

CORRECTED VERSION

ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

Inquiry into portability of long service leave entitlements

Melbourne — 14 September 2015

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Mr Luke Hilakari, Secretary, Victorian Trades Hall Council; and

Mr Dave Oliver, Secretary, Australian Council of Trade Unions.

The CHAIR — Welcome, first of all. This is the Economic, Education, Jobs and Skills Committee Inquiry into portability of long service leave entitlements. All evidence taken at this hearing is protected by parliamentary privilege. Any comments you make outside the hearing are not afforded such privilege. Hansard is recording today's proceeding. We will provide a proof version of the *Hansard* transcript so you can correct any typographical errors. I would now like to invite you to make an opening statement. The Committee also has a number of questions for you. I will leave the stage to you.

Mr HILAKARI — My name is Luke Hilakari. I am the Secretary, Victorian Trades Hall Council.

Mr OLIVER — Dave Oliver, Secretary, Australian Council of Trade Unions.

Mr HILAKARI — I thought how we might approach this is that I might read a statement and then Dave might read a short statement, and then we would be very pleased to take any questions the Committee may have. We start by thanking the Committee. We think this is a very important issue, and we are very pleased to be before it and appreciate the seriousness with which you are paying attention to the issue of portable long service leave.

I would like to start with a media release of Minister Hutchins. On 6 May 2015 the Minister said, '... as the nature of people's work life changes, governments must ensure entitlements aren't eroded'. We share that view because we believe entitlements right now are being eroded. It was not the workers who chose to make their working lives more precarious; employers and governments have managed to do that in two ways, the first of which is that employers are engaging workers in precarious forms of work to avoid paying entitlements. This shifts the responsibility of employment to the worker so that businesses can expand profits, and they have been quite successful at that.

Secondly, employers and various governments are subcontracting out more work, leading to a person having no permanency in their employment. The 2010 independent *Lives on Hold* report found that 40 per cent of workers are now employed in some form precarious work. That is up from 15 per cent of casual workers in the 1980s. With so many different workers in some form of insecure work, it is no wonder that so many workers are missing out on long service leave.

Take a worker like Ken Caton. Ken is a security guard. Ken works in public housing. I have known Ken now for over eight years. Ken enjoys his job. He is a professional. He works late nights. He keeps his residents safe. He works in a job that most people would not want to do. Ken works on these public housing sites, and over the multiple years that he has worked there the contracts have been changed multiple times. Two things happen when that happens: Ken changes his uniform and changes his badge, and Ken loses his long service leave. That is what happens. The contract changes, he changes his uniform but he loses his long service leave. He is still working in the same place; he is still working with the same people. He is doing exactly the same job, just like our fine security guards that we have right out the front at 55 St Andrews Place, but again they lose their long service leave. It is because of the nature of the contracting that he misses out.

We say that is unfair. We say that is discriminatory. It affects workers on lower wages, it affects more women than it does men and it affects more migrants. Ken would not lose his long service leave if the Government did not privatise out these types of services. Ken is the type of person that I want you guys to start thinking about when we talk about portable long service leave—him and the hundreds of thousands of others who are affected by this each and every day. We need to get this fixed.

What we want to talk about just very quickly are some of the myths that are being put out by employer groups. We think they need to be debunked. The first myth we often hear is the scheme will cost too much money. We say this is blatantly untrue. This is money that employers already put aside. Employers already cost the additional on-cost of hiring any single person. It can range from somewhere between 12 per cent and 18 per cent, depending on the conditions. That is money that is already budgeted for and put aside. When a worker leaves before long service leave is taken, that money is banked by the employer. That is money that is kept; that is a windfall gain. That is an entitlement that the worker misses out on.

AiG had a number of calculations; we believe those calculations to be obviously wrong, and transparently wrong, and I think you guys around the table would have picked it up pretty quickly too. There are 14 portable long service leave schemes across this nation, 10 of which have levies of 2 per cent or less. They have obviously picked the highest levy here in Victoria, and they have picked it for the reason of spin. We think you guys have probably seen through that pretty quickly, and we think their submission should largely be ignored.

The second myth is that this is a scheme about rewarding long-term workers. This is not a reward; this is an entitlement. This is an entitlement that has been fought for. This is an entitlement that has been campaigned for. This is not a gift. We have seen many submissions claim it is a gift or a reward. We believe that is wrong. This is an entitlement that the bosses have been getting around by changing the nature of the employment contract.

The third myth we hear is that it is bad for productivity. We also believe that to be an obvious falsehood. A portable long service scheme would keep experienced workers in that industry. It would reduce the need for retraining. It would reduce recruitment costs for businesses. It has positive repercussions for long-term employment. It supports people to stay in their industry by providing a break, and many workers use these breaks to recuperate and plan difficult surgeries that take a period of time to get back to work. It is good for productivity.

The last argument you always hear is that it will lead to fewer jobs. We believe this is the Chicken Little argument, and you hear this all the time. We heard it at the same time when we introduced superannuation. We hear it at the same time about increasing maternity leave. You hear it about annual leave. Hell, any sort of entitlement we hear about, we always hear it will cost more jobs—and it is simply not true. Throughout the submissions that you have seen we have not seen any evidence, of the 14 schemes that are still running, that it is costing any extra jobs. I am yet to meet an employer who says, ‘I will hire this person to help kick the economy along’. Employers hire people because they need to get a job done, and they hire the least amount of people to get that job done.

We have several recommendations, the first of which is that we would ask the Committee to complete the introduction of the Community Services Long Service Leave Bill. That was a bill that was introduced by the Brumby government, by Minister Neville, and reached the second-reading speech stage in October 2010. Many of you here would remember that. That was not enacted or completed by the last—the Baillieu-Napthine—Government. We believe this needs to be taken to full effect. We believe this legislation needs to be passed. We have an NDIS scheme that is coming. We believe this is urgent.

Secondly, we want this Committee to look at a portable long service leave scheme for all Victorian workers. Any portable long service leave scheme should be based on the current levels of entitlements in Victoria, if not better. There should be no loss of entitlement for Victorian workers who are in other portable long service leave schemes or have other long service entitlements. Lastly, we have asked this Committee to consider how it can coordinate with its federal counterparts to explore a national portable long service scheme.

Mr OLIVER — Thank you for the opportunity to address this Committee. The ACTU is the peak body that represents about 1.8 million workers in this country, and we would be urging this Committee to recommend a portable long service leave scheme here in Victoria as soon as practical. You have received our written submissions, but I will take the opportunity just to highlight a few points. At the outset we support the submissions that have been put by the Victorian Trades Hall Council. From the ACTU’s perspective we would like to see a national scheme implemented. Our preference is to look at the higher standard of 13 weeks long service leave after 10 years and pro rata after 7, or pro rata after 5 in exceptional circumstances, but the Victorian scheme could be a good start, because our submission is putting it in the basis that we want to look at phasing it in over a period of time.

If you go back to look at the concept of long service leave, it was put up with a desire to provide an entitlement to an extended period of rest for employees who have worked for many years. It is pleasing to note that the concept and the scheme started here in Victoria, so we are very keen to see, if we can get a

statewide scheme, that Victoria once again could lead the way for the rest of the country in putting a scheme in place. Over the years we have seen different schemes set up across different industries. If you take the coal industry and the construction industry, they many years ago implemented portable long service leave schemes because of the very nature of work in those industries. It was predominantly a transient workforce; it was highly casualised for the nature of the industries. That is why it was segregated to those particular industries.

Over time we have now seen a significant shift in the nature of work in this country. In part of our submission we have included our *Lives on Hold* report, which was done back in 2012, which was an analysis of the workforce. It showed that 40 per cent of the workforce is now engaged in some form of insecure work. At the time we had just under 24 per cent of the workforce who were employed as casual. If you take one industry, the accommodation and food sector, a huge 64 per cent of the workforce there is highly casualised. If you go back and you look at it, portable long service leave schemes came into those industries to recognise that kind of workforce. We are now seeing this precarious form of employment coming into the rest of the workforce, so it only makes sense to look at those models to translate that across to the mainstream.

The other thing to note is that labour mobility has increased. The example I often like to give is that I entered the workforce at the age of 15; the job I currently hold is my fifth job. My 20-year-old daughter is now on her 12th job. I am sure a lot of you could relate to that if you have children of your own in the workforce. The notion of staying with the one employer for a significant period of time has dissipated, but people stay within specific industries or they stay in employment. Recently we have seen portable long service leave schemes come into other areas—contract cleaners in Canberra, Queensland and New South Wales and the community sector in Canberra—again recognising the transient nature of the workforce in those specific areas.

The other benefit of these kinds of schemes, which I did not touch on in our submission, is the notion of protecting entitlements as well. When a company goes bankrupt, if you are employed in the construction industry or the coal industry, you will know that your long service leave entitlement is guaranteed and it is protected. I know my old union for many years has been campaigning to get protected entitlements, portable entitlements—that is the AMWU on the manufacturing industry, along with the other manufacturing unions. But if you are lucky enough to work for a construction company and the company goes belly up, your long service leave is protected. If you worked in any other industry and it went belly up, it is not protected.

Thankfully we have a national scheme in place that picks up your long service entitlement, but that is funded by the taxpayer. There is a benefit to the taxpayer—if you have a national portable scheme where employers are required to set that entitlement aside as it accrues, it will relieve the burden if that company happens to go bankrupt. The long service leave entitlement is recognised, and I know that Ai Group and other employers for some time have been saying it is anachronistic. The fact is that the law recognises it. That is why it is a minimum standard in the Fair Work Act. We realise that it will not just be specific industries that will benefit. All sectors and occupations in the contemporary labour market will benefit from the creation of a general entitlement.

We favour a national scheme, and we have modelled it looking at the highest common denominator, as I said, about South Australia and the Northern Territory. In our submission we have identified three models that you could look at. Firstly, you have what would be known as the approved deposit fund model whereby employers would deposit the funds into an account as they accrue. That would roll into new accounts that follow an employee from workplace to workplace. The second model is the industry-based defined benefit fund—a more limited portable model where employers register as part of an industry-based fund and workers entitlements accrue from workplace to workplace as long as they stay in that defined industry. That is currently up and running, for example, in the building and construction industry. The third one is the accumulation model, which is similar to how superannuation currently operates, whereby employers would pay long service leave entitlements into an account held for the worker by an approved financial institution and the worker can only access the funds after meeting a release criteria.

Those are our three models. We have also referenced a study that was put together by the McKell Institute in 2013 that looked at the pros and cons of having a scheme. It identified the benefits for employers. They are saying it maintains a level playing field for employers, particularly those involved in competitive tendering. There are administrative benefits for employers. There are tax benefits for employers where they can claim a tax benefit for the levies. It provides a more stable industry to boost the industry retention rates. It can attract and retain skills and an experienced workforce, therefore increasing industry service standards, industry performance and, as Luke Hilakari has referenced, productivity as well. Of course it can reduce mental stress claims that can be quite costly to the employer.

The benefits to the employees include mental health, wellbeing and work-life balance. Employees can plan better their work and life balance. There is greater employment security and equity. We now have highly casualised or contract roles. We are concerned that 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. We want to try to create a bit more equity, mobility, flexibility, employee attraction and importantly employee retention. The other benefit for the employees, as I mentioned before, is that in the case of companies going belly-up, they will know that their entitlements are there.

Also in our submission, while supporting a national scheme and supporting what is happening in Victoria, we are suggesting something broader as well, like a national inquiry to look at national schemes. I have to say from the ACTU's point of view we are taking an holistic view of this. We are looking at recognising the changing nature of work. It is significant. We have seen it change significantly over the last 30 years, and we have no doubt that there is going to be even more significant change looking ahead to 10 or 20 years from now. It will not just be long service leave that we will be looking at in regard to portability entitlements, but certainly long service leave is a good start and you are in a great position here in Victoria in putting it up.

The CHAIR — Thank you for that. We will ask questions, and if both of you would like to make comments on those questions, you are welcome. If one is enough, we will leave it up to you.

Mr HILAKARI — Sure. We will do a double act.

The CHAIR — Your submission notes that portable long service leave would encourage worker retention. In your experience have interstate schemes, such as the ACT's scheme in the community service sector, improved the retention of skilled workers within the sector?

Mr HILAKARI — Certainly that is the response we are getting from the affiliate unions. These are typical service sector-type jobs. They spend a lot of time with the community. When contracts change in that industry, so do entitlements. That is the problem. What you ideally want is the entitlements to be reserved, and that is an additional incentive for people to stay in that industry for that ten years. They know that entitlement is coming along. They know that break can be in the distance, and it encourages people to say, 'This is my profession. I want to be here. I want to get the entitlements that we know we deserve and that organisations are otherwise banking', and it encourages them to stay there. That is a productivity gain for the businesses or the not-for-profits in which they are engaged.

Mr OLIVER — My own experience is from many years of being an organiser in New South Wales in the building construction industry. The best model that we found was the building industry portable long service leave scheme in New South Wales. It was basically zero cost to employers. It was originally levied off the cost the developer had to pay on putting up a building. The money was reinvested, and it basically became self-funding for many years. The way that scheme would operate was that you had an eligibility period. If you dropped out of the industry, I think it was for two years, and you were not engaged over that period, you would lose your accrual. That in itself was an incentive for a lot of these people to stay within that particular sector for the reason that they had to be eligible for a long service leave payment.

Ms RYALL — On the Chair's question, the question related to community service, and you said your understanding. Is there any independent data that backs up that it has created retention in that sector?

Mr HILAKARI — Yes. The ASU submission is here, and I think there were some things in that.

Ms RYALL — Not that I saw.

Mr HILAKARI — We are happy to provide some data to you, if that is what the Committee is seeking.

Ms RYALL — In terms of the origin of long service leave, which was about going back to England as a colony, Australia and New Zealand are, I think, the only countries in the world that have it. For the employee, long service leave was about providing loyalty and continuity so they would get that rest period as well as investment in skills and competencies and being able to increase that. For the employer, it was about improving productivity and that reduced cost of turnover which invariably comes when you have turnover of staff, which is additional training and so forth. That was a two-way benefit—a give and take. How does that help? From my understanding of what you are suggesting it breaks that nexus and becomes a one-way street, not a two-way street, because in terms of productivity, whilst they may stay in the industry, there is still always the cost of turnover of staff, certainly in additional training. How does what you are suggesting actually help an organisation to grow and create jobs, given that the employer essentially would have additional costs when there is turnover of staff in the industry?

Mr OLIVER — I did reference the McKell Institute report, so I would urge you ...

Ms RYALL — Can I just make a reference to that? I have done some research on the McKell Institute. It was actually set up for increasing communications with Labor and its voters, and that is fairly clear from research on the internet. I understand what you are saying, but I am just talking about independent research.

Mr OLIVER — But hang on, they are serious academics. Academics can give independent research.

Ms RYALL — I understand. My research on the McKell Institute indicates that its background is that nexus. I hear what you are saying.

Mr OLIVER — They have sat down, they have asked the question of employers and they have paid particular attention to the people in the cleaning sector as well, where they said it had, for them, positive effects, including a boost in industry retention rates by retaining skills and experience and increasing service standards and industry performance. They do not go off and make this stuff up. They go and sit and speak to employers in the industry. It is fairly clear from the employer's perspective; they can see the benefit of it.

When it comes to retention, any scheme that allows employers to keep employees retained not only in their own enterprise but in the industry is a big plus. It is a big plus not only to the individual enterprise; it is a big plus to the industry sector as well. If we are serious in this country about dealing with productivity levels, we would be embracing something that is about improving productivity rates across an industry as well, and clearly it has got these benefits.

Ms RYALL — Just on that point, obviously there is a cost when there is a turnover of staff. That goes without saying. Now there is an additional cost of a long service leave for which the entitlement has not kicked in until seven years previously because there was loyalty and a mix of improvement of skills. Both were giving. I see this as very one-sided.

Mr HILAKARI — We would say that that is not the case because this is a cost that has already been factored in. When someone employs someone—let us say a part-time person at \$50 000 a year—maybe they are saving 16 per cent on costs so the actual cost to that employer is \$58 000. That extra \$8000 gets spent—it is part of their entitlement—but also part of that money is reserved. Responsible employers reserve that long service leave payment. When that person ...

Ms RYALL — I would suggest to you that in small business, that is not the case. They get to that 10 years and they then cover the cost of a replacement person—if the person takes long service leave.

Mr HILAKARI — I would suggest that for most employers it is the case.

Ms RYALL — Small business.

Mr HILAKARI — Small businesses know how to plan too, and I would not treat small businesses so shabbily as to pretend ...

Ms RYALL — I know the sector very well.

Mr HILAKARI — We all know small businesses very well, and as union officials we know many businesses very well and the workers they employ. This money is put aside and when that worker leaves that money does not follow the worker, that money is banked by that business and is a windfall gain.

Ms RYALL — It is the employer's money in the first place.

Mr HILAKARI — No, it is an entitlement that has been earned and ...

Ms RYALL — Not until seven years.

Mr HILAKARI — No, it is an entitlement that has been earned and negotiated by workers.

Mrs FYFFE — I am not sure if you should be arguing.

The CHAIR — We can have questions and answers but ...

Mrs FYFFE — But Chair, there was a debate with the previous people we had here and you permitted debate before, strong debate, from two of our colleagues so I do not think you can stop Ms Ryall.

Ms RYALL — We can agree to disagree, but I will just let you know that the 500 000 small businesses may have that on their books but very seldom do they apportion the money. But when staff do, if they do, take long service leave, they will cover the costs at that time of obviously a replacement for that period. That is the way generally small business functions in respect of that. This is an additional cost.

Mr OLIVER — Can I just challenge you on the cost aspect of it, and I referenced this just a moment ago. If you look at the New South Wales construction industry scheme, there are a lot of very small contractors that work in the building and construction industry. The way that that was established was there was a 0.1 per cent levy struck so if you wanted to build a building, 0.1 per cent of the cost went into the project. That kicked off the scheme. Over a period of time, because the money was invested in the same way that superannuation is invested, that actually subsidised the scheme so that it became a zero cost. So for a small business employer in the construction industry, even though their employees would receive a long service leave benefit, the cost to that employer's pocket was zero. If we got a national scheme in place in a similar vein you would find that there would be a cost saving in the long run for many employers.

Mr MELHEM — I might follow up on that. That is great for the construction industry. I agree with you totally. How would you do that for other industries—how would you replicate what is being done in the construction industry? For the construction industry it is a levy on a project. When it comes to the community sector and to manufacturing, would you consider a levy? How would that work?

Mr HILAKARI — Yes. As you know, Cesar, we were involved for many years in looking at a paid leave scheme and you can do the modelling on it. You would find that at the moment the raw long service leave entitlement, take the metal industry for example, would be 13 weeks after 10 years and I think it works out at 2 per cent of payroll. So it is arguable to say that in an industry where you do not have a high turnover, that is what the employer is putting out—2 per cent. But if you have a national scheme, it could be somewhat less than that if the income that is being generated gets reinvested back into it.

It is similar to the building industry. That was a levy on the developer. It could be something that would be a levy entitlement across the industry, similar to the way that superannuation is done at the moment with an SG charge, but it would be somewhat less than what employers are currently paying at the moment.

Mr MELHEM — We had the AiG here earlier who talked about the cost and they picked manufacturing as an example. They said the current cost in Victoria is \$115 million under the current arrangement. If they go to a portable long service leave scheme, that would go to \$457 million. I do not accept those figures. Have you done any costing on what a scheme is likely to cost? I think we have two arguments. The employers will argue the full cost of the scheme as a new benefit, which it is not. You will argue that it is zero change, which is probably not correct. The answer is somewhere in between. You have the current benefit which somewhere between 50 to 70 per cent of employees already access anyhow. The employees are missing out on somewhere between 20 and 40 per cent. That is just a good guess. Have we got any sort of costing around that? We need to lower what the real cost is instead of certain sectors running a campaign and scaring people off by saying it is going to destroy jobs. Is there any research you can point us to?

Mr OLIVER — Our submission was looking at a national inquiry to start bedding down. Of course it will vary from sector to sector depending on the turnover of the work force in it. Again I would suspect that the AiG's costings did not take into account that if there were a portable scheme under which the funds were generating income and they went back to actually subsidising that entitlement, you would find that their end figure would be significantly less if the benefit was being generated back into subsidising that entitlement.

Mr HILAKARI — The AiG submission took 2.7 per cent; they took the CoINVEST's number and just did some maths across all of Victoria. They picked one of the highest numbers they could pick, a different number from what was considered by the 2010 Parliament—sorry, before the 2010 Parliament—which was I think 1.6.

Mr OLIVER — It was 0.86 actually.

Mr NARDELLA — That was for the SACS award.

Mr HILAKARI — That was for the SACS award.

Mr NARDELLA — Not sex—SACS.

Mr OLIVER — That is right.

Mrs FYFFE — Luke, you made a comment when you were discussing the fact that people have expressed concerns about what the costs would be and the loss of jobs if the scheme was extended and you referred to them as 'Chicken Littlers'; yet are these concerns not justified when Victoria lost 18 600 jobs in the month of August alone and, if this comes in across all industries, won't people who have been in the work force for almost 10 years be discriminated against? An employer, when they have a choice of two or three people to employ for a job who all have the same qualifications, might look at the older person and say 'They are going to be taking this amount of time off, which is going to cost me in the hire of replacement staff while they are taking long service leave?'. How would you manage that?

Mr HILAKARI — There are several things in there

Mrs FYFFE — It is because I am only allowed one question.

Mr HILAKARI — That is all right. It is a compound question. That is good. When it comes to the unemployment figures, we are always very concerned about unemployment across the state and the Victorian Trades Hall Council has been very strong in coming out about some of the issues around it. If we look at our automotive and manufacturing sector, we can see the best bit of 35 000 jobs will go in this state. That is not because of a discussion around portable long service leave schemes, that is because a federal Liberal government provoked those auto ...

Mrs FYFFE — No. You cannot separate it completely. When you are investigating whether something is worthwhile or not you have to take into account what is happening, whether it is caused by market forces, whether it is caused by competing economies that have lower wage costs or whatever the reason. We have to look at that and consider it in the whole picture.

Mr HILAKARI — Yes, as I was saying, the automotive industries are leaving because they were provoked to leave. If we look at manufacturing costs, they do not surround portable long service leave. They are looking at things like the Australian dollar. That is what they are looking at. When the Australian dollar drops from \$1 to 70 cents, that is a 30 per cent difference as opposed to a scheme where we are talking about 1.6 per cent to 2 per cent.

Mrs FYFFE — But one of the paramount things for an employer to go overseas and produce their product is the cost of wages. It is an important component.

Mr OLIVER — I dispute that. This is the mythology that has been put around for some time—that the reason we cannot compete in the manufacturing sector is because of wage costs. It is not. I have been over to China and had a look over there. The reason we cannot compete is because they make significant investment in R and D, in innovation, in skills and training, in the automation of their production processes. It is not so much labour-intensive; in fact their only competition now is from other low-wage nations in regard to labour-intensive industries. It is a myth that we are not internationally competitive because of our wage costs.

Mrs FYFFE — We will have to disagree on that.

Mr OLIVER — Have a look at Germany. Germany is a case in point. It is highly productive with very low levels of unemployment and they have very high wages. I do not buy that argument.

Mrs FYFFE — You may not, and we will agree to disagree on that I think.

Mr OLIVER — The facts speak for themselves.

Mrs FYFFE — When we look at the clothing industry, the footwear industry, and why they moved overseas, we have to take all of this into account when we are considering it.

Mr HILAKARI — Yes, you take everything into account when you consider a scheme. What I would like you to take into account is all those hundreds of thousands of Victorian workers who are missing out on that scheme because of the forms of sham contracting that we have in this state. They are the people who are missing out, and they are the people you should stand up for.

Ms RISELEY — There were some further parts of that question.

Mr HILAKARI — What were the other parts?

Ms RISELEY — There was one about discrimination against older workers.

Mr HILAKARI — We have not found in any of the CoINVEST schemes that there would be discrimination against older workers. The current discrimination that someone may face is that if they are coming up towards their long service scheme—they are reaching that 10 years or that 7-year period in Victoria—if you are looking for someone to knock off, maybe they will look to move on that older worker. If anything, this will secure older workers into more permanent employment. We think this is a great thing for older workers.

Mr MELHEM — Following on from that, when a person due for long service leave changes jobs, for example, that is an opportunity to take long service leave—before they move onto the next job. These sorts of things happen in construction, don't they?

Mr HILAKARI — What you will see is a lot of people take long service leave because they have got a medical issue to take care of, you know, replacing a knee or replacing a hip. Typically, you might have

10 days sick leave. You will go well beyond that before you are ready to get back to work. People will do this to make sure they can get better and get ready to get back to work. This is what these schemes do. They not only provide a break; they provide time for recovery, and I would have thought that was good for productivity in business.

Mr OLIVER — The other advantage too of course, and you would be familiar with this, Cesar, is in those areas where you may be confronted with a downturn. In order to avoid redundancies normally we will ask employees to either exhaust their annual leave or long service leave. If you have got employees who can access long service leave, it is a good alternative to redundancies occurring.

Mr CRISP — I would like to take us down the impact on not-for-profits. Not-for-profits rely on government funding to exist, and I am concerned about how they will manage in a portable long service scheme environment. Some comments?

Mr HILAKARI — Contracts are given in not-for-profits. What happens to a number of these workers is, when that contract changes, they may miss out on that long service leave. That is a problem. We think that is an issue of fairness. Contracts need to be appropriately funded for long service leave. That is what we would say.

Mr CRISP — I gather you will be asking government to increase the funding to those organisations. Have you any idea what the cost to government may well be?

Mr HILAKARI — The scheme that was put forward in 2010 via Minister Neville was 1.6 per cent of the wages bill.

Ms RYALL — What does that equate to?

Mr MELHEM — It is 0.8 cents a week.

Ms RYALL — No, no, in cost?

Mr HILAKARI — Sorry, I do not have the number in front of me for every contract that you guys do for the SACS sector.

Mr NARDELLA — It was in some submissions.

Mr HILAKARI — Yes, it will be there.

Mrs FYFFE — And you have consulted with the not-for-profit sector?

Mr HILAKARI — The not-for-profit sector has also written to the various 50-odd submissions you have seen. A number of those organisations have expressed support for a portable long service leave scheme.

Mrs FYFFE — But have you consulted with them?

Mr HILAKARI — That is your job to consult with them, obviously.

Mrs FYFFE — But because of some of the comments you have made.

Mr HILAKARI — We have consulted with our members.

Mrs FYFFE — With your members, okay.

Mr HILAKARI — And you would have seen the submission from the ASU to that effect.

Mrs FYFFE — Yes, I just wanted to know if you had done any research.

Mr OLIVER — Also, from our point of view, we do not see that there should be any discrimination between whether you work for the not-for-profit sector or you work in the manufacturing industry or the cleaning industry or the private sector or are a government employee. That is the very reason that we want to look at these schemes. That is why I mentioned before about age discrimination; there is discrimination that exists out there across different sectors and between different definitions of employment.

Mr CRISP — My second question I am interested in is if a portable long service leave was introduced, would you favour a reduction in the casual loading for workers as a quid pro quo?

Mr OLIVER — No. When the casual loading was struck it never contemplated and never allowed for a long service leave component, because of the very nature of casual employment. No-one contemplated that you would have a casual employee engaged for five years or more at the time that casual employment was struck and at the time the casual loading was struck. If anything, it is an additional benefit. In fact there may well be an argument for us to look at increasing the casual loading to incorporate a higher loading in lieu of the fact that they are missing out on long service leave, because the whole idea of casual employment was to supplement your permanent workforce. We now have this oxymoron that you are a permanent casual. As our report *Lives on Hold* has shown, there have been many employees who have been engaged as a casual employee for 5, or 10 or plus years; so there would be no contemplation of trying to discount the casual loading because it was never contemplated when the loading was struck in the first place.

Ms RYALL — But the law does require, under the changes to the Long Service Leave Act in 2005, that any continuation of casual employment even at times with breaks attracts long service leave for those casual employees.

Mr OLIVER — Correct, so that is even more reason why we would not discount the casual loading.

Ms RYALL — My suggestion, though, is that your point about these permanent casuals is they get it anyway.

Mr OLIVER — I said that that they get it, plus they get their loading as well; so we would not contemplate dropping the loading.

Ms RYALL — Yes.

Mr OLIVER — Between 15 and 25.

Ms RYALL — Okay, I understood it was between 25—can we check that?

Mr HILAKARI — The idea of stripping away someone's hard-won entitlements, people who are sometimes some of our poorest workers, to pay for another entitlement would be outrageous, completely outrageous.

Mr NARDELLA — With eligibility, what would be an appropriate amount of time that you would be in or out of the industry? I remember when the portable long service leave was established in the construction industry—the metal industry—when I was working in it many, many decades ago, there was a time period and once you were out of that then all the benefits went. Would it be 3 months, 12 months, 24 months? What would be a reasonable time to be out of an industry?

Mr HILAKARI — It depends on the model. The ACTU has very aptly put forward three different models. I think it will take a little bit of work of this Committee to have a look at the three different versions, because it depends on the industry in which people work. If you are looking at the industry fund, the time frames could be different as well. In the Victorian submission we have looked at what is currently in the Act. We have done the 10 and 7, but the period of time might change depending on the industry.

Mr NARDELLA — No, sorry, eligibility in terms of being out of work.

Mr HILAKARI — Out of the industry—no, I understand your point, but it might be different depending on the industry you are in.

Mr NARDELLA — Why would it be different?

Mr HILAKARI — Because for a construction worker, where you have different times in which buildings come up and down, versus a SACS worker, versus maybe a security worker, maybe things would be a little bit different. We have not given you a fixed time frame in which people would have to be out of the industry who would then lose that entitlement. We have not given you a view on that.

Mr NARDELLA — Having worked with a bloke called Arturo, who worked at Smorgons and got sacked at 9 years and 10 months—it might have been 9 years and 11 months, but he got sacked—and then 3 months later he was reemployed, have you got any figures in terms of employees, workers, that have missed out on long service because they have come up to their time?

Mr OLIVER — It is very difficult. Anecdotally I could sit here and tell you as a union official with 20 years in manufacturing it was not uncommon that people would find, particularly if there was a redundancy situation in place, that the red pen would come out. It would go for your longer serving employees. That is why the union movement has long argued in redundancies it should be last on, first off to avoid that situation, because we were seeing it. We have got no real way of fighting that unless individuals complain or register or have taken action in the commission to fight an unfair dismissal.

Mr HILAKARI — It is not unheard of. Your example holds true.

Mr NARDELLA — That was back in the 70s.

Ms RYALL — But that would be different now, because three months is actually under the legislation considered continuous, so in this current day, Don, that person would be fine.

Mr NARDELLA — No, Arturo would have then not been in a job for four months. That is the way that these employers work—and that was Smorgons, before they amalgamated.

Ms RYALL — In that instance.

Mr NARDELLA — But I came across a number of my friends who were in that situation, and I would probably like to see some argument in terms of having the pro rata go down to five years, so you cannot discriminate. Because if you are going to start knocking people off, then they are entitled to some long service rather than no long service.

Ms RYALL — In terms of the cost—and I cannot buy the assertion that there is no cost to business, to small and medium business, because generally they run on very thin margins—given that we have just in the last month lost nearly 12 000 full-time jobs, given they now have the additional costs of an extra two public holidays on that, and given that there are economically some storm clouds on the horizon, where is the money going to come from? Because they do not have it.

Mr OLIVER — I do not buy this argument that there is this relationship between unemployment and rates of pay.

Ms RYALL — I am giving examples.

Mr OLIVER — Okay, but I will deal with the facts. This is an argument that employers run every year when we put in an application to increase the minimum wages of many millions of workers in this country. Every year the employers will roll up and put submissions in place, saying that if you increase minimum wages it is going to have a negative impact on employment. They basically argue the sky is going to fall in. And every year the minimum wages go up—not as high as we would like to see it, but nevertheless they do go up—and the sky does not fall in.

If you look at the US, for example, where they have abysmal minimum wages, the debate shifted the other way, because they recognise by increasing the minimum wage you are generating more income in the economy. It stimulates the economy and creates employment. So I do not accept the argument that there is a relationship of higher wages leading to unemployment. It is a cost. It is a cost of doing business to factor in ...

Ms RYALL — I did not make that ...

Mr OLIVER — You did. You inferred that.

Ms RYALL — Not between higher wages costing. What I am suggesting to you is that small business in particular is having significant additional cost impacts at the moment. Economically, from a global perspective, things are a little bit scary for some, and so for a small business that is operating on thin margins, where do they get the extra money from? Where does the money come from?

Mr HILAKARI — When small businesses write a budget, they automatically look at the costs of employing someone, and part of that is the on-cost.

Ms RYALL — But these are additional costs.

Mr HILAKARI — No, the on-cost is already provided for when you do a simple business budget. It happens all the time, and businesses are smart enough to get that done.

Ms RYALL — Can I suggest ...

Mr HILAKARI — If you want to talk about unemployment, we can talk about the unemployment in Victoria hitting a peak of 215 000 under your government. If we want to look at our problems of unemployment, I think we can have a look at that.

Ms RYALL — I think we should stick to answering the questions.

Mr HILAKARI — You are the one who raised unemployment.

Ms RYALL — No.

The CHAIR — Excuse me for a second. Can we respect the Chair, please, on both sides. If a question is directed to you, answer directly to the Chair. If you are not happy with the question, you do not have to answer it. You can make any comment if you like, and we will leave it at this stage.

Ms RYALL — Chair, the question was: where is the money going to come from for these small businesses?

Mr OLIVER — Through the Chair, this argument can be run every day. The fact is the cost of living goes up. You have this thing called inflation, so input cost into businesses will always go up. That is the nature of our society, and businesses need to plan for it. This argument to say that labour costs are too high; does cutting the wages in half mean we are going to double employment in this country? I think not. There are cost inputs. Your electricity bills go up; you make account for that. Your rates go up; you make account for that. The suggestion that one public holiday is going to send a business bust, for me that is either that your business is on a knife edge or it is poor planning that you cannot ameliorate the cost of one public holiday over the rest of the financial year. The same would apply here.

Ms RYALL — What I am suggesting, through you, Chair, is that there are additional costs at this point in time. It gets to a point, as you say that, costs are rising, so they are paying increasing electricity costs. If the customers do not walk through the door, or if the contracts are not available and they move, then the impact is that the business may have to shed staff. Whilst small business can best predict its costs, it cannot guarantee the income, so when it is running on small margins and it is not making large sums of money, do we not get to a point where there is a straw that breaks the camel's back? With additional costs keeping on

incurring for small business, that is my concern. You do not have to answer it, but I am just stating that for the record.

Mr OLIVER — One thing I will respond to, and I do agree with you. I am wholeheartedly agreeing with you with your comment that what determines the future sustainability of the business is whether they can get their customers in the front door or whether or not they lose their contract. They are the main reasons why businesses close. The reality is businesses succeed and businesses fail. I do not know the exact stats. You would be more familiar with how many businesses ...

Ms RYALL — I like to see them succeed.

Mr OLIVER — Yes, but the reality is that not everyone will succeed, and that is not because of a small cost impost for long service leave or wages costs. The fact is whether the business model is right, whether they have customers through the door, whether they have the right contracts. They are the more determining factors that keep the door open or not.

Ms RYALL — And the additional costs.

Mr MELHEM — The whole argument about portable long service leave, according to my understanding, is to cover the employees who miss out on the qualification period, in some cases five years or seven years. That is what we are talking about. I am talking about the cost of people who are over seven years, because these people get long service leave.

Mr OLIVER — Yes.

Mr MELHEM — Have you got a preferred model for an industry-wide system to cover all employees? Is it a model where a statutory authority will run it—government, for example—or private enterprise? What for you would be the preferred model?

Mr OLIVER — You can speak on behalf of Victoria, and I was speak nationally.

Mr HILAKARI — So you have three models that are being put forward by the ACTU. The Committee should consider all three of them. What we would say the hallmarks of a good model would be a universal scheme, whether that be the approved deposit fund or the industry CoINVEST model or looking like a superannuation fund—that is all good. You guys will need to consider that. We believe there must be mandatory contributions. We are saying that the minimum would be 8.7 weeks after 10 years, the same as the Act. We believe a model should have an equal representation of employers and unions, similar to the CoINVEST model. We want to make sure that it would be easy to understand for both workers and employees, and that none of these models diminish any of the portable long service leave schemes that are in place or any long service schemes that have been negotiated under an enterprise agreement.

Mr MELHEM — But is it a statutory model you are talking about or private? CoINVEST is a private company. Are we looking at that model, which has all sorts of problems now according to the AiG in relation to how that is running, versus a statutory authority, where appointments to that board, for example in terms of how it is run, are government appointees?

Mr HILAKARI — We have not given a view on how you shape it—the format—whether it is statutory, or whether it is independent. We would say that a good model would look like equal representations of employees and employers.

Mr OLIVER — From where I sit—and I mentioned this in my opening remarks—the discussion we are now having in our movement is looking at the future, because work has significantly changed. We are even now concerned about this new kind of technology and the impact it is going to have on work, so our longer-term objective would be to look at a more general scheme in regard to leave entitlements. But, as I have said, we want to have a look at doing it through a national review. We would like to even get employers on board to be part of that, to have a look at what the costings are and what is achievable or

what is not. But right now at this point we support the notion of the Victorian scheme to be put in place. We can obviously build on that.

Our view as well is that if you want to look at one of the most successful models we have seen in this country, you only have to look at the industry superannuation model. We would simply be looking at that as the guide for a statutory scheme into the future, because that is the real leveller. That levels the playing field for everyone—small business, large business and everyone else on the one playing field—but it also has enormous benefits to the individuals who are part of it and to the economy generally.

Mrs FYFFE — Following on from what Don was talking about as to how long you can be out and still benefit from this, I cannot remember the report—and I wish I could; I have been frantically trying to think about it—which talked about how the generations coming through now will change jobs 6, 7, 10 times in their working life, but not just change jobs; they are actually going to change industries. I am thinking about, in my family alone, some of the changes that they have made. I can use you as an example. You could be a union official now, you could come into Parliament for a term, and you are out for four years.

Mr HILAKARI — I know what you mean.

Mrs FYFFE — There are all the things that can happen easily. You are in the building industry. You might go into banking, or you might go into having a small business along the way. If it came in—and I am serious about this—how could it be applied? Because it seems to be a larger growing workforce who are moving, whether it is aspirational, whether it is job opportunities or whether it is to get a higher salary. But they are going to move from industries to industries, not just state to state; it is a complete change. How would a portable one affect them, when it is only just ...

Mr HILAKARI — That is a very good question; that is very good. What we are thinking about is it depends on the model. If you think of it like a super fund model, where it does not matter which industry I might change to, I might go from here to—you gave the example—Parliament or back to the construction industry. It does not matter. Where I ask my employer to invest the funds, that follows me. It could be a model like that. Some people will lean towards the industry funds, and they will lean towards that model just to be caught, like in the CoINVEST model, as sort of an enticement for people to stay in that industry, so when you leave that industry you are also leaving behind, possibly, long service leave entitlements. These are questions that are well worth asking for this Committee. That is why there is some attraction to a universal fund like your super schemes.

Mrs FYFFE — I think we were thinking along the same lines really.

Mr NARDELLA — It is a good point that you make, Christine.

Mr HILAKARI — It is a very good question.

Ms RYALL — Can I add to that, Chair?

The CHAIR — Yes.

Ms RYALL — If they do leave the industry, does the money come back to the employer?

Mr HILAKARI — No, because the entitlements are earned by the employee.

Ms RYALL — Yes, but if they have left the industry so they are never going to draw on it ...

Mr HILAKARI — It stays in the scheme. What we have seen from many schemes is that has helped underpin what would otherwise be higher levies, and from time to time that will allow the scheme to become, in some places, self-funding. When that scheme becomes self-funding that means employers' contributions get reduced.

Mr NARDELLA — And that is part of the discussion.

Ms RYALL — So businesses are essentially putting money in to fund that when the employee who has worked for them will never get the benefit of it.

Mr HILAKARI — But the dividend back to the business may be reduced contributions.

Mr MELHEM — But if the employees, if we have a universal scheme ...

Mr HILAKARI — That is right. They will take it with them.

Mr MELHEM — Unless the employee dies before the entitlements, or becomes fully disabled and goes on the pension, there is a high chance that no-one will miss out—it will be a small portion—if you have a universal scheme.

Mr HILAKARI — That is correct.

Mr MELHEM — If you have an industry scheme, the likelihood of a person missing out is there because unless you have full service, but if you have a universal scheme it is highly unlikely that an employee will miss out.

Mr HILAKARI — That is the balance.

Mr MELHEM — That is the argument about which scheme you go to.

Mr NARDELLA — I just want to go back to what has been talked about before. If a business sets up a business plan and they are looking at employing somebody, like with annual leave they would put that money away, wouldn't they? A responsible employer would put that money away and then when somebody goes on annual leave they pay them.

Mr HILAKARI — That is exactly right.

Mr NARDELLA — So that would be the case with long service leave.

Mr HILAKARI — That is the case with long service leave, or ...

Mr NARDELLA — So what you are arguing is that that money, instead of the employer putting it away into their bank account, or into a fund that they set up or whatever, actually goes into either a general industry scheme or it goes into an individual's long service leave scheme.

Mr HILAKARI — That is exactly right. That entitlement that has been earned over that period of time will go with that employee rather than go with that employer and be banked as basically a cash windfall.

Mr OLIVER — I have long run the argument that if I walked into my local bank tomorrow and said, 'Hey, I want an unsecured loan of 30 grand and I will pay it back with zero interest', I am sure the bank would tell me to nick off. Unfortunately we have seen the practice in this country that where employees are eligible to accrue entitlements for every week they work—in fact you accrue a benefit for a sick leave entitlement, for an annual leave entitlement, even for a redundancy benefit if you qualify for that, and a long service leave benefit—we have seen too many cases where employers use that accrual as an interest-free unsecured loan. That is why when a company goes bankrupt, and the time comes when the poor old employee gets in the queue behind the secured creditors, there is often nothing left.

Mr NARDELLA — And the ATO. Everybody is behind the ATO.

Mr OLIVER — No, it used to be the ATO, but they have now jumped behind these secured creditors. Employees are not deemed to be secured creditors. Fortunately after many years of campaigning we convinced the Federal Government to put in a federal scheme called the fair entitlements guarantee scheme where the minimum entitlements for annual leave and long service leave will get paid out, but that is then shifting the burden away from the employer onto the taxpayer, whereas this kind of scheme keeps the employers honest.

Mr NARDELLA — With CoINVEST, from 1993 to, I think, 2000 there was that period of time where no employer had to pay. You would put the ...

Mr OLIVER — Contribution order, yes.

Mr NARDELLA — Why was that the case, and why is it now the case that it is back up to 2.7 per cent? Was there a special situation between 1993 and 2000? What was the special reason?

Mr OLIVER — I am not on the board of CoINVEST, but I could make some assumptions.

Mr HILAKARI — I am not on the board of CoINVEST either.

Mr NARDELLA — Okay, it is one I will ask them.

Mr OLIVER — They might have had a good investment strategy for that period of time ...

Mr NARDELLA — It was before 1989 and before the crash.

Mr OLIVER — That could well be the case, plus there may not have been a significant drawdown on the funds. It could have been an accrual period before a downturn in the building industry.

Mr HILAKARI — Less building going on.

Mr OLIVER — That is right, If you have a downturn in the building industry, then do you call on those entitlements as well?

Mr HILAKARI — Yes.

Mr NARDELLA — Or people then, because of the eligibility, do not become entitled to it and the money just gets ...

Mr OLIVER — That could be another option, yes.

Mr HILAKARI — That money could just get banked in the ...

Mr NARDELLA — That is why I think there needs to be some thinking, depending on what the Committee view is, about those individual accounts so that if there is a downturn in the industry—and all these things are cyclical—and there is no work, then at least at some stage you have got, as an employee, as a worker, some entitlement.

Mr HILAKARI — That is why the super fund model is quite attractive.

Mr NARDELLA — Yes, but there would need to be some thinking about how you would make sure that your long service leave account is then given to the employer, like your super, but some of those regulations or that legislation is put into place.

Mr HILAKARI — Yes, you would have to be careful about writing those rules. You are absolutely right.

Mr NARDELLA — Yes, because you do not want somebody to have eight years up and then start from zero or whatever.

Mrs FYFFE — And you do not want a huge bureaucracy ...

Mr NARDELLA — No, you do not want a huge bureaucracy.

Mr HILAKARI — No, they are getting quite efficient at this.

Ms RYALL — In terms of the background of the data and references, ABS statistics, for example, say that there has really been no change in the casualisation of the workforce in, I think, the last 18 years, and in fact since 2007 it has actually decreased. Some of the aspects of your submission, I am just concerned, do not have the statistics or the data to back up the assertions that you are suggesting.

Mr HILAKARI — Through the Chair, we disagree.

Mr OLIVER — I will just refer you to our report that we did several years ago, and again it comes down to the definition. You are right; if you categorise insecure work purely as casual, we are still clearly of the view that it has increased significantly from where it was, but there are other forms now, so you have got fixed term, you have got part time, you have got the issue about contract work as well, which is this broader category which has significantly increased. That is the 40 per cent figure that we get.

The CHAIR — I would like to thank you both for coming and giving evidence to the Committee.

Witnesses withdrew.