there is no portable long service leave. But we have actually—the union quite recently held a national summit on the NDIS and we had workers and organisations from all round Australia talking about the NDIS and the issues were the same. They were not any worse or any better in the ACT because of the long service leave scheme there.

The CHAIR — Jeff.

Mr BOURMAN — Have there been any issues with employer compliance into the ACT?

Ms WESTWOOD — No because—and I think it's really—I'm sure you have but it's really worth examining the ACT model because they have also established an inspectorate, so the inspectorate actually does examine the books of all the registered organisations and the compliance has been excellent. There has been no issues with compliance, it's paid and you may actually be aware that this year in fact the levy went down from 1.67 to 1.6.

Mr BOURMAN — Is the inspectorate, as far as you're aware, a part of the government or is it part of the scheme?

Ms WESTWOOD — No, well as I understand it it's part of the Authority and as I understand it's quite a small inspectorate.

Mr BOURMAN — It's a small territory.

Ms WESTWOOD — Yes, yes.

Mr CRISP — It's being paid for out of the scheme.

Ms WESTWOOD — Yes, yes,—their annual reports are on their website and really pretty comprehensive.

Ms FYFFE — You mentioned that the competition of the sector and in the public service was getting employees. Since the introduction of the portable long service leave has it made it easier to recruit people to work in the sector, are they staying longer?

Ms WESTWOOD — Absolutely and in fact that's what someone said to me the other day, it's actually a real recruitment attraction, they've found that because see the other thing—well, it's the same in all states and territories and I don't think Victoria is any different. You've got a lot of really small organisations that have got sometimes two and three staff. There isn't that opportunity for promotion, you know, through the various classifications in our sector, so people will move on and they were saying that before this scheme they were losing a lot more workers to the public service in Canberra which you can understand because it is so much more accessible there in the ACT. But it certainly has helped with recruitment and it has also helped with retention of skilled staff.

The CHAIR — Cesar.

Mr MELHEM — Thanks Helen. Has there been any discussions in New South Wales as doing the same thing as the ACT or where is it at?

Ms WESTWOOD — No, it hasn't, it's certainly something that our union would be happy to see, we would support it, we certainly supported the introduction of the ACT scheme and we would do the same because it's rare for our members in New South Wales to actually meet the criteria for long service leave and it's not because they leave the sector. Many members have been in our sector for 20 years and yet they have not actually had the privilege or the entitlement of long service leave and that's because after—and it's often five years they move on to another position. Sometimes it's only three. It is the nature of our sector.

Mr MELHEM — Is that because—I mean have you got portable long service leave for the state system for example, if someone worked for the public sector for example in New South Wales and they moved between departments have you got portable long service leave recognition?

Ms WESTWOOD — No, but local government—although the ASU in other—I know in Victoria you cover local government, the ASU, but we don't in New South Wales but in local government there are a lot of entitlements that are portable into other local governments within New South Wales. That has been the same for years, but no, not then onto state government but within local government within New South Wales. So if you move from one council to another you take your—all of your entitlements with you actually, all long service, sick leave entitlements, you know the whole lot.

The CHAIR — Dee.

Ms RYALL — Thank you, Helen. You mentioned 70 per cent of small business which is massive. Many contributors to our public hearings have talked about concerns in relation to small business, particularly micro-businesses which you have referred to earlier. Cash flow is obviously an issue, sustainability is an issue, especially when the business owner is usually the accountant, the sales person, you know every aspect of the business. In terms of if you're in an industry where people tend to move fairly frequently to another sector or within the industry but ABS data shows to another industry, what's—that money normally in terms of if they're putting money aside, often with small business, sorry I'll just clarify, as they are accrued to a five year will start looking at how they are going to apportion later on and therefore this is money that would normally be in their cash flow or in their working capital and if they're putting it in and the people move on they never get that back where they would normally and therefore that would be the cost of re-employing, re-training which obviously has costs associated with that. So I think there's concerns around that and with 70 per cent in your sector that's a massive impact and potential some would argue, certainly economists would argue that that can have a significant impact on employment.

Ms WESTWOOD — Yes, look I hear that but I think the same arguments were made about superannuation. Look I think every time we look at an improvement in terms of workers' conditions, allowances or pay rates that is always the issue that's raised but it's not a reason not to do it. I mean our sector in particular, we're still relatively low pay overwhelmingly and we do really important work that makes a real difference in communities and you're not getting—even when the CEO is quite reasonably sized and NGOs, they're still not on huge salaries. I think long service leave is a reasonable reward for the commitment to this profession and it is not breaking the community

services sector in the ACT, quite the reverse, it's quite a healthy sector.

Ms RYALL — In Victoria, and I expect it's fairly similar here, not-for-profits are operating on very, very small margins.

Ms WESTWOOD — Yes, that's true.

Ms RYALL — And so I hear when you say you know if they didn't break it for this but as you start to increment up you end up with very little in the residual which starts to beg the question why bother and you know the concern obviously is around the cost to business and their sustainability and there has been some examples given where the choice might be made to either not comply with the many compliance obligations which obviously no one wants or to ...

Mr NARDELLA — Only the political.

Ms RYALL — Yes, nobody wants that because it is or to actually opt out and I guess if there's no real incentive now with long service leave existing for people to stay with an employer why is the incentive going to change within the industry?

Ms WESTWOOD — Within our industry though, it's often not an option because it's not that people are not loyal to an employer, it simply is that to actually move up through their career structure they have to move into another organisation, and seriously particularly in the ACT because you've got a lot of national based organisations or organisations that have national coverage and do more advocacy. So you might have three or four staff. Some have only got two staff, so you get to a level and there's nowhere else for that person to go, they then need to move over to a larger organisation and that's where the risk was they were then moving onto the public service and the sector was losing these highly skilled workers. I think the other factor too that makes our sector a little different is that most of us are funded by various governments and certainly what's happening in New South Wales and I think the trend is the same in Victoria and certainly this is the case nationally is that governments are looking to NGOs for service provision. They are moving more and more of that service delivery out of the public service and into the non-government sector. Long service leave is an entitlement in the public service and if government continue to provide within the public service but that service delivery, then they would have to pay for it, then I think that it should then be allocated to the grants that are given to NGOs to provide the services that government is now outsourcing.

Ms RYALL — That has been something that we have raised is that if this were to go ahead then what's the cost to government because you would expect that that would happen, not that it would be absorbed because the margins don't allow for it.

Ms WESTWOOD — Yes, but it won't be any greater cost to government. NGOs are not—they are not a greater cost to government than providing it through the public service.

Ms RYALL — Yes, but—

Ms WESTWOOD — It's the same.

Ms RYALL — No, I hear you, I hear you but I'm just suggesting they may argue otherwise.

The CHAIR — Any other questions?

Mr NARDELLA — One of the issues is that—that's been raised on the Committee is that if you put in the portable long service leave it then means there is going to be a greater cost to retraining or re-employment because people can then move within the industry rather than be loyal to a company and you've explained why people move and certainly the development of the long service scheme before 2010 in Victoria, we have the same issue, that is that the wages and conditions, the packages in the NGO sector, community sector were so poor that everybody was leaving that to go into the government sector where there was also a career structure. So if somebody leaves an employer does it then mean that somebody else backfilling that job needs to be retrained in the sector if they have the same qualifications and experience. I mean what is the extra cost of retraining and—obviously re-advertising and stuff but retraining and all the rest of the stuff, I mean is there a cost?

Ms WESTWOOD — Yes, well in some cases you can do that, I mean people within the sector do just transfer their skills from one organisation to another and don't require it, but I think the other thing—quite often there are other causes for change such as the NDIS for example has required additional training and that's quite separate to long service leave but the organisations have had the capacity to do that. In fact the ACT at the moment and I am on the steering committee to represent our members, we're actually developing an industry plan looking very much at workforce development and skills that are required.

So we don't—to be honest at this stage I don't have a real picture of that but the introduction of the NDIS or the role of the NIS has been one of the greatest factors in that. But I think it's also true to say the organisations are always looking at professional development. Regulations change, particularly for NGOs in the community services sector, issues around child protection. You need your staff to be familiar with the changes and also you know funding changes too. I think that's one of the other factors too, actually although it's not related to your question but I point out the things I think is worth mentioning here is the other characteristic that I think is unique to our sector is that our funding cycles are quite precarious, so you can be funded for three years, you could be funded for five, you could have a fixed contract. It might be one project for 12 months.

Now that equals precarious work, so again that would be another reason why workers are then going to move from one organisation to another, not because they are disloyal or because they want to leave, but the funding may end through no fault of their own, government just may decide on a different direction, other target groups and a job can end. So rather than losing those workers out of the sector or to the public service. I mean I think it's really good to have anything that's going to retain them within our sector.

Ms RYALL — Why would I as a business owner when generally—a good employer but generally you know students come work for me or people make choices and they tend to stay three or four years and that's it, why would I want to contribute to a scheme like this when that's the nature of the industry I'm in and why would I want to do that?

Ms WESTWOOD — I think as an employer you'd want to be an employer of choice. You would

want the best people to be coming to work for you because you are such a good employer.

Ms WESTWOOD — No, it's not that, it's a collection of things though. It's about the wages you pay, it's the conditions, its allowances, it's you know—it's the work environment.

Ms RYALL — So if I pay above the award and people want to come and work with me, but the general trend as the ABS data says is most of them or many of them—a large percentage are actually going to move off to another sector and so forth after a certain amount of time, I guess you know what's the incentive?

Ms WESTWOOD — Yes, but then you will get the benefit of other workers who are part of that scheme then who then get to have some long service leave and come back refreshed and energetic.

Ms RYALL — If they go off into another sector, the money I've paid in has gone, it's gone and sitting in some scheme.

Ms WESTWOOD — But you'd pay the same for training wouldn't you? I think that's always a risk of any investment ...

Ms RYALL — But training is going to benefit my staff and my organisation. I just wanted to put it out there.

Ms WESTWOOD — It's about attracting really competent, skilled staff and you know you're a good employer, you do attract the best.

Ms RYALL — Especially if I pay more and invest in training and things like that.

Ms WESTWOOD — Yes.

Ms RYALL — I guess this is just an additional thing that I already do.

Ms WESTWOOD — I think it is an investment, investment in your staff, I think it's a real investment and I think it brings real dividends to your business.

Ms RYALL — The problem we have is there's no data to suggest anything. There's no data to suggest anywhere.

Ms WESTWOOD — That doesn't surprise me.

The CHAIR — Any further questions? We're all happy. Helen, on behalf of the Committee I'd like to thank you very much for your time and for your evidence.

Ms WESTWOOD — Thank you.

Committee adjourned.