C O R R E C T E D   V E R S I O N

ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

Inquiry into portability of long service leave entitlements

Melbourne — 14 September 2015

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

The CHAIR — Welcome to the public hearing for the Economic, Education, Jobs and Skills Committee's Inquiry into the 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 staff are recording today's proceedings. We will provide a proof version of the transcript so you can correct any typographical errors. I now invite you to make an opening statement, and then the Committee members will ask questions.

Ms MATHESON — Thank you very much. The Australian Chamber of Commerce and Industry thanks the Parliament of Victoria's Economic, Education, Jobs and Skills Committee for this opportunity to provide comments in relation to its Inquiry into portability of long service leave entitlements. The Australian Chamber's position is as reflected in its written submission provided to this Committee in August. However, we wish to address the Committee in relation to a number of key points made within that submission.

The Australian Chamber's primary position is that it would oppose any expansion of existing industry-based portable long service leave entitlements as well as the creation of new schemes. The Australian Chamber advances that position on a number of grounds, which include concerns that the expansion of portable long service leave entitlements runs contrary to the rationale underpinning of long service leave, will bring into effect a levy on employment which will have a negative impact on employment in Victoria and create apprehension about employing people with long career tenures and experience, will create additional administrative and financial burdens on employers and will negatively impact Victoria's competitiveness as a place to do business domestically and in terms of international investment.

I will address each of these concerns separately, first dealing with the Australian Chamber's view on the rationale underpinning long service leave. The founding purpose of long service leave is now redundant. With its genesis arising from the 1860s it enabled a largely migrant population of public service employees to make a long journey home by sea after 10 loyal years of service and was a benefit reserved for those relatively high in the colonial administration hierarchy. The objects of the entitlement appear to have evolved by the time of its introduction into state-based law applying to private sector employees in the 1950s at the time of the post-war boom, with the entitlement designed to reward faithful service with the one employer and to reduce labour turnover.

In relation to its role in reducing labour turnover, it is questionable as to whether legislative intervention is necessary in the modern economy as employer strategies targeted at attracting and retaining employees have evolved significantly. In relation to the objective of rewarding loyal and faithful service with one employer, the Productivity Commission expressed the view in its recently released draft report arising from its inquiry into the Workplace Relations Framework that while long service leave may not be an efficient measure for creating employer loyalty, it must have some effect which would be diluted with full portability, and the Australian Chamber agrees.

A key characteristic of the current long service leave regime that would be lost with the introduction of portability is the benefit employers derive — that is, in accumulating long service leave the employee has given long service to an employer, providing the employer with continuity, stability and greater productive benefits. These considerations need to be part of the discussion; otherwise this discussion is purely about an extension of employee entitlements.

Furthermore, the Australian Chamber does not consider that there has been any significant trigger warranting a shift in policy to provide for portable entitlements more broadly. In particular, ABS and HILDA data suggest there has not been any structural change in tenure that would warrant an expansion in long service leave. In fact our ageing population and increased participation rates of older Australians suggest that more Australian workers will accrue long service leave entitlements in the future, particularly as older workers have been found to have lower resignation rates than younger workers.

Portable long service leave schemes are generally understood to have been designed in response to the unique nature of industries, are typically engaged on a project basis and move from employer to employer as one project is completed and another starts. This rationale does not apply to industries that do not reflect this pattern of engagement. There are also doubts about the nature of long service leave entitlements derived from portable schemes. It cannot be assumed that employees take the leave. It is suggested by a number of sources that these entitlements are concerned with payments as opposed to leave in many cases, and this is addressed in our written submission.

For example, Ferris and others have observed:

> … it is clear that LSL entitlements are used flexibly, for a wide range of different purposes. LSL can be used for retirement savings; redundancy pay; death and disability pay; to extend parental leave or carers' leave; or as a lump sum resignation payment.

Accordingly, the Australian Chamber has suggested that contemporary research should be undertaken into the utilisation of long service leave by eligible Victorian workers.

There is no evidence to suggest that extending portable long service leave schemes to other industries will be a catalyst for retaining people in a particular industry. People now change careers for a variety of reasons that are likely to trump considerations related to long service leave, including personal development, financial reasons—including higher pay and better benefits—personal preference and job satisfaction, or issues related to health or capacity. Career decisions are very personal and the proposition that portable entitlements are a driver of loyalty to an industry is questionable.

The Australian Chamber also has concern that the expansion of long service leave portability will have negative employment impacts. The levies payable in relation to portable long service leave vary between states. However, the McKell Institute has suggested that a broad-reaching portable entitlement accompanied by a 2.5 per cent levy could, in the absence of counteracting wage reductions, have some dampening effect on employment and encourage businesses to use more capital instead of labour. The Australian Chamber agrees with this hypothesis and is also concerned that the extension of portable entitlements could create employer apprehension about employing people approaching the service milestones that would trigger long service leave—in case they give rise to absence shortly after commencement—because of the operational costs and impacts associated with covering the absence. These negative employment impacts will be compounded by the added financial cost associated with the payment of a new levy on employment and the cost of the additional administrative and compliance costs created by these schemes. Where employers are unable to pass these costs on to consumers, they will adopt other strategies to meet the increased cost of employing, which may result in a reduction in the number of people employed and/or the hours they work.

We note that the community services sector has been specifically called out in the terms of reference. The Australian Chamber encourages the Committee to bear in mind that many of the organisations delivering such services are not-for-profit entities, and we have concerns that an additional levy on employment in this sector will impact the sustainability of some community service organisations and the services they deliver.

It should also be noted that long service leave entitlements for many employees continue to be derived from federal awards that applied prior to the modern awards coming into effect or from enterprise agreements. The introduction of another portable scheme would create further complexity and confusion, particularly where employers operate across multiple jurisdictions and where employees move between roles, employers and industries.

A new levy on employment will also increase the cost of doing business in Victoria, and this will negatively impact Victoria's competitiveness. Paid long service leave in its current form is already an entitlement unique to Australia and New Zealand, with its origins tied to our colonial past. Further expansion of this entitlement will increase labour costs in Australia that are already high by international standards, impacting Australia's international competitiveness and attractiveness as a location for investment. A levy specific to Victoria will also disadvantage the state relative to state counterparts in terms of the cost of doing business.

In summary, in the Australian Chamber's view the negative impacts and risk associated with the expansion of long service leave entitlements outweigh the purported benefits which are not clearly established. A new levy on employment will increase the cost of doing business and employing in Victoria and impact the cash flow and competitiveness of Victorian businesses, which are poor policy outcomes, particularly in a time of economic uncertainty. We thank the Committee for hearing these concerns and would be happy to address any questions in relation to our submission.

The CHAIR — Thank you very much. Your submission notes that Victorian businesses will be financially disadvantaged if portable long service leave is expanded. Which industries do you think would be most adversely affected by the introduction of portable long service leave, and in what ways would they be affected?

Mr CLANCY — I think before we look at industries, the sector we would see being particularly impacted would be private sector small business employers. In circumstances where you take, for example, retail, if you look at the current award rate for an entry level retail employee, who is being paid $721 a week, a 2.7 per cent levy on wages there would equate to about $940 per annum. When you multiply that across five employees, that equates to $4700 a year. The larger the employee wage, that will incrementally go up. If you look at a full-time entry level community services employee, paid at $764.90 a week, our calculations are that that would equate to $1000 a year per employee. So you multiply it across for five employees. It is that capacity to absorb what would be an immediate payment if the scheme was to operate on a monthly basis or quarterly basis. That is cash going out of the business. So one of our prime concerns in looking at this is the small business sector. That is from a cost basis.

From a practical basis, it is the capacity for a small business to absorb the long service leave absence of an employee without having the ability to plan for it. If you take, for example, the way the current legislation works, as a small business you know your employee service milestones are approaching; you might then put in place arrangements whereby you are divesting duties off to other employees or you plan to get someone in to cover the long service leave absence. If it is a portable scheme, our concern is that small businesses have less capacity to cover the absences. If they have not got a long history with the employees, it really is just a sunk cost in terms of covering them for the period of their absence. In terms of the affordability there always has to be a distinction, as we are sure the Committee members will be cognisant of, between the public sector and the private sector. Where there are increased costs it is the capacity then of the employer in any given circumstance to pass those on.

Mr MELHEM — Chair, just a follow-up to your question: Mr Clancy, I appreciate you coming here, but what I have a problem with is your giving misleading information, or maybe your facts are wrong. The 2.7 per cent that is obviously coming from CoINVEST, which is the highest, and it always was— 1.3 weeks per year. For retail it is 0.866 weeks per year. It is nearly half. It is not 2.7 …

Mr CLANCY — As a percentage?

Mr MELHEM — As a percentage it is not 2.7; it is about 1.6. Secondly, you need to discount as well the portion of employers who already make provision for that long service leave. We need a real figure. If you want to quote a figure, I would like you to quote the real figure, which is only the figure where employees do not normally access long service leave—they do not have a 10-year or 7-year service with employers. It is really the shortfall, which will be far less than the 2.7 per cent. Would that be correct?

Mr CLANCY — I think the example we were trying to give is if you look, for example, at the McKell Institute research which said that if you set up a portable scheme, it would equate to a 2.5 per cent levy.

Mr MELHEM — Yes, but that is based on—and that is what I think it is important for us to actually distinguish between. Employers have a responsibility to account for long service leave entitlements. Various research indicates that 60 per cent stay with their employer for more than seven years. I think that is somewhere in your submission and various other employers' submissions. We only want to account for the 40 per cent who currently miss out on long service leave; otherwise we are double dipping—or at least try to work out the cost.

Mr CLANCY — But the design in the scheme would change in that you are not having the same number of employees—or the employees who are drawing upon long service leave, having accumulated 7, 10 or 15 years' service, that equation becomes different under a portable scheme. If the design of the scheme is to require payments as soon as the employment starts, our point is that that is an immediate payment that starts having to be made, not a provision, an accrual or a liability that may or may not materialise. That is money that, as we understand it, would go out via a quarterly, monthly or weekly payment—however the scheme is designed—to the fund. The point we are making is that, whatever that levy ends up being, that is a payment that is payable periodically rather than if eventually the liability arises.

Mr MELHEM — A formula has to be worked out, but 2.7 is misleading. That is the point I am making. A formula needs to be worked out, because I do not want to go and scare everyone by saying, 'It's 2.7 per cent. The world's going to end'. I am not saying we are going to go with it. I am basically making the point that when an employer organisation wants to quote to us, I would like real figures. The unions will say it will cost you nothing or that it will cost you next to nothing, which I do not accept either. What I am basically saying is that we need to be very careful when quoting figures. I am cautioning you. It will cost money.

Mr CLANCY — It is an exaggeration to say we have come in to mislead. I think what we are doing is working on …

Mr MELHEM — I accept that.

Mr CLANCY — I think what we are doing is working on research that is out there, schemes that are there and a scheme of which the design is not known. We are not setting about to overcook. We are saying, 'If you assume it is that'. I think the key point is this: if the scheme requires periodic payments for all workers across whatever employer size and whatever industry, they are periodic payments that are not currently made, and that is something that a business will have to account for.

Mr MELHEM — And what the formula is, yes.

Mrs FYFFE — There is an assumption by some people that an employer diligently makes provision every quarter for all the entitlements, but we know the reality is that a small business will use to the maximum any funds at their disposal to grow the business and fund the business, and when it comes time to make a payment they will find the money. This is a suggestion that is going to change the whole thing around.

Mr CLANCY — Yes.

Ms RYALL — Alana you mentioned the apprehension about employing people who may have been in the industry for a significant amount of time. If I were an employer and someone came along and they were eight or nine years in, the likelihood is that very soon or even at the time they might take that. Can you talk about the impact that that would have, and therefore if there were to be portable long service leave introduced in particular industries or so forth, what impact would that have on both the business and the sector?

Ms MATHESON — There is going to be an operational impact associated with covering that employee's absence. Depending on the quantum—I do appreciate that the details of the scheme design are not yet settled, and we are not sure what they might look like—let us say there was a 13-week entitlement that was triggered after, say, 10 years' service, which might look a little bit like the CoINVEST scheme, 13 weeks out of the workplace is a significant absence to cover. If somebody has commenced with me within a short period of time to the point that you are making, there is a degree of apprehension associated. Will that person request leave? What will I have to do to cover that person's absence in terms of financial costs of sourcing new labour? There might be disruption of my business, particularly if I am a small business and I am less able to reallocate responsibilities within my small workforce. I think there is a real repercussion that people may have some apprehension about, particularly as the service accrued up to that point will be have accrued with somebody else, so you have not had the benefit of that person's experience and loyal service and the productive benefit that comes with experience in tenure.

Ms RYALL — Would you expect to see that people who have gone past the seven-year mark are going to be less likely to be employed than people who are in the early …

Ms MATHESON — Potentially. It could be a consideration.

Mr NARDELLA — I just find that rubbish. It is like someone taking annual leave or extended sick leave. What do you do? You backfill. You have a look at that situation and you backfill. If you have a portable long service scheme, then in actual fact, as Christine said, you find the money. It is there. That $18 a week on your $940 a year has made that provision, so you are not finding that money. You are just finding the money to either backfill, or you extend responsibilities or something else. We had CoINVEST before say that it does not matter how long you have got, there is not an effect on people being employed, whether they are 7 years or 10 years in. I suppose if that is the argument, you make it every 5 years; you pro rata it for 5 years so you do not have this argument about 7 or 10. I just find this argument really silly, because otherwise you would not even have annual leave.

Mr CLANCY — The point we are making is that whilst that employee is out of the business, someone else is performing their work.

Mr NARDELLA — Correct.

Mr CLANCY — If you are putting on someone for a temporary period, you have to find someone and say, 'Hi, come and work for us for 13 weeks'.

Mr NARDELLA — Yes. For maternity leave it is the same thing.

Mr CLANCY — Right. So you are probably then paying for them on premium rates, either agency rates or casual rates.

Mr NARDELLA — Or on a contract.

Mrs FYFFE — With training costs.

Mr CLANCY — You have got to induct them into the business and get them up to speed, which has an impact on the productive output of your business.

Mr NARDELLA — Not necessarily, not if they are answering the phone.

Mr CLANCY — I am talking about a small business.

Mr NARDELLA — Yes, not if they are answering the phone.

Mr CLANCY — That does weigh on employers' minds.

Mr NARDELLA — You would not give anybody a break on that basis, would you?

Mr CLANCY — That is the concern that we are speaking to. Your point goes to that it is no cost to fund the leave, that that is already funded. We are not going to that point. We are saying that the replacement costs and the disruption to the business in the interim may weigh on employers' minds. You cannot say that is not going to be a factor. We are saying that it may be a factor. The fact is that for the broad economy this has not been a consideration, but it is being raised as something and it was cited recently by the Productivity Commission.

Mrs FYFFE — My own experience in small business is if you have only 8, 10 or 12 employees and someone is away, it is the owner who fills in, who does that extra work and adds to the extra time. It is extremely difficult in a small business to find someone to fill in, so I can understand the concerns that you are presenting. In the portable long service leave schemes in other states, is there anything that stands out to you that we should have in here with our existing portable long service leave—ACT, New South Wales, Queensland?

Mr CLANCY — The features of them—and no doubt you are aware that they tend to be in construction or there is some contract cleaning—seem to be associated with those industries which are either project based or contractually based, not necessarily employment that gives rise to long periods of tenure with the one employer. In construction the nature of the industry is an obvious reason as to why.

Mrs FYFFE — It was the way it started, wasn't it?

Mr CLANCY — Yes, but as to why it has not spread beyond that I cannot add anything further. The key component for us in all this is the nature of long service leave is that there was something in it for employers as well, and that related to the long service of an employee who over time became experienced, skilled, familiar with the business and part of the business such that the employer was deriving that benefit out of the exchange which then was rewarded with the leave. If you have a portable scheme, that same benefit to employers does not hold. It becomes a different scenario as to when people in the life of their employment with you as an employer are taking extended periods of leave.

Mr MELHEM — I understand that looking at a universal scheme presents a major problem for union members. But if we focus on certain industries—we have talked about long service leave, loyalty to employers, continuity of service, a bit of recognition et cetera—in the community sector or the aged-care sector, for example, what do you think could be some advantages in certain industries apart from construction where we can look at introducing portable long service leave to attract workers to stay in the industry. It might not be the same employer, but in particular with an ageing population would that be a possibility we should consider?

Mr CLANCY — I think there are a range of factors now that attract employees to sectors and employers, so to pin it all on to one …

Mr MELHEM — No, one of.

Mr CLANCY — What we found interesting in this was to look at the profile of the workforce and how it is changing. Some of the interesting data that is coming up is confirming that the older workers get, the longer their tenure in roles becomes, whereas younger workers are moving around. So I think if you were looking at industries to say, 'Where is that continuity?', you would probably start looking at the profiling of industries in terms of their demographics.

The key area for us is absorbing the cost. Some industries are able to do that, and maybe in a project sense that is why construction has developed the way it has; but, as was the experience with the CoINVEST scheme, when the eligibility rules were changed it went from being no contribution to contributions. That is just an example to say that if you introduce it, there may be an impact.

I am sure you have read the study that was done I think by the state government in 2010 for the community services sector, the PricewaterhouseCoopers research, which gives an example of where it might impact—for example, in the not-for-profit context or public sector. If the funding that is required to service a portable scheme is not there, the employers look to where you either reduce services or have to absorb the costs in some other way and cut something else. If you are talking about aged care, we know that that by its very nature is inextricably linked to government funding. There would be an impact there. In the private sector it will come down to the industry, the market, the capacity to pay and the size of the employer.

Mr MELHEM — Basically, your advice is—and I am not putting words in your mouth — we are always going to have employers arguing against it and unions arguing for it. But more importantly, from what you are saying, if we look at CoINVEST, for example, it is the set-up of any scheme and being able to give an independent-type analysis of what the real cost is. For example, for CoINVEST, when it was set up in the 1970s, it was 0.5 per cent. It went on holiday for 10 years in the 1980s and in the 1990s it went up to 1 per cent, then 2 per cent and now it is 2.7 per cent because of formula changes. If you average all that and then that can give you an idea of what a scheme will cost. Basically the figure has got to be right. You will never get it 100 per cent.

Mr CLANCY — Yes, but a unique industry context.

Mr MELHEM — Yes, but you can apply the same formula across other industries or universally. All these things need to be taken into account.

Mr CLANCY — In some ways this is a discussion about leave and the capacity to refresh during the course of your working life. That is not to say that there are not other ways of doing that. People now take breaks between roles. Many businesses are introducing policies where they have a 48/52 purchased leave scheme, where people can take up to 8 weeks annual leave just on a reduced pay rate. There is an interesting leave discussion to be had. I guess, to get back to our fundamental point, when we are talking about long service leave there was that swings and roundabouts between employers and employees. That was or is an integral feature of it.

Ms RYALL — You mentioned earlier—and I guess it is something I am mindful of, and our terms of reference refer to it—the economic impact. There is some talk of instability. We have seen it in the past. It comes up and down and there are, certainly in manufacturing, fluctuations in the Australian dollar. There are other impacts on organisations in an economic sense. Do you want to talk about how you would see the impact of a portable long service scheme on the wider Victorian economy? You also mentioned competition in relation to someone choosing to set up their business in Victoria or New South Wales. I will leave that to you to discuss.

Mr CLANCY — I think the basic proposition is that if you have some conditions that apply just in Victoria, that will impact on Victoria's position vis-a-vis other states. If it were to come to pass and the arrangements were in place which required those periodic payments across the board, that would mean that businesses would have to invest in Victoria in a different way from how they would invest into other States. That is an impact.

We have not, as have other industry associations, drilled down into the impact because we are a national body. We have spoken with our Victorian-based members about that, and we note that amongst them, and also with the Australian Industry Group, they have talked about those impacts. Our concerns lie in terms of the construct of the scheme, which would be different, the signal that sends and where it would differ vis-a-vis other states, and then in terms of a cross model internationally or certainly in our region. These things do come into play as they take hold.

Ms RYALL — So economic impacts?

Mr CLANCY — You would be increasing the base running costs of your business in a way that is not operating at the moment, because instead of being able to profile your business in terms of the composition of your employees and their length of tenure, it is a periodic payment that is being made in terms of all employees. That is an immediate day-to-day running cost where it has not been. It would then come down to scheme design. What we would say is where you drop it into small businesses you do not want to send a signal to small business, 'Your costs are going to go up' and that forces small businesses to go into their shells.

Mr CRISP — I am going to ask you about impacts on employer subgroups and particularly the impact of the proposed portable long service scheme for rural and regional employers, and perhaps talk about small business as well.

Mr CLANCY — Some issues with small business transcend whether you are regional or urban. Again, it would come down to the issues that we referred to earlier around managing your workforce in the event of absences of employees and getting people in to replace those people who are on leave. So the availability of labour may have a more profound impact in a rural context.

The cost to small business: we have talked about absorbing those sorts of costs or the fact that it becomes the rural business owners who will manage the absence on their own time. In terms of the industry profiling, I think it would then come down to issues of scheme design. For example, one of the issues you may need to look at is seasonal workers in the agricultural or horticultural industries and how that would be accounted for. But that would drop onto your costs there, whatever arrangements they are employed on — if it is on a casual or contract basis. That base level of cost would be built into those contract rates if the scheme were to apply to them.

Mr CRISP — You have sparked a thought in my mind, because in the horticultural area there are a lot of seasonal workers, some of whom are backpackers here for a couple of years. That would pad out a scheme because they do not stay. They only work for a couple of years, and they are gone. That is something I have to think about, but you have prompted that, so thank you.

Mr NARDELLA — Apart from all the rhetoric in your submission to the Committee, you have got here on page 13 that in New South Wales you have got contract cleaning and in the ACT you have got contract cleaning—a portable long service scheme. In Queensland you have got contract cleaning—a portable long service scheme since 2005. Name one company that has left Queensland, the ACT or New South Wales to come to Victoria because of the establishment of the portable long service leave scheme—just one out of all those three. None? That is what I am saying: this is rhetoric. What you have put in your submission to us is just rhetoric because to say that we are going to have a situation where companies, be they in the cleaning industry, will leave Victoria because we establish a portable long service scheme is just rubbish. You have no evidence for what you have put in your submission.

Mrs FYFFE — I think that is more of a statement of opinion.

Mr NARDELLA — But there was no response.

The CHAIR — Do you have any comment or response, Richard?

Mr CLANCY — I would like you to point to my evidence today where I said companies would leave Victoria.

Mr NARDELLA — That is the evidence that has been presented—that it would make it harder for companies to compete either in the state or internationally, understanding that a lot of companies that we compete with have not got long service leave internationally, have not got annual leave, are lucky to be paid after three or six months, like in China, but be that as it may, you do not have a situation where companies are going to leave Victoria to go somewhere else because the reverse has not occurred when those schemes have been established.

Ms RYALL — Don, I do not see that that was suggested.

Mr NARDELLA — It was. The whole premise of their argument is that this will make it harder for small business and that Victoria will become less competitive. If Victoria is less competitive, does that then mean that they go interstate or internationally? They will not.

Ms RYALL — I think it was that there is competition in small business …

Mrs FYFFE — Chair, perhaps we should discuss this after …

The CHAIR — Mr Nardella has made a point; Richard did not want to make a comment. That is the end of the story. If there are no other questions, I would like to thank Alana and Richard on behalf of the Committee for coming here and giving evidence.

Witnesses withdrew.