



PARLIAMENT OF VICTORIA

Economic, Education, Jobs and Skills
Committee

Inquiry into portability of long service leave entitlements

Parliament of Victoria
Economic, Education, Jobs and Skills Committee

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Committee functions

The Economic, Education, Jobs and Skills Committee is constituted under section 8 of the *Parliamentary Committees Act 2003* (Vic).

The Committee's functions are to inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with:

- a. economic development, industrial affairs or infrastructure
- b. the provision of services to new urban regions
- c. the development or expansion of new urban regions
- d. education or training.

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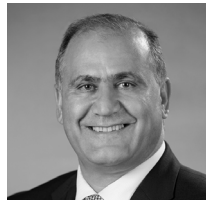
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Terms of reference

Inquiry into portability of long service leave entitlements

Received from the Legislative Assembly on 5 May 2015:

To the Economic, Education, Jobs and Skills Committee—for inquiry, consideration and report no later than 1 May 2016 on employer schemes that provide portability of long service leave entitlements for Victorian workers and—

- a. in particular, the Committee is requested to investigate employer schemes that provide portability of long service leave entitlements for workers as they move between jobs in the same or similar industry, including:
 - i. the objectives of portable long service leave schemes
 - ii. which sectors, industries or occupations may benefit from such schemes
 - iii. the rationale for any difference in treatment between sectors or groups of employees
 - iv. funding arrangements applying to existing portable long service leave schemes
 - v. governance, compliance and enforcement arrangements applying to existing portable long service leave schemes
 - vi. the key components that should apply to any portable long service leave scheme for the community services sector including coverage, eligibility for and the calculation of long service leave benefits
 - vii. whether alternative mechanisms or arrangements could better meet the objectives of a portable long service leave scheme for sectors of the workforce including the community services sector
 - viii. the capacity to operate such schemes within or across jurisdictions, including recognition of service
 - ix. the appropriate role for Government in facilitating portable long service leave schemes
 - x. relevant implementation issues and options.
- b. in making its recommendations the Committee should have regard to:
 - i. constitutional or other legal issues or impediments arising from interaction with the *Fair Work Act 2009* (Cth), agreements and awards operating under the fair work scheme

- ii. the distinction between schemes for portability of long service leave entitlements and legal structures underpinning other leave entitlements
- iii. the financial impacts or benefits of portable long service leave entitlements on employers, employees and taxpayers
- iv. the economic impact on Victorian jobs, employment and investment and whether such schemes may disproportionately affect urban or regional areas.

The reporting date was extended to 30 June 2016 by resolution of the Legislative Assembly on 12 April 2016.

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Chair's foreword

I am pleased to present the final report of the Economic, Education, Jobs and Skills Committee's Inquiry into the portability of long service leave entitlements.

Long service leave provides workers with a well-deserved break and the opportunity to rest and rejuvenate, spend time with family or undertake further study to improve their career prospects. It also benefits employers and the community by providing workers with extended breaks that help them stay in the workforce for longer. The evidence presented to the Committee suggests that certain pockets of the workforce are missing out on long service leave because they work on projects or contracts. During this Inquiry, I was moved by the personal stories of workers who have never qualified for long service leave despite working in the same job for over a decade.

To address this inequity, portable long service leave schemes have been established in some industries to allow workers the chance to qualify for long service leave. In Victoria a portable long service leave scheme has existed in the building and construction industry for over 35 years. Similar schemes also exist in other Australian jurisdictions for the contract cleaning, community services, security and coal mining industries.

The Committee finds merit in introducing portable long service leave for workers in the community services sector and the contract cleaning and security industries. This report recommends preliminary research into the feasibility of establishing portable long service leave schemes for the contract cleaning and security industries which have similar schemes operating effectively interstate. I am confident that this work will smooth the way for providing equity for some of Victoria's most vulnerable workers.

On behalf of the members of the Economic, Education, Jobs and Skills Committee I thank the many individuals and organisations—workers, employers, employer and employee groups, academics and others—who took the time to contribute their views and experience to this Inquiry. In particular, the Committee would like to thank the individual workers who shared their stories and the interstate stakeholders who provided evidence at public hearings or via correspondence.

I sincerely thank the Deputy Chair, Ms Dee Ryall MP, and my fellow Committee members, Mr Jeff Bourman MLC, Mr Peter Crisp MP, Ms Christine Fyffe MP, Mr Cesar Melhem MLC and Mr Don Nardella MP for their hard work and contributions during the Inquiry.

I also extend my gratitude to the members of the Committee's Secretariat, Ms Kerryn Riseley, Dr Marianna Stylianou and Ms Janelle Spielvogel, for their professionalism and dedication. I also acknowledge Ms Stephanie Dodds and Ms Natalie-Mai Holmes for their administrative support during the initial months of the Inquiry.

Chair's foreword

Long service leave is an important worker entitlement that provides benefits to both workers and employers. It is vital that the Victorian Government ensures workers can access long service leave and gain the benefits from it after a lengthy period of service.

A handwritten signature in blue ink, appearing to read 'Nazih Elasmr', written in a cursive style.

Nazih Elasmr MLC
Chair

Executive summary

Long service leave traditionally provides employees with additional paid leave following a lengthy period of service with a single employer. However, workers who are not hired on an ongoing basis or change jobs frequently may be unable to qualify for long service leave. Portable long service leave schemes allow workers to accrue long service leave entitlements through continuous service in an industry rather than with one employer.

In Victoria, portable long service leave is legislated for building and construction workers and is available through non-legislated mechanisms such as awards and employment agreements to some workers in the public health, government and education sectors, among others. Statutory portable long service leave schemes also exist for the building and construction industry in each Australian jurisdiction, as well as for the contract cleaning, community services, security and black coal mining industries in some jurisdictions.

The Inquiry's terms of reference asked the Committee to investigate portable long service leave schemes for workers as they move between jobs in the same or similar industry, which industries may benefit from such schemes, the financial and economic impacts of portability and whether alternative mechanisms could better meet the objectives of a portable long service leave scheme. The terms of reference also required the Committee to specifically consider portability of long service leave entitlements for the community services sector.

During the Inquiry, the Committee was presented with conflicting arguments from stakeholders about the costs and benefits of portable long service leave. Chapter 3 outlines the arguments for and against portability and Chapter 4 discusses the impact portable long service leave may have on the Victorian economy and employment. There is a lack of data or research to support the validity of the arguments presented in these chapters, which hindered the Committee's ability to reach conclusions on the true costs and benefits of expanding portable long service leave. In the absence of solid evidence, the Committee examined the operation of interstate portable long service leave schemes to determine the viability of establishing similar schemes in Victoria.

The Committee found that community services workers are not always able to work with a single employer long enough to qualify for long service leave because of the short-term funding of community services and the high risk of worker burnout. Based on this inequity and the existence of a portable long service leave scheme for the sector in the ACT, the Committee found that there is merit in introducing portable long service leave for community services workers. In Victoria, a Bill to establish a portable long service leave scheme for the community services sector was introduced to the Victorian Parliament in 2010 but was not passed prior to a change of Government in November that year. One of the rationales for introducing portability to the sector was to help improve staff recruitment and retention. Despite the extensive work undertaken to develop the

2010 scheme, the Committee found that this modelling should be updated if a future scheme is introduced, due to recent changes in the sector such as the Equal Remuneration Order and the National Disability Insurance Scheme. Revising the assumptions that underpinned the modelling for the 2010 scheme will provide the Victorian Government with a clearer indication of whether the benefits of a future scheme will outweigh the costs.

The Committee also found that workers in the contract cleaning and security industries may benefit from a portable long service leave scheme because the contract-based nature of their work often precludes them from qualifying for long service leave. This inequity experienced by contract cleaners and security workers has been recognised interstate where several portable long service leave schemes operate for these industries. The Committee found there is merit in introducing portable long service leave schemes for the contract cleaning and security industries on the basis of providing equity to workers and the existence of similar schemes interstate. This report recommends that the Victorian Government undertake feasibility studies into the introduction of portable long service leave schemes for these industries.

In Chapter 6, the Committee considers possible models for portable long service leave schemes and the key components that should apply to such schemes. A number of issues relating to the implementation and operation of portable long service leave schemes are discussed based on stakeholders' viewpoints and the experience of interstate schemes.

The Committee is in favour of further work into alternative mechanisms to portable long service leave. Although the Committee received limited evidence from stakeholders, several other mechanisms may exist for workers to renew their energies such as alternative forms of leave and flexible working arrangements if their workplace supports these. There are also other strategies to improve staff recruitment and retention such as increasing remuneration and improving working conditions. Another option to protect the long service leave entitlements of contract workers is to ensure that prior service is recognised either in contracts or through changes to legislation.

The Committee considers that a portable long service leave scheme is one way to address the inequity experienced by workers who lose their long service leave entitlements through no fault of their own. The implementation of the Committee's recommendations will help to ensure that fewer Victorian workers miss out on their long service leave due to the nature of their work or their mode of employment.

Findings

Chapter 2 Portable long service leave: the current landscape

FINDING 1: Legislative definition of coverage for statutory schemes

Statutory portable long service leave schemes that do not have their coverage defined in the enabling legislation, such as the CoINVEST scheme, have the potential to generate disagreements about coverage, which can increase the possibility of litigation.37

FINDING 2: Funding model for construction industry schemes

Compared with an employer-levy funding model, a project-levy funding model for construction industry schemes can be simpler and less costly to administer and can result in greater compliance. However, the existing Victorian scheme is a complex scheme.38

Chapter 3 Arguments for and against portable long service leave

FINDING 3: Lack of evidence about the overall impact of portability

There is a lack of data on the benefits and costs of portable long service leave, which makes it difficult to determine any net impact of portable long service leave.75

Chapter 4 Effects of portable long service leave on the Victorian economy and employment

FINDING 4: Impact of portable long service leave on wage growth

If portable long service leave is introduced to an industry, there is evidence that the rate of wage growth for employees in that industry is likely to slow down to compensate for the increase in benefits.88

FINDING 5: Lack of evidence about the economic impact of portability

There is a lack of empirical evidence on the potential impact on the Victorian economy and employment of expanding portable long service leave.97

Chapter 5 A closer look at key sectors

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Some workers in the textile, clothing and footwear industry, the non-emergency patient transport sector and the media, arts and entertainment industry are unable to access long service leave due to the casual, contract or project-based nature of employment in these industries. 132

Recommendations

Chapter 5 A closer look at key sectors

RECOMMENDATION 1: Feasibility study for a contract cleaning industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the contract cleaning industry. 124

RECOMMENDATION 2: Feasibility study for a security industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the security industry. 128

Glossary

ABS	Australian Bureau of Statistics, the statistical agency of the Australian Government.
ACCI	Australian Chamber of Commerce and Industry, a peak council of Australian business organisations.
Accumulation model	A possible model for a portable long service leave fund where employers make regular contributions into individual employees' accounts that are administered and invested by superannuation funds and/or authorised financial institutions, similar to superannuation guarantee contributions. The fund administrator releases the funds when employees qualify for and claim their long service leave.
ACEVic	Adult and Community Education Victoria, the peak body for the adult community education sector in Victoria.
ACTCOSS	ACT Council of Social Service, the peak body for not-for-profit community organisations in the ACT.
ACT Leave	ACT Long Service Leave Authority, a statutory authority administering the portable long service leave schemes in the ACT.
ACTU	Australian Council of Trade Unions, a peak body for Australian employee groups.
ADF	Approved Deposit Fund, a possible model for a portable long service leave fund where employers deposit long service leave funds in an employee's account when the employee ceases employment. The fund administrator invests the funds and releases them when employees qualify for and claim their long service leave.
AEAV	Ambulance Employees Australia Victoria, a section of the employee group, United Voice Victoria, representing Victoria's ambulance industry employees.
AEU	Australian Education Union, a national employee group representing teachers and education support staff.
Ai Group	Australian Industry Group, a peak industry association representing the interests of businesses across a range of industries.
AMMA	Australian Mines and Metals Association, a national employer group representing Australia's resource industry.
ANHLC	Association of Neighbourhood Houses and Learning Centres, the peak body for the neighbourhood house and learning centre sector in Victoria.
ANMF	Australian Nursing and Midwifery Federation, the national employer group for nurses, midwives and nursing assistants.
APRA	Australian Prudential Regulation Authority, a statutory authority regulating the Australian financial services industry.
APTIA	Australian Public Transport Industrial Association, a national employer group representing employers in the private and public sector passenger vehicle industry.
ASIAL	Australian Security Industry Association Limited, a national peak body representing owners and operators of security businesses.
ASU	Australian Services Union, a national employee group representing workers in a range of sectors, including community services.

BSCAA	Building Services Contractors Association of Australia, a national employer group representing building services employers.
Casual employment	A form of employment where employees do not have regular hours of work, do not receive benefits such as sick leave or annual leave and can end or have their employment ended without a period of notice.
Casual loading	A higher hourly pay rate than equivalent full-time or part-time employees, paid to casual employees in lieu of entitlements such as notice of termination, severance pay, paid public holidays and paid sick leave, carer's leave and annual leave.
CoINVEST	CoINVEST, the administrative body for Victoria's construction industry portable long service leave scheme.
CSIF	Community Sector Investment Fund, a fund set up by the Victorian Government in 2003 to advance the sustainability of community service organisations.
Equal Remuneration Order	An order made by Fair Work Australia in 2012 awarding workers covered by the Social, Community, Home Care and Disability Services Industry Award with wage increases, on the basis that workers were not receiving equal remuneration compared with State and local government employees doing comparable work.
Fair Work Act 2009	Commonwealth legislation that outlines the rights and responsibilities of employees and employers at work.
FEG	Fair Entitlements Guarantee, an Australian Government fund that pays employees the entitlements owed to them if their employer becomes insolvent and cannot pay employees' entitlements.
Fixed-term employment	A form of employment where employees are employed for a set task or for a set period of time, such as six months or 12 months.
GEERS	General Employee Entitlements and Redundancy Scheme, an Australian Government scheme that operated to pay employees owed entitlements prior to the introduction of the Fair Entitlements Guarantee in December 2012.
HACSU	Health and Community Services Union, a national employee group which represents staff working in intellectual disability, mental health and alcohol and other drug services.
HFA	Hardware Federation of Australia, a national peak body representing employers in the hardware industry.
HIA	Housing Industry Association, the national peak body for the residential building, renovation and development industry.
HILDA	Household, Income and Labour Dynamics in Australia survey, a national household-based survey.
HWU	Health Workers Union, a national employee group representing staff working in hospitals, pathology, dental, Aboriginal and aged care services.
Independent contract employment	A form of employment where workers operate their own business and are engaged by clients to undertake work.
Industry-based defined benefit fund	A possible model for a portable long service leave fund where employers in an industry contribute funds for long service leave through a levy and provide information about each employee to fund administrators on a periodic basis. The fund administrator pools together and invests the levies and pays out workers' long service leave claims.
IRAC	Industrial Relations Advisory Council, an advisory body which advises and assists the NSW Government with industrial relations issues.

IRV	Industrial Relations Victoria, the business unit within the Department of Economic Development, Jobs, Transport and Resources responsible for industrial relations.
Labour hire employment	A form of employment where workers are employed by labour hire businesses to perform work for other organisations (host organisations).
Long service leave	An entitlement that provides long-serving employees with additional paid leave.
MEAA	Media, Entertainment & Arts Alliance, a national peak employee group representing workers in the media, entertainment, sports and arts industries.
Modern awards	Employment awards that have been reviewed and rationalised by the Fair Work Commission.
NGO	Non-government organisation, an organisation that is neither a part of a government nor a conventional for-profit business.
NDIS	National Disability Insurance Scheme, a national disability services program launched in 2013. The scheme will provide individualised support to people with permanent and significant disability and their families and carers.
Non-statutory scheme	A portable long service leave scheme which is established through an employment agreement or regulations, rather than an Act of Parliament.
Non-traditional employment	Employment that differs from ongoing employment in an employer's business; major examples include casual, fixed-term contract, labour hire and self-employed (independent) contract employment.
NRA	National Retail Association, a peak body representing employers in the retail industry in Australia.
OECD	Organisation for Economic Cooperation and Development, the international organisation aimed at promoting policies to improve the economic and social well-being of people around the world.
Ongoing employment	Employment that does not have a specified date of cessation and will continue until the employer or employee ends the employment relationship. Also referred to as permanent employment.
Pre-modern awards	Employment awards pre-dating the implementation of modern awards under the <i>Fair Work Act 2009</i> (Cth).
Portable long service leave	Long service leave entitlements that are transferred with employees when they move between different employers.
RCSA	Recruitment & Consulting Services Association, the peak body for the recruitment and the human resources services sector in Australia and New Zealand.
SCHADS Award	The Social, Community, Home Care and Disability Services Industry Award.
Statutory scheme	A portable long service leave scheme which is established through an Act of Parliament.
TAFE	Technical and Further Education, education institutions providing a wide range of predominantly vocational tertiary education courses.
TCFUA	Textile Clothing and Footwear Union of Australia, a national employee group representing workers in the textile, clothing, footwear and felt hatting industries.
VAADA	Victorian Alcohol and Drug Association, the peak body representing Victorian alcohol and other drug services.
VACC	Victorian Automobile Chamber of Commerce, an employer organisation representing automotive businesses in Victoria.

VCAT	Victorian Civil and Administrative Tribunal, a tribunal which deals with disputes about consumer matters, credit, discrimination, domestic building, guardianship/administration, residential/retail tenancies and disputes.
VCOSS	Victorian Council of Social Service, the peak body for the social and community sector in Victoria.
VECCI	Victorian Employers' Chamber of Commerce and Industry, the peak body for Victorian employers.
VFF	Victorian Farmers Federation, an organisation representing the interests of Victoria's agricultural producers.
VTA	Victorian Transport Association, an employer organisation for the freight and logistics industry in Victoria.
VTHC	Victorian Trades Hall Council, the peak body for employee groups in Victoria.
WHW	Women's Health West, a women's health service for the western metropolitan region of Melbourne.
WorkCover	A compulsory insurance for Victorian employers to cover the cost of benefits if their employees are injured or become ill because of their work.

On 5 May 2015 the Parliament of Victoria's Legislative Assembly gave the Economic, Education, Jobs and Skills Committee terms of reference to conduct an inquiry into the portability of long service leave entitlements. The terms of reference directed the Committee to investigate employer schemes that provide portability of long service leave entitlements for workers as they move between jobs in the same or similar industry.

Long service leave gives workers paid leave in recognition of a long period of work. However, some workers may not get the opportunity to take long service leave if they are unable to work with the same employer long enough to qualify. In some cases, this occurs through no fault of the employee or the employer but due to the short-term or contract nature of employment in some industries.

Portable long service leave schemes exist for workers in the construction, contract cleaning, community services and security industries in various parts of Australia. In Victoria, a statutory portable long service leave scheme for the construction industry was established in 1976. Portability also exists for some other Victorian sectors such as neighbourhood houses, community legal centres and the education and public health sectors, through employment agreements.

During the course of the Inquiry, the Committee heard from a range of stakeholders. Employee groups were in favour of expanding portable long service leave to other industries in Victoria on the basis of providing equity to workers and improving staff recruitment and retention. On the other hand, employer groups were generally against further expansion of portability due to the costs that would be imposed on businesses and concern about the lack of data demonstrating improvements to recruitment and retention of staff.

The Committee also sought evidence from independent sources, however, research into portable long service leave, particularly its implementation at the State level, is limited. As a result, the Committee has identified areas where further research on portable long service leave is required to determine the benefits for and impact on employers and employees.

Due to gaps in the research, the Committee's recommendations were influenced by the notion of equity and the experience of portable long service leave schemes that exist interstate. This report explores the key issues raised by stakeholders and aims to inform future efforts in this area.

1.1 Background to this Inquiry

1.1.1 An introduction to long service leave

What is long service leave?

Long service leave is an entitlement that provides long-serving employees with additional paid leave. Australia is the only country which legislates for long service leave for the entire workforce. The entitlement is contained in State and Territory legislation, awards and agreements. Long service leave also exists in New Zealand, however, it is not a legal requirement and instead is negotiated between employers and employees as an additional entitlement.¹

History of long service leave

Long service leave originated in Victoria in 1862 to grant civil servants up to 12 months of leave at half pay following 10 years of continuous service.² The length of leave enabled civil servants to return to Britain to visit family and friends when the only mode of transport was by ship. The entitlement subsequently spread to civil servants in other colonies. Following Federation, long service leave entitlements were only available to Commonwealth public servants after 20 years of continuous service.³

During the 1940's, long service leave was granted to some workers in the private sector by decisions of industrial tribunals at the State and Federal levels. Legislation to cover all workers was progressively introduced in the following decade. In Victoria, long service leave entitlements were first provided for by the *Factories and Shops (Long Service Leave) Act 1953* (Vic), which was then incorporated into the State's labour and industry legislation. It provided for 13 weeks of leave after 20 years of continuous service with the same employer. Over time, the qualifying period fell to 10 years and pro rata access was granted upon the termination of employment prior to the qualifying period.⁴

Between 1951 and 1958, all States introduced legislation for long service leave.⁵ The economic boom and strong demand for labour in the 1950's may have increased employers' willingness to provide benefits such as long service leave

1 Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry* (2003), 217; New Zealand Ministry of Business, Innovation & Employment, *Entitlement to long service leave*, <www.employment.govt.nz/workplace/knowledgebase/item/1314> viewed 1 March 2016.

2 Louise Thornthwaite and Ray Markey, 'Long service leave, the labour market, and portability of entitlements' (2014) 40(1) *Australian Bulletin of Labour*, 2, 4.

3 Shauna Ferris, Nick Parr, Ray Markey and Tim Kyng, 'Long service leave: Past, present and future' (2015) 3 *Australian Journal of Actuarial Practice*, 5, 6-7.

4 Australian Bureau of Statistics, *Official year book of the Commonwealth of Australia* (1971), 267; Small Business Victoria, *A comprehensive guide to the Victorian Long Service Leave Act 1992* (2012), Department of Business and Innovation, 9.

5 Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry*, 218.

to attract and retain staff.⁶ Although all States provided long service leave entitlements, the length of leave and the continuous service required to qualify varied between jurisdictions.

Long service leave today

In Victoria, long service leave is regulated by the *Long Service Leave Act 1992* (Vic) which provides for 8.67 weeks of leave after 10 years of continuous service with one employer. A further 4.33 weeks of leave is provided after each additional five years of service with that employer.⁷ After seven years of continuous service, employees can be paid out their pro rata long service leave entitlements if their employment ends. Many industrial awards provide more generous long service leave entitlements.

The variations between the jurisdictions continue in existing long service leave provisions. Across the States and Territories, the qualifying period for long service leave ranges from seven to 10 years, the accrual rates range from 0.87 weeks to 1.3 weeks per year and the amount of leave granted ranges between 1.4 and three months.⁸

The complexity of these provisions has hindered the introduction of a uniform national standard for long service leave.⁹ Under the *Fair Work Act 2009* (Cth), modern awards (that is, awards that have been reviewed and rationalised by the Fair Work Commission) are unable to include long service leave clauses, which is part of the 2005 Work Choices legislation. While the Fair Work Act includes a National Employment Standard for long service leave, it does not provide basic entitlements but instead derives entitlements from prior applicable awards or agreements or State and Territory legislation pending the development of a uniform national standard.¹⁰

A 2012 review of the Fair Work Act recommended that the Commonwealth, State and Territory governments expedite the development of a uniform national standard for long service leave to standardise workers' entitlements across jurisdictions.¹¹ Although the recommendation proposed the development of the standard by 1 January 2015, it has not eventuated. Standardisation will prove difficult because applying the most generous of the States' entitlements nationally would increase employers' liabilities in some States, whereas applying the least generous entitlements would reduce employees' entitlements in other States.¹²

⁶ Shauna Ferris et al, 'Long service leave: Past, present and future', 8.

⁷ ss 56, 56A *Long Service Leave Act 1992* (Vic).

⁸ Shauna Ferris et al, 'Long service leave: Past, present and future', 9.

⁹ Productivity Commission, *Workplace relations framework, final report, volume 1* (2015), 526.

¹⁰ Fair Work Commission, *National employment standards*, <www.fwc.gov.au/creating-fair-workplaces/the-national-workplace-relations-system/national-employment-standards-0> viewed 30 November 2015; Productivity Commission, *Workplace relations framework*, 521.

¹¹ Ron McCallum, Michael Moore and John Edwards, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation*, report for Department of Education, Employment and Workplace Relations (2012), 101.

¹² Productivity Commission, *Workplace relations framework*, 528.

Portable long service leave

In some Australian industries, long service leave entitlements can be accrued through continuous service in an industry rather than with a single employer. In this case, long service leave entitlements are portable between employers within the same or similar industries.

Portable long service leave may be supported by legislation or provided for in employment agreements.

Portable long service leave in Victoria

In Victoria, there is a statutory portable long service leave scheme for the building and construction industry. In addition, non-statutory portable long service leave schemes exist in some sectors.

In 1985, a Bill to legislate for portable long service leave in Victoria was introduced to Parliament as a way to meet requests for portable long service leave benefits from industries other than construction. The then Labor Government's intention was for the contract cleaning industry to be the first industry to be admitted to the portable long service leave scheme provided for by the Bill, based on recommendations in a 1984 interim report for the Industrial Relations Commission of Victoria's inquiry into long service leave.¹³ While the Bill was passed in the Legislative Assembly, it was voted down by a majority of one in the Legislative Council.

There was an attempt to introduce a scheme for the Victorian community services sector in 2010 on the basis of using portable long service leave as an incentive for staff recruitment and retention in the sector which was characterised by staff shortages.¹⁴ However, the Bill to introduce a portable long service leave scheme for the community services sector was not passed prior to the 2010 election. The work done to inform the development of this Bill is discussed further in Sections 1.1.4 and 5.1.

In 2014, part of the Victorian Labor Party's election platform was to facilitate employer schemes that provide portability of long service leave entitlements for workers as they move between jobs in the same or similar industry.¹⁵

Portable long service leave in other Australian jurisdictions

Statutory schemes for portable long service leave exist for the building and construction industry in each State and Territory; the contract cleaning industry in the Australian Capital Territory (ACT), New South Wales (NSW) and Queensland; and the community services sector and security industry in the ACT.

¹³ Victoria, *Parliamentary debates*, Legislative Assembly, 14 November 1985, 1974 (Steven Crabb), 1975.

¹⁴ Victoria, *Parliamentary debates*, Legislative Assembly, 6 October 2010, 4001 (Lisa Neville), 4004.

¹⁵ Victorian Labor, *Platform 2014* (2014), 22.

In the private sector, the first portable long service leave scheme to be established was for the black coal mining industry in 1949. The national scheme was contained in an industrial award of the former Coal Industry Tribunal and was later enshrined in Commonwealth legislation. The *States Grants (Coal Mining Industry Long Service Leave) Act 1949* (Cth) was introduced because of the extent of worker mobility between employers and to prevent the loss of skilled labour from the industry.¹⁶ As a result of a review of the funding arrangements in 1990, a new scheme was established under the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth), which operates in New South Wales, Queensland, Western Australia and Tasmania.¹⁷ The scheme does not operate in Victoria because Victoria has no operating black coal mines (Victorian mines extract brown coal).¹⁸

In recognition of the intermittent nature of building work and the need for employees to move between employers as they followed work, statutory portable long service leave schemes for the building and construction industry began to be introduced at the State level in the 1970's.¹⁹ Currently, every Australian State and Territory has a portable long service leave scheme for the building and construction industry. The first scheme commenced in Tasmania in 1972 and the most recent scheme was established by the Northern Territory in 2005.

Statutory portable long service leave schemes have been established in other industries since 2000, following the lead of developments in the ACT.²⁰ In 1999, the ACT legislated for a portable long service leave scheme for the contract cleaning industry due to its highly contracted workforce. The ACT scheme commenced operation in 2000.

Queensland followed with a contract cleaning scheme in 2005 after extensive consultations with unions and employers.²¹ Queensland employers supported portable long service leave because of recent industrial tribunal decisions that allowed for portability of long service leave entitlements for existing workers following contract changes. However, this resulted in the last employer bearing the total liability for long service leave regardless of the employee's period of service with the last employer. Introducing a portable long service leave scheme distributed the liability across employers in proportion to the amount of time a worker served for each.²²

16 Steve O'Neill, 'Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2011' (2011) 56 *Bills Digest*, 1, 3–4.

17 *ibid.*, 4.

18 Geoscience Australia, *Coal fact sheet*, <www.australianminesatlas.gov.au/education/fact_sheets/coal.html> viewed 3 December 2015.

19 Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry*, 219.

20 Louise Thornthwaite and Ray Markey, 'Long service leave, the labour market, and portability of entitlements', 7.

21 Queensland, *Parliamentary debates*, Legislative Assembly, 12 May 2005, 1454 (Marc Rowell), 1462.

22 *ibid.*, 1456.

Extensive consultation with stakeholders also occurred in NSW, where legislation for a contract cleaning industry scheme was passed without opposition in 2010.²³ The rationale for the scheme was to ensure that contract cleaners were able to access long service leave following changes of employer due to the competitive tendering process.²⁴ The NSW scheme for the contract cleaning industry commenced operation in 2011.

In 2010, the ACT also introduced a scheme for the community services sector and in 2013 for the security industry.

1.1.2 Data on access to long service leave

Data on the amount of long service leave taken by Australians were last published by the Australian Bureau of Statistics (ABS) in the late 1980's. In the absence of recent data, the accrual of long service leave may be inferred by the number of employees that report working for the same employer for at least 10 years. However, these data do not reveal whether long service leave has been taken by employees or how the leave has been taken (for example, in its entirety, as a shorter break or as a lump-sum payment).

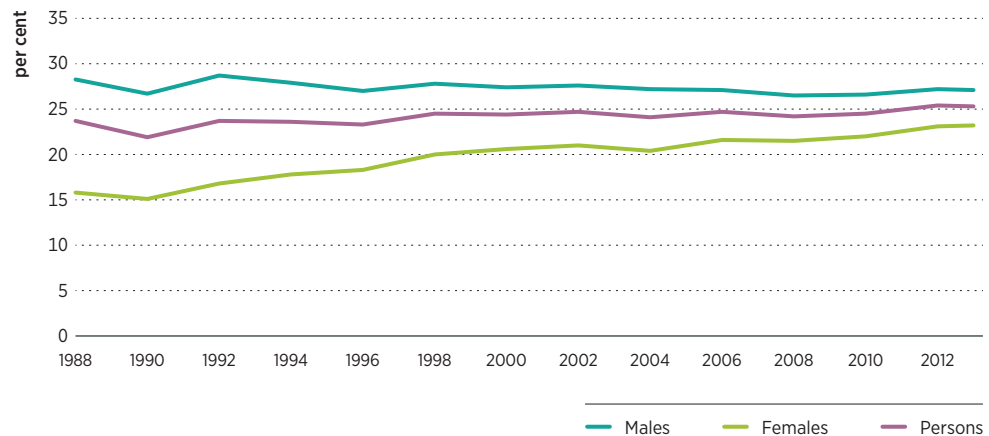
Labour mobility data from the ABS show that in 2013, 25% of Australian workers reported working for their current employer or business for at least 10 years.²⁵ Figure 1.1 shows this proportion has remained fairly stable for male workers between 1988 and 2013 but has increased for female workers. However, more than 25% of Australian workers are likely to qualify for long service leave because some of these workers are too young to have been in the workforce for at least 10 years. In addition, some workers may have been able to access their pro rata entitlements prior to 10 years, some older workers may have already taken long service leave from a previous employer and some workers may have access to portable long service leave.²⁶

23 New South Wales, *Parliamentary debates*, Legislative Council, 1 December 2010, 28626 (Penny Sharpe) 28651; New South Wales, *Parliamentary debates*, Legislative Assembly, 30 November 2010, 28600 (Anthony Roberts) 28601.

24 New South Wales, *Parliamentary debates*, Legislative Assembly, 30 November 2010, 28600 (Anthony Roberts) 28601.

25 Australian Bureau of Statistics, *Labour mobility, Australia, February 2013* (2013), 13.

26 Shauna Ferris et al, 'Long service leave: Past, present and future', 11.

Figure 1.1 Persons working at least 10 years in their current job, Australia, 1988–2013

Sources: Australian Bureau of Statistics, *Labour mobility, Australia, February 2013*, 13; Australian Bureau of Statistics, *Labour mobility, Australia, February 2006* (2006), 11; Australian Bureau of Statistics, *Labour mobility, Australia, February 2000* (2000), 9; Australian Bureau of Statistics, *Labour mobility, Australia, February 1998* (1998), 11.

1.1.3 What factors affect access to long service leave?

Non-traditional forms of employment

In some industries, the nature of employment does not allow employees to serve with a single employer long enough to qualify for long service leave. This occurs when workers in these industries are not hired on a permanent basis. For example, employees who are contracted based on short-term funding arrangements may have a different employer following each competitive tendering process. Even though their work and/or workplace may stay the same, the change of employer may mean these employees lose the long service leave entitlements they had accrued with the previous employer.

Traditionally, employees are hired on a permanent basis and have regular hours of work each week. They are employed on a full-time or part-time basis and have a range of entitlements protected by law which includes long service leave. Non-traditional forms of employment include casual, fixed-term, independent contracting and labour hire employment. The range of entitlements available to workers hired under these forms of employment varies.

Casual employment

Casual employees do not have guaranteed hours of work. They usually work irregular hours and do not receive benefits such as paid sick leave or annual leave. In addition, there is no requirement for casual employees to give or receive a period of notice to end their employment. Casual employees are paid a 'loading' (a higher hourly pay rate than equivalent full-time or part-time employees) in lieu of entitlements such as notice of termination, severance pay, paid public holidays and paid sick leave, carer's leave and annual leave.²⁷

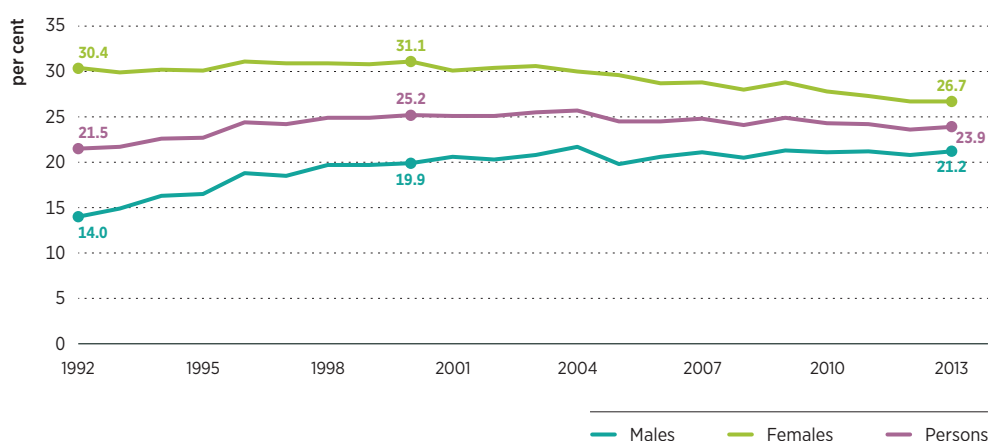
²⁷ Productivity Commission, *Workplace relations framework*, 496.

In Victoria, casual loading does not cover long service leave.²⁸ Casual employees instead accrue long service leave entitlements and can access them if they reach the required length of service with their employer.²⁹

In 2013, the industries with the highest casual share of employees were accommodation and food services (65%), agriculture, forestry and fishing (47%), arts and recreation services (43%) and the retail trade (40%).³⁰

While the percentage of Australian employees in casual work doubled from 12% in 1982 to 24% in 2013, Figure 1.2 shows that the percentage has stayed around 24% since 2000.³¹ Labour market statistics from the ABS indicate the percentage of male employees in casual work increased from 14% in 1992 to 20% in 2000 but has remained fairly stable since. The percentage of female employees in casual work fell from 31% in 2000 to 27% in 2013.³²

Figure 1.2 Percentage of employees in casual work, Australia, 1992–2013



Source: Australian Bureau of Statistics, *Australian labour market statistics*, July 2013.

The stabilisation of the percentage of employees in casual work following 2000 may be due to the strength of the Australian economy and low unemployment in this period which increased the likelihood of employers offering permanent work.³³

Fixed-term contract work

Fixed-term employees are employed for a set task or for a set period of time such as six months or 12 months. The employment ends on the date specified in the contract. Fixed-term employees are entitled to paid public holidays and paid

²⁸ s 74 *Long Service Leave Act 1992* (Vic); Small Business Victoria, *A comprehensive guide to the Victorian Long Service Leave Act 1992*, 5.

²⁹ Small Business Victoria, *A comprehensive guide to the Victorian Long Service Leave Act 1992*, 5.

³⁰ Australian Bureau of Statistics, *Australian labour market statistics*, July 2013, <www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6105.0Main+Features1July%202013?OpenDocument> viewed 18 September 2015.

³¹ Anthony Shomos, Erin Turner and Lou Will, *Forms of work in Australia: Productivity Commission staff working paper* (2013), 78.

³² Australian Bureau of Statistics, *Australian labour market statistics*, July 2013.

³³ Anthony Shomos et al, *Forms of work in Australia*, 50.

annual and sick leave (pro rata). However, due to the short-term nature of their employment, they are unlikely to qualify for long service leave. Service is only considered to be continuous if breaks between fixed-term appointments with the same employer do not exceed three months.³⁴

ABS data indicate that rates of fixed-term contract work have remained stable between 2009 and 2013 at about 4%.³⁵ The industries with the highest proportion of workers on fixed-term contracts are education and training (14.6%), public administration and safety (6.7%) and arts and recreation services (6.3%).³⁶

Independent contract work

Independent contractors operate their own business and are engaged by clients to undertake work. They are not generally classified as employees and therefore, they are not eligible for long service leave. However, outworkers in the clothing industry are an exception as the *Outworkers (Improved Protection) Act 2003* (Vic) deems them to be employees for the purposes of the Long Service Leave Act.³⁷

The proportion of Australian workers who are independent contractors has remained fairly stable between 2009 (9.6%) and 2013 (8.5%).³⁸

Labour hire employment

Labour hire workers are employed by labour hire businesses to perform work for other organisations (host organisations). The host organisation pays a fee to the labour hire business for finding the worker and the worker remains an employee of the labour hire business. Therefore, the worker's long service leave entitlements will depend on whether the labour hire business has an enterprise agreement which applies to the labour hire worker. If it does not, the labour hire worker will be covered by the relevant modern award and the National Employment Standards in the Fair Work Act.³⁹

The ABS' survey methods do not capture labour hire employees as these employees are classified by the nature of their relationship with their labour hire business (for example, as permanent employees, independent contractors or casual workers). A recent study estimates that labour hire workers made up between 1% and 2% of Australian workers between 2001 and 2011.⁴⁰

³⁴ Small Business Victoria, *A comprehensive guide to the Victorian Long Service Leave Act 1992*, 4.

³⁵ Australian Bureau of Statistics, *Forms of employment, Australia, November 2013*, <www.abs.gov.au/ausstats/abs@.nsf/mf/6359.0> viewed 16 September 2015; Australian Bureau of Statistics, *Forms of employment, Australia, November 2009* (2009), 7.

³⁶ Australian Bureau of Statistics, *Forms of employment, Australia, November 2013*.

³⁷ Small Business Victoria, *A comprehensive guide to the Victorian Long Service Leave Act 1992*, 5.

³⁸ Australian Bureau of Statistics, *Forms of employment, Australia, November 2013*.

³⁹ Fair Work Ombudsman, *Understanding on-hire employee services: A guide for on-hire businesses and host organisations* (2013), 1.

⁴⁰ Anthony Shomos et al, *Forms of work in Australia*, 38.

Labour market mobility

Another reason why some employees lose their long service leave entitlements is because their employment ends, either voluntarily or involuntarily, prior to the qualifying period (usually 10 years or seven years pro rata). Whether employees change industries when they change employers is also of interest in determining the potential benefit and impact of industry-specific portable long service leave schemes. We also examine why employees change industries when they change jobs.

Mobility between employers

ABS data show that in February 2013:

- 18% of employees had been with their current employer for under 12 months
- 44% of employees had been with their current employer for at least five years
- 25% of employees had been with their current employer for at least 10 years.⁴¹

Two out of five workers (40%) who ceased a job in the year prior to February 2013 left involuntarily. Of these, 47% were retrenched, 41% left their job because it was temporary or seasonal and 12% left due to their own ill health or injury.⁴² Among the 60% of workers who voluntarily ceased a job, the most common reasons reported were for a better job or conditions or because they wanted a change (32%) and unsatisfactory work conditions (22%).⁴³

The lowest rates of mobility are among managerial and professional occupations (11% had been with their current employer for less than 12 months) and the highest rates are among community and personal service workers, labourers and sales workers (each at 25%).⁴⁴ Research into labour mobility shows the workers who are most likely to change jobs are those who are younger, have no family commitments and do not have post-school qualifications.⁴⁵ In addition, workers are more likely to change jobs if their current job lacks permanency or opportunities for career progression.⁴⁶ Other factors that contribute to voluntary job turnover are favourable economic conditions, which provide workers with more job opportunities and the greater prevalence and accessibility of social media and professional networking sites, which alert workers to career opportunities.⁴⁷

ABS data suggest that job tenure has remained fairly stable since 1990 as shown in Figure 1.3. Using data from the Household, Income and Labour Dynamics in Australia survey, social research agency McCrindle Research found that the

41 Australian Bureau of Statistics, *Labour mobility, Australia, February 2013*, 13.

42 *ibid.*, 31.

43 *ibid.*, 30.

44 *ibid.*, 16.

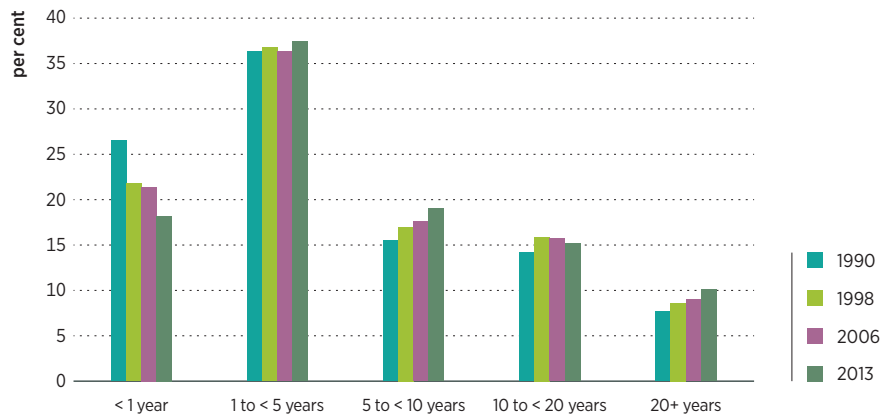
45 Richard Sweet, *The mobile worker: Concepts, issues, implications* (2011), 20, 21, 23.

46 *ibid.*, 20.

47 Deloitte Access Economics, *The future of work: How can we adapt to survive and thrive?* (2016), 31.

average tenure in a job is three years and four months. Based on this information, if a school leaver starts work in 2015 at age 18 and continues until retirement at age 75, they will have 17 different employers in their lifetime.⁴⁸

Figure 1.3 Duration of current job, Australia, 1990–2013



Sources: Australian Bureau of Statistics, *Labour mobility, Australia, February 2013*, 13; Australian Bureau of Statistics, *Labour mobility, Australia, February 2006*, 11; Australian Bureau of Statistics, *Labour mobility, Australia, February 2000*, 9.

Mobility between industries

According to ABS data, 57% of workers working as at February 2013 who changed employer or business in the 12 months prior, also changed the broad industry group in which they worked.⁴⁹ Figure 1.4 shows that worker turnover varies by industry, as does the source of new workers (that is, from the same industry, from another industry or from outside of the workforce). A recent Deloitte Access Economics survey of 1,400 Australian labour market participants found 60% of respondents who reported they will pursue a new job in the next 10 years are looking to change their industry, role or both.⁵⁰

McCrindle Research predicts the average worker starting work in 2015 will have five careers in their lifetime based on the assumption that a worker will work three jobs before upskilling or changing career.⁵¹

The occupational groups that have the lowest mobility between industries are those requiring post-school qualifications such as professionals, technicians and trades workers.⁵² In general, occupations that require post-school qualifications have better pay and conditions and greater opportunities for career progression, which reduces the incentive to change industry.⁵³

48 McCrindle Research, *Australia in 2015*, <mccrindle.com.au/the-mccrindle-blog/australia-in-2015> viewed 31 August 2015.

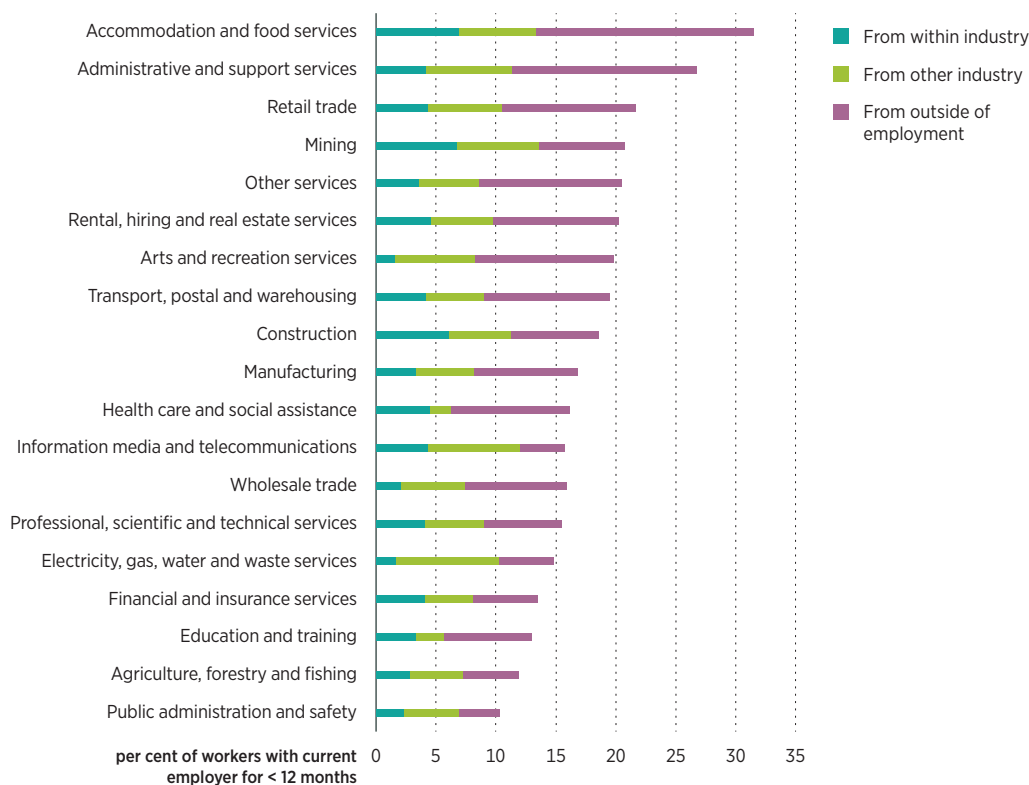
49 Australian Bureau of Statistics, *Labour mobility, Australia, February 2013*, 7.

50 Deloitte Access Economics, *The future of work*, 30.

51 McCrindle Research, *Australia in 2015*.

52 Richard Sweet, *The mobile worker*, 23–24.

53 *ibid.*, 24.

Figure 1.4 Worker turnover by industry at February 2013, Australia

Source: Australian Bureau of Statistics, *Labour mobility, Australia, February 2013*.

1.1.4 What other work has been done in this area?

The portability of long service leave entitlements has been considered in various reports in recent years. In Victoria, extensive work was conducted in the late 2000's to establish a proposed portable long service leave scheme for the community services sector.

Victorian Government

The push for portable long service leave for the Victorian community services sector came from the Community Sector Investment Fund, which was established in 2003 by the then Minister for Community Services, Ms Bronwyn Pike. The purpose of the Fund was to enhance the sustainability of community service organisations and through its work, portable long service leave was identified as a strategy to improve worker recruitment, retention and to foster professional development.⁵⁴

⁵⁴ PricewaterhouseCoopers, *Portable long service leave for early childhood teachers and assistants*, report for Department of Education and Early Childhood Development (2010), 1.

In 2007 and 2008, the then Department of Human Services, through the Community Sector Investment Fund, commissioned two studies to determine the practicality of a portable long service leave scheme for the Victorian community services sector. They were:

- a feasibility study, which recommended a compulsory, legislated scheme with contributions based on wages
- an actuarial study which forecast the initial base contribution rate and the ongoing contribution rate, in addition to establishment costs.⁵⁵

The Department held further stakeholder consultations in 2009 and 2010 including commissioning PricewaterhouseCoopers to identify the concerns of the community service organisations. The issues raised by stakeholders mostly focused around the scope of the scheme (who would be covered) and the cost of the scheme to employers. Some employers also expressed doubt about the benefits of the scheme for them, particularly in the short term.

This work culminated in the Community Services Long Service Leave Bill 2010 which was second read but did not pass prior to the end of the 56th Parliament. The Victorian Government has not worked further on a portable long service leave scheme for the community services sector since 2010.⁵⁶

Industrial Relations Victoria review of the Long Service Leave Act

Industrial Relations Victoria (IRV), the business unit responsible for industrial relations within the Department of Economic Development, Jobs, Transport and Resources, is currently undertaking a review of the Long Service Leave Act. The purpose of the review is to determine if the Act:

- meets the expectations of the community
- can be made fairer for women, parents and part-time and casual employees
- can be made simpler for employers to administer.⁵⁷

The review is not intended to consider issues relating to the portability of long service leave entitlements. IRV released a discussion paper setting out options for amending the Act in February 2016. It has invited the community, businesses, employers and employees to provide comments on these options, but will not finalise its views on these issues until after the Committee has completed this Inquiry.

⁵⁵ Bendzulla Actuarial Pty Ltd, *Feasibility study into a portable long service leave scheme for the community services sector in Victoria* (2007); Bendzulla Actuarial Pty Ltd, *Actuarial assessment of a proposed portable long service leave scheme for the community services sector in Victoria* (2008).

⁵⁶ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 2.

⁵⁷ Industrial Relations Victoria, *Victorian Government long service leave discussion paper 2016* (2016), 4.

Productivity Commission Workplace Relations Framework report

In December 2015, the Productivity Commission released the final report of its inquiry into the workplace relations framework. The objective of the inquiry was to examine the current operation of the Fair Work Laws and to identify potential improvements while taking into consideration the protection of workers' entitlements as well as the growth and prosperity of business and their impact on employment.⁵⁸

The Productivity Commission considered long service leave in its examination of the National Employment Standards. In regards to the portability of long service leave entitlements, the Commission expressed doubt about the degree of some of the reported benefits of portable long service leave.⁵⁹ When it compared the potential benefits with the costs of a scheme, it found that there was not enough evidence to justify the introduction of a national universal portable long service leave scheme.⁶⁰ It proposed an alternative where a proportion of long service leave entitlements could be portable. For example, two days per year of an employee's long service leave entitlements could be added to the employee's four weeks of annual leave. The Productivity Commission believed this proposal would provide some portability without requiring an employer levy or administration by a third party.⁶¹

Senate inquiry into long service leave

On 9 November 2015, the Australian Senate referred an inquiry into the feasibility of and options for, creating a national long service leave standard and the portability of long service leave and other entitlements, to the Senate Education and Employment References Committee. The terms of reference included examining the extent of insecure work and labour market mobility, the objectives of portable long service leave, which sectors may or may not benefit and how a portable long service leave scheme could operate.⁶²

The Senate Committee tabled its report in February 2016. It found the differences in long service leave arrangements between jurisdictions complicates the development of a national standard but there is widespread support for standardisation.⁶³ It also found there is no consensus on the definition of 'insecure work', which creates difficulties for analysing employment trends.⁶⁴ Regarding portable long service leave, the Senate Committee noted that while portability offers potential benefits to workers, employers object to it because of the costs and reduced incentive for workers to stay with the same employer.⁶⁵

⁵⁸ Productivity Commission, *Workplace relations framework*, v–vi.

⁵⁹ *ibid.*, 524.

⁶⁰ *ibid.*, 525.

⁶¹ *ibid.*, 524.

⁶² Senate Education and Employment References Committee, *Feasibility of, and options for, creating a national long service standard, and the portability of long service and other entitlements* (2016), 1.

⁶³ *ibid.*, 48.

⁶⁴ *ibid.*, 30.

⁶⁵ *ibid.*, 48.

The report made three recommendations:

- the State, Territory and Commonwealth Governments review existing long service leave arrangements and consider developing a national standard
- the ABS consider whether the development of an insecure work indicator would be useful to assist in understanding the extent of insecure work in Australia
- the Australian Government undertake modelling to determine the potential costs to employers of implementing a national portable long service leave scheme for all Australian workers.⁶⁶

Centre for Workforce Futures

The McKell Institute, with the Centre for Workforce Futures at Macquarie University, undertook some research into portable long service leave. The McKell Institute was established to reconnect the Labor Party with its voter base. Professor Raymond Markey was part of the McKell Institute team during that research.⁶⁷

The McKell Institute report was the first submission made to the Inquiry and the Centre for Workforce Futures also made a separate submission to the Inquiry.

1.2 The scope of this Inquiry

1.2.1 The terms of reference

The terms of reference for this Inquiry required the Committee to investigate employer schemes that provide portability of long service leave entitlements for Victorian workers as they move between jobs in the same or similar industry. The Committee was asked to give particular consideration to:

- which sectors, industries or occupations may benefit from portable long service leave schemes
- the role of Government in facilitating such schemes
- possible models, including governance, compliance and enforcement arrangements for portable long service leave schemes
- the capacity to operate such schemes both within Victoria and nationally
- the impact of such schemes on employment and the Victorian economy
- whether alternative mechanisms could better meet the objectives of a portable long service leave scheme.

The terms of reference also asked the Committee to give special consideration to a portable long service leave scheme for the community services sector.

⁶⁶ *ibid.*, vii.

⁶⁷ Professor Raymond Markey, Director and Professor of Employment Relations, Department of Marketing and Management, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 12.

1.2.2 What did the Committee examine?

To investigate portable long service leave, the Committee examined existing and proposed schemes in Victoria and interstate. This report summarises these schemes and what the Committee found regarding their implementation and operation. Consistent with the terms of reference, the report specifically considers the issues relating to a portable long service leave scheme for the community services sector. It outlines the arguments for and against portable long service leave for the sector and implementation issues relating to coverage and recent changes to the sector such as the rollout of the National Disability Insurance Scheme. In addition, other industries that may or may not benefit from portable long service leave are also considered.

Although the Committee received submissions calling for a universal portable long service leave scheme (where long service leave entitlements are portable between employers in any industry), the focus of this report is on portable long service leave between employers in the same or similar industry in accordance with the terms of reference. Similarly, while some submissions called for a national portable long service leave scheme, it is not considered in this report.

In general, issues relating to long service leave are also excluded from this report as they are beyond the scope of the Inquiry's terms of reference. The current IRV review of the Long Service Leave Act will look at pro rata access to long service leave after seven years (irrespective of employment termination), the calculation of long service leave entitlements with regard to penalty rates and accrual during parental leave and the definitions of employer and employee.⁶⁸

1.3 The Inquiry process

The Committee called for public submissions to this Inquiry in June 2015. Advertisements appeared in *The Age*, *The Herald Sun*, *The Weekly Times*, *The Australian* and *The Australian Financial Review*. The Committee also arranged for notice of the Inquiry and the subsequent public hearings to be included in the Parliament of Victoria's Twitter feed.

The Chair of the Committee wrote directly to over 120 key stakeholders inviting submissions to the Inquiry. These stakeholders included bodies that currently operate portable long service leave schemes, employer groups, unions, community service organisations, industry groups and government departments.

The Committee received 53 submissions. A list of stakeholders who made a submission can be found in Appendix 1.

The Committee held six days of public hearings, commencing in September 2015 and concluding in December 2015. One day of public hearings was focused on the issues specific to the community services sector. A number of key stakeholders were invited to appear at public hearings even though they had not made a

⁶⁸ Mr Matt O'Connor, Deputy Secretary, Industrial Relations Victoria, Department of Economic Development, Jobs, Transport and Resources, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

submission because, in the Committee's view, it was important to hear their perspectives to gain a better understanding of the issues around portable long service leave.

To further inform its understanding of portable long service leave schemes, the Committee held a day of public hearings in Sydney to gain the perspectives of key stakeholders involved in the implementation and operation of schemes running in NSW and the ACT. The NSW schemes are administered by the Long Service Corporation, which was invited to speak to the Committee but declined. The ACT Long Service Leave Authority (ACT Leave), which administers the portable long service leave schemes in the ACT, also declined to speak to the Committee, however, ACT Leave responded to questions from the Committee in writing.

Appendix 2 lists the participants who gave evidence to the Committee at the public hearings.

The Committee's Secretariat conducted a literature review on portable long service leave and this research is reflected throughout this report and in the bibliography. Due to long service leave being a uniquely Australian entitlement, published research in this area is limited.

1.4 Outline of the report

This report is divided into eight chapters:

- This chapter, Chapter 1, provides an introduction to the Inquiry, including the Inquiry's context, scope and conduct.
- Chapter 2 provides an overview of existing portable long service leave schemes in Victoria and interstate and possible future developments.
- Chapter 3 presents a summary of the arguments put for and against portable long service leave.
- Chapter 4 outlines the effects that portable long service leave may have on the Victorian economy and employment if it was expanded to other industries. Special consideration is given to the effects on small businesses and rural and regional areas.
- Chapter 5 considers which sectors or industries may benefit from the introduction of a portable long service leave scheme and specifically considers a scheme for the community services sector.
- Chapter 6 looks at the implementation and operational issues that need to be considered if portable long service leave is expanded to other industries in Victoria.
- Chapter 7 discusses alternative mechanisms or arrangements that could achieve the same objectives as portable long service leave.
- Chapter 8 contains a brief conclusion to the report.

This chapter describes the statutory portable long service leave schemes operating in Victoria and interstate and also provides examples of non-statutory Victorian schemes. The chapter then summarises the issues the Committee heard about these schemes and concludes by outlining possible future developments in relation to portable long service leave schemes interstate.

2.1 Existing schemes in Victoria

The only statutory portable long service leave scheme that exists in Victoria is the scheme for the building and construction industry described in Section 2.1.1 below. Victorian workers in some other sectors can also transfer their entitlements between employers by virtue of their respective employment agreements and examples of such non-statutory schemes are described in Section 2.1.2.

2.1.1 Building and construction industry

The Victorian building and construction industry portable long service leave scheme commenced in 1976. It was introduced in recognition of the project-based nature of employment in the industry, which made qualifying for long service leave difficult for workers. According to the scheme administrators, 84% of the workers who had a long service leave claim paid in 2014–15 had worked for at least two employers thus far.⁶⁹ In the same year, the scheme had 186,601 registered workers, 15,573 current employers and total assets of \$1.03 billion.⁷⁰

The scheme is administered by CoINVEST, a public company limited by guarantee. When the scheme began it was administered by a statutory authority known as the Building Industry Long Service Leave Board, which adopted the name CoINVEST in 1992. When the scheme was privatised under the *Construction Industry Long Service Leave Act 1997* (Vic), CoINVEST was appointed as a not-for-profit trustee to administer the Construction Industry Long Service Leave Fund.

Under the scheme, workers are entitled to 13 weeks of leave after 10 years of continuous service in the industry and then 1.3 weeks of leave for every year thereafter. Workers can access pro rata entitlements after seven years of service.⁷¹ Each quarter, employers are required to report to CoINVEST the number of

69 CoINVEST, *Submission 7*, 1.

70 CoINVEST, *Annual report 2015* (2015), 9, 24.

71 CoINVEST, *Q & A: The CoINVEST long service leave scheme* (2014), 1.

days worked by their employees and apprentices and the total gross wages of their employed qualified tradespeople. CoINVEST then issues employers with an invoice for 2.7% of the total gross wages reported (the employer contribution levy rate).⁷²

CoINVEST does not allocate the collected funds to specific employees but pools and invests the funds. When an employee qualifies for long service leave (based on the reported days worked) and applies for the entitlement, CoINVEST credits the employee's bank account with the long service leave payment. Employees can choose the number of days they wish to claim between a minimum of one week and their entire entitlement.⁷³

Work covered by the CoINVEST scheme

The CoINVEST scheme covers workers who do construction, reconstruction, renovation, maintenance and installation work and, under some trades, service and repair work. Apprentices are covered as well as qualified tradespeople, foremen and labourers. However, employers are not required to pay the levy for apprentices. Subcontractors who wish to participate in the scheme and pay for themselves are also able to.⁷⁴ The scheme also covers long service leave entitlements for workers whose employers have become insolvent.

At the scheme's commencement, coverage was limited to work in the building trades. Amendments to legislation brought in construction trades in 1978 and shopfitting in 1982. In 1983, electrical and communications work and metal trades construction were incorporated into the scheme under the *Construction Industry Long Service Leave Act 1983 (Vic)*.⁷⁵

Prior to 1997, changes in the scheme's coverage could only be made by amending legislation. However, following privatisation, the scheme's coverage definitions were removed from the enabling legislation and were instead contained in CoINVEST's Rules. This makes Victoria's scheme unique when compared with statutory portable long service leave schemes in other States and Territories whose coverage is defined in legislation.

CoINVEST may bring into effect changes to coverage after a special resolution of the Board and approval by the Governor in Council. CoINVEST informed the Committee that each change to coverage since 1997 has been initiated by the industry, with both employer and union support.⁷⁶ CoINVEST conducts extensive negotiations and consultations with stakeholders and receives legal advice in relation to each proposed change to the Rules. In the case of the inclusion of metal trades maintenance and labour hire in 2004, this process took two years.⁷⁷

72 CoINVEST, *Workers' days and wages form*, <www.coinvest.com.au/employers/workers-days-wages-form> viewed 7 December 2015.

73 CoINVEST, *Claiming long service leave*, <www.coinvest.com.au/workers/claiming-long-service-leave> viewed 7 December 2015.

74 CoINVEST, *Q & A: The CoINVEST long service leave scheme*, 2.

75 CoINVEST, *Submission 7*, 1.

76 *ibid*, 2.

77 Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 9.

Table 2.1 lists the coverage changes that have occurred since 1997. Not all requests for coverage extensions succeed. For example, in 2005–06, a union request to include glazing work did not proceed because support from the relevant employer group was lacking.⁷⁸

Table 2.1 Changes made to the CoINVEST scheme’s coverage since 1997

Year	Extension to coverage
1998	Electrical services (that is, maintenance of power lines and installation and maintenance of electric light, power and appliances)
1999	Concrete testing Construction yardmen services (that is, services relating to scaffolding)
2004	Landscape gardening (excludes work carried out in the domestic sector) Floor covering services (excludes work carried out in the domestic sector) Metal trades workers undertaking machinery maintenance Non-destructive testing services (that is, investigation of the material integrity of metal work, structures or objects) Parquetry floor laying
2005	Watering system services (excludes work carried out for viticulture, horticulture or agriculture and in the domestic sector)
2006	Platform service operators and responsible officers working off-shore (on oil or gas processing facilities)

Sources: CoINVEST, *Annual report 2004* (2004), 2; CoINVEST, *Annual report 2005* (2005), 3; CoINVEST, *Submission 7*, 9.

Administration of the CoINVEST scheme

Governance

CoINVEST is governed by an 11-director board. Four of the directors are elected by employers. Of these, two directors represent building trades employers, one represents electrical trades employers and one represents metal trades employers. Another four directors are elected by workers and their representation follows the same breakdown—two directors represent building trades workers and one each represents electrical trades workers and metal trades workers.⁷⁹ The remaining three directors must be independent and have skills in fund management, investment, law or finance. They are appointed by the industry directors. The Chairperson must be one of the independent directors.⁸⁰

As mentioned earlier, CoINVEST’s Rules can only be amended following a special resolution of the Board, which requires agreement from at least seven of the eight industry directors and two of the three independent directors.⁸¹

⁷⁸ CoINVEST, *Submission 7*, 2.

⁷⁹ CoINVEST, *Board of directors*, <www.coinvest.com.au/about-coinvest/board-of-directors> viewed 7 December 2015.

⁸⁰ CoINVEST, *Submission 7*, 2.

⁸¹ *ibid.*

Compliance and enforcement

Employers in the construction industry are required to register with CoINVEST, submit information every three months on the days worked and total wages of their workers and pay the required contribution levy. To ensure compliance, CoINVEST educates employers and employees and encourages electronic lodgement of employer forms and payments. In 2015, 60% of employer returns were lodged electronically, covering 77% of all workers.⁸²

CoINVEST is often alerted to unregistered employers when workers approach CoINVEST. For example, a worker who recently changed employer might discover that no service has been recorded on his or her annual statement since and report this to CoINVEST. Mr John Hartley, CoINVEST's Chief Executive Officer stated, 'the best people to tell us they work in the industry are the apprentices and the workers.'⁸³ For this reason, CoINVEST has field officers who speak to first and third-year apprentices annually at TAFE colleges to educate them about the scheme.

Enforcement measures relating to late returns and payments follow a set timeframe. Employers who are one week overdue submitting information about their workers via the 'Workers' Days and Wages' form are sent SMS and email reminders. Once the form is two weeks overdue, a solicitor's warning letter is posted and once it is three weeks overdue, notice pursuant to section 10 of the Construction Industry Long Service Leave Act is served on the company or business owner.⁸⁴ If the form is not subsequently lodged, a summons is issued. However, CoINVEST can negotiate with the employer and drop the court action if the employer complies and covers CoINVEST's costs.⁸⁵

If levy contribution payments are not made within 14 days of invoicing and if a payment plan has not been set up with CoINVEST, CoINVEST sends the debt to an external collection agency.⁸⁶

Employer levy contribution rate

The employer levy contribution rate for the CoINVEST scheme has fluctuated over the years reflecting changes to investment returns and worker benefits. An independent actuarial review is conducted annually to assess the liabilities of the scheme and the adequacy of the levy contribution rate.⁸⁷ The levy contribution rate may be adjusted based on the assessment of the fund's solvency. However, the Construction Industry Long Service Leave Act currently caps the rate at 3%. Figure 2.1 shows how the levy has varied since the scheme's commencement.

⁸² *ibid*, 3.

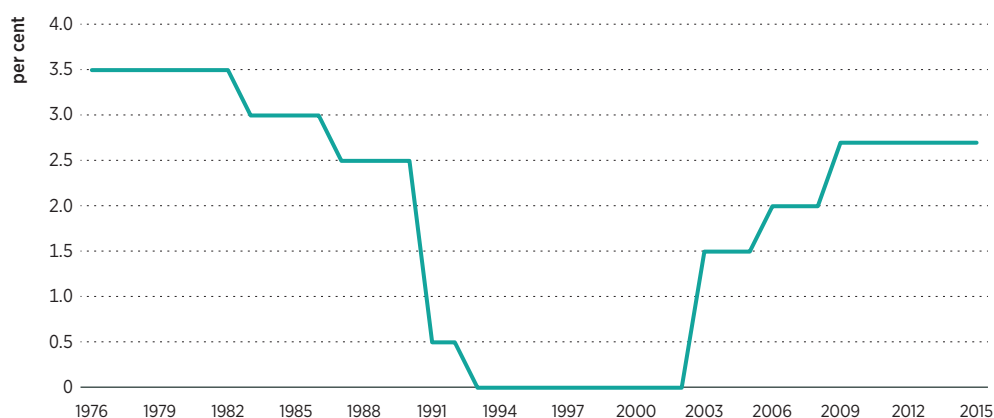
⁸³ Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 8.

⁸⁴ CoINVEST, *Employer obligations*, <www.coinvest.com.au/employers/employer-obligations> viewed 7 December 2015.

⁸⁵ CoINVEST, *Submission 7*, 3.

⁸⁶ CoINVEST, *Employer obligations*.

⁸⁷ CoINVEST, *Submission 7*, 3.

Figure 2.1 CoINVEST employer levy contribution rates, 1976–2015

Sources: CoINVEST, *Annual report 2001* (2001), 4; CoINVEST, *Annual report 2010* (2010), 1.

The original 1976 levy was set at 3.5% because the fund picked up the liabilities for workers' prior entitlements and the level of future liabilities was unclear.⁸⁸ Due to surplus funds, the levy rate was gradually reduced until it fell to zero in 1993. Favourable investment returns allowed the rate to stay at zero for 10 years. In 2003, the levy rate was increased to 1.5% to cover a surge in liabilities due to changes in the Rules that increased worker entitlements, namely the introduction of pro rata access at seven years in 2001 and an increase from two months to three months of leave after 10 years of service in 2002.⁸⁹

Subsequently, the scheme's investment returns suffered from the stock market crashes following the burst of the information technology bubble and the global financial crisis. The latter crash required an increase in the levy to 2.7% in 2009. As economic downturns affect work in the construction industry, levy contributions also fell during this period affecting the fund's income. At the same time, workers were more likely to claim benefits to cover periods of unemployment.⁹⁰ After a slow recovery, the CoINVEST scheme is now fully funded (105% at 30 June 2015). Mr Hartley estimates that over the long term, the average operating costs of the scheme were between 2.0% and 2.2%.⁹¹

The Committee heard a number of concerns about the operation of the CoINVEST scheme. These are discussed in Section 2.3.1.

2.1.2 Non-statutory schemes

A range of sectors have non-statutory portable long service leave schemes where portability of long service leave entitlements is contained in their employment agreements or in the case of local government, regulations rather than in an

⁸⁸ CoINVEST, *Annual report 2001*, 4; Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 4.

⁸⁹ Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 4.

⁹⁰ Shauna Ferris, Louise Thornthwaite, Ray Markey and Tim Kyng, 'Portable long service leave in the building and construction industry' (Paper presented at the Actuaries Institute Actuaries Summit, Melbourne, 17–19 May 2015), 13.

⁹¹ Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 5.

Act. Examples of such schemes brought to the Committee's attention during consultations are briefly described below. Unlike CoINVEST, non-statutory schemes have internal administrative mechanisms.

Local government

Portable long service leave has existed in Victorian local government since 1974 and the entitlements are contained in the *Local Government (Long Service Leave) Regulations 2012* (Vic). Employees are entitled to three months of leave at ordinary pay after 10 years of service with a pro rata entitlement after seven years. Entitlements can be transferred between Councils and Victorian public sector State authorities such as water authorities, where an agreement is in place and there has not been a break in service of more than 12 months.⁹²

A central long service leave fund does not exist for the sector and requirements for Councils to set aside money in their own fund were abolished in 2012. Councils must now meet their long service leave obligations from their general revenue.⁹³

State government

Current long service leave entitlements for the Victorian public service are set out in the *Victorian Public Service workplace determination 2012*, which includes portability rights between the Victorian public sector and other Commonwealth, State and Territory public services. Employees are entitled to three months of leave (13 weeks) after 10 years of service with a pro rata entitlement after seven years. Service is considered to be continuous as long as there has not been a break of more than 12 months but there are exceptions. For example, a break of up to two years is allowable if the employer believes that the break was caused by special circumstances or up to three years if the break was due to disability.⁹⁴

The long service leave arrangements of some public entities which were part of the Victorian public service (such as Parks Victoria and the Country Fire Authority) have changed. At times, this has affected the recognition of prior service from elsewhere in the Victorian public sector. Following these entities' removal from the Victorian public service, variations were made to their employment agreements relating to long service leave. In some cases, portability of entitlements is only realised if funds are transferred from the former employer to the current one. For example, the Victorian Building Authority and the Zoological Parks and Gardens Board will only recognise prior service in the Victorian public sector if funds are transferred to them from the former employer (see Section 5.2.2 for further examples).⁹⁵

⁹² r 15 *Local Government (Long Service Leave) Regulations 2012* (Vic).

⁹³ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 18.

⁹⁴ cl 50 *Victorian Public Service workplace determination 2012*.

⁹⁵ Community and Public Sector Union, SPSF Group, Victorian Branch, *Submission 49*, 8–9.

Public health sector

Long service leave entitlements for nurses, midwives and other health professionals within the public health system can be transferred between employers as long as there is no more than a 13-week break between employers. The entitlements are outlined in the respective enterprise agreements. For example, medical specialists are entitled to six months of leave after 15 years of continuous service (some agreements provide four months of leave after 10 years of service). Pro rata entitlements are payable as a lump sum after 10 years if employment is ended.⁹⁶

There is no actual transfer of accrued long service leave monies as it is assumed that the movement between hospitals and networks will balance out. Instead, the Department of Health and Human Services provides public sector hospitals and networks 2.8% of the salary component in supplementary funding each year to cover long service leave entitlements.⁹⁷

Public education sector

Teachers in the Victorian public school system are employed by the Department of Education and Training, so they do not lose their long service leave entitlements when moving between public schools. Public school teachers may have a break of up to five years from the profession without being considered to have broken their service. Their employment agreement also allows portability between teaching service and public service in approved organisations such as local government, or a State or Commonwealth government department or authority. However in these cases, the maximum break between periods of service is 12 months.⁹⁸

Teachers are entitled to three months of leave after 10 years of service and one and a half months of leave for each subsequent five years of service. Pro rata access is available at seven years if employment ends.

Catholic education sector

Unlike the public education sector where teachers are employed by the Victorian Department of Education and Training, in the Catholic education sector, teachers are employed by individual Catholic schools. However, there is an agreement in place between Catholic education providers, the Archdiocese of Melbourne and the Dioceses of Ballarat, Sandhurst and Sale to provide portable long service

⁹⁶ Australian Medical Association Victoria, *Long service leave entitlements*, <amavic.com.au/page/Specialists_in_Public_Hospitals/Working_as_a_specialist_in_a_Victorian_Public_Hospital/What_are_collective_agreements_and_which_cover_my_employment/> viewed 4 December 2015.

⁹⁷ Mr Leigh Hubbard, Senior Industrial Officer, Australian Nursing & Midwifery Federation (Victorian Branch), *Transcript of evidence*, Melbourne, 5 October 2015, 3.

⁹⁸ Department of Education and Training (Victoria), *Recognition of prior service for leave purposes*, <www.education.vic.gov.au/hrweb/employcond/Pages/pservTS.aspx> viewed 4 December 2015.

leave to Catholic education employees.⁹⁹ Employees are entitled to 13 weeks of leave after 10 years of service, with access to pro rata entitlements at seven years. The maximum break in service is 12 months.¹⁰⁰

The scheme is not centralised. Instead, a former employer transfers funds to cover accumulated long service leave entitlements to the new employer upon application by the employee (which must happen within 13 months of leaving the former employer). Employees are not allowed to take long service leave in their first year of employment with the new employer (unless there are exceptional circumstances).¹⁰¹

Early childhood sector

The portability of long service leave entitlements for early childhood teachers and assistants in Victoria was legislated in 1984. At the time, a central payment system was established for the former Department of Human Services to hold long service leave funds, maintain records and pay out entitlements for funded pre-schools. The enabling legislation provided for the gazettal of the kindergartens to be covered but this list was never published in the Government Gazette.¹⁰² Nevertheless, portability was available to employees of community kindergartens as they were paid from the Department's central payment system. This system was dismantled in 1994 and a replacement system has not been set up.

Currently, an informal agreement is in place but there is no legal obligation for former employers to honour accrued entitlements when requested to do so by the current employer. There is also no legal obligation for current employers to seek contributions from former employers when a worker seeks to access the long service leave they have accrued across the sector.¹⁰³ Long service leave entitlements are in accordance with the *Long Service Leave Act 1992* (Vic).

Neighbourhood houses

Employees at Victorian neighbourhood houses that are signatories to a Multi-Employer Collective Agreement are entitled to transfer their long service leave entitlements if they move between neighbourhood houses that are both signatories to the Agreement. Almost three in four neighbourhood houses (73%) are signatories.¹⁰⁴ Employees are entitled to three months of leave after 10 years of continuous service. The Agreement allows employees to access their pro rata long service leave entitlements at five years rather than the statutory seven years.

⁹⁹ Catholic Education Long Service Leave Scheme (Victoria), *Financial statements for the financial year ended 31 December 2014* (2015), 6.

¹⁰⁰ Catholic Education Commission of Victoria, *Victorian Catholic education multi enterprise agreement 2013* (2013), 90, 93.

¹⁰¹ Catholic Archdiocese of Melbourne, *Portability of long service leave policy* (2015), 1.

¹⁰² PricewaterhouseCoopers, *Portable long service leave for early childhood teachers and assistants*, report for Department of Education and Early Childhood Development (2010), 2.

¹⁰³ Australian Education Union, Victorian Branch, *Submission 16*, 6–7.

¹⁰⁴ Association of Neighbourhood Houses and Learning Centres, *Submission 13*, 2.

Community legal centres

The portability of long service leave entitlements is available to employees of community legal centres through their enterprise agreements. Employees are entitled to 13 weeks of leave after 10 years of continuous service with a pro rata entitlement after seven years.

Prior service is recognised for long service leave purposes if breaks in service do not exceed 12 months and funds are transferred from the former employer(s) to the current employer. If the funds are not made available from the former employer(s), the current employer will recognise the period of service but will only be responsible for funding the component of long service leave accrued with the current employer.¹⁰⁵

2.2 Interstate and national statutory schemes

All other States and Territories have statutory portable long service leave schemes although the industries which are covered vary. This section summarises these schemes by industry.

2.2.1 Building and construction industry

Each State and Territory has its own portable long service leave scheme for the building and construction industry. A reciprocal agreement signed by the relevant Minister in each jurisdiction exists, whereby workers' service in other jurisdictions is recognised upon application. Under the reciprocal agreement, the chief executive officers of the schemes meet several times each year to benchmark their processes and discuss issues of concern. The schemes are currently assessing the feasibility of implementing a common back office for all the schemes.¹⁰⁶

Table 2.2 lists and compares the attributes of each jurisdiction's construction industry scheme. Other than variances in entitlements, the major differences between the schemes' administration are:

- the Tasmanian and Victorian schemes have been privatised whereas the schemes in other jurisdictions are administered by bodies appointed by government
- the schemes in New South Wales (NSW), the Northern Territory (NT) and Queensland (QLD) are funded by a project levy (payable by the person for whom the work is being done), whereas the schemes in other jurisdictions are funded by a levy on employers. The employer levy varies between the relevant jurisdictions, ranging from 1.5% to 2.7%.

¹⁰⁵ Eastern Community Legal Centre, *Eastern Community Legal Centre enterprise agreement 2013-16* (2014), 22.

¹⁰⁶ CoINVEST, *Submission 7*, 5.

Table 2.2 Comparison of interstate portable long service leave schemes for the building and construction industry

Jurisdiction	Victoria ^(a)	Australian Capital Territory (ACT) ^(b)	New South Wales (NSW) ^(c)	Northern Territory (NT) ^(d)	Queensland ^(e)	South Australia (SA) ^(f)	Tasmania ^(g)	Western Australia (WA) ^(h)
Year commenced	1976	1981	1975	2005	1992	1977	1972	1987
Supporting legislation	<i>Construction Industry Long Service Leave Act 1997 (Vic)</i>	<i>Long Service Leave (Portable Schemes) Act 2009 (ACT)</i>	<i>Building and Construction Industry Long Service Payments Act 1986 (NSW)</i>	<i>Construction Industry Long Service Leave and Benefits Act 2005 (NT)</i>	<i>Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)</i>	<i>Construction Industry Long Service Leave Act 1987 (SA)</i>	<i>Construction Industry (Long Service) Act 1997 (Tas)</i>	<i>Construction Industry Portable Paid Long Service Leave Act 1985 (WA)</i>
Registration	Compulsory for all employers and their employees; optional for subcontractors to contribute for own service	Compulsory for all employers and their employees; optional for contractors/sub-contractors	Compulsory for all employers and their employees	Compulsory for all employers and their employees	Compulsory for all employers and their employees	Compulsory for all employers who employ a worker for 3 or more days per month; optional for self-employed contractor or working director	Compulsory for all employers and their employees	Compulsory for all employers and their employees
Scope	Construction work, as well as reconstruction, renovation, maintenance and installation; service and repair work is also covered under some trades	All trades and building, demolition, maintenance and construction-related work undertaken in the ACT Includes interstate companies working in the ACT	Construction, reconstruction, alteration, demolition, maintenance or repair work to a range of structures	Construction work including commercial, domestic, industrial and civil Includes repair, maintenance, extension and demolition work	Construction, deconstruction, reconstruction, renovation, alteration, demolition, relocation, maintenance or repair work to a range of structures	Building work and electrical and metal trades work performed mainly on-site on new or existing commercial, industrial or domestic buildings or structures	Construction work in an industry defined in the relevant sections of Division C and all of Division E of the Australian Standard Industrial Classification (ANZSIC) Code	Construction, alteration, renovation, repair or maintenance to any new or existing commercial, industrial or domestic buildings, structures or works

(continued)

Jurisdiction	Victoria ^(a)	Australian Capital Territory (ACT) ^(b)	New South Wales (NSW) ^(c)	Northern Territory (NT) ^(d)	Queensland ^(e)	South Australia (SA) ^(f)	Tasmania ^(g)	Western Australia (WA) ^(h)
Entitlements	9.1 weeks of leave after 7 years of service; then 1.3 weeks for each subsequent year; pro rata after 7 years	13 weeks of leave after 10 years of service; pro rata after 5 years of service (for workers registered before 1 July 2012) or 7 years (for workers registered from 1 July 2012) if leaving the industry permanently	8.67 weeks of leave after 10 years of service; then 1 month after each subsequent 5 years; pro rata after 5 years if permanently leaving the industry	13 weeks of leave after 10 years of service; then 6.5 weeks for each subsequent 5 years; pro rata after 5 years if leaving the industry permanently	8.67 weeks of leave after 10 years of service; pro rata after 5 years of service if leaving the industry permanently	13 weeks of leave after 10 years of service; pro rata after 7 years if leaving the industry for at least 12 months	13 weeks of leave after 10 years of service; pro rata after 7 years	8.67 weeks of leave after 10 years of service; then 4.33 weeks after each subsequent 5 years; pro rata after 7 years
Payment instead of leave	Allowed	Allowed only for workers registered before 1 July 2012	Allowed	Allowed only for labour-only contractors	Not allowed	Not allowed	Allowed	Not allowed
Maximum break from sector	4 years (if less than 7 years of service); indefinite thereafter	4 years	4 years	4 years	4 years	2 years (if less than 5 years of service); 3 years (if between 5 and 7 years of service); indefinite thereafter	4 years	2 years (in the first 5 years of service); 4 years thereafter
Employer levy	2.7% of employees' ordinary wages	2.5% of employees' ordinary wages	0.35% of total cost of project (for all projects in NSW that cost \$25,000 or more)	0.1% of total cost of project (for all projects in NT that cost \$1 million or more)	0.25% of total cost of project (for all projects in Queensland that cost \$150,000 or more)	2.25% of workers' remuneration	2.5% of employees' ordinary wages	1.5% of employees' ordinary wages
Employer returns	Quarterly	Quarterly	Yearly	Twice yearly	Yearly	Every 2 months	Monthly or quarterly	Quarterly
Funding model	Industry-based defined benefit fund	Industry-based defined benefit fund	Industry-based defined benefit fund	Industry-based defined benefit fund	Industry-based defined benefit fund	Industry-based defined benefit fund	Industry-based defined benefit fund	Industry-based defined benefit fund
Administrative body	ColINVEST	ACT Leave	Long Service Corporation	NT Build	QLeave	Construction Benefit Services	TasBuild	MyLeave

(continued)

Jurisdiction	Victoria ^(a)	Australian Capital Territory (ACT) ^(b)	New South Wales (NSW) ^(c)	Northern Territory (NT) ^(d)	Queensland ^(e)	South Australia (SA) ^(f)	Tasmania ^(g)	Western Australia (WA) ^(h)
Governance	Public company; board of 11 members with employer and employee representation elected by industry	Statutory authority; board of 3-7 members with employer and employee representation appointed by Minister	NSW Government agency under Ministerial control	Statutory authority; board of 7 members with employer and employee representation appointed by Minister	Statutory authority; board of 8 members with employer and employee representation appointed by Governor	Statutory authority; board of 7 members with employer and employee representation appointed by Minister	Private trustee company; board of 7 members with employer and employee representation elected by industry	Statutory authority; board of 7 members with employer and employee representation appointed by Minister
Actuarial review	Every 3 years	Every 3 years	Every 3 years	Every 3 years	Every 2 years	Annually	Every 3 years	Annually
Complaint body	Court	ACT Civil and Administrative Tribunal	Building and Construction Industry Committee	Local Court	Industrial Magistrate	Appeals Tribunal	Court	Board of Reference

Sources:

- (a) *Construction Industry Long Service Leave Act 1997* (Vic); CoINVEST. *Board of directors*; CoINVEST, *How CoINVEST works*, <www.coinvest.com.au/about-coinvest/how-coinvest-works> viewed 11 November 2015; CoINVEST, G & A: *The CoINVEST long service leave scheme*.
- (b) *Long Service Leave (Portable Schemes) Act 2009* (ACT); ACT Leave, *Construction industry fact sheet* (2010).
- (c) *Building and Construction Industry Long Service Leave Payments Act 1986* (NSW); Long Service Corporation, *Employer guide: Building and construction industry* (2015).
- (d) *Construction Industry Long Service Leave and Benefits Act 2005* (NT); NT Build, *Differences between the NT LSL Act and the portable long service leave scheme* (2015); NT Build, *General overview*, <www.ntbuild.com.au/ntbuild/about_ntbuild.shtml> viewed 11 November 2015.
- (e) *Building and Construction Industry (Portable Long Service Leave) Act 1997* (Qld); QLeave, *A guide for registered employers* (2015).
- (f) *Construction Industry Long Service Leave Act 1987* (SA); Construction Benefit Services, *Employer guide* (2015); Construction Benefit Services, *Workers FAQ*, <www.cbsserv.com.au/home/cislib/index.php/workers/faq> viewed 11 November 2015.
- (g) *Construction Industry (Long Service) Act 1997* (Tas); TasBuild, *FAQs*, <www.tasbuild.com.au/FAQ-s.aspx> viewed 11 November 2015.
- (h) *Construction Industry Portable Paid Long Service Leave Act 1985* (WA); MyLeave, *About the scheme*, <www.myleave.wa.gov.au/workers/about-the-scheme/> viewed 11 November 2015.

2.2.2 Contract cleaning industry

Some jurisdictions have introduced portable long service leave schemes for the contract cleaning industry. Due to the industry's competitive tendering process, contract cleaners may have new employers every three to four years despite working in the same job. In most industries, when there is a transfer of ownership or when assets are transferred with the transmission of business, employee entitlements are transferred to the next employer. However, in the contract cleaning industry, there is no change in ownership and no transmission of physical assets when contracts change so employees lose their entitlements.¹⁰⁷

In recognition of the contracted nature of employment, portable long service leave schemes for the contract cleaning industry were established in the Australian Capital Territory (ACT) in 2000, NSW in 2011 and QLD in 2005. There is a reciprocal agreement between the schemes to recognise service across these jurisdictions. Table 2.3 compares the attributes of the cleaning industry portable long service leave schemes that exist interstate.

2.2.3 Community services sector

The ACT is the only jurisdiction to have established a portable long service leave scheme for the community services sector, which commenced operation in 2010. The scheme was implemented in response to the ACT Community Sector Taskforce's 2006 report *Towards a sustainable community services sector in the ACT*, which recommended the legislation of a mandatory portable long service leave scheme for the sector to create a more sustainable career path for community services workers.¹⁰⁸

In its 2008–09 budget, the ACT Government agreed to establish a portable long service leave scheme for the sector. A steering committee was established, which issued a discussion paper seeking views from peak industry bodies and employers. It then held interviews with key stakeholders which revealed strong support from unions and employees and mixed support from employers. The employers' main concern was the additional cost of long service leave entitlements, since high labour mobility in the industry meant that few entitlements were ever paid out. They were also concerned about the potential increase in staff turnover if there was no incentive to stay with the same employer.¹⁰⁹ However, small to medium employers supported the scheme.¹¹⁰

¹⁰⁷ Fair Work Ombudsman, *When businesses change hands*, <www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/when-businesses-change-hands> viewed 14 December 2015; Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 6. Also see Section 3.1.1.

¹⁰⁸ Australian Capital Territory, *Parliamentary debates*, Legislative Assembly, 17 September 2009, 4133 (John Hargreaves), 4134.

¹⁰⁹ Urbis, *Portable long service leave for the ACT community services sector*, report for Department of Disability, Housing and Community Services (2008), 4.

¹¹⁰ Katy Gallagher, ACT Government, *New scheme to strengthen community sector workforce* (Media release, 10 September 2009).

The scheme provides the same entitlements as the *Long Service Leave Act 1976* (ACT). Table 2.4 lists the attributes of the ACT's community services sector portable long service leave scheme. Further discussion of portable long service leave for the community services sector can be found in Section 5.1.

Table 2.3 Comparison of interstate portable long service leave schemes for the contract cleaning industry

Jurisdiction	ACT ^(a)	NSW ^(b)	Queensland ^(c)
Year commenced	2000	2011	2005
Supporting legislation	<i>Long Service Leave (Portable Schemes) Act 2009</i> (ACT)	<i>Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010</i> (NSW)	<i>Contract Cleaning Industry (Portable Long Service Leave) Act 2005</i> (Qld)
Registration	Compulsory for all employers and their employees	Compulsory for all employers and their employees	Compulsory for all employers and their employees
Scope	All contract cleaning work conducted in the ACT (except in buildings under construction) Includes interstate companies working in the ACT	Contract cleaning work performed on commercial and domestic premises Includes minor property maintenance work incidental to cleaning work Excludes workers who are directly employed by the owners of the premises	Contract cleaning work performed in commercial and domestic premises Excludes cleaning of swimming pools, waste removal from commercial waste receptacles, ground maintenance and gardening
Entitlements	8.67 weeks of leave after 10 years of service; pro rata after 5 years of service if leaving the industry permanently or 7 years of service otherwise	8.67 weeks of leave after 10 years of service; pro rata after 5 years of service if leaving the industry permanently	8.67 weeks of leave after 10 years of service; pro rata after 7 years of service if leaving the industry permanently
Payment instead of leave	Not allowed	Not allowed	Not allowed
Maximum break from sector	4 years	4 years	4 years
Employer levy	1.6% of employees' ordinary wages	1.7% of employees' gross ordinary wages	1.3% of employees' ordinary wages
Employer returns	Quarterly	Quarterly	Quarterly
Funding model	Industry-based defined benefit fund	Industry-based defined benefit fund	Industry-based defined benefit fund
Administrative body	ACT Leave	Long Service Corporation	QLeave
Governance	Statutory authority; board of 3–7 members appointed by Minister with employee and employer representation	NSW Government agency under Ministerial control	Statutory authority; board of not more than 8 directors appointed by Governor in Council with employee and employer representation
Actuarial review	Every 3 years	Every 2 years	Every 2 years
Complaint body	ACT Civil and Administrative Tribunal	Contract Cleaning Industry Long Service Leave Committee	Industrial Magistrate

Sources:

- (a) *Long Service Leave (Portable Schemes) Act 2009* (ACT); ACT Leave, *Cleaning industry fact sheet* (2015).
 (b) *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* (NSW); Long Service Corporation, *Employer guide: Contract cleaning industry* (2015).
 (c) *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* (Qld); QLeave, *Employers*, <[www.qleave.qld.gov.au/webdb/wsmanager.nsf/\(web\)/98EAEC027A1066464A257011001E3E95](http://www.qleave.qld.gov.au/webdb/wsmanager.nsf/(web)/98EAEC027A1066464A257011001E3E95)> viewed 11 November 2015.

2.2.4 Security industry

The most recent portable long service leave scheme to be introduced in Australia is the ACT security industry scheme. The 2013 introduction of the scheme followed consultation with peak security industry employer and employee bodies. The rationale for the scheme's introduction was to ensure equity for security workers who were unable to serve with an employer long enough to qualify for long service leave due to contract work. ACT Minister for Industrial Relations, Dr Chris Bourke, referred to the security industry's similarity to the contract cleaning industry when he introduced the legislation to Parliament:

The general nature of the security industry—in terms of contracts, transient workforce and workforce profiles—is consistent with the cleaning industry that has had a successful scheme in operation. In addition, many organisations engage cleaners and security workers on similar contract arrangements and the addition of a new scheme for the security industry would have minimal impact.¹¹¹

Table 2.4 lists the attributes of the ACT's security industry portable long service leave scheme.

2.2.5 Black coal mining industry

The portable long service leave scheme for the black coal mining industry commenced in 1949 and was the first statutory portable long service leave scheme created in Australia. While it is a national scheme enabled by Commonwealth legislation, it only operates in States that have operating black coal mines. Victoria does not have any operating black coal mines.

The scheme provides the entitlements provided for in the relevant awards. Unlike other statutory portable long service leave schemes which pay benefits directly to employees, the coal mining scheme instead reimburses employers after they have paid their workers long service leave benefits.¹¹² Another difference is that the scheme recognises aggregate rather than continuous service to reflect the nature of employment opportunities in the industry following the closure and opening of coal mines. Workers are allowed a break of up to eight years from the industry without losing their long service leave accruals. Table 2.4 lists the attributes of the black coal mining portable long service leave scheme.

¹¹¹ Australian Capital Territory, *Parliamentary debates*, Legislative Assembly, 29 March 2012, 1515 (Chris Bourke), 1518.

¹¹² Coal Mining Industry (Long Service Leave Funding) Corporation, *Annual report 2014* (2014), 4.

Table 2.4 Comparison of interstate portable long service leave schemes for the community services, security and black coal mining industries

Industry	Community services ^(a)	Security ^(b)	Black coal mining ^(c)
Jurisdiction	ACT	ACT	Commonwealth
Year commenced	2010	2013	1949
Supporting legislation	<i>Long Service Leave (Portable Schemes) Act 2009</i> (ACT)	<i>Long Service Leave (Portable Schemes) Act 2009</i> (ACT)	<i>Coal Mining Industry (Long Service Leave) Administration Act 1992</i> (Cth)
Registration	Compulsory for all employers and their employees	Compulsory for all employers and their employees	Compulsory for all employers and their employees
Scope	All community sector work including childcare and residential care (welfare, homecare, respite, social support, rehabilitation), but excluding aged care where medical care is provided as a major service Includes interstate companies working in the ACT Excludes government sector	Security work undertaken in the ACT including patrol guards, cash-in-transit, guards with firearm or dog, monitoring centre operator, bodyguard, security consultant, crowd control Includes interstate companies working in the ACT Excludes work in relation to security equipment (e.g., advice, sales, maintenance, installation and repair)	Work in the black coal mining industry (that is, extraction, mining, processing and transportation of black coal on a coal mining lease)
Entitlements	8.67 weeks of leave after 10 years of service; pro rata after 5 years of service	8.67 weeks of leave after 10 years of service; pro rata after 7 years of service if leaving the industry permanently	13 weeks of leave after 8 years of aggregate service; pro rata at any time if employee is over 60 or is retiring due to ill health; pro rata at 6 years if made redundant
Payment instead of leave	Not allowed	Not allowed	Not allowed
Maximum break from sector	4 years	4 years	8 years
Employer levy	1.6% of employees' ordinary wages	1.47% of employees' ordinary wages	2.7% of employees' eligible wages
Employer returns	Quarterly	Quarterly	Monthly
Funding model	Industry-based defined benefit fund	Industry-based defined benefit fund	Accumulation model
Administrative body	ACT Leave	ACT Leave	AUSCOAL Services Pty Ltd acting for the Coal Mining Industry (Long Service Leave Funding) Corporation
Governance	Statutory authority; board of 3–7 members appointed by Minister with employee and employer representation	Statutory authority; board of 3–7 members appointed by Minister with employee and employer representation	Statutory authority; board of 6 members appointed by the Minister with employee and employer representation
Actuarial review	Every 3 years	Every 3 years	At least every 3 years
Complaint body	ACT Civil and Administrative Tribunal	ACT Civil and Administrative Tribunal	Administrative Appeals Tribunal

Sources:

(a) *Long Service Leave (Portable Schemes) Act 2009* (ACT); ACT Leave, *Community sector fact sheet* (2015).(b) *Long Service Leave (Portable Schemes) Act 2009* (ACT); ACT Leave, *Security sector fact sheet* (2013).(c) *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth); Coal Mining Industry (Long Service Leave Funding) Corporation, *Employers*, <www.coalslcorp.com.au/employers> viewed 23 November 2015.

2.3 Issues with existing statutory schemes

The Committee received evidence identifying issues with CoINVEST and other existing statutory schemes, which this section summarises. While a review of the efficiency of these schemes is beyond the scope of the Inquiry, some lessons can be learned about the administration of such schemes from the issues encountered.

2.3.1 Issues with CoINVEST

The Committee received evidence supporting the retention of the CoINVEST scheme however, several submissions raised concerns about the scheme's administration. The most common concerns were the ambiguity of the coverage rules and the enforcement measures used by CoINVEST.

In 2012, PricewaterhouseCoopers conducted a review of the CoINVEST scheme for the Victorian Coalition Government and reported its findings to the Government in 2013. This report has not been released publicly and neither the CoINVEST Board nor CoINVEST's management have seen the report.¹¹³ The Committee requested a copy of the report from Industrial Relations Victoria to inform its deliberations but it was not provided.

Coverage

The CoINVEST scheme is unique because the work covered by the scheme is not defined in legislation. The scope of work covered is defined in CoINVEST's Rules, which were based on coverage descriptions in awards from 1958 and 1983. To clarify coverage descriptions, CoINVEST undertook a project to rewrite the Rules in 2013. The Board engaged its solicitors to rewrite the Rules in 'plain English' and its instructions were 'not one extra person in as a result of this project and not one person out from the coverage.'¹¹⁴ The Victorian Coalition Government asked another law firm to review the rewrite to check that there was no change to coverage. Two discrepancies were identified; one was resolved immediately and CoINVEST recognised that the other was ambiguous and removed it.¹¹⁵ Following approval from the Governor in Council, the rewritten Rules were adopted by the Board in November 2014.

Despite the rewriting of the Rules, some submissions to the Inquiry argued there is ambiguity about the type of work that is covered and it has the potential to expand coverage into other areas outside of construction, especially manufacturing. For example, the Recruitment & Consulting Services Association, which represents labour-hire and contracting businesses, stated that its 'members have reported significant frustration with the scheme arising through a lack of consistent interpretation and application of scope and coverage of

¹¹³ CoINVEST, *Submission 7*, 6.

¹¹⁴ Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 3.

¹¹⁵ *ibid*, 4.

occupations.¹¹⁶ The Australian Industry Group (Ai Group), which represents the interests of businesses across a range of industries, argued that ‘the vague coverage rules create huge risks and potential liabilities for employers.’¹¹⁷ Several cases have gone to court due to disputes about coverage, which have resulted in businesses having to pay back pay.¹¹⁸

Claims were also made that CoINVEST was deliberately expanding coverage. For example, the Housing Industry Association, which is a peak body for the residential building, renovation and development industry, stated:

In recent years, the construction industry portable long service leave scheme in Victoria has been increasingly problematic due to attempts by the CoINVEST Board to inappropriately expand coverage to workers involved in manufacturing, telecommunications, labour hire and other industries via changes to the scheme’s trust deed.¹¹⁹

CoINVEST argued that any expansion to coverage requires approval from industry, the Governor in Council and a special resolution of the Board. It referred the Committee to cases disputing coverage heard to date where the courts have consistently upheld CoINVEST’s legal interpretations.¹²⁰

However, subsequently, in December 2015, the Victorian Court of Appeal upheld an appeal by Baytech Trades which claimed that it was not liable to pay the CoINVEST levy for a group of workers it on-hired to another company, NHP, to assemble electrical switchboards at NHP’s premises. While the judge at the first instance ruled that the work constituted the provision of electrical services, the Court of Appeal unanimously decided that the work was part of the manufacturing process and Baytech was not liable for the levy.¹²¹

In relation to manufacturing, CoINVEST explained that when manufacturing companies create divisions that do work which is covered, such as electrical or metal trades servicing, they compete with construction companies that do the same work. In order to create a level playing field between businesses, any worker who does work that falls under the scheme is covered, regardless of the main business of the company. Further clarification was provided by Mr Brian Hansen, Manager, Membership Services at CoINVEST:

If an employer has five workers and three are doing construction work and two are not doing construction work, we cover the three who are doing the construction work. We do not cover the two who are not doing the construction work.¹²²

¹¹⁶ Recruitment & Consulting Services Association Australia & New Zealand, *Submission 46*, 3.

¹¹⁷ Australian Industry Group, *Submission 26*, 19.

¹¹⁸ *ibid*; CoINVEST, *Submission 7A*, 4.

¹¹⁹ Housing Industry Association, *Submission 45*, 4.

¹²⁰ CoINVEST, *Submission 7A*, 4.

¹²¹ *Baytech Trades Pty Ltd v CoINVEST Ltd* [2015] VSCA 342.

¹²² Mr Brian Hansen, Manager, Membership Services, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 7.

Due to CoINVEST's independence from government, the Ai Group expressed its concern that there is a lack of oversight to amendments to the coverage rules. It stated that:

the terms 'construction work' and 'construction industry' need to be defined in the [Construction Industry Long Service Leave] Act. This is the fairest approach for all employers and employees, including both those in the construction industry and those in other industries such as manufacturing which are adversely affected by any expansion in coverage.¹²³

In the Committee's experience, the coverage rules can be difficult to interpret. Two instances in which coverage was queried by Committee members, namely the delivery of concrete to construction sites and the pre-fabrication of roof trusses and doors in factories, required direct confirmation with CoINVEST to determine that they were not covered by the scheme.

FINDING 1: Legislative definition of coverage for statutory schemes

Statutory portable long service leave schemes that do not have their coverage defined in the enabling legislation, such as the CoINVEST scheme, have the potential to generate disagreements about coverage, which can increase the possibility of litigation.

Dispute resolution and enforcement

The process CoINVEST follows when returns are overdue was outlined in Section 2.1.1. Some submissions expressed concerns with the enforcement measures used by CoINVEST when it identifies employers who are not registered in the scheme, claiming the wording can be intimidating and the information required is excessive.¹²⁴ CoINVEST argued that its information gathering powers are justified to ensure the levy is collected for work that is covered by the scheme, otherwise the scheme has unfunded liabilities.¹²⁵

The Ai Group also raised concerns about the dispute settling arrangements available to employers who do not agree with CoINVEST's decisions, suggesting that the dispute resolution processes contained in the Construction Industry Long Service Leave Act are infrequently used and disputes are often dealt with in court. The Ai Group recommended that the Victorian Civil and Administrative Tribunal (VCAT) be empowered to resolve disputes arising under the Act.¹²⁶ However, CoINVEST's view was that VCAT was not an appropriate forum for resolving these disputes, as the disputes are of a legal nature requiring the interpretation of the Rules and the consideration of detailed evidence.¹²⁷

¹²³ Australian Industry Group, *Submission 26*, 21.

¹²⁴ Mr Barry Farmer, Managing Director, Visium Networks, *Submission 34*, 2; Australian Industry Group, *Submission 26*, 22.

¹²⁵ CoINVEST, *Submission 7A*, 7; Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 7.

¹²⁶ Australian Industry Group, *Submission 26*, 23.

¹²⁷ CoINVEST, *Submission 7A*, 10.

Funding model

The Ai Group argued that the project-levy funding model used by the construction industry schemes in NSW, QLD and the NT is preferable to the employer-levy model used in the Victorian scheme because it is cheaper for employers and would improve compliance.¹²⁸

The project-levy model works by collecting a levy on the total cost of building and construction work for any project that costs above a pre-determined threshold. The levy rate and threshold varies between jurisdictions (see Table 2.2). The person or company for whom the work is being done must pay the levy prior to the issue of a development permit or before work begins. NSW transitioned from an employer-levy model to a project-levy model in 1986.

In 2007, CoINVEST commissioned Access Economics to investigate the economic impact of using a project levy to fund the scheme compared with the existing employer levy. Access Economics found that a project-levy model would 'reduce the administrative costs of the scheme, result in greater compliance and more accurate recording of workers' service.'¹²⁹ A project levy would also be more efficient for the Victorian construction industry and the Victorian economy in general. The direct benefit to cost ratio was calculated at 1.13 and taking into consideration the flow-on effect to the rest of the economy, the benefit to cost ratio increased to 2.38.¹³⁰

However, changing the existing scheme to a project-levy funding model would be difficult to implement because of the required legislative changes, worker opposition to the exclusion of work that is currently covered (such as maintenance work) and the Building Commission's concerns about permit compliance and implementation costs.¹³¹ Access Economics recommended that while there would be modest benefits to transitioning to a project-levy model, the complexity of implementation did 'not give rise to any urgency to implement a [project levy] in the near future.'¹³²

FINDING 2: Funding model for construction industry schemes

Compared with an employer-levy funding model, a project-levy funding model for construction industry schemes can be simpler and less costly to administer and can result in greater compliance. However, the existing Victorian scheme is a complex scheme.

2.3.2 Issues with other schemes

A review of the literature found concerns had been reported about other portable long service leave schemes. The 2003 Cole Royal Commission into the building and construction industry reported on the industry's portable

¹²⁸ Australian Industry Group, *Submission 26*, 25.

¹²⁹ Access Economics, *Economic impact of a project levy to fund the Victorian construction industry portable long service leave scheme*, report for CoINVEST (2007), 2.

¹³⁰ *ibid.*

¹³¹ *ibid.*, 3, 18–22.

¹³² *ibid.*, 3.

long service leave schemes in each jurisdiction. It noted that ‘the submissions received by the Commission without exception supported the retention of the existing schemes.’¹³³ However, the Cole Royal Commission submissions also identified some problems with the schemes’ administration.

This section discusses issues that have been raised about other statutory schemes operating interstate. Concerns raised with the Committee about non-statutory schemes operating in Victoria are considered in Section 5.5.

Government use of monies

In reviews of some existing schemes, concern has been raised about the government appropriation of monies collected by portable long service leave schemes and how this can affect the solvency of the schemes. During the 1990’s, portable long service leave schemes enjoyed favourable investment returns and large surpluses. In some instances, State governments used these surpluses to withdraw funds from the schemes to use for other purposes. For example, in NSW, \$120 million was withdrawn from the construction industry scheme in 1995–96 and \$60 million in 1996–97.¹³⁴ These withdrawals depleted the scheme’s surplus and required increases to the project levy.¹³⁵ In some other States, funds were withdrawn but reinvested in the industry. For example, in Tasmania, the construction industry scheme has allocated funds to construction projects to encourage business investment and employment in the State, and the construction industry scheme in QLD has allocated funds to worker training.¹³⁶

The Cole Royal Commission saw no justification for using funds raised from an industry levy for purposes other than the levy’s original purpose. It recommended ‘that moneys held or received by long service leave funds should be used only for the purposes of paying employees’ long service leave entitlements.’¹³⁷ In some jurisdictions, the enabling legislation places limitations on how portable long service leave funds can be used by the current government. For example, the *Long Service Leave (Portable Schemes) Act 2009* (ACT) states that the ACT Long Service Leave Authority’s money can only be used for purposes relating to the Act.¹³⁸

Fund investment and employer levies

Another outcome of the surpluses experienced by portable long service leave schemes in the 1990’s is it allowed schemes to reduce employer contributions and provide more generous benefits to workers.¹³⁹ In the case of Victoria’s

¹³³ Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry* (2003), 244.

¹³⁴ Long Service Corporation, *Government to investigate new ways to administer portable long service leave in NSW* (Media release, 8 November 2013).

¹³⁵ Professor Raymond Markey, Dr Joseph McIvor and Professor Louise Thornthwaite, Centre for Workforce Futures, Macquarie University, *Submission 19*, 58.

¹³⁶ Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry*, 246.

¹³⁷ *ibid*, 250.

¹³⁸ s 79L *Long Service Leave (Portable Schemes) Act 2009* (ACT).

¹³⁹ Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry*, 240–41.

construction industry scheme, much of the industry-endorsed expansion to coverage occurred when CoINVEST lowered its contribution rate to zero.¹⁴⁰ However, less favourable investment returns over the past decade coupled with increases in wages and benefits led to the schemes reporting losses and increasing employer contribution levies.¹⁴¹

When schemes experience poor investment returns and/or have to pay more benefits, the shortfall will be compensated by increases to employer levies. These increases can be quite sharp especially following periods when employer levies have been reduced markedly in response to surpluses, as was the case in Victoria and Tasmania's construction industry schemes. According to the Centre for Workforce Futures, increases to employer contributions are unfair to new employers who have to pay higher levies when they enter the scheme to cover the liabilities accumulated in previous years.¹⁴²

To ensure the solvency of the schemes, Unions NSW, which is the peak body for that State's trade unions, supported investing employer contributions using 'more defensive investment portfolio strategies' in its submission to the NSW Industrial Relations Advisory Council's (IRAC) review of the contract cleaning industry scheme.¹⁴³ The Centre for Workforce Futures at Macquarie University also suggested that employer levies be kept at fixed rates for longer periods and not be reduced to zero in order to provide a buffer during economic downturns or periods with poor investment returns.¹⁴⁴ In addition, Ms Shauna Ferris, also from the Centre for Workforce Futures, said that in regards to investment:

choosing a high risk profile gives you better long term average returns but it also increases the volatility of the levy. In my opinion employers who are paying the levy do not want to see this kind of volatility in their levy rates.¹⁴⁵

According to these stakeholders, more conservative investment strategies and less volatile levy contribution rates are preferable because they offer employers greater cost stability and predictability.

Payment instead of leave

In Victoria, the Long Service Leave Act forbids the 'cashing out' of long service leave except if entitlements are paid out following the termination of employment. It is an offence for workers to be paid long service leave while they continue to work and both the employee and employer can be convicted

¹⁴⁰ Access Economics, *Economic impact of a project levy to fund the Victorian construction industry portable long service leave scheme*, 20.

¹⁴¹ Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry*, 241-42.

¹⁴² Professor Raymond Markey et al, *Submission 19*, 63.

¹⁴³ Industrial Relations Advisory Council, *Contract cleaning industry portable long service leave scheme: 12 month review* (2013), 5.

¹⁴⁴ Professor Raymond Markey et al, *Submission 19*, 64.

¹⁴⁵ Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 11.

if found guilty.¹⁴⁶ However, most of the building and construction industry schemes, including Victoria's, do not enforce the taking of leave when workers claim their long service leave benefits. If they choose to, workers can take a lump-sum payment and continue to work. There is no indication of how many workers in Victoria's building and construction industry do not take the leave as CoINVEST does not collect information about how workers use their payments.¹⁴⁷

Some submissions claimed that allowing workers to take their entitlements as a payment rather than as paid leave goes against the purpose of long service leave to give workers a break to rest and recuperate.¹⁴⁸ In its submission to the NSW IRAC's review of the contract cleaning industry scheme, the NSW Business Chamber Limited (the State's peak body for businesses) argued 'that in many cases [long service leave] is not regarded by employees as an opportunity for career renewal, but rather as an economic asset.'¹⁴⁹

The statutory portable long service leave schemes in the contract cleaning, community services, security and black coal mining industries do not allow workers to claim a payment without taking leave.

2.4 Possible future developments in other jurisdictions

Moves to expand portable long service leave to cover other industries have been made in some States and Territories. Possible future expansions in the ACT and NSW are described below.

2.4.1 Aged care and waste disposal sectors in the ACT

In 2012, the ACT Government made an election commitment to expand the portable long service leave scheme for the community services sector to include aged care workers and to expand the contract cleaning scheme to include waste disposal workers. The rationale for introducing portable long service leave for these sectors was their high workforce mobility and the contractual nature of employment which found an employee working the same job for an extended period but with different employers.¹⁵⁰

Consultations with stakeholders began in 2013 to determine which workers and employers the scheme should cover and how the expansion to these industries should be administered. The ACT Government is currently in the detailed

¹⁴⁶ Small Business Victoria, *A comprehensive guide to the Victorian Long Service Leave Act 1992 (2012)*, Department of Business and Innovation, 13.

¹⁴⁷ Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 11.

¹⁴⁸ Australian Chamber of Commerce and Industry, *Submission 42*, 9; Australian Industry Group, *Submission 26*, 5.

¹⁴⁹ Industrial Relations Advisory Council, *Contract cleaning industry portable long service leave scheme*, 8.

¹⁵⁰ Mr Simon Corbell, Minister for Workplace Safety and Industrial Relations, *Transcript of evidence*, ACT Justice and Community Safety Committee, Canberra, 14 November 2013, 93.

design stage for expanding portable long service leave to the aged care and waste disposal sectors and has indicated that it could introduce amending legislation to cover these sectors in 2016.¹⁵¹

2.4.2 Community sector and security industry in NSW

The *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* (NSW) required the NSW IRAC to review the operation of the Act as soon as practicable after 12 months of the NSW contract cleaning scheme's operation. As part of the review, IRAC was required to assess the viability of extending portable long service leave to all NSW employees and in particular, employees in industries characterised by short-term contract work such as community services and security. Due to the infancy of the contract cleaning scheme, the IRAC's report in 2013 recommended that consideration of the viability of extending portable long service leave to other industries would be more appropriate at the five-year statutory review of the scheme in 2016.¹⁵²

151 Mr Michael Young, Executive Director, Workplace Safety and Industrial Relations, Chief Minister, Treasury and Economic Development Directorate, *Transcript of evidence*, ACT Justice and Community Safety Committee, Canberra, 11 November 2015, 92.

152 Industrial Relations Advisory Council, *Contract cleaning industry portable long service leave scheme*, 10.

3

Arguments for and against portable long service leave

This chapter presents the arguments put forward in submissions and public hearings supporting or opposing portable long service leave. The chapter is divided into four sections: the first section discusses arguments for portable long service leave, the second section discusses arguments against, the third section considers the available data on staff recruitment and retention and the last section considers the evidence supporting the arguments on both sides of the debate.

3.1 Arguments for portable long service leave

The main argument presented supporting portable long service leave was that it would provide equity to workers who through no fault of their own were unable to work with the same employer long enough to qualify for long service leave. The evidence received by the Committee also raised the potential benefits of portable long service leave including the general benefits of greater access to long service leave, the benefits to employers, costs savings to the Australian Government and the opportunity to collect workforce data. These arguments are presented in this section.

3.1.1 Equity for workers

Under the *Long Service Leave Act 1992 (Vic)*, long service leave recognises an employee's continual service with one employer where, after 10 years, the employee gains a period of paid leave. Meanwhile, the employer gains the benefit of the employee's loyalty over that period. However, in some industries, workers are unable to serve with an employer long enough to qualify for long service leave. This may occur when: employment in the industry is based on projects, contracts or short-term funding arrangements; workers need to take employment breaks to care for family members; or businesses become insolvent. Examples of each scenario are discussed in this section.

Types of inequity

Several submissions argued that changes to the nature of employment in their industry precluded continuity of service and portability would provide equity to workers in these industries as well as give them the ability to qualify for long service leave. For example, the Health Workers Union (HWU), which represents staff working in hospitals and pathology, dental, Aboriginal and aged care services, stated:

Continual service with one employer has become increasingly rare, and the move between employers is often dictated by changes to business structures or funding models. Therefore, we need to make sure that workers are not disadvantaged by current workplace laws and that long fought for workplace entitlements such as long service are altered to reflect the changing nature of the Australian work culture.¹⁵³

Ms Emma King, the Chief Executive Officer of the Victorian Council of Social Service (VCOSS), the peak body for the social and community sector in Victoria, informed the Committee that change in employers can be beyond the control of both parties:

The difficulty we have within the community sector is that through no fault of the employer or the employee often that employment is not able to be continuous simply because it is a system that is operating on relatively short-term contractual arrangements. Where there are opportunities, say with some of the bigger employers that offer some ongoing positions, we do watch employees staying in that system for many years because they are able to. But for many staff and for many employers that option is simply not there.¹⁵⁴

In other cases, there is inequitable access to long service leave between workers in the same industry. As mentioned in Chapter 2, health professionals and teachers in the public sector can transfer their long service leave entitlements between employers, whereas those in the private sector cannot.¹⁵⁵ Representing educators in schools and other education services, the Australian Education Union argued:

employees should not be disadvantaged because of their occupation, the nature of their employment, where they work, the size of the employer they work for or whether their employment is in the public or private sector.¹⁵⁶

The evidence identified two groups of workers that are more likely to miss out on long service leave compared with other workers, namely, workers on contracts and women. The Committee was also informed of the inequity experienced by workers who lose their jobs prior to qualifying for long service leave, either through dismissal, redundancy or business insolvency. These groups of workers are discussed under the headings below.

Workers on contracts

As mentioned in Chapter 2, employment in some industries is based on short-term funding arrangements and contracts. For example, the cleaning and security industries operate on a contract model. Businesses, governments and organisations that require cleaning and/or security services for the buildings they work out of advertise their service needs by tender and providers bid for the right to supply these services. To ensure value for money or in accordance with company policy, the contract for services may be retendered every three to four years, which can result in a change of provider. If cleaning and security

¹⁵³ Health Workers Union–Victoria, *Submission 52*, 7.

¹⁵⁴ Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 9.

¹⁵⁵ Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 12–13.

¹⁵⁶ Australian Education Union, Victorian Branch, *Submission 16*, 2.

workers are hired by the incoming provider, they will have a different employer even though they continue to work the same job at the same site. As there is no transfer of assets when cleaning or security contracts change hands, workers' long service leave entitlements are not transferable to the new employer.¹⁵⁷ As explained by United Voice Victoria, which represents workers in the cleaning and security industries:

This competitive contracting environment means cleaners and security guards are extremely vulnerable to losing their employment, or losing their entitlements, every three to four years, when contracts for security or cleaning services are re-tendered and might change.¹⁵⁸

CASE STUDY 3.1: 'I thought it would be easy to take it when I was ready'

'I have been a cleaner for 35 years. I had long service leave at my first site but not since then. In the last 24 years I have never had long service leave. In the 24 years I have only worked on two NAB [National Australia Bank] buildings, but I have changed cleaning company seven times. Every three or four years the contract will change. The companies did not ask anything about our leave when they changed it. I thought I would get long service leave for the whole time I was employed. I never asked about long service leave because I did not need it. I thought it would be easy to take it when I was ready, but it is not that easy. Now I am working with the union to try to find out if any of the companies have to pay me my long service leave.

I am always working and do not get much time with my kids or grandkids. I want to retire soon. If I had long service leave, I would go to Queensland to see my daughter and grandkids, and I would also go home to Greece. It is not fair that cleaners do not get long service leave.'

Helen Christoudas, Cleaner

Source: Ms Helen Christoudas, Delegate, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 3.

In other industries such as the community services sector, employment contracts may be subject to funding arrangements for a specific service, such as a mental health or health promotion program run by a not-for-profit organisation. If a decision is made to no longer fund a service, then the employment contracts of the staff hired to provide that service ends. The Australian Services Union (ASU), which represents workers in community services, stated:

while some workers are able to find alternative employment soon after, or even anticipate de-funding and change employers accordingly, the de-funding of their previous role means a break in continuity of service for the purpose of [long service leave] entitlement.¹⁵⁹

¹⁵⁷ Fair Work Ombudsman, *When businesses change hands*, <www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/when-businesses-change-hands> viewed 14 December 2015.

¹⁵⁸ United Voice Victoria, *Submission 40*, 8.

¹⁵⁹ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 8.

Community Information & Support Victoria, which represents not-for-profit agencies that provide information, referral and support services, noted that a portable long service leave scheme would ensure workers do not lose out on their long service leave entitlements when the organisations they work for face program closures due to funding cuts.¹⁶⁰

The notion of equity for workers employed on contracts underpinned the introduction of interstate portable long service leave schemes for the contract cleaning, community services and security industries. For example, when the Bill for the portable long service leave scheme for the contract cleaning industry was introduced to the New South Wales (NSW) Parliament, the Minister for Industrial Relations, Mr Paul Lynch, stated:

the Bill does not create a new entitlement; it simply extends an existing industrial standard to a group of workers who are currently denied access to such entitlement due to industry-based circumstances or other factors beyond their control.¹⁶¹

Women

Several submissions noted that women are less likely to qualify for long service leave than men because they are more likely than men to be employed in casual or contract work and to temporarily leave the workforce to care for children and other family members.¹⁶² As shown in Chapter 1, 27% of female employees are in casual work compared with 21% of male employees.¹⁶³ Short-term employment hinders women from working with a single employer long enough to qualify for long service leave and in industries where entitlements are contained in the Long Service Leave Act, breaks of more than three months disrupt continuity of service. While the Act states that up to two years of parental leave will not break continuous employment with an employer, long service leave entitlements do not accrue during parental leave.¹⁶⁴

Unions representing industries with highly feminised workforces, such as the Australian Nursing and Midwifery Federation and the Health and Community Services Union (HACSU), argued for the introduction of portable long service leave so women would not lose their long service leave entitlements due to caring responsibilities falling disproportionately on them.¹⁶⁵

HACSU, which represents staff working in intellectual disability, mental health and alcohol and other drug services, argued that portable long service leave would provide more flexibility for women to choose 'employment where the hours or position better suits both them and their families, without losing any

¹⁶⁰ Community Information & Support Victoria, *Submission 15*, 3.

¹⁶¹ New South Wales, *Parliamentary debates*, Legislative Assembly, 24 November 2010, 28215 (Paul Lynch), 28216.

¹⁶² Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 3; Victorian Trades Hall Council, *Submission 23*, 9; Health and Community Services Union (Victoria), *Submission 30*, 6.

¹⁶³ Australian Bureau of Statistics, *Australian labour market statistics, July 2013*, <www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6105.0Main+Features1July%202013?OpenDocument> viewed 18 September 2015.

¹⁶⁴ Business Victoria, *Long service leave: Continuous employment*, <www.business.vic.gov.au/hiring-and-managing-staff/long-service-leave-victoria/long-service-leave-act-continuous-employment> viewed 22 December 2015.

¹⁶⁵ Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 9; Health and Community Services Union (Victoria), *Submission 30*, 6.

of their hard earned long service leave accrued entitlements.¹⁶⁶ JobWatch, an employment rights community legal centre, also argued that portable long service leave would improve female workforce participation as women would be more likely to return to the same industry if their service prior to taking extended parental leave was recognised for long service leave purposes.¹⁶⁷

Workers who lose their job prior to qualifying

JobWatch presented evidence to the Committee of workers who were dismissed prior to qualifying for long service leave. Out of approximately 8,000 telephone calls received by JobWatch from workers seeking advice in the 2014–15 financial year, 120 (1.5%) related to long service leave and four (0.05%) related to dismissal prior to qualifying for long service leave.¹⁶⁸ Principal Lawyer at JobWatch, Mr Ian Scott said it was difficult to quantify how many workers were dismissed because they were approaching the qualifying period:

It is very hard to say how common it is in the sense that employers do not say that this is the reason for the dismissal. The reason for the dismissal is usually cloaked in performance reasons or misconduct reasons. It is very suspicious, though, when a worker who has been employed for, say, about six and a half years suddenly has performance issues and is performance managed out the door prior to becoming eligible for their long service leave under the Victorian Long Service Leave Act. It is only by inference that we can deduce that the reason must have been because they will be coming up to their long service leave entitlements.¹⁶⁹

JobWatch argued that a portable long service leave scheme would reduce the possibility of workers being terminated prior to qualifying for long service leave.¹⁷⁰

CASE STUDY 3.2: 'Jen was not sure why she had lost her job'

'Jen, an engineer working in the construction industry, who fell in the 35–44 age bracket, was employed on a permanent part-time basis. Jen's employment was retrenched after 6 years and 10 months of service—just short of acquiring long service leave entitlements.

Jen's employer cited that her employment was retrenched because the industry was quiet, in addition to the fact that the company was in a precarious financial position. Furthermore, the employer did not provide Jen with any redeployment opportunities.

Jen was not sure why she had lost her job, particularly given the fact that others, including new employees, despite doing similar work, kept their jobs. The employer did not inform Jen as to why she, in particular, lost her job.'

Source: JobWatch, *Submission 41A*, 2.

¹⁶⁶ Health and Community Services Union (Victoria), *Submission 30*, 6.

¹⁶⁷ JobWatch, *Submission 41*, 7–8.

¹⁶⁸ Email from Ian Scott, Principal Lawyer, JobWatch, to Executive Officer, Economic, Education, Jobs and Skills Committee, 25 September 2015.

¹⁶⁹ Mr Ian Scott, Principal Lawyer, JobWatch, *Transcript of evidence*, Melbourne, 14 September 2015, 2.

¹⁷⁰ JobWatch, *Submission 41*, 6.

CASE STUDY 3.3: 'Prune suspected that her redundancy was not a case of genuine redundancy'

'Prune, a permanent full-time employee working as a Professional Service Worker in the retail trade, was made redundant after over 6 years with her employer. Prune suspected that her redundancy was not a case of genuine redundancy, as her job title had been given to someone else. Prune was [of] the belief that her redundancy was in connection to the fact that she was approaching her long service leave entitlements. Prune identified herself as being in between the ages of 25 and 34.'

Source: JobWatch, *Submission 41A*, 2.

Other instances where employees may lose their job prior to qualifying for long service leave (and therefore lose their entitlements) is when employees are made redundant or businesses become insolvent. The Textile Clothing and Footwear Union of Australia (TCFUA), which represents workers in the textile, clothing, footwear and felt hatting industries, stated:

it is not uncommon for [our] workers to have spent 15, 20, 30 years in [our] industry (even some for their entire working lives) and not have the practical benefit of long service leave. There are a number of reasons for this, but typically these workers experience serial redundancies and/or insolvencies together with periods of casual and precarious work.¹⁷¹

Ms Vivienne Wiles, the National Industrial Officer of the TCFUA, stated that while redundancies and insolvencies in the industry were more common at the time of tariff reductions on imported goods introduced in the 1970's, they still occur. She added that if businesses that go insolvent have not made provisions for long service leave:

the onus really shifts to the worker to try to pursue that money, which they have rightfully earned over many years of service, through the courts. For our members, and particularly award-dependent workers, that is an onerous burden. They are low paid. Court proceedings are expensive, and they also take a long time. In our view it does not address the fundamental problem, which is that if an entitlement is accruing and provision is meant to be made for it, then in our view provision practically should be made for it.¹⁷²

According to the TCFUA, a portable long service leave scheme would help to ensure businesses made provisions for long service leave and fewer workers would lose entitlements following redundancy or business insolvency.¹⁷³ In cases where an employee's former employer has gone bankrupt or insolvent and has not paid out the employee's entitlements, the Australian Government has established the Fair Entitlements Guarantee, which is a fund that employees can claim these entitlements from (see Section 3.1.4 for further explanation).

171 Textile Clothing & Footwear Union of Australia, *Submission 48*, 2.

172 Ms Vivienne Wiles, National Industrial Officer, Textile Clothing & Footwear Union of Australia, *Transcript of evidence*, Melbourne, 5 October 2015, 4.

173 Textile Clothing & Footwear Union of Australia, *Submission 48*, 2.

CASE STUDY 3.4: 'He said that the company did not have enough staff to afford the long service leave'

'I am 55 years old. I am married and I have a daughter. I came to Australia in 1993 as a refugee. I did not complete the 510 hours of English training provided by the government because I needed to find a job quickly to support myself and my family. I learnt sewing and did sewing as an outworker at home in 1993.

My husband came to Australia in 1999. I got pregnant and stopped working in 1999. My husband started working for Sassy Suits. The corporate name is Pinnacle Clothing. It was a clothing company located in Reservoir in 2000. A few months later, after he started his job there, I also joined the company. In 2010, when we had worked for the company for over 10 years, we applied for our long service leave entitlements. However, the employer refused. He said that the company did not have enough staff to afford the long service leave. In 2012 the company business went down. Sometimes he asked the staff to stay at home without pay for two or three weeks and sometimes we only worked three or four days per week. The company did not agree to allow us to take our long service leave. We were so worried about our entitlements. We decided to talk to the union. The company announced that it was insolvent. They could not pay their debts and salaries as well as long service leave or other entitlements. The union has helped us to apply for [the General Employee Entitlements and Redundancy Scheme] at the Federal Government level to ask for the remaining debt—the long service leave as well as other entitlements and salaries.'

Mai Tuyet Thi Dinh, Textile clothing and footwear industry worker

Source: Mrs Mai Tuyet Thi Dinh, Worker/Member, Textile Clothing & Footwear Union of Australia, *Transcript of evidence*, Melbourne, 5 October 2015, 3.

3.1.2 Greater access to long service leave

The Committee heard that portable long service leave will enable more workers to access long service leave and therefore experience the benefits of this leave. While some employer groups argued that long service leave is anachronistic and irrelevant for current Australian workers, Mr Dave Oliver, Secretary of the Australian Council of Trade Unions (ACTU), the peak body for Australian unions, pointed out long service leave is recognised by law and 'is a minimum standard in the Fair Work Act.'¹⁷⁴ This section summarises the general benefits of long service leave presented in the evidence received.

Rest and rejuvenation

One of the original purposes of long service leave was to give employees paid leave to rest and rejuvenate after a long period of service with an employer and to return to work refreshed.¹⁷⁵ The Victorian Trades Hall Council (VTHC), the peak body for unions in Victoria, stated:

¹⁷⁴ Mr Dave Oliver, Secretary, Australian Council of Trade Unions, *Transcript of evidence*, Melbourne, 14 September 2015, 4.

¹⁷⁵ Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry* (2003), 217.

The purpose of long service leave is to allow a suitable break from physical and/or intellectual labour. It provides time for rest and rejuvenation; holidays and adequate time spent with family; as well as the opportunity for further study or volunteering, if the worker chooses. It provides an opportunity for balance between work and life commitments. It assists older work[er]s who require medical operations (such as knee and hip replacements) adequate time to recover, while also retaining their employment. For many workers, it is the only time they can take a dedicated, planned long holiday overseas. It adds longevity to the worker's productive life as it allows the worker to return to employment refreshed and revived; and to continue working productively for many more years to come.¹⁷⁶

Several submissions noted that the respite offered by long service leave is increasing in importance as Australians are working longer hours and retiring later.¹⁷⁷ Compared with other Organisation for Economic Cooperation and Development (OECD) countries, Australia has a high proportion of workers who work more than 50 hours per week (14% in 2011 compared with the OECD average of 9%).¹⁷⁸ The data did not provide the breakdown of occupation and working hours. Australians are also working for longer. The percentage of employed men aged 50 and over increased from 24% in 2001 to 29% in 2011 and the percentage of employed women aged 50 and over increased from 20% to 27% over the same period.¹⁷⁹ According to Professor Raymond Markey from the Centre for Workforce Futures at Macquarie University:

It's not just that the population is ageing, but Federal Government policy settings are encouraging people to work for a longer period and in fact 67 is going to be the new pension age and then 70 down the track. This is a worldwide trend.¹⁸⁰

Ms Erin Keogh, Senior Industrial Officer at United Voice Victoria, claimed that the respite offered by long service leave was important for the health of older workers and allowed them to stay in the workforce for longer:

Having the ability to take a long service leave break will mean that they will be able to care for their health and be able to return to the workforce where they may not previously have been able to, so we think it will actually contribute to a more extended period of engagement where they can remain in the workforce for a longer period of time.¹⁸¹

Extended paid leave to recover from health problems was also raised by Mr Luke Hilakari, Secretary of the VTHC, who stated:

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

¹⁷⁶ Victorian Trades Hall Council, *Submission 23*, 9.

¹⁷⁷ Australian Education Union, Victorian Branch, *Submission 16*, 2; Professor Raymond Markey, Dr Joseph Mclvor and Professor Louise Thornthwaite, Centre for Workforce Futures, Macquarie University, *Submission 19*, 19.

¹⁷⁸ Productivity Commission, *Workplace relations framework, final report, volume 1* (2015), 388.

¹⁷⁹ Professor Raymond Markey et al, *Submission 19*, 19.

¹⁸⁰ Professor Raymond Markey, Director and Professor of Employment Relations, Department of Marketing and Management, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 3.

¹⁸¹ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 6–7.

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.¹⁸²

Other submissions also highlighted the importance of long service leave for health reasons. The HWU cited research which found ‘[w]orking long hours over a prolonged period of time has ... adverse effects on mental and physical health.’¹⁸³ The Centre for Workforce Futures also referred to a 2013 Australian Psychological Society survey on stress and wellbeing in Australia which found that workplace issues were one of the main contributors to stress and 82% of Australians reported that spending time with friends and/or family was an important strategy for dealing with stress.¹⁸⁴

Prevention of burnout and workplace illnesses and injuries

Evidence was received on the importance of long service leave to prevent health problems in industries characterised by shift work or where employment is physically or emotionally demanding. For example, the Victorian Branch of the United Firefighters’ Union, which represents professional firefighters, stated:

Leave is extremely important in the Fire Services Industry as it provides an opportunity to recover mentally and physically from the unique demands of the industry. These demands include shift work and regular night shift in particular as well as the intrinsically physically and emotionally demanding nature of the work.¹⁸⁵

The HWU’s submission also noted the stressful situations faced by hospital workers in emergency departments and psychiatric wards. It stated that these frontline workers are exposed to life-threatening situations and:

patients experiencing severe mental illness, such as psychotic episodes, bipolar disorder, depression and anxiety, and post-traumatic stress disorder. Clinical, anecdotal and research evidence suggests that it is not uncommon for a hospital worker to incorporate or absorb some of the psychological symptomology expressed by patients within hospital settings. Furthermore, hospital workers are also exposed to physical illness brought about by viral and bacterial infections present within their work environment. The rate of physical and emotional illness is greater amongst hospital workers when compared to workers from the finance or other industries.¹⁸⁶

United Voice Victoria pointed to the high rates of WorkCover insurance premiums in the cleaning and security industries to show that ‘[c]leaners and security officers require the relief of long service leave to address both the physical toll and work-life balance toll of their jobs.’¹⁸⁷ Ambulance Employees Australia Victoria (AEAV), which represents Victoria’s ambulance industry employees, also

¹⁸² Mr Luke Hilakari, Secretary, Victorian Trades Hall Council, *Transcript of evidence*, Melbourne, 14 September 2015, 9–10.

¹⁸³ Health Workers Union–Victoria, *Submission 52*, 5.

¹⁸⁴ Professor Raymond Markey et al, *Submission 19*, 21.

¹⁸⁵ United Firefighters’ Union, Victorian Branch, *Submission 51*, 1.

¹⁸⁶ Health Workers Union–Victoria, *Submission 52*, 5.

¹⁸⁷ United Voice Victoria, *Submission 40*, 16.

highlighted that the Victorian ambulance service has one of the highest rates of WorkCover claims in the public sector and greater access to long service leave could reduce WorkCover premiums.¹⁸⁸

A Swedish study measured the impact of vacation leave on recuperation. It noted leave was important as '[r]epeated exposure to stress without intervening rest, and the long-term activation of the body's physiological stress systems, are reaction patterns that can be expected to increase the risk of ill health.'¹⁸⁹

Other benefits of long service leave

Another benefit of long service leave mentioned in some submissions was it can finance career breaks that allow workers to complete further education and training, which may improve career prospects.¹⁹⁰ The HWU noted some health workers require further qualifications to progress to higher grades within their classification and reported that its members often had to resign from work in order to pursue further study if their employer was unable to grant them study leave.¹⁹¹ It argued that portable long service leave would increase employees' access to long service leave to pursue professional development opportunities.

The McKell Institute and the Centre for Workforce Futures also speculated greater access to long service leave could boost the tourism industry as workers would have more time available to take extended holidays.¹⁹²

3.1.3 Benefits of portability for employers

In addition to the more apparent benefits of portable long service leave for employees discussed above, submissions also raised potential benefits for employers. These include improved staff recruitment and retention, more experienced staff and more options for managing labour demand. These arguments are discussed in this section.

Improved staff recruitment and retention

Several submissions argued portable long service leave could be used as a strategy to improve staff recruitment and retention in industries that have labour shortages. While workers may not stay with a single employer for 10 years under a portable long service leave scheme (see Section 3.2.4 for a discussion of increased worker turnover), the ability to transfer entitlements to another employer in the same industry may be an incentive for workers to continue working in that industry.

¹⁸⁸ Ambulance Employees Australia Victoria, *Submission 20*, 7, 11.

¹⁸⁹ Gunnar Aronsson and Klas Gustafsson, 'Vacation—Still an issue for workers' protection? An empirical study of vacation and recuperation' (2005) 35(1) *International Journal of Health Services*, 143, 165–66.

¹⁹⁰ Professor Raymond Markey et al, *Submission 19*, 26; Health Workers Union–Victoria, *Submission 52*, 8.

¹⁹¹ Health Workers Union–Victoria, *Submission 52*, 8.

¹⁹² The McKell Institute, *Submission 1*, 60; Professor Raymond Markey et al, *Submission 19*, 27.

This argument was most commonly raised by community services employee groups and organisations, who stated that, in their sector, workers are relatively underpaid and employers do not have the capacity to increase wages.¹⁹³ Therefore, employers offer workers other incentives such as salary sacrificing and flexible hours, to attract and retain workers.¹⁹⁴ Portable long service leave could be used as an added incentive to attract workers to the community services sector and to keep them within the sector. This was the rationale that underpinned the proposed portable long service leave scheme for the Victorian community services sector in 2010.¹⁹⁵

In consultations with key stakeholders for its review of the proposed Victorian community services scheme, PricewaterhouseCoopers found unions perceived portable long service leave was a good initiative to retain staff because a scheme 'costing between 1 and 2 per cent of wages, provides a more noticeable and tangible benefit to employees than a pay rise of the same amount.'¹⁹⁶ Another benefit raised by both community services unions and employers was that by increasing staff retention within the sector, employers would save through reduced recruitment and training costs.¹⁹⁷

Most of the evidence to support the argument that portable long service leave would improve recruitment and retention was speculative or anecdotal. Ms Amanda Kaczmarek, Industrial Officer at AEAV, stated that due to the generous entitlements offered in her sector, portable long service leave was likely to help to retain staff:

I think protection of entitlements is important, and [portable long service leave] does support them. We do have in the ambulance industry a greater entitlement than what is provided for in the Long Service Leave Act. I believe that is a factor, because 26 weeks after 15 years is, I believe, a very good incentive to stay in the industry.¹⁹⁸

The Committee asked Mr Lance Wallace, Deputy Secretary, Corporate Services Division from the Department of Health and Human Services, about the evidence on which the objective of the proposed 2010 community services scheme was based on. He responded:

I think to start with it is reasonably intuitive that improving benefits would have some impact. I think from the work that the Department subsequently had done, it was difficult to quantify exactly the extent of that. The reason for that was that when people were trying to actually look at how they would empirically assess that number and put a quantitative number on that, it was difficult due to the datasets.¹⁹⁹

¹⁹³ Victorian Council of Social Service, *Submission 36*, 3.

¹⁹⁴ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 7.

¹⁹⁵ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund: Community services sector portable long service leave*, report for Department of Human Services (2010), 1.

¹⁹⁶ *ibid*, 2.

¹⁹⁷ Health and Community Services Union (Victoria), *Submission 30*, 6; ACT Council of Social Service, *Community services sector portable long service leave scheme*, submission to the ACT Government (2008), 6.

¹⁹⁸ Ms Amanda Kaczmarek, Industrial Officer, Ambulance Employees Australia Victoria, *Transcript of evidence*, Melbourne, 9 November 2015, 5.

¹⁹⁹ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 6.

The evidence available from interstate schemes on the impact of portability on recruitment and retention is discussed in Section 3.3.

When portable long service leave was introduced to the Australian Capital Territory's (ACT) community services sector, employer groups believed portability of entitlements would only make a small difference to staff retention. However, they recognised the scheme could be a worthwhile strategy in the long term. For example, in its submission to the ACT Government prior to the introduction of the scheme, the ACT Council of Social Service (ACTCOSS), the peak body for not-for-profit community organisations in the ACT, acknowledged:

that the scheme is not a silver bullet for workforce development, and as a stand alone measure will likely only produce marginal differences in recruitment and retention of workers ... Conversely, we would point out that once in place, the scheme has the potential to benefit the community sector workforce indefinitely, and represents a long-term structural response rather than an initiative that requires indefinite recurrent funding.²⁰⁰

Similarly, in its submission to the Committee, HACSU acknowledged portable long service leave was unlikely to solve the workforce shortages experienced by the sector but supported portability as a strategy that would benefit the sector over time. It stated:

Whilst a Portable Long Service Leave scheme will not be a panacea to the recruitment and retention problems that beset the sector it will provide the necessary structural capacity to improve employment standards in respect to leave and give employees the confidence that they will be rewarded in time for choosing a longer term career in the sector.²⁰¹

Promoting the development of workers' knowledge and skills

According to some sources, an industry-specific portable long service leave scheme would reduce workers' reluctance to move between sectors within an industry so they do not lose their entitlements. By doing so, workers who change sectors within an industry would gain experience in different environments, which would improve their knowledge and skills. In its draft consultation paper on the proposed 2010 community services scheme, the then Victorian Department of Human Services argued that by encouraging movement within an industry, portable long service leave could 'foster professional development and lead to more experienced workers.'²⁰²

Similar arguments were put forth during the debate on the Long Service Leave (Commonwealth Employees) Bill 1976 (Cth), the purpose of which was for the Australian public service to recognise prior service in local government for long service leave purposes. During the debate, parliamentarians commented that

²⁰⁰ ACT Council of Social Service, *Community services sector portable long service leave scheme*, 7.

²⁰¹ Health and Community Services Union (Victoria), *Submission 30*, 11.

²⁰² Department of Human Services, *Portable long service leave for the community services sector: Draft consultation discussion paper* (2009), 5.

the lack of portability discouraged movement between government sectors and hindered the professional development of workers who felt they would lose financially if they left the local government sector.²⁰³

Management of fluctuating demands for labour

Another potential benefit of portable long service leave is that greater access to long service leave could be used by employers to manage fluctuating demands for labour. For example, Mr Oliver of the ACTU commented that when industries are confronted with a downturn:

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.²⁰⁴

The use of long service leave during economic downturns has been noted in the construction industry portable long service leave schemes. When asked by the ACT Public Accounts Committee why there was a sharp increase in long service leave claims and payments between 2011 and 2012, Mr Goran Josipovic, Acting General Manager of the ACT Long Service Leave Authority, stated:

All jurisdictions—all states and territories—have noticed the same impact ... It is just a general downturn in the construction industry where a lot of the employers are not having continuous work and are encouraging employees to take leave.²⁰⁵

By giving workers greater access to long service leave, portable long service leave schemes provide employers with more options to manage falls in labour demand. Other examples of employers using long service leave to avoid the necessity for retrenchments include businesses that were forced to close following the 2011 Queensland floods and Qantas, which encouraged staff to use annual and long service leave in order to limit redundancies when it cut capacity.²⁰⁶ The Fair Work Commission also suggests employers offer employees the opportunity to take any annual or long service leave they have access to when employers have to temporarily close following a natural disaster or emergency.²⁰⁷

A level playing field between employers

Some submissions argued that the introduction of portable long service leave would create a more level playing field between employers. For example, smaller organisations cannot compete with the employee benefits provided by larger

²⁰³ Australia, *Parliamentary debates*, House of Representatives, 2 December 1976, 3174 (John Haslem), 3179.

²⁰⁴ Mr Dave Oliver, Secretary, Australian Council of Trade Unions, *Transcript of evidence*, Melbourne, 14 September 2015, 10.

²⁰⁵ Mr Goran Josipovic, Acting General Manager, ACT Long Service Leave Authority, *Transcript of evidence*, ACT Public Accounts Committee, Canberra, 23 April 2013, 203.

²⁰⁶ Shauna Ferris, Nick Parr, Ray Markey and Tim Kyng, 'Long service leave: Past, present and future' (2015) 3 *Australian Journal of Actuarial Practice*, 5, 14.

²⁰⁷ Fair Work Ombudsman, *Employment conditions during natural disasters and emergencies*, <www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/employment-conditions-during-natural-disasters-and-emergencies#temporary-close> viewed 23 December 2015.

organisations and will be less disadvantaged when recruiting new employees.²⁰⁸ An industry-specific portable long service leave scheme could also help private or not-for-profit sectors achieve parity with the public sector, which is often seen as a more attractive employer due to more generous benefits.²⁰⁹

Similarly, portable long service leave schemes that require contributions from all employers would prevent non-compliant businesses from gaining a competitive advantage over businesses that honour long service leave entitlements. As explained by United Voice Victoria:

if a contract cleaning company can avoid paying long service leave entitlements through non-compliance, the resultant reduction in operating costs results in a competitive advantage over a competitor that strictly adheres to its legal obligations. Jurisdictions which have adopted portable long service leave schemes have removed these competitive temptations and have ensured a level playing field in relation to this particular industrial entitlement.²¹⁰

Reduced administrative burden

While most submissions acknowledged employers would face an additional administrative burden if portable long service leave was introduced, there were some suggestions that, over the long term, employers' burden could be reduced since the responsibility for administering accruals and paying entitlements will shift to the scheme.²¹¹ The Committee heard that smaller organisations, which do not have dedicated payroll staff, would be most likely to benefit. Ms Keogh commented that a portable long service leave scheme:

reduces [small businesses'] responsibility for independently administering their long service leave obligation. The ACT system has a very clear system of how the deductions operate, which provides a reduced administrative burden for the small business.²¹²

The McKell Institute also acknowledged that during the transitional periods of newly established portable long service leave schemes, employers are likely to face increased administration costs. However, it added, 'recent improvements in administrative software and systems were cited by administrators and employer representatives as significantly reducing the administrative burden and cost.'²¹³ In addition, the ability of portable long service leave funds to administer above-base entitlements can be granted to reduce complexity for employers. This capacity was a component of the proposed 2010 Victorian portable long service leave scheme for the community services sector.²¹⁴

208 Health Workers Union–Victoria, *Submission 52*, 14–15.

209 Community Information & Support Victoria, *Submission 15*, 3.

210 United Voice Victoria, *Submission 40*, 16.

211 ACT Council of Social Service, *Community services sector portable long service leave scheme*, 6.

212 Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 11.

213 The McKell Institute, *Submission 1*, 12.

214 cl 55 Community Services Long Service Leave Bill 2010 (Vic).

Capacity to cover employee absences

Employers told the Committee they were concerned about the costs of replacing staff who take long service leave. However, when asked about the costs associated with temporarily replacing labour, Ms Keogh stated that especially in the cleaning and security industries, employers are already accustomed to replacing staff because:

the rate of WorkCover injury in both industries is extremely high, so both workforces already have to tailor their workforce to replace short-term gaps in labour. In my view both workforces have the capacity to effectively cover long service leave, where it occurs, with replacement labour.²¹⁵

Cost impact on employers

The Committee had submissions that suggested that the cost on employers would be expensive. Some stakeholders do not agree with some of the estimates derived and stated it could be less expensive for employers.

For example, Ms Shauna Ferris, Senior Lecturer in the Department of Applied Finance and Actuarial Studies at the Centre for Workforce Futures, Macquarie University, believes the figures provided by the Australian Industry Group (Ai Group), a peak association for businesses in a range of industries, are too high.²¹⁶ According to her assessment, Ai Group's estimate that expanding portable long service leave to all Victorian workers would cost an additional \$4 billion is too high because it is based on CoINVEST's levy of 2.7%, which she believes is inappropriate for estimating the costs of a future scheme. This is because the CoINVEST scheme offers workers more generous benefits than other industries and the levy is currently high due to the investment losses experienced by CoINVEST following the global financial crisis.²¹⁷ Ms Ferris articulated that the initial figure of 1.5% of employee wages would be a more appropriate cost rather than that suggested by some other submissions. She also added that the Ai Group's estimate of the current long service leave entitlements costing about \$0.9 billion was too low because it 'only looked at the costs for people with more than seven years of service' and ignored that a proportion of workers with less than seven years of service would also qualify for long service leave.²¹⁸

When considering the proposed 2010 portable long service leave scheme for the Victorian community services sector, the then Department of Human Services reported that the extent of additional costs for employers would depend on whether the employers currently deposited long service leave funds in bank accounts or whether they used notional book reserves (that is, they recorded entitlements on employees' balance sheets but did not allocate funds). For employers who physically held long service leave provisions in bank accounts,

²¹⁵ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 7.

²¹⁶ Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 5.

²¹⁷ *ibid.*, 10.

²¹⁸ *ibid.*, 11.

actuarial analysis found that a portable long service leave scheme would be 25% more expensive than existing arrangements after 15 years. However, for employers who used notional book reserves, a scheme would be 7% more expensive after five years but 11% less expensive after 15 years. The former Department of Human Services cited research by the University of Sydney that found 89% of community service organisations use notional book reserves, so the Department concluded that for the majority of community service organisations, the proposed portable long service leave scheme would be cheaper than existing arrangements in the later years of the scheme.²¹⁹ In the initial stages, it will be more expensive.

Ms Ferris also explained to the Committee that the additional costs to employers would depend on the current worker turnover experienced by the employer. She stated:

If you have an employer who has a stable workforce where everyone stays more than seven years, portability costs are nothing. I mean the employer is already paying everybody [long service leave], the extra cost of portable [long service leave] to the employer is roughly zero.²²⁰

She added that for this employer, the costs could actually reduce. For example:

an employer who is in a pool [with other employers who] have a lot of staff turnover ... the money from their employees who quit goes into the pool and is used to reduce this employer's [levies]. So for example the actuary who did this work back in 2008 for the [Victorian Department of Human Services] said for this type of employer their costs could actually go down by 0.2 per cent.²²¹

To obtain a more accurate indication of the cost burden portable long service leave may place on a particular industry, Ms Ferris recommended the Victorian Government engage an actuary to estimate the additional costs to employers of such a scheme.²²²

3.1.4 Costs savings for the Australian Government

The Committee also heard that a portable long service leave scheme would save money for the Australian Government through reduced claims lodged with the Fair Entitlements Guarantee (FEG). The FEG is an Australian Government fund that pays employees the entitlements owed to them if their employer becomes insolvent and cannot pay the employees' entitlements. The FEG replaced the General Employee Entitlements and Redundancy Scheme (GEERS) in December 2012. In 2011–12, the Commonwealth budget allocated \$195 million to GEERS. In that year, over \$24.5 million was paid through GEERS for long

219 Department of Human Services, *Portable long service leave for the community services sector*, 5. The Department of Human Services cited this research in its discussion paper but the original research was not available to the Committee.

220 Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 8.

221 *ibid.*

222 *ibid.*, 11.

service leave entitlements, up from \$7.9 million in 2007–08. The proportion paid out for long service leave remained fairly stable between 12.9% in 2007–08 and 12.5% in 2011–12.²²³

Since portable long service leave schemes would regularly collect funds from employers to cover long service leave entitlements and pay out entitlements to workers, fewer claims would need to be lodged with the FEG for long service leave. Mr Oliver argued that by reducing the number of FEG claims, the taxpayer will also benefit. He said:

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.²²⁴

3.1.5 Workforce data development

In its review of the proposed Victorian community services sector portable long service leave scheme, PricewaterhouseCoopers observed that a potential benefit of the scheme would be the creation of ‘a detailed baseline dataset in relation to the number and demographic characteristics of the community services workforce.’²²⁵ In addition to assessing the impact of the scheme and analysing workforce mobility trends, the dataset could assist other sector-wide initiatives and workforce planning.

The Committee heard that this benefit has been realised in interstate schemes. Ms Darmanin commented that in relation to the ACT portable long service leave scheme for the community services sector:

an extremely useful but unintended benefit has been the most accurate workforce data tracking mechanisms that are now available through the scheme regarding the number of employees, pay rates and associated conditions ... This benefit is applicable to the entire sector for workforce planning purposes as well as individual agencies upon request. This is a heightened benefit in community services whereby a high proportion of employers do not employ finance, [human resources] or admin officers on a full-time basis to manage such affairs.²²⁶

The PricewaterhouseCoopers review also stated that the data available from portable long service leave schemes could be augmented by actively seeking information from employees, such as through exit interviews or surveys, to gain a greater insight into the mobility patterns of employees and inform future workforce initiatives.²²⁷

²²³ The McKell Institute, *Submission 1*, 61.

²²⁴ Mr Dave Oliver, Secretary, Australian Council of Trade Unions, *Transcript of evidence*, Melbourne, 14 September 2015, 4.

²²⁵ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund*, 22.

²²⁶ Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 2–3.

²²⁷ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund*, 22.

3.2 Arguments against portable long service leave

The main arguments presented against portable long service leave were that it was irrelevant for workers who are able to stay with their current employer long enough to qualify and it would be costly for employers. Other arguments presented to the Committee included that portable long service leave would increase worker turnover, increase costs to the Victorian Government and discriminate against experienced job applicants. The arguments against portable long service leave are presented in this section.

3.2.1 Long service leave is anachronistic

Several submissions claimed that long service leave, as an entitlement, was anachronistic and not relevant to contemporary Australian workers who do not need extended leave to 'return home' to Britain to visit family and friends.²²⁸

3.2.2 Irrelevance for workers who have ongoing employment

According to the Australian Chamber of Commerce and Industry (ACCI), a peak council of Australian business organisations, 'the rationale for portable schemes does not exist in industries where traditional employment arrangements are commonplace and employees are generally employed by employers on an ongoing basis.'²²⁹ Similarly, the evidence received from employers in industries where employment is not project or contract-based, was that there was no need for portable long service leave because employees could choose to stay with a single employer long enough to qualify for long service leave.

For example, the Australian Public Transport Industrial Association (APTIA), which represents employers in the private and public sector passenger vehicle industry, argued 'that the passenger transport industry is not an industry in which there is significant turnover of staff in which the right to long service leave should become portable.'²³⁰ In their combined submission, the National Retail Association (NRA) and the Hardware Federation of Australia (HFA), which represent employers in the retail and hardware industries respectively, also maintained that:

it is very uncommon for employees in our industries to be employed on short, fixed-term contracts and it is even less common for them to be employed for the duration of a project.²³¹

These organisations also noted that a large proportion of workers in the retail industry 'are students or employees who merely seek employment for a limited period of time and do not intend to continue to work in the retail industry' long

²²⁸ National Retail Association and Hardware Federation of Australia, *Submission 17*, 5; Australian Security Industry Association Limited, *Submission 18*, 1; Australian Chamber of Commerce and Industry, *Submission 42*, 7.

²²⁹ Australian Chamber of Commerce and Industry, *Submission 42*, 8.

²³⁰ Australian Public Transport Industrial Association, *Submission 33*, 2.

²³¹ National Retail Association and Hardware Federation of Australia, *Submission 17*, 12.

term.²³² Since they are unlikely to work in the industry long enough to qualify for long service leave, the NRA and HFA argued that portable long service leave is not relevant for these workers.

The Ai Group and ACCI also rejected the argument that portable long service leave is necessary because an increasing number of Australians are in casual or contract work. ACCI cited data from the Australian Bureau of Statistics (ABS) and the Household, Income and Labour Dynamics in Australia (HILDA) survey showing the proportion of Australians working long enough with one employer to qualify for long service leave has been stable over time (see Chapter 1 for a discussion of these data).²³³

Ms Alana Matheson, Deputy Director, Workplace Relations at ACCI, argued that data from the ABS and HILDA indicate that more Australians would qualify for long service leave under existing arrangements. She argued:

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.²³⁴

ACCI argued that data suggesting young people change jobs frequently was indicative of the early stage of their careers when they combined study with part-time work in an industry that was unlikely to be the one in which they would pursue a long-term career.²³⁵

3.2.3 Costs to employers

Most submissions acknowledge that expanding portable long service leave will pose additional costs on employers. Employer groups such as the Victorian Employers' Chamber of Commerce and Industry (VECCI), the peak body for Victorian employers, the Victorian Transport Association (VTA), which represents Victorian employers in the freight and logistics industry, and the Ai Group provided the Committee with some cost estimates of expanding portability to all Victorian workers.

A recurrent argument against portable long service leave was the additional cost burden employers would face if it was expanded to their industry. This section presents employers' general concerns about the additional financial burden portable long service leave would place on them before discussing specific costs identified in the evidence presented to the Committee. The potential flow-on effect of these costs on employment, competitiveness and the Victorian economy is discussed in Chapter 4.

²³² *ibid.*

²³³ Australian Chamber of Commerce and Industry, *Submission 42*, 6–7.

²³⁴ Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 2.

²³⁵ Australian Chamber of Commerce and Industry, *Submission 42*, 7.

Loss of mutual benefit from long service

Several employer groups were concerned that portable long service leave would only benefit workers and employers would not only lose any advantages they had from current long service leave arrangements (such as lower worker turnover) but would also face additional costs. For example, the Ai Group argued that ‘portable long service leave does not provide a benefit to employers; it simply imposes a substantial cost burden.’²³⁶ Ms Matheson from ACCI also stated:

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.²³⁷

The Victorian Farmers Federation (VFF), which represents the interests of Victoria’s agricultural producers, added ‘portable long service leave goes against the original purpose of why long service leave was introduced initially. Long service leave would essentially become just another additional cost to the employer.’²³⁸

Cost estimates of portable long service leave

The estimates presented to the Committee of the additional costs employers would face if portable long service leave was expanded to other industries varied. For example, VECCI stated that the expansion of portable long service leave would cost Victorian employers an additional \$84 million per annum approximately.²³⁹ In contrast, the Ai Group claimed that Victorian employers would face an additional cost of over \$4 billion per annum and added that ‘traditional [long service leave] costs less than a quarter (approximately \$926.7 million over 12 months) [of] the \$4 billion annual cost of a portable long service leave scheme.’²⁴⁰ The VTA estimated that portable long service leave would cost its employers an additional \$85 million annually and the Victorian economy \$1.5 billion.²⁴¹

Specific costs of portable long service leave to employers

In addition to the general increased financial burden, the submissions also highlighted specific costs that are a concern for employers including more long service leave payments, reduced cash flow, loss of investment income, costs to replace workers and a greater administrative burden. These concerns are discussed under the headings below.

²³⁶ Australian Industry Group, *Submission 26*, 15.

²³⁷ Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 2.

²³⁸ Victorian Farmers Federation, *Submission 35*, 4.

²³⁹ Victorian Employers’ Chamber of Commerce and Industry, *Submission 4*, 2.

²⁴⁰ Australian Industry Group, *Submission 26*, 11.

²⁴¹ Victorian Transport Association, *Submission 8*, 6.

Greater proportion of workers qualifying for long service leave

Some submissions highlighted that if a portable scheme was established, a higher proportion of workers would qualify for long service leave and as a consequence, employers would need to pay out more long service leave benefits. As explained by the Productivity Commission:

Under current arrangements, the total costs of [long service leave] for an employer depend on the tenure distribution of its workforce. As many employees leave before the qualifying period, the total claims under the current arrangements are much smaller than would apply under a portable scheme (where employees' tenure would be based on their working lives, not their specific tenure with an employer).²⁴²

The McKell Institute identified that in 'industries where many workers do not achieve the qualifying period under non-portable schemes, [portable long service leave] has effectively imposed an additional financial cost for employers.'²⁴³

Reduced cash flow and working capital

Although employers are required to set aside provisions for long service leave for their workers, for the majority of employers, this is more likely to occur once a worker is close to reaching the qualifying period. In contrast, a portable long service leave scheme would require employers to start paying for their workers' long service leave from the time they commence work, regardless of whether the worker will ever reach the qualifying period.

Several submissions highlighted that a portable long service leave scheme would reduce businesses' cash flow (the amount of money moving into and out of a business) and working capital (the difference between a business' current assets and liabilities). According to VECCI, businesses' cash flow 'would be negatively impacted by having to pay long service leave entitlements on a regular basis.'²⁴⁴ VCOSS added:

If the employer currently delays establishing reserves for long service leave until employees have a number of years' service, the cost impact will be greater than if the employer reserves employees' full long service leave entitlements from commencement of the employees' service.²⁴⁵

In general, employers were concerned that regular payments to fund a portable long service leave scheme would increase labour costs and this could ultimately affect consumer costs, service levels and employment (these impacts are discussed more fully in Chapter 4).

The Committee also heard that some employers may find it difficult to absorb increased labour costs or to pass them on to the consumer or end-user. Industries facing increased competition or reliant on government funding were considered to be particularly vulnerable. For example, the NRA and HFA argued:

²⁴² Productivity Commission, *Workplace relations framework*, 524.

²⁴³ The McKell Institute, *Submission 1*, 12.

²⁴⁴ Victorian Employers' Chamber of Commerce and Industry, *Submission 4*, 2.

²⁴⁵ Victorian Council of Social Service, *Submission 36*, 9.

in recent years, the Australian Retail industry has also experienced an increased level of competition from online, overseas-based retail businesses, which operate in low-wage economies. It is extremely difficult for business owners to pass on any additional wage cost to customers, particularly in an environment where heavy discounting has become the norm in recent years.²⁴⁶

Ms Meg Parkinson, Chair of the Workplace Relations Committee of the VFF, also highlighted the competition faced by the agricultural sector (which is predominantly export oriented) and how it restricted employers' ability to recover increased labour costs. She said:

We really do feel that we cannot pass these extra costs on because it is export industries. Those of us who are not in export industries, who are in domestic industries, have to deal with Coles and Woolworths, and we cannot pass those costs on either.²⁴⁷

The Australian Security Industry Association Limited, which represents owners and operators of security businesses in Australia, argued that employers fulfilling existing contracts at the time portable long service leave is introduced would be adversely affected because:

[m]any existing contracts do not allow for an escalation of fees based on changes other than those relating to wages decisions of the Fair Work Commission. Our members will be significantly disadvantaged as a result of the introduction of a scheme if there is no ability to offset the increases against the contract.²⁴⁸

In addition, some submissions claimed an inability to absorb or pass on costs could lead to the reduction of services, particularly in industries funded by government. For example, APTIA argued:

Because the passenger transport industry is funded in most cases where there are route and school services through Government service contracts, any additional costs associated with a portability scheme would have to be absorbed into existing transport budgets with a potential to reduce services or even reduce infrastructure spending.²⁴⁹

Loss of income from investment of long service leave provisions

Another financial concern raised by some employers, especially those in the community services sector, was that a portable long service leave scheme would affect their investment income from long service leave provisions they currently set aside in bank accounts. Community service organisations claimed they use the interest accrued from these provisions to improve service delivery or sustain their workforce. For example, Women's Health West (WHW), a women's health service for the western metropolitan region of Melbourne, stated:

²⁴⁶ National Retail Association and Hardware Federation of Australia, *Submission 17*, 11.

²⁴⁷ Ms Meg Parkinson, Chair, Workplace Relations Committee, Victorian Farmers Federation, *Transcript of evidence*, Melbourne, 5 October 2015, 2.

²⁴⁸ Australian Security Industry Association Limited, *Submission 18*, 3.

²⁴⁹ Australian Public Transport Industrial Association, *Submission 33*, 3.

The current [long service leave] model allows WHW to invest the funds we set aside for [long service leave] entitlements and use the returns to support service delivery. Where an employee leaves the sector prior to becoming eligible for [long service leave], those funds are returned to support programs. [A portable long service leave scheme would retain] all funds in a central pool, resulting in a dramatic loss in revenue to organisations.²⁵⁰

The Association of Neighbourhood Houses and Learning Centres, the peak body for Victorian neighbourhood houses, added:

There is a possible loss of income from the investment of [long service leave] provisions. Smaller community organisations operate within the restrictions of tight budgets. In some cases interest is a significant contribution to organisational income and may support a paid position or fund essential staffing costs such as professional development.²⁵¹

Costs to cover employees' absences

Some employer groups voiced their concerns about the costs involved with replacing workers when they take their long service leave. For example, Mr Keith Ryan, Manager, Workplace Services at the Housing Industry Association (HIA), the peak body for the residential building, renovation and development industry, argued that portable long service leave 'complicates staff and workforce planning, as workers may take long service leave despite having been employed by the current employer for a relatively short period of time.'²⁵²

The ARB Corporation, which manufactures and distributes four wheel drive vehicle accessories, noted that in industries not characterised by contract or project work, employers are burdened with having to cover the absence of employees. It argued:

Many businesses are not project based like the construction industry where leave could be taken between projects. In businesses like ARB, leave would be taken from long term permanent roles which need to be performed on an ongoing basis.²⁵³

The Victorian Automobile Chamber of Commerce (VACC), which represents automotive businesses in Victoria, added:

The long term absence of an employee performing vital functions for a business will need to be covered either through additional overtime hours where possible, hiring casual staff or reducing outputs over that period. Costs associated with each of these options can significantly affect a small business' bottom line. While an employee's wage costs may be shared in a portable long service leave scheme, the operating costs lie solely with the employer at the time the long service leave is taken.²⁵⁴

²⁵⁰ Women's Health West, *Submission 27*, 4.

²⁵¹ Association of Neighbourhood Houses and Learning Centres, *Submission 13*, 3.

²⁵² Mr Keith Ryan, Manager, Workplace Services, Housing Industry Association, *Transcript of evidence*, Melbourne, 9 November 2015, 2.

²⁵³ ARB Corporation Limited, *Submission 10*, 3.

²⁵⁴ Victorian Automobile Chamber of Commerce, *Submission 43*, 6.

Greater administrative burden

A number of submissions from employer groups raised the additional administration costs employers would face if portable long service leave was expanded to other industries. For example, VECI stated, 'It would result in additional indirect administration costs for employers. Additional red tape would be imposed on businesses in the form of administering payments.'²⁵⁵

Some submissions were concerned that employers would be required to administer two sets of long service leave entitlements—those of the portable long service leave scheme and any additional long service leave benefits workers were entitled to through relevant enterprise agreements. For example, the Centre for Excellence in Child and Family Welfare was concerned about 'additional administrative complexities' created through the existence of above-base long service leave entitlements.²⁵⁶

3.2.4 Increased worker turnover

Although industry-specific portable long service leave schemes may retain staff within an industry (as discussed in Section 3.1.3), several employer groups argued the schemes would increase worker turnover for individual employers because the ability to transfer entitlements would remove the incentive for employees to stay with their current employer. For example, VACC stated:

Portable long service leave risks further reducing the ability of many businesses to maintain staff. Long service leave has traditionally been used as a means to reward employees for long periods of faithful service. Portable long service leave removes one of the few entitlements that encourages employees to stay with their employer.²⁵⁷

When an employee leaves their job, employers not only lose an employee but they also lose the time and expense of their training whilst employed by that employer. The Ai Group added, '[a]n employer may spend several years providing professional support and development to a worker only to lose them to another employer.'²⁵⁸

When considering portable long service leave in its review of the workplace relations framework, the Productivity Commission agreed 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.'²⁵⁹

Worker turnover costs

Employer groups argued that employers could face additional costs because portable long service leave may increase worker turnover. The NRA and the HFA stated:

²⁵⁵ Victorian Employers' Chamber of Commerce and Industry, *Submission 4*, 2.

²⁵⁶ Centre for Excellence in Child and Family Welfare, *Submission 24*, 1.

²⁵⁷ Victorian Automobile Chamber of Commerce, *Submission 43*, 8–9.

²⁵⁸ Australian Industry Group, *Submission 26*, 15.

²⁵⁹ Productivity Commission, *Workplace relations framework*, 524.

Each time employers have to engage new employees they incur increased costs in training those employees and a resultant loss of productivity to their business which will not only impact on their profitability, but ultimately on the Victorian economy.²⁶⁰

The cost to employers of replacing staff members varies depending on the industry and the seniority of the employee. The total cost includes direct costs (such as advertising, recruitment and termination payouts) and indirect costs (such as productivity losses, in-house hiring costs and training/induction costs).

Deloitte Access Economics has estimated turnover costs to be equivalent to 75% of an employee's salary.²⁶¹ According to Business Victoria, the turnover cost for a business to replace one worker who earns the average hourly rate of \$38 per hour is \$24,404.²⁶² Table 3.1 shows the staff turnover costs for some occupations of interest to the Inquiry. These costs were calculated using average hourly earnings data from the ABS and Business Victoria's online staff turnover calculator.

Table 3.1 Labour turnover costs by occupation

Occupation group	Example occupations	Average hourly total cash earnings (\$) ^(a)	Staff turnover cost (\$ per employee) ^(b)
Community services			
Social and welfare professionals	<ul style="list-style-type: none"> Counsellors Social workers 	37.4	23,761
Health and welfare support workers	<ul style="list-style-type: none"> Welfare support workers Ambulance officers 	36.5	23,119
Personal carers and assistants	<ul style="list-style-type: none"> Aged and disabled carers Special care workers 	27.2	17,339
Child carers		23.2	14,771
Security			
Prison and security officers	<ul style="list-style-type: none"> Prison officers Security officers and guards 	33.1	21,193
Cleaning			
Cleaners and laundry workers	<ul style="list-style-type: none"> Commercial cleaners Domestic cleaners Laundry workers 	24.5	15,413
All occupations		38.0	24,404

Sources:

- (a) Australian Bureau of Statistics, *Employee earnings and hours, Australia, May 2014*, <www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6306.0May%202014?OpenDocument> viewed 16 November 2015
- (b) Business Victoria, *Calculator: Staff turnover*, <www.business.vic.gov.au/hiring-and-managing-staff/staff-management/calculator-staff-turnover> viewed 16 November 2015.

²⁶⁰ National Retail Association and Hardware Federation of Australia, *Submission 17*, 6.

²⁶¹ Deloitte Access Economics, *The future of work: How can we adapt to survive and thrive?* (2016), 31.

²⁶² Business Victoria, *Calculator: Staff turnover*, <www.business.vic.gov.au/hiring-and-managing-staff/staff-management/calculator-staff-turnover> viewed 16 November 2015.

3.2.5 Uncertain impact of portability on recruitment and retention

Employer groups who provided evidence to the Inquiry argued there was a lack of data to support the claims that portable long service leave improved staff recruitment and retention. For example, ACCI stated:

The potential ‘employee attraction’ advantage is based upon suppositions that a cohort of employees working in ‘poorly managed workplaces’ will now move to ‘good employers’ because of portability of long service leave entitlements.²⁶³

These concerns were also raised when a portable long service leave scheme for the Victorian community services sector was being developed between 2007 and 2010. In PricewaterhouseCoopers’ review of the proposed scheme, stakeholder consultations revealed that:

Many employers regarded the proposed benefits generated by portable long service leave of retention and recruitment to be unproven and only likely to be realised (if at all) in the long term. There is also a sense that the benefits accrue to the sector in general at the cost of individual employers.²⁶⁴

The review also found employers did not believe portable long service leave would improve the attraction or retention of young workers. An observation from employers was:

Particularly for younger workers, the view was expressed that a portable long service leave benefit, which accrued after 7 to 10 years of service in the sector, would not influence workforce decisions.²⁶⁵

National Disability Services, the peak body for non-government disability service providers, also suggested to the Committee that portable long service leave may only work to retain certain subsets of workers such as older workers, ‘resulting in potential distortions of a sector’s labour market.’²⁶⁶

Employer groups also questioned whether access to long service leave influences workers’ decisions to stay within an industry. Ms Matheson from ACCI stated:

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.²⁶⁷

The evidence available from interstate schemes on the impact of portability on recruitment and retention is discussed in Section 3.3.

²⁶³ Australian Chamber of Commerce and Industry, *Submission 42*, 11.

²⁶⁴ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund*, 12.

²⁶⁵ *ibid*, 13.

²⁶⁶ National Disability Services, *Submission 31*, 2.

²⁶⁷ Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 3.

3.2.6 Costs to the Victorian Government

The Committee heard that the introduction of a portable long service leave scheme for the community services sector could create added costs for the Victorian Government because it funds non-government organisations to provide services. For example, ACCI suggested the increase in labour costs caused by a portable long service leave scheme would have an impact on community service organisations that are mainly not-for-profit and would find it difficult to absorb any additional costs. It stated:

The increase in labour costs would either have to be passed onto the Government for the taxpayer to bear or, failing this, result in cuts in current levels of service in order to meet the increased expense.²⁶⁸

This argument was also raised during stakeholder consultations for the ACT community services sector scheme conducted by consulting firm Urbis. Urbis reported: ‘one stakeholder stressed that if the Scheme was implemented it would force organisations to lobby the government for increased funding or force them to lay off employees.’²⁶⁹ When the Committee asked how community service organisations would be able to cover the additional costs of a portable long service leave scheme, Mr Llewellyn Reynders, Policy Manager at VCOSS referred to the ACT scheme and how the ACT Government adjusts its funding to community service organisations:

ACT has a much more generous indexation policy [than Victoria]. They in fact link their indexation to the wage price index with a component for CPI, and it results in a much fairer level of indexation from year to year which potentially for the ACT would have covered any shortfall.²⁷⁰

By December 2015, the Victorian Government had provided \$2.3 billion in funding to non-government organisations to provide health and community services in the 2015–16 financial year; \$1.7 billion of this funding was for community services.²⁷¹ It is unclear how much of this funding community service organisations allocated to long service leave; however, government funding and service agreements make provisions for salary on-costs such as long service leave.²⁷²

Chapter 5 contains a more detailed discussion of the potential impact of portable long service leave on the community services sector.

²⁶⁸ Australian Chamber of Commerce and Industry, *Submission 42*, 18.

²⁶⁹ Urbis, *Portable long service leave for the ACT community services sector*, report for Department of Disability, Housing and Community Services (2008), 4.

²⁷⁰ Mr Llewellyn Reynders, Policy Manager, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 13–14.

²⁷¹ Email from Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, to Executive Officer, Economic, Education, Jobs and Skills Committee, 21 December 2015.

²⁷² Health and Community Services Union (Victoria), *Submission 30*, 8–9.

3.2.7 Discrimination against job applicants

Some submissions mentioned that another potential disadvantage of portable long service leave was it could make employers wary of hiring job applicants with many years of service because they may wish to access long service leave shortly after commencement. For example, ACCI claimed portable long service leave would create ‘apprehension about employing people with longer career tenures and experience.’²⁷³

Employers’ main concern regarding an employee who would access long service leave shortly after commencing was replacing that employee.²⁷⁴ The HIA claimed:

members are concerned about the exposure of the end employer ‘when the music stops’ and when the employee in question, who may [have] been with that particular employer for a relatively short period of time, eventually takes their leave. The impact will not just be productivity losses whilst that business backfills the worker in question, but there will be the other on-costs as well.²⁷⁵

However, when the Committee asked HIA if it was aware of employers discriminating against job applicants with many years of service, Mr Ryan said, ‘Whether it does happen or not, we cannot say. It is possibly a factor that some employers might take into account, but we certainly have not heard about it.’²⁷⁶ Mr David Humphrey, Senior Executive Director, Business, Compliance and Contracting at HIA, also stated that discrimination was unlikely in their industry because:

when you are looking at detached housing, residential building, it is project-based work. So long service leave is probably unlikely to play a major factor in any decision to hire a worker ... it could be different for those larger construction projects for the medium density high-rise projects, where you will be looking at a project period well over 12 months.²⁷⁷

Aged and Community Services Australia (Victoria), the peak body representing not-for-profit and faith-based providers of residential and community care, also referred to the cost implications of hiring an experienced employee who may seek to access long service leave soon after commencing employment. Its Business Manager argued:

while the accrual will transfer, the employer needs to commence accruing [long service leave] immediately for an employee who already has an entitlement. While there is an additional cost I would ‘discriminate’ against that employee in a recruitment sense because of the additional cost.²⁷⁸

²⁷³ Australian Chamber of Commerce and Industry, *Submission 42*, 4.

²⁷⁴ The McKell Institute, *Submission 1*, 54.

²⁷⁵ Housing Industry Association, *Submission 45*, 5.

²⁷⁶ Mr Keith Ryan, Manager, Workplace Services, Housing Industry Association, *Transcript of evidence*, Melbourne, 9 November 2015, 3.

²⁷⁷ Mr David Humphrey, Senior Executive Director, Business, Compliance and Contracting, Housing Industry Association, *Transcript of evidence*, Melbourne, 9 November 2015, 3.

²⁷⁸ Aged & Community Services Australia (Victoria), *Submission 5*, 1.

This additional cost refers to instances when employers do not set aside provisions for long service leave until an employee is close to reaching the qualifying period. However, existing portable long service leave schemes require employers to regularly contribute funds to cover entitlements for all employees regardless of how long each employee has worked for them.

3.2.8 ‘Cashing out’ of long service leave

While long service leave is meant to give workers a period of rest and rejuvenation, several employer groups were concerned that some portable long service leave schemes allowed workers to take their entitlement as a lump-sum payment, therefore negating the restorative effects of taking an extended period of leave. Legislation in NSW and Victoria forbids long service leave to be taken as a lump-sum payment (however Industrial Relations Victoria’s current review of the Long Service Leave Act is considering whether to allow leave to be cashed out).²⁷⁹ In Queensland, South Australia, Tasmania and Western Australia, long service leave can be cashed out if an agreement is reached between the employer and employee.²⁸⁰ As indicated in Tables 2.2 to 2.4 in Chapter 2, most of the construction industry schemes allow workers to take their long service leave entitlement as a lump-sum payment. Payment instead of leave is not allowed in the contract cleaning, community services, security and black coal mining schemes.

Employer groups in the construction industry argued that portable long service leave is at odds with the fundamental purpose of long service leave to provide workers with a period of rest. For example, the Ai Group claimed that the ‘focus of the [construction industry] scheme and other portable long service leave schemes is on an employee’s entitlement to a lump-sum payment, not on an entitlement to a period of rest.’²⁸¹ However, as discussed in Chapter 2, there are no data to show how many construction industry workers take leave when they claim their long service leave entitlement to substantiate this argument.

3.3 Available evidence on staff recruitment and retention

One of the rationales for introducing portable long service leave to the community services sector in 2010 was to help attract and retain staff. This section discusses the availability of evidence in determining the impact of portable long service leave schemes on staff recruitment and retention.

²⁷⁹ Industrial Relations Victoria, *Victorian Government long service leave discussion paper 2016* (2016), 14–15.

²⁸⁰ Shauna Ferris et al, ‘Long service leave: Past, present and future’, 15.

²⁸¹ Australian Industry Group, *Submission 26*, 6.

3.3.1 Evidence on staff recruitment and retention from interstate schemes

The Committee asked for evidence on improved staff recruitment and retention based on the experience of the community services portable long service leave scheme in the ACT. Ms Lisa Darmanin from the ASU, responded:

As far as I am aware there is no data available on that. The scheme has been operating for five years. I have consulted with a couple of board members from the ACT community services scheme and also my colleagues in the ACT ASU branch. I am not aware of any hard data that is available regarding the turnover, because I think it is still too early to tell. But what I can say anecdotally, and what we know certainly from our colleagues in New South Wales, is that it has definitely made an improvement. I think the widespread support of both employers and employees of the scheme in the ACT is showing that it is a benefit for everyone.²⁸²

When asked the same question, Ms Helen Westwood, ASU Organiser with the NSW and ACT Services Branch, answered:

our members who head organisations say that it certainly does attract staff. It enables them to attract staff and to retain staff because one of the issues in the ACT is that they are really competing with the Commonwealth Public Service and that was one of the triggers for establishing this scheme for community services workers ahead of some of the others.²⁸³

At a public hearing for the ACT Select Committee on Estimates 2014–2015, Mr Robert Barnes, Chief Executive Officer and Registrar of the ACT Long Service Leave Authority, took a question on notice regarding the staff retention rate for each portable long service leave scheme in the Territory over the last five and 10 years. Table 3.2 presents these retention rates, which were derived from actuarial reviews of the construction and contract cleaning industry schemes conducted in 2011 (the most recent investigation at the time). The retention rates provided for the community services sector and the security industry are actuarial assumptions because these schemes had not yet been in existence for five years. No data were provided on how these rates have changed over time.

Table 3.2 Staff retention rates for portable long service leave schemes in the ACT

Industry	Retention rate after 5 years (%)	Retention rate after 10 years (%)
Building and construction	44.1	26.0
Contract cleaning	39.5	30.2
Community services*	40.7	20.3
Security*	28.5	20.0

* Retention rates for the community services sector and security industry are actuarial assumptions due to the schemes being less than five years old in 2014.

Source: Simon Corbell, *Answers to questions taken on notice during public hearings, IR-No 05-18-06-2014*, ACT Select Committee on Estimates 2014–2015 (2014).

²⁸² Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 5.

²⁸³ Ms Helen Westwood AM, Organiser, Australian Services Union, NSW & ACT, *Transcript of evidence*, Sydney, 1 December 2015, 4.

3.3.2 Measuring the impact of portability on recruitment and retention

When asked about the impact of portability on employee retention, Ms Ferris from the Centre for Workforce Futures responded that she was not aware of any research in this area.²⁸⁴ She proposed that one way to measure the impact of portable long service leave on staff retention was to investigate resignation and redundancy patterns around the time workers reach their qualifying period. She suggested:

If resignation rates are low just before the qualifying date and then spike up after the qualifying date that would be some evidence that people were being influenced by their long service leave entitlements in deciding whether to change jobs. You would also want to look at whether employers sacked people just before they qualify; you would have to look at the redundancy rates where people leave work involuntarily and see how those patterns change over time around the qualifying date.²⁸⁵

3.4 Weighing up the evidence

The net impact of portable long service leave will depend on the balance between the benefits and costs associated with its operation. The Committee notes there is a lack of empirical evidence to support the arguments both for and against portable long service leave. It is also unclear to what extent the benefits may offset the costs and vice versa. As outlined in the previous sections, the Committee heard conflicting evidence about the following arguments:

Costs

Employer groups provided the Committee with cost estimates of expanding portable long service leave to all Victorian workers, which varied considerably and were questioned by other stakeholders. Employee groups did not derive cost estimates of portable long service leave but in some cases provided the Committee with likely employer contribution rates for their industry based on other schemes. The cost estimates provided to the Committee for a portable long service scheme varied considerably from \$84 million per annum to \$4 billion per annum.

It is difficult to ascertain what the precise cost would be because it would depend on which industries would have access to portability and the long service leave benefits and worker turnover rates applicable to these industries.

Further research is required to arrive at an accurate estimate of the costs of any future industry-specific portable long service leave scheme. This estimate, by an actuary, would take into account the level of long service leave benefits particular to the industry as well as the industry's labour turnover, average wages and worker demographics.

²⁸⁴ Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 15.

²⁸⁵ *ibid.*

Impact on cash flow and working capital

The impact of expanding portability on cash flow and working capital appears to depend on whether employers regularly provision for their workers' long service leave or if they wait until their workers approach the qualifying period (usually at seven years). Some small businesses or organisations may use long service leave funds to improve their cash flow and working capital prior to their workers qualifying for long service leave.

Administrative burden

The administrative burden of portable long service leave on employers could depend on the size of the business or organisation. Larger employers have dedicated payroll staff who can submit returns but smaller employers would have to manage returns themselves. However, some stakeholders suggested that smaller employers may benefit from having a portable long service leave scheme that would take on the responsibility for tracking accruals and paying entitlements.

Capacity to cover employee absences

Several stakeholders were concerned that some employers, especially small businesses, would struggle to replace employees who took long service leave. On the other hand, the Committee heard the cleaning and security industries are used to covering employee absences due to their high rate of workplace injuries and illnesses.

Impact on staff recruitment and retention

There was disagreement between employee and employer groups about whether a portable long service leave scheme would actually help to attract and retain staff within a sector. There are also no available data to compare recruitment and retention rates before and after the introduction of existing portable long service leave schemes.

Further information on workers' motivations for moving between jobs would be useful to determine whether portable long service leave makes a difference to worker turnover or staff retention rates in an industry. Qualitative and quantitative research would need to be undertaken to determine whether portable long service leave significantly impacts recruitment and retention.

While the Committee would not like to direct how that research would be undertaken, one way to measure this is a longitudinal survey that can follow the same subset of workers over many years and record their mobility and the motivations behind their mobility. Ideally, another group of workers in the same industry ('a control group') who do not have access to portable long service leave should be used for comparison, however, other factors that may influence labour mobility between the groups, such as economic or demographic factors would need to be controlled for.

Analysing resignation and redundancy patterns around the time workers qualified for long service leave could provide some insight.²⁸⁶ Data on workers' qualifying periods could be obtained from existing portable long service leave schemes, however whether these workers ceased employment due to resignation or redundancy might be harder to obtain. Again, any factors that may have an effect on labour mobility around the time workers reach their qualifying period would also need to be accounted for.

Cost benefit analysis of portable long service leave

Undertaking a cost benefit analysis of portable long service leave is difficult because in some cases the benefits are subjective and hard to quantify. Even quantifiable measures such as staff retention rates, currently lack the data to make this possible despite the existence of portable long service leave schemes in some industries. Simply looking at changes in worker numbers before and after the introduction of a portable long service leave scheme may not distinguish between the impact of the scheme and other factors affecting staffing in the industry, such as industry-wide policy or structural changes, the age profile of workers and general economic conditions.

In addition, the true cost of portable long service leave can only be determined through actuarial analysis that takes into account the relevant wages, benefits, worker demographics and labour turnover for the industry in question. This analysis must also take into account the full costs to businesses.

FINDING 3: Lack of evidence about the overall impact of portability

There is a lack of data on the benefits and costs of portable long service leave, which makes it difficult to determine any net impact of portable long service leave.

²⁸⁶ This method was suggested by Ms Ferris as discussed in Section 3.3.2.

4 Effects of portable long service leave on the Victorian economy and employment

The Inquiry's terms of reference required the Committee to assess the potential impact of portable long service leave on the Victorian economy and employment. In addition to the other evidence received in submissions and public hearings, the Committee invited two economists to provide their views on the economic impact of portable long service leave. The evidence presented by employer and business groups warned that the expansion of portable long service leave would be detrimental to the Victorian economy in terms of its impact on investment, competitiveness and employment. However, other evidence suggested that portable long service leave may be beneficial to the Victorian economy. This chapter summarises the arguments about the potential impact expanding portable long service leave may have on the Victorian economy, employment, small businesses and regional Victoria.

Similar to the arguments for and against portable long service leave presented in Chapter 3, there is a lack of empirical evidence to verify the claims made regarding the economic impact of expanding portable long service leave. There is no published academic research in this area, therefore most of the evidence presented to the Committee is based on economic theory or supposition. Some of the economic arguments assumed portable long service leave would be expanded to all workers in Victoria (a universal portable long service leave system); however, as explained in Chapter 1, the Committee is only considering the expansion of portable long service leave to workers in the same or similar industry as per the terms of reference.

4.1 Victorian economy

Several business and employer groups submitted that the increased labour costs created through the expansion of portable long service leave would discourage investment in Victoria, reduce the competitiveness of Victorian businesses, decrease productivity and increase the price of goods and services. However, not all of the evidence presented to the Committee supported these claims. These arguments are summarised below.

4.1.1 Impact on investment in Victoria

Employer and business groups raised the concern that portable long service leave would increase labour costs and as a consequence, fewer businesses would seek to invest in Victoria. This was a particular concern for employer and business groups representing the automotive industry. The ARB Corporation, which manufactures

and distributes four wheel drive vehicle accessories, highlighted that ‘original motor vehicle manufacturers are leaving Victoria at the cost of thousands of jobs, and the high cost of Australian labour is a major contributing factor to this.’²⁸⁷ The Victorian Automobile Chamber of Commerce (VACC), which represents automotive businesses in Victoria, added that ‘[i]ncreasing the cost of employing workers in Victoria through portable long service leave risks further dissuading foreign and interstate businesses from investing in Victoria.’²⁸⁸

Other stakeholders voiced similar arguments. For example, Mr Richard Clancy, Director, Workplace Relations at the Australian Chamber of Commerce and Industry (ACCI), a peak council of Australian business organisations, stated that if portable long service leave was expanded ‘businesses would have to invest in Victoria in a different way from how they would invest into other States.’²⁸⁹ The Victorian Employers’ Chamber of Commerce and Industry (VECCI), the peak body for Victorian employers, agreed that portable long service leave would be an added factor businesses would need to take into account before investing in Victoria. Mr Steven Wojtkiw, Executive Manager Policy and Chief Economist at VECCI, stated:

There is no single influence on what determines investment decisions of businesses, but [the cost of doing business] does add to the stock of their considerations. They will look at access to a skilled labour force; the adequacy, cost and reliability of infrastructure; regulatory costs—in other words, indirect costs of doing business in the state; and direct costs. In the case of [portable long service leave] ... it potentially adds another layer of cost on doing business in Victoria, which businesses will look at closely in terms of discerning an overall competitiveness of investing in and operating their businesses in Victoria relative to other States or other locations for that matter.²⁹⁰

The Committee questioned whether the expansion of portable long service leave would discourage businesses from operating in Victoria considering the size of its population. Mr Charles Cameron, Policy Adviser at the Recruitment & Consulting Services Association (RCSA), the peak body for the recruitment and the human resources services sector, stated:

although [RCSA’s members] would probably choose to operate in Victoria because it is such a big slice of the pie, when you start adding all of these things up ... we add another layer on top then in terms of regulation.²⁹¹

The claim that portable long service leave would negatively affect investment in Victoria was refuted by Access Economics, which was commissioned by CoINVEST in 2007 to investigate the economic impact of using a project levy to fund the construction industry portable long service leave scheme compared

²⁸⁷ ARB Corporation Limited, *Submission 10*, 3.

²⁸⁸ Victorian Automobile Chamber of Commerce, *Submission 43*, 11.

²⁸⁹ Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 8.

²⁹⁰ Mr Steven Wojtkiw, Executive Manager Policy and Chief Economist, Victorian Employers’ Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 4.

²⁹¹ Mr Charles Cameron, Policy Adviser, Recruitment & Consulting Services Association Australia & New Zealand, *Transcript of evidence*, Melbourne, 5 October 2015, 7.

with the existing employer levy. When Access Economics looked at whether employer contribution levies would affect investment in projects where location was inconsequential, it found it questionable that the costs involved would have a bearing on whether businesses would invest in Victoria or interstate. It concluded:

At any rate, it is highly unlikely that differentials in [long service leave] obligations would be the determining factor in investment decisions, a contention strongly supported by industry consultation findings.²⁹²

According to Access Economics, businesses would consider the costs related to portable long service leave in conjunction with other costs and levies and in some cases, higher long service leave costs could be offset by other costs such as workers' compensation premiums, which vary between States.²⁹³

Another issue raised was where the revenue of portable long service leave schemes would be invested. Mr Paul Ryan, Industrial Relations Adviser at the Victorian Transport Association (VTA), an employer organisation for the freight and logistics industry in Victoria, argued that employer levy contributions would be taking money:

out of the Victorian economy and putting it into a scheme or several schemes that will be treated like superannuation and cannot be touched for a defined period of time ... Those schemes may well invest some of that money in Victoria, and that is beneficial. They may invest money elsewhere.²⁹⁴

He added that if any future portable long service leave fund was required to invest its revenue in Victorian businesses, then some of the money 'may come back into the economy.'²⁹⁵

4.1.2 Impact on the competitiveness of Victorian businesses

Another concern of employer and business groups was that a portable long service leave scheme would increase the cost of doing business in Victoria and therefore, disadvantage Victorian employers when they compete with interstate or international employers for business opportunities. Ms Alana Matheson, Deputy Director, Workplace Relations at ACCI, stated:

Further expansion of [portable long service leave] 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.²⁹⁶

²⁹² Access Economics, *Economic impact of a project levy to fund the Victorian construction industry portable long service leave scheme*, report for CoINVEST (2007), 17.

²⁹³ *ibid.*

²⁹⁴ Mr Paul Ryan, Industrial Relations Adviser, Victorian Transport Association, *Transcript of evidence*, Melbourne, 5 October 2015, 6.

²⁹⁵ *ibid.*

²⁹⁶ Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 3.

The Australian Mines and Metals Association (AMMA), Australia’s resource industry employer group, agreed adding that in ‘recent years, Australia’s competitiveness has declined, as the cost of production for many commodities has risen faster than the global average.’²⁹⁷

The Australian Industry Group (Ai Group), which is a peak association for businesses in a range of industries, highlighted that industries such as manufacturing are internationally trade exposed and less able to pass on higher costs to their clients:

When long service leave was widely introduced in Australia in the 1950s, Australia’s economy operated behind high tariff barriers. Today, Australia has one of the most open economies in the world and international competitive pressures are intense.²⁹⁸

Some stakeholders mentioned that businesses were already choosing to invest part of their operations overseas and this would make it easier for them to leave Victoria due to increased labour costs.²⁹⁹ Mr Tim Piper, Victorian Director of the Ai Group, stated:

We know from talking to many of our managing directors that they have to compete internally with potential investments in Thailand, in Indonesia and even into Eastern Europe. In many circumstances they look at issues such as the cost of employment, and what we are talking about here is an additional cost of employment. In those circumstances companies do not pull out today—or tomorrow, for that matter—but they start to reduce their amount of capital expenditure so that in three, four, five or six years’ time it is a much easier decision for them to make to leave Victoria, to leave Australia. That is the sort of implication that we are concerned about with having continuing increases in employment costs on businesses.³⁰⁰

Not all stakeholders agreed that portable long service leave would have an impact on the competitiveness of Victorian businesses. Mr Dave Oliver, Secretary of the Australian Council of Trade Unions, the peak body for Australian unions, disputed employer and business groups’ claims of increased labour costs reducing Australia’s competitiveness. He argued:

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.³⁰¹

²⁹⁷ Australian Mines and Metals Association, *Submission 50*, 4.

²⁹⁸ Australian Industry Group, *Submission 26*, 14.

²⁹⁹ ARB Corporation Limited, *Submission 10*, 3.

³⁰⁰ Mr Tim Piper, Director–Victoria, Australian Industry Group, *Transcript of evidence*, Melbourne, 14 September 2015, 2.

³⁰¹ Mr Dave Oliver, Secretary, Australian Council of Trade Unions, *Transcript of evidence*, Melbourne, 14 September 2015, 9.

As mentioned in Section 4.1.1, the Access Economics' CoINVEST report also found the additional costs of portable long service leave did not affect Victoria's competitiveness with other jurisdictions.³⁰² Furthermore, there was no available evidence that any businesses have chosen to invest elsewhere specifically due to the extra costs associated with portable long service leave in the States or Territories where such schemes exist.

4.1.3 Impact on productivity

The Committee heard conflicting evidence about whether the expansion of portable long service leave would have an impact on productivity. Employer and business groups argued that employee absences due to long service leave would decrease business productivity because businesses would not only temporarily lose a worker but also have to find a replacement worker and train them.³⁰³ The VACC also argued that:

businesses are more likely to invest in productivity boosting improvements when they can afford to do so ... Victorian employers, and the Victorian economy as a whole, would be better served if employers were able to reinvest the money that they save from not making regular long service leave payments back into their businesses.³⁰⁴

On the other hand, employee groups argued that greater access to long service leave would boost productivity because there would be fewer workplace illnesses and injuries and workers would be able to work for longer following periods of rest and rejuvenation.³⁰⁵ Professor Raymond Markey, Director of the Centre for Workforce Futures and Professor of Employment Relations, Department of Marketing and Management at Macquarie University, agreed stating:

Many of the benefits for employees that I've noted are in fact benefits for the community and the economy as a whole and for employers. For example, keeping people in the workforce for longer, with a decent break given that people are working much longer than they used to, is to the benefit of the whole economy. Increased labour force participation on the part of women is to the benefit of the whole economy and to employers who can keep valuable employees.³⁰⁶

The Committee invited Professor John Freebairn, who holds the Ritchie Chair in Economics at the University of Melbourne, to provide his view on the impact of expanding portable long service leave on the Victorian economy. In relation to the effect of portable long service leave on productivity, he provided the example of where a worker:

³⁰² Access Economics, *Economic impact of a project levy to fund the Victorian construction industry portable long service leave scheme*, 17.

³⁰³ For example, Australian Chamber of Commerce and Industry, *Submission 42*, 14; National Retail Association and Hardware Federation of Australia, *Submission 17*, 6; Housing Industry Association, *Submission 45*, 5.

³⁰⁴ Victorian Automobile Chamber of Commerce, *Submission 43*, 13.

³⁰⁵ For example, Australian Education Union, Victorian Branch, *Submission 16*, 1; Australian Council of Trade Unions, *Submission 38*, 6; United Voice Victoria, *Submission 40*, 6; Victorian Trades Hall Council, *Submission 23*, 9.

³⁰⁶ Professor Raymond Markey, Director and Professor of Employment Relations, Department of Marketing and Management, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 3.

might say, 'I hate working this place, but if I hang in for another year I am going to get long service leave, so I am just going to do the time'. Whereas if it is portable, 'Hey, I want to be employed by somebody else. I am going to work really effectively. I am going to get out of this crummy job and get over to there where I am going to be happier'. And my productivity went up in the place I wanted to get out of because I wanted to be employable, and I went over here where I was more productive. There is an example where portability could make stuff work your way.³⁰⁷

However, Professor Freebairn stated that this type of productivity was difficult to measure and one could not definitively say whether portable long service leave would either improve or worsen productivity. He stated 'it would be impossible to do any study to sort that out. It is very individualistic. It depends very much on individual employer/employee relations.'³⁰⁸

Another impact on productivity highlighted by Professor Freebairn was an increase in employee benefits in low-paid industries could force businesses to change their practices to boost productivity. He gave the example of cases in the United States (US) where the minimum wage was increased, stating:

there is quite a bit of data emerging, particularly from the US studies, that when minimum wage is pushed up in the US, businesses suddenly reorganise for more efficient use of the now more expensive labour to hold down production costs per unit output ... these studies coming out of the US are saying, 'No, while wages are cheap; [employers] just don't care very much'. When they are suddenly very expensive, [employers] say to these employees, 'I really love you. I want you to hang around. I want you to learn this job. I want you to be much more productive. You're getting a higher wage. Let's have a deal', and that works.³⁰⁹

4.1.4 Impact on the prices of goods and services

As mentioned in Chapter 3, some employer and business groups argued increasing labour costs through the expansion of portable long service leave would increase the price of goods and services because businesses would factor these costs into their prices. This would affect not only consumers but also the Victorian Government in cases where it contracts out or outsources work to other businesses or not-for-profit organisations. The National Retail Association (NRA) and the Hardware Federation of Australia (HFA), which represent employers in the retail and hardware industries respectively, argued the pricing increases would be most noticeable in border towns:

Victorian businesses are likely [to] seek to pass on these increased labour costs to the consumer which will result in a disparity of pricing merely because of the location in which a business is based. The practical implications of this disparity will be more pronounced in areas within close proximity to each other but on separate sides of the state border (such as Albury and Wodonga).³¹⁰

³⁰⁷ Professor John Freebairn, Ritchie Chair in Economics, University of Melbourne, *Transcript of evidence*, Melbourne, 9 November 2015, 10.

³⁰⁸ *ibid.*

³⁰⁹ *ibid.*, 4–5.

³¹⁰ National Retail Association and Hardware Federation of Australia, *Submission 17*, 14.

4.2 Employment in Victoria

Employer and business groups warned that the expansion of portable long service leave would have an adverse effect on employment because of the increased labour costs. For example, both ACCI and VECCI argued employers would be forced to cut jobs, wages or employee benefits or hours.³¹¹ The Committee also asked two economists for their views on the impact of portability on employment. The economists stated that some of the ways employers may respond to increased labour costs are by improving productivity, cutting jobs or increasing the price of their products and services. They also predicted slower wage growth to offset increased worker benefits.

The evidence received by the Committee suggested that expanding portable long service leave could have an effect on the following aspects of employment: job security; wage growth; the balance between capital and labour; and labour market flexibility. However, other than an impact on wage growth, the evidence that portable long service leave would have a detrimental effect on the other aspects was conflicting. These aspects are discussed under the headings below.

4.2.1 Impact on job security

Several employer groups were adamant the expansion of portable long service leave would create job insecurity by discouraging the creation of new jobs and possibly cutting jobs or employees' hours. For example, Mr Piper from the Ai Group claimed that if portable long service leave was expanded, employers would 'question whether they want to create new jobs because of all the continuing new costs that are being imposed on employment.'³¹² While AMMA acknowledged increases to labour costs were inevitable, it believed increases to on-costs (costs additional to salary) were problematic because they do not lead to improved productivity. It argued that additional labour costs 'would only serve to make it harder to create and retain jobs.'³¹³

The Victorian Alcohol and Drug Association (VAADA), which is the peak body representing Victorian alcohol and other drug services, maintained that the requirement of employers to backfill positions when workers take long service leave would be an additional financial burden for its members and would create 'a perverse disincentive for engaging in short term projects and even backfilling positions temporarily vacant due to long service leave and parental leave.'³¹⁴

Other employer groups warned that increased labour costs from the expansion of portable long service leave would force more workers into contract work. The NRA and HFA stated:

³¹¹ Australian Chamber of Commerce and Industry, *Submission 42*, 16; Victorian Employers' Chamber of Commerce and Industry, *Submission 4*, 2.

³¹² Mr Tim Piper, Director-Victoria, Australian Industry Group, *Transcript of evidence*, Melbourne, 14 September 2015, 2.

³¹³ Australian Mines and Metals Association, *Submission 50*, 3.

³¹⁴ Victorian Alcohol & Drug Association, *Submission 29*, 2.

we envisage that Victorian employers will look for ways to better manage those costs, including by employing fewer workers, relying on labour-hire arrangements and reducing their trading patterns.³¹⁵

The ARB Corporation agreed, claiming portable long service leave would:

force Victorian employers to reconsider the way they engage their employees so this can be done in a more efficient way. For example, employees may be engaged on a fixed term or casual basis or under Federal employment schemes which do not offer the same 'bonus' entitlements.³¹⁶

Some employer groups also maintained that the employment of older and experienced workers was most likely to be adversely affected. For example, AMMA argued employers would not 'hire someone who some weeks or months into their employment, is going to exercise a right to an extended period of absence.'³¹⁷ The VACC also claimed that the disincentive to hire employees who are close to reaching the qualifying period 'harms the employability of older workers at a time when more experienced job applicants are struggling to re-enter the workforce.'³¹⁸ According to the VACC, this is a particular problem for older workers in the automotive industry where new skills and training are required to keep up with technological advances and the redundancies at Ford, General Motors Holden and Toyota have increased competition for the remaining number of jobs.³¹⁹

However, unions and employee groups refuted the argument that portable long service leave would create fewer jobs. For example, Mr Luke Hilakari, Secretary of the Victorian Trades Hall Council, the peak body for unions in Victoria, said the:

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 ... 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.³²⁰

When asked to respond to the argument that expanding portable long service leave would have an adverse effect on employment, Ms Helen Westwood, Organiser with the NSW and ACT Services Branch of the Australian Services Union (which represents workers in community services), answered:

315 National Retail Association and Hardware Federation of Australia, *Submission 17*, 14.

316 ARB Corporation Limited, *Submission 10*, 3.

317 Australian Mines and Metals Association, *Submission 50*, 11.

318 Victorian Automobile Chamber of Commerce, *Submission 43*, 7.

319 *ibid.*

320 Mr Luke Hilakari, Secretary, Victorian Trades Hall Council, *Transcript of evidence*, Melbourne, 14 September 2015, 3.

every time we look at an improvement in terms of workers' conditions, allowances or pay rates that is always the issue that's raised but it's not a reason not to do it ... I think long service leave is a reasonable reward for the commitment to this profession and it is not breaking the community services sector in the ACT, quite the reverse, it's quite a healthy sector.³²¹

Professor Freebairn explained that when employers are faced with increased labour costs, they had three options: find ways to improve productivity; increase the price for their product; or cut jobs.³²² However, he referred the Committee to US studies which found that higher labour costs created from increasing the minimum wage did not lead to job cuts, stating, '[t]he puzzle has been: minimum wages are being pushed up in various cities or States, and employment does not seem to have fallen.'³²³ Professor Freebairn noted that for industries with average labour costs, studies still show employment is sensitive to the wage rate however, this did not appear to be the case for industries with low labour costs. As mentioned in Section 4.1.3, he noted that in businesses where the minimum wage increased, employers instigated changes to improve productivity, 'reorganised their business and largely employed the same number of people.'³²⁴

Professor Markey also noted that small increases to employee benefits did not affect employment. He referred to his research on how the Australian labour market has responded to increases in labour costs, stating:

I have done a lot of work on the impact of penalty rates and minimum wage regimes on employment and there is virtually no evidence that there is a negative employment impact from small increases in employee entitlements. There is no evidence with something like long service leave or penalty rates. There is some evidence with minimum wages internationally and it shows no impact and the only impact, and even this is contested, is that there may be a substitution effect that employers may be more inclined to replace young labourers with older workers if there's an increase in the minimum wage. Even that is contested, it's not clear cut. So no overall impact on employment levels from any of the evidence about small improvements in employee entitlements.³²⁵

Associate Professor Steven Kates from the School of Economics, Finance and Marketing at RMIT University stated in his submission:

I wouldn't think over time the aggregate employment effects across all industries will be affected at all but in the particular industries where this is newly introduced there will be some relative contraction of employment compared with what otherwise would have been the case.³²⁶

³²¹ Ms Helen Westwood AM, Organiser, Australian Services Union, NSW & ACT, *Transcript of evidence*, Sydney, 1 December 2015, 6–7.

³²² Professor John Freebairn, Ritchie Chair in Economics, University of Melbourne, *Transcript of evidence*, Melbourne, 9 November 2015, 12.

³²³ *ibid*, 5.

³²⁴ *ibid*.

³²⁵ Professor Raymond Markey, Director and Professor of Employment Relations, Department of Marketing and Management, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 4.

³²⁶ Associate Professor Steven Kates, *Submission 53A*, 4.

4.2.2 Impact on wage growth

Evidence available suggests that ultimately, the cost of portable long service leave will be paid by employees through the lowering of wages. For example, Access Economics stated:

Although a [portable long service leave] scheme may be thought of as an additional cost to employers, fundamentally, it is the workers themselves who bear a large portion of the incidence of the Scheme. In a competitive labour market, employers will not absorb such costs, but will recoup them by paying marginally lower wages to their workers.³²⁷

This view was supported by Professor Freebairn, Associate Professor Kates and the McKell Institute. Professor Freebairn explained how the dampening of wage growth would come about:

Any rational business would say, 'If I say I'm spending \$100 a day on wages, annual leave and so on, and I am now asked to put aside the equivalent of \$10 a day for long service leave', most employers will say, 'Well, over time I'm going to bring that wage rate down from \$100 to \$90'.³²⁸

At the same time, the employee would think:

if I am offered, say, \$100 in wages and zero long service leave, I am willing to work for that \$100. But, now I am going to be given \$10 equivalent of long service leave. If I regard a dollar as a dollar, I am indifferent between the wage or the long service leave. Over time I would be willing to have my wage cut from \$100 with no long service leave to \$90 with \$10 of equivalent long service leave.³²⁹

When these two perspectives are considered together, the situation returns:

to a new equilibrium where exactly the same amount of hours are worked but the wage rate has come down to offset the extra long service leave. That is the really simple story. If a dollar is a dollar, it really has no impact on total employment. It changes the mix of employer payout.³³⁰

However, Professor Freebairn added that in some cases, employers and employees may not value a dollar of wages equal to a dollar of long service leave. For example, an employer may consider long service leave to be a bigger cost than employees value it as a benefit. In that case, employment may go down but wages will not fall as much.³³¹ On the other hand, in the unlikely scenario that employees value long service leave more than employers consider it as a cost, then the wages will fall but employment will increase.³³² In each scenario, the balance between benefits, employment and wages will re-equilibrate depending on employers' and employees' perceived value of long service leave.

³²⁷ Access Economics, *Economic impact of a project levy to fund the Victorian construction industry portable long service leave scheme*, 16.

³²⁸ Professor John Freebairn, Ritchie Chair in Economics, University of Melbourne, *Transcript of evidence*, Melbourne, 9 November 2015, 2.

³²⁹ *ibid.*

³³⁰ *ibid.*

³³¹ *ibid.*, 3.

³³² *ibid.*

Both Professor Freebairn and Associate Professor Kates questioned whether employees value long service leave enough to accept slower wage growth. Associate Professor Kates stated, 'it is quite possible that employees prefer to receive the relatively higher amounts of money they receive than have their incomes pared back to finance this future contingency.'³³³ Professor Freebairn supposed that because most people 'kind of live for today and tomorrow will look after itself', it is possible 'that employees are not going to be all that delighted by this gain, but it depends on the assumption.'³³⁴

Professor Freebairn added that because long service leave is a benefit realised after an extended period, over time awards and enterprise agreements would take into account the increase in employee benefits and reduce wage growth accordingly.³³⁵ He stated:

My reading of the way arbitration tribunals and so on work in this country is that over time they will slow the rate of increase of the award wage to recognise that super, long service leave, annual leave et cetera is taken into account. I would argue that for the majority of people the textbook long-run equilibrium model is pretty close to the mark.³³⁶

Associate Professor Kates agreed, sharing the example of the introduction of the superannuation guarantee:

I was back in the Chamber of Commerce in the days of the super guarantee and the productivity case back in '86. Everybody agreed ... that over time the super guarantee would be paid for by employees ... over time things would evolve people would get a payment of a certain amount, how much value they create, how much they can afford to pay you and some of that would be shifted into the super guarantee and you would end up with less take home pay.³³⁷

However, in the case of Victoria, while wage growth could be reduced for employees engaged under pre-modern awards, employers would be unable to adjust wage growth for employees who are bound by modern awards, which are set nationally.³³⁸

The McKell Institute's submission also acknowledged employers' increased costs created through portable long service leave may need to be compensated through slower wage growth.³³⁹ One of its recommendations if portable long service leave was expanded, was that 'stakeholders consider an agreement for a one-off wage offset for the first year of an employer levy, to the extent of 1–2% of anticipated wage increases, to assist with the transition.'³⁴⁰

³³³ Associate Professor Steven Kates, *Submission 53*, 2.

³³⁴ Professor John Freebairn, Ritchie Chair in Economics, University of Melbourne, *Transcript of evidence*, Melbourne, 9 November 2015, 4.

³³⁵ *ibid.*, 3.

³³⁶ *ibid.*

³³⁷ Associate Professor Steven Kates, *Submission 53A*, 2–3.

³³⁸ Professor John Freebairn, Ritchie Chair in Economics, University of Melbourne, *Transcript of evidence*, Melbourne, 9 November 2015, 6.

³³⁹ The McKell Institute, *Submission 1*, 67.

³⁴⁰ *ibid.*, 20.

FINDING 4: Impact of portable long service leave on wage growth

If portable long service leave is introduced to an industry, there is evidence that the rate of wage growth for employees in that industry is likely to slow down to compensate for the increase in benefits.

4.2.3 Impact on the balance between capital and labour

The increased labour costs caused by expanding portable long service leave could shift the balance between capital (assets that can generate income, such as buildings or equipment) and labour (workers). As the Productivity Commission explained:

In the absence of any counteracting wage reductions, [portable long service leave] would have some dampening effect on employment and encourage businesses to use more capital instead of labour.³⁴¹

Professor Freebairn added that if:

there is a net increase in labour costs to employers that is greater than the perceived benefit by employees, you are going to get some reduction in wages but not to fully offset the extra cost ... Labour [will] become slightly more expensive relative to capital. You will get a bit more impetus to substitute machines for people.³⁴²

The implication is that if labour costs increase, employers may choose to automate tasks usually performed by workers especially as technology becomes cheaper and more powerful.³⁴³ However, there is no evidence from published research or the experience of portable long service leave schemes interstate, to show there has been an increase in automation following the introduction of portable long service leave to an industry.

4.2.4 Impact on labour market flexibility

Associate Professor Kates noted that when long service leave became a statutory entitlement for workers in the 1950's, it:

may have had some advantages in times of labour shortages. In the modern world, however, it is, if anything, an impediment to labour market flexibility. An employee will remain with an employer even if other better opportunities become available as the date of eligibility draws closer.³⁴⁴

³⁴¹ Productivity Commission, *Workplace relations framework, final report, volume 1* (2015), 524.

³⁴² Professor John Freebairn, Ritchie Chair in Economics, University of Melbourne, *Transcript of evidence*, Melbourne, 9 November 2015, 7.

³⁴³ 'All around the world, labour is losing out to capital', *The Economist*, 2 November 2013, <www.economist.com/news/finance-and-economics/21588900-all-around-world-labour-losing-out-capital-labour-pains> viewed 11 January 2016.

³⁴⁴ Associate Professor Steven Kates, *Submission 53*, 1.

On this basis, the Centre for Workforce Futures argued that portable long service leave, which does not disadvantage workers if they change employers, ‘fits more appropriately within the conditions of the modern economy.’³⁴⁵ It explained:

Employers today are pushing for and implementing policies which support labour flexibility and a contingent workforce, and indeed at times closely associate flexibility with productivity. Seen in this light, a portable scheme has the benefit of supporting flexibility and mobility—without penalising employees with reductions in access to entitlements, consistent with the ‘flexicurity’ approach.³⁴⁶

The flexicurity approach is an approach to labour market policy that emerged in Europe in the late 1990’s and has been widely adopted across the European Union. It is a conceptual fusion of ‘flexibility’ and ‘security’ and was developed in response to demands to make labour markets and employment more flexible while also protecting employee rights and social cohesion.³⁴⁷ While flexicurity has not gained as much support in Australia, the Centre for Workforce Futures notes that the object of the *Fair Work Act 2009* (Cth) is based on a similar concept because it seeks to provide a workplace relations framework ‘that promotes national economic prosperity and social inclusion for all Australians.’³⁴⁸

4.3 Small business

One of the concerns highlighted to the Committee was the impact that expanding portable long service leave could have on small businesses. Employer and business groups argued that compared with larger businesses, small businesses would find it harder to absorb increased labour costs, cover employee absences and deal with the additional administrative burden. These arguments are discussed below, along with evidence presented to the Committee suggesting that these impacts would not be so great and that portable long service leave could benefit some small businesses.

4.3.1 Capacity to absorb costs

Some submissions argued that small businesses are less able to absorb the additional costs created by the expansion of portable long service leave because they have smaller profit margins than larger businesses. For example, the VACC argued:

Portable long service leave risks creating problems of cash flow for some businesses. This is particularly relevant for small businesses, which deal with smaller sums and profit margins than larger businesses. This is supported in a Nielsen telephone survey of VACC members as part of the 2014–15 Annual Wage Review. According to the survey, ‘profitability’ and ‘cash flow’ were areas that were most negatively

³⁴⁵ Professor Raymond Markey, Dr Joseph McIvor and Professor Louise Thornthwaite, Centre for Workforce Futures, Macquarie University, *Submission 19*, x.

³⁴⁶ *ibid*, 32–33.

³⁴⁷ *ibid*, 23–24.

³⁴⁸ *ibid*, 25.

impacted by the 3% increase in modern award minimum wage rates from the 2013–14 Annual Wage Review decision. The survey noted that 35% of businesses experienced a decrease in the level of overall profitability in the business. This is followed with the level of cash flow in the business, in which 27% of businesses reported a decrease as a result of the 3% increase in wages.³⁴⁹

As mentioned in Chapter 3, small businesses and organisations may not provision for long service leave until their employees are close to qualifying for it. A University of Sydney study found that 89% of community service organisations recorded their employees' long service leave accruals but did not allocate funds to cover the benefits.³⁵⁰ The Committee also heard that smaller employers may use long service leave funds for other purposes before employees qualify for their leave.³⁵¹

The Australian Security Industry Association Limited (ASIAL), which represents owners and operators of security businesses, claimed that small businesses could close if portable long service leave was expanded because they would not be able to absorb the costs. Mr Chris Delaney, ASIAL's Industrial Relations Advisor, stated:

we think the impact will be that the smaller operators are just going to go out of business. They will have a cash flow effect as well as the extra cost. They will either go shonky, quite frankly or they will go out of business or they'll start trying to use contractors so that they can avoid some of the on-costs that exist.³⁵²

However, no evidence was presented to the Committee suggesting that small businesses contributing to existing schemes have folded due to the introduction of portable long service leave to their industry. Mr Ian Scott, Principal Lawyer at JobWatch, a Victorian employment rights community legal centre, noted that small businesses are not exempt from long service leave obligations and '[t]here are a lot of small businesses in building and construction that pay their percentage of wages to the scheme.'³⁵³ This was supported by data from the Access Economics report prepared for CoINVEST, which indicated that of the employers registered with the scheme, 35% employed one worker, and 78% employed five or fewer workers.³⁵⁴

The Centre for Workforce Futures argued that small businesses employing at least one employee do not have significantly worse survival rates than larger businesses.³⁵⁵ Professor Markey stated:

³⁴⁹ Victorian Automobile Chamber of Commerce, *Submission 43*, 13.

³⁵⁰ Department of Human Services, *Portable long service leave for the community services sector: Draft consultation discussion paper* (2009), 5.

³⁵¹ Women's Health West, *Submission 27*, 4; Association of Neighbourhood Houses and Learning Centres, *Submission 13*, 3.

³⁵² Mr Chris Delaney, Industrial Relations Advisor, Australian Security Industry Association Limited, *Transcript of evidence*, Sydney, 1 December 2015, 6.

³⁵³ Mr Ian Scott, Principal Lawyer, JobWatch, *Transcript of evidence*, Melbourne, 14 September 2015, 2–3.

³⁵⁴ Access Economics, *Economic impact of a project levy to fund the Victorian construction industry portable long service leave scheme*, 9.

³⁵⁵ Professor Raymond Markey et al, *Submission 19*, 33.

There is no reason to believe that small businesses are more vulnerable ... they are no more likely to go out of business than a large business. The only reason [the number is] inflated is because micro-businesses with no employees are often counted, they're volatile.³⁵⁶

4.3.2 Capacity to cover employees' absences

Another concern for employer and business groups was the costs involved for small businesses to cover the absence of workers taking long service leave. In its submission, ACCI argued:

The impacts upon small business are particularly acute as small businesses are less able to source and train temporary staff, reallocate work, or otherwise cover absences over an extended period, resulting in less than optimal business performance.³⁵⁷

Associate Professor Kates agreed, stating:

The smaller the business and especially if you see someone's been there long enough to have actually been there long enough to accumulate long service leave the disappearance of someone for a period of time, for the three months can be a problem, a serious problem, difficult to find people to replace people for such short periods of time, to get those skills. You have to train them up beforehand. There will always be inefficiencies that are introduced. It just adds a bit of sand to the gears.³⁵⁸

ACCI also highlighted that small businesses would find absences occurring due to portable long service leave harder to manage than those from traditional long service leave because there could be a shorter lead time to when the leave is taken. It stated that staff retention:

is a particular concern for small business employers given that the cost of turnover is more acutely felt. While long service leave currently requires management, particularly where employees in essential roles take leave, the vesting of the entitlement will have meant that the employer has had the opportunity to plan ahead ... However in the case of portable schemes, this is not the case.³⁵⁹

The Committee asked representatives of the Building Services Contractors Association of Australia, which represents building services employers, how small businesses participating in the NSW contract cleaning scheme deal with the costs of worker turnover. While acknowledging the costs involved, Mr Terry Corby, President of the NSW Branch, replied:

³⁵⁶ Professor Raymond Markey, Director and Professor of Employment Relations, Department of Marketing and Management, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 19–20.

³⁵⁷ Australian Chamber of Commerce and Industry, *Submission 42*, 14.

³⁵⁸ Associate Professor Steven Kates, *Submission 53A*, 1–2.

³⁵⁹ Australian Chamber of Commerce and Industry, *Submission 42*, 15.

I've never had a member—and we have small members, our Association represents people with five cleaners and three cleaners. I've never had a member complain to me about that because they see it as a benefit for the staff and that has been our one driver through all this is to improve the standards of employment for our people.³⁶⁰

4.3.3 Capacity to manage administrative burden

Other stakeholders maintained that small businesses do not have the resources to deal with the additional administrative burden that a portable long service leave scheme could create. For example, the VACC noted:

employers under the CoINVEST scheme are required to make regular payments—constituting a greater administrative burden for payroll staff. These administration costs are felt most particularly by small businesses, who are often unable to afford a dedicated payroll employee.³⁶¹

Mr Peter Strong, Chief Executive Officer of the Council of Small Business of Australia, the nation's peak body for small businesses, agreed stating medium and large businesses have staff that can deal with the administrative burden of portable long service leave, however, in small businesses, the burden will fall on the owner.³⁶²

As discussed in Chapter 3, the creation of a portable long service leave scheme that administers and coordinates long service leave payments could be beneficial to smaller businesses. Ms Erin Keogh, Senior Industrial Officer at United Voice Victoria, which represents workers in the cleaning and security industries, argued that a portable long service leave scheme would shift most of the administrative burden for small businesses to the scheme and preserve long service leave records and funds of small businesses which may become insolvent.³⁶³

In addition, when it was suggested that the additional compliance costs could be the breaking point for small businesses, Ms Shauna Ferris, Senior Lecturer in the Department of Applied Finance and Actuarial Studies at the Centre for Workforce Futures, replied that the extra compliance costs should be minimal as employers already need to keep similar records to comply with workers' compensation requirements.³⁶⁴

³⁶⁰ Mr Terry Corby, President, Building Services Contractors Association of Australia NSW, *Transcript of evidence*, Sydney, 1 December 2015, 10.

³⁶¹ Victorian Automobile Chamber of Commerce, *Submission 43*, 14.

³⁶² Mr Peter Strong, Chief Executive Officer, Council of Small Business of Australia, *Transcript of evidence*, Melbourne, 9 November 2015, 3.

³⁶³ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 11.

³⁶⁴ Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 20.

4.4 Regional Victoria

The Inquiry's terms of reference required the Committee to consider whether a portable long service leave scheme would disproportionately affect urban or regional areas. Some of the evidence received by the Committee suggested regional businesses would be more likely to struggle with portable long service leave than urban businesses. In addition to the existing labour shortages in some industries in regional areas, other concerns raised by stakeholders included the risk that workers could migrate to urban areas, the capacity of regional employers to absorb costs and the management of seasonal workers. On the other hand, the Committee heard that in some cases, portable long service leave could be beneficial to regional businesses by improving staff recruitment and retention and increasing fairness between employers in urban and regional areas. This section summarises these arguments.

4.4.1 Labour shortages

The evidence received by the Committee suggests regional areas are experiencing labour shortages in some industries. Some stakeholders suggested that if portable long service leave was expanded to these industries, regional employers may find it harder to replace workers who take long service leave, whereas other stakeholders suggested portable long service leave could help to improve staff recruitment and retention. For example, Mr Clancy from ACCI stated that when it comes to 'managing your workforce in the event of absences of employees and getting people in to replace those people who are on leave ... the availability of labour may have a more profound impact in a rural context.'³⁶⁵

On the other hand, community service organisations referred to the shortage of workers in regional areas and that portable long service leave could serve to ameliorate it. In its submission, VAADA stated:

The sector as a whole, particularly in rural and regional areas, has experienced significant difficulties in recruiting, retaining and providing a competitive level of remuneration for employees ... Therefore, initiatives which create incentives for attracting and retaining skilled workers into the [alcohol and other drug] treatment sector are necessary.³⁶⁶

Mr Paul Gilbert, Assistant State Secretary of the Australian Nursing and Midwifery Federation (ANMF), the national union for nurses, midwives and nursing assistants, added that the existing lack of portability between the public and private healthcare sectors hindered worker mobility and further exacerbated worker shortages in regional Victoria. He said:

³⁶⁵ Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 8.

³⁶⁶ Victorian Alcohol & Drug Association, *Submission 29*, 1.

What you are unable to do is transfer it from one area to another, which makes for, particularly again in country Victoria, particular difficulties recruiting skilled nurses into those areas because you lose your long service leave. You can transfer it between public sector agencies, but not between any non-public sector agencies, other than community health.³⁶⁷

When the Committee asked whether there would be differences in how neighbourhood houses in urban and regional Victoria would manage portable long service leave, Ms Clare Corbet, Sector Development Officer at the Association of Neighbourhood Houses and Learning Centres, responded:

I think their experience of it would be similar because the same rules apply, but their experience of attracting and retaining staff would be really different which would have an impact. Small communities have less of a pool of people to draw on and employ in a given position. They are more likely to be drawing on people from outside the sector. In the more densely populated areas, in the cities, there would be more likelihood of somebody coming from another neighbourhood house, whereas if you lived in Robinvale, they might come from a church organisation or a local government organisation because there are less neighbourhood houses in that given area.³⁶⁸

Therefore, the ability of an industry-specific portable long service leave scheme to improve staff recruitment and retention in regional areas would depend on the coverage rules and how the industry is defined.

4.4.2 Migration between urban and regional areas

Another issue raised by some stakeholders was how portable long service leave might affect the movement of workers between urban and regional areas. The NRA and HFA maintained that portable long service leave would encourage workers to leave regional areas for work in urban areas. They argued:

Because of the freedom of mobility that a portable [long service leave] scheme will offer to workers we consider that this will negatively impact businesses in our industries located in rural areas of Victoria—particularly small to medium sized businesses. Given the difficulties that they experience in attracting and retaining talented workers, this scheme will merely operate to encourage some of those workers to move to urban environments. This will further reduce the pool of suitable workers and the ability of rural businesses to operate productively.³⁶⁹

However, JobWatch argued the opposite outcome was a possibility. Its submission claimed portable long service leave could encourage workers in metropolitan areas to move to regional areas because doing so would not affect their long service leave entitlements.³⁷⁰ This view was also held by the Health Workers

³⁶⁷ Mr Paul Gilbert, Assistant State Secretary, Australian Nursing & Midwifery Federation (Victorian Branch), *Transcript of evidence*, Melbourne, 5 October 2015, 2–3.

³⁶⁸ Ms Clare Corbet, Sector Development Officer, Association of Neighbourhood Houses and Learning Centres, *Transcript of evidence*, Melbourne, 19 October 2015, 4.

³⁶⁹ National Retail Association and Hardware Federation of Australia, *Submission 17*, 13.

³⁷⁰ JobWatch, *Submission 41*, 5.

Union (HWU), which represents staff working in hospitals and pathology, dental, Aboriginal and aged care services. Mr David Eden, Assistant Secretary of the HWU, said:

If you are a smaller provider in regional Victoria, for example, and finding it difficult to attract staff with experience ... if you were able to recognise their service towards long service leave through the portable long service leave scheme you may be more likely to attract staff into those rural and remote areas.³⁷¹

4.4.3 Capacity to absorb costs

Some stakeholders also claimed regional businesses would be less able to absorb the additional costs associated with portable long service leave compared with urban businesses. For example, Mr Wojtkiw from VECCI stated:

they are facing high unemployment in some regional locations, particularly amongst youth. There is a difficulty in creating jobs, moving out of traditional historical industries like manufacturing into some new service economy industries. On balance we find that businesses in regional Victoria are doing it harder than those in metropolitan Melbourne.³⁷²

The Victorian Transport Association also argued that portable long service leave was not necessary in regional areas because workers in these areas are more likely to stay with a single employer long enough to qualify. It added that imposing an additional cost on these employers through a portable long service leave scheme would disadvantage them without offering benefits to workers.³⁷³ Mr Ryan of the VTA added that due to the increased labour costs, the VTA envisaged 'serious implications for employment in the freight and logistics industry, both city and regional, but probably a slightly higher impact in regional areas.'³⁷⁴

On the other hand, the ANMF's Mr Gilbert highlighted an area where a portable long service leave scheme could benefit regional hospitals. He explained that public hospitals in regional Victoria bear a greater long service leave burden because they are less likely to lose workers and more likely to pick up workers' long service leave entitlements. He explained:

The average service of a nurse at Cobram is probably 30 years-plus, and the average service of a nurse at the Alfred is 4, 5 years. They are all funded the same and ... you would expect that you will get someone with long service and you will lose someone without paying anything to another employer who has got long service. The reality is in country hospitals that does not happen. Country hospitals keep their staff for a long time. If they get someone, they stay for a long time. They very

³⁷¹ Mr David Eden, Assistant Secretary, Health Workers Union–Victoria, *Transcript of evidence*, Melbourne, 19 October 2015, 4.

³⁷² Mr Steven Wojtkiw, Executive Manager Policy and Chief Economist, Victorian Employers' Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 5.

³⁷³ Mr Paul Ryan, Industrial Relations Adviser, Victorian Transport Association, *Transcript of evidence*, Melbourne, 5 October 2015, 5.

³⁷⁴ *ibid.*

rarely lose someone with long service to a metropolitan hospital. They are more likely to get someone with long service coming from a metropolitan hospital to a country hospital.³⁷⁵

In this case, a portable long service leave scheme where each employer contributes their share of a worker's long service leave entitlements would be fairer to regional public hospitals.

4.4.4 Seasonal workers

Another aspect of employment particularly relevant to regional Victoria is the use of seasonal workers during harvest periods. Mr Clancy from ACCI advised the Committee that:

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 ... That base level of cost would be built into those contract rates if the scheme were to apply to them.³⁷⁶

The Victorian Farmers Federation (VFF), which represents the interests of Victoria's agricultural producers, also cautioned the Committee about the inclusion of seasonal workers, many of whom are backpackers, in a portable long service leave scheme. Ms Meg Parkinson, Chair of the Workplace Relations Committee of the VFF, stated:

Especially in horticulture they use seasonal labour quite often. They might only have a few permanents, but at harvest time they might employ hundreds ... and it would be quite difficult to manage with portable long service leave. They would have to make that allocation to those workers, and then they would depart Australia. We go back to our basic statement that, really, long service leave is to reward a relationship with an employee and an employer over a long period of time. It should not be just another entitlement that the employers have to pay for.³⁷⁷

She also highlighted the practical difficulty that a portable long service leave fund may face to stay in contact with these workers based on farmers' experience. She said that horticultural industries:

use a lot of backpackers for their employees. They usually have a lot of visa holders. Many people that they employ work in other States; they move around from property to property, and of course there are a lot of issues around labour hire, which makes it particularly difficult if people change addresses. You cannot find them, they change countries—it all gets very difficult and complicated for us.³⁷⁸

³⁷⁵ Mr Paul Gilbert, Assistant State Secretary, Australian Nursing & Midwifery Federation (Victorian Branch), *Transcript of evidence*, Melbourne, 5 October 2015, 2.

³⁷⁶ Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Transcript of evidence*, Melbourne, 14 September 2015, 9.

³⁷⁷ Ms Meg Parkinson, Chair, Workplace Relations Committee, Victorian Farmers Federation, *Transcript of evidence*, Melbourne, 5 October 2015, 3.

³⁷⁸ *ibid*, 2.

The issues raised by Ms Parkinson about seasonal workers are also relevant to other industries that employ transient or casual workers, such as the hospitality industry. One suggestion offered by the HWU was to limit the payment of employer contributions to cover only those workers who earn at least \$450 before tax per month, parallel with the superannuation guarantee threshold.³⁷⁹

4.5 Weighing up the evidence

Most of the evidence presented to the Committee regarding the economic impact of expanding portable long service leave was not taken from published research. Most was surmised from what stakeholders presume will happen if employers are faced with increased labour costs. Whether the 1–2% increase in labour costs that a portable long service leave scheme may generate is great enough to cause the negative effects that employer and business groups suggest was not proven or disproven to the Committee. Furthermore, the Committee did not receive evidence suggesting that adverse economic or employment effects have occurred in other jurisdictions that have expanded portable long service leave. There are also insufficient data to confirm if any adverse effects were caused by the introduction of a portable long service leave scheme.

A similar issue that has been researched extensively is the impact of minimum wage increases on employment and as noted by Professors Freebairn and Markey, there is no convincing evidence to suggest employment is affected. Published research suggests there is little or no change to employment when there are modest increases to the minimum wage.³⁸⁰ Instead, a 2013 review of the evidence conducted by the Center for Economic and Policy Research in Washington DC found that the most common adjustments that occur following increases to the minimum wage are reduced labour turnover, improved organisational efficiency, wage compression (reduction in the wages of higher earners) and price increases.³⁸¹ The applicability of these findings to the expansion of portable long service leave in various industries is yet to be investigated.

FINDING 5: Lack of evidence about the economic impact of portability

There is a lack of empirical evidence on the potential impact on the Victorian economy and employment of expanding portable long service leave.

³⁷⁹ Health Workers Union–Victoria, *Submission 52*, 24.

³⁸⁰ John Schmitt, *Why does the minimum wage have no discernible effect on employment?*, <cepr.net/documents/publications/min-wage-2013-02.pdf> viewed 13 January 2016, 22; David Metcalf, 'Why has the British national minimum wage had little or no impact on employment?' (2008) 50(3) *Journal of Industrial Relations*, 489, 507; Ian Watson, 'Minimum wages and jobs: The overseas story', *On line opinion: Australia's e-journal of social and political debate*, 20 April 2005, <www.onlineopinion.com.au/view.asp?article=3362&page=0> viewed 13 January 2016.

³⁸¹ John Schmitt, *Why does the minimum wage have no discernible effect on employment?*, 3.

5

A closer look at key sectors

The evidence presented to the Committee throughout the course of the Inquiry suggested certain sectors or industries may be more likely to benefit from portable long service leave than others. This chapter discusses the arguments put forward for expanding portable long service leave to these sectors and improving the arrangements in sectors with existing portability. In accordance with the Inquiry's terms of reference, special consideration is given to the community services sector.

5.1 Community services sector

This Section provides background information on portable long service leave schemes for the community services sector and then covers the arguments put for and against portability, issues regarding scope and coverage, and recent developments in the sector that may have an impact on a future scheme.

5.1.1 Background to portable long service leave for the community services sector

A brief description of the Victorian community services sector is provided below, followed by a discussion of the development of the proposed Victorian community services portable long service leave scheme, and the Australian Capital Territory's (ACT) scheme, which commenced operation in July 2010.

Introduction to Victoria's community services sector

Community services are services that aim to improve the lives of vulnerable and disadvantaged people. Examples include child care, aged care, disability support and housing and homelessness services. In Victoria, community services are provided by government, for-profit and not-for-profit organisations. As mentioned in Chapter 3, the Victorian Government had provided \$2.3 billion in funding to non-government organisations by December 2015 to provide health and community services in the 2015–16 financial year; \$1.7 billion of this funding was for community services.³⁸²

According to the Victorian Council of Social Service (VCOSS), the peak body for the social and community sector in Victoria, the Victorian not-for-profit community sector employs approximately 97,000 staff, has over

³⁸² Email from Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, to Executive Officer, Economic, Education, Jobs and Skills Committee, 21 December 2015.

135,000 volunteers and contributes approximately \$13 billion per year to the Victorian economy.³⁸³ According to Ms Emma King, Chief Executive Officer of VCOSS, the community services sector:

- is a rapidly changing and growing sector due to the ageing population and the introduction of the National Disability Insurance Scheme (NDIS)
- has a very feminised workforce which is relatively low paid compared with other occupations with similar skill sets
- is characterised by short-term contracts and funding arrangements
- has a high turnover of staff.³⁸⁴

The Committee heard that the rollout of the NDIS will bring significant changes to the community services sector. These changes and their potential impact on introducing portable long service leave to the sector are discussed in Section 5.1.4.

A portable long service leave scheme for the community services sector exists in the ACT and a similar scheme was slated to be introduced in Victoria. The proposed 2010 Victorian scheme is outlined in the next section.

Proposed 2010 Victorian portable long service leave scheme

In 2003, the Victorian Government established the Community Sector Investment Fund (CSIF) to advance the sustainability of community service organisations. To achieve this aim, strategies to improve worker recruitment and retention were sought, and community services stakeholders recommended portable long service leave as a potential strategy.³⁸⁵ A feasibility study was commissioned in 2007, which was followed by actuarial studies and stakeholder consultations. Table 5.1 provides a timeline of events leading up to the introduction of the Community Services Long Service Leave Bill.

Benzulla Actuarial Pty Ltd conducted the initial feasibility study in 2007 and did not find ‘any “deal breakers” that would rule out the establishment or operation of a viable portable long service leave scheme for the sector, at this stage.’³⁸⁶ It estimated the scheme would cost employers between 1% and 2% of total wages, and recommended that an actuarial study be carried out to more accurately determine costs. It also recommended commencing discussions with the community services sector and CoINVEST, the administrative body for Victoria’s construction industry scheme.³⁸⁷ In the same year, stakeholder consultations began, which consisted of ‘over 200 one-on-one consultations, a series of public forums, presentations to industry groups and the opportunity

³⁸³ Victorian Council of Social Service, *Strengthening the state: A snapshot of Victoria’s community sector charities* (2015), 2.

³⁸⁴ Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 2.

³⁸⁵ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund: Community services sector portable long service leave*, report for Department of Human Services (2010), 1.

³⁸⁶ Benzulla Actuarial Pty Ltd, *Feasibility study into a portable long service leave scheme for the community services sector in Victoria* (2007), 7.

³⁸⁷ *ibid*, 5, 8.

for written submissions.³⁸⁸ A reference group of government departments, sector peak bodies, unions and employers was also established to oversee the scheme's development.

Table 5.1 Timeline for developing the Community Services Long Service Leave Bill 2010 (Vic)

2003	Minister for Community Services, Ms Bronwyn Pike, establishes \$7 million Community Sector Investment Fund to enhance the sustainability of community service organisations. Portable long service leave is identified as a strategy to improve worker recruitment and retention and foster professional development.
2007	A feasibility study into a portable long service leave scheme for the sector is commissioned. ^(a) The study identifies merit in introducing a scheme and recommends an actuarial study.
2008	The Victorian Government commits to establish a portable long service leave scheme in the 2008 <i>Strengthening Community Organisations Action Plan</i> . The 2008–09 budget allocates \$1.2 million to the former Department of Human Services to realise the scheme. An actuarial report is commissioned to determine the practicalities of the scheme. ^(b)
2009	Consultation with employer groups and peak bodies in the community services sector finds employer opposition to the scheme on the basis of costs and administration requirements. PricewaterhouseCoopers is engaged to continue stakeholder consultations and review the actuarial reports.
2010	The PricewaterhouseCoopers report finds that the actuarial work undertaken to date appears reasonable and that the scheme offers benefits to employees and employers. Options for addressing employers' concerns about financial and administrative costs are discussed. ^(c) The Community Services Long Service Leave Bill is introduced to the Victorian Parliament in September 2010. The Bill is not passed prior to the November 2010 election.

Sources:

- (a) Bendzulla Actuarial Pty Ltd, *Feasibility study into a portable long service leave scheme for the community services sector in Victoria* (2007).
- (b) Bendzulla Actuarial Pty Ltd, *Actuarial assessment of a proposed portable long service leave scheme for the community services sector in Victoria* (2008).
- (c) PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund: Community services sector portable long service leave*, report for Department of Human Services (2010), 2, 4.

In 2008, Bendzulla Actuarial Pty Ltd conducted the actuarial study, which estimated the initial employer levy contribution rate for a statutory compulsory scheme would be 1.6% (1.4% to cover entitlements and 0.2% to cover administrative costs). Over the long term, the rate was estimated to fall to 1.4%.³⁸⁹ Actuarial firm DeeDeeRa was commissioned to conduct three further actuarial studies in 2009, which looked into above-base entitlements and funding models. Mr Lance Wallace, Deputy Secretary, Corporate Services Division at the Department of Health and Human Services, stated the then Department of Human Services reviewed the actuarial calculations and the similarity between the actuaries' figures and the initial ACT levy rate of 1.67% 'gave the Department comfort that the rates that the actuaries were calculating seemed to be reasonable.'³⁹⁰

³⁸⁸ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 2.

³⁸⁹ Bendzulla Actuarial Pty Ltd, *Actuarial assessment of a proposed portable long service leave scheme for the community services sector in Victoria* (2008), 6.

³⁹⁰ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 8.

PricewaterhouseCoopers, which the Department of Human Services commissioned to review the actuarial reports and continue stakeholder consultations following resistance to the scheme from employer groups, reached a similar conclusion. It found the ‘methodology and assumptions used to estimate the long term employer contribution rates and other findings of the actuarial work undertaken to date, all appear reasonable.’³⁹¹ In its stakeholder consultations, it found employers were concerned about the costs and administrative requirements of the scheme, coverage issues and the lack of evidence supporting the proposed benefits of the scheme.³⁹² However, PricewaterhouseCoopers noted the benefits for employees and employers of establishing a portable long service leave scheme for the sector and suggested options to address employers’ concerns. These options are discussed in Chapter 6, along with other submissions to reduce employer costs.

Some of PricewaterhouseCoopers’ recommendations were incorporated into the Community Services Long Service Leave Bill, which was introduced to the Victorian Parliament’s Legislative Assembly in September 2010. The stated aims of the Bill were to reduce recruitment and training costs in the community services sector, create a better skilled workforce and protect employee rights.³⁹³ The proposed scheme would have been compulsory and prospective for not-for-profit organisations. Employees would have been entitled to 8.7 weeks of long service leave for every 10 years of continuous service with pro rata entitlements at 7 years. A statutory authority would have been established to administer the scheme and the authority would have been able to administer above-base, out-of-scope and pre-scheme entitlements on behalf of employers.

The Bill was read for the second time in October 2010 and debate was adjourned due to the State election in November that year. The election resulted in a change of government and the scheme was not further pursued. The Department has not since undertaken additional work on portable long service leave for the sector.³⁹⁴

ACT community services sector portable long service leave scheme

The attributes of the ACT’s portable long service leave scheme for the community services sector were outlined in Table 2.4 (Chapter 2). The scheme was introduced to enhance the sustainability of careers in the sector. As was the case in Victoria, community services unions endorsed the scheme, and employers were concerned about the costs of the scheme, the lack of perceived benefits for employers and whether portable long service leave would be effective at recruiting and retaining workers.³⁹⁵

³⁹¹ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund*, 2.

³⁹² *ibid.*

³⁹³ Victoria, *Parliamentary debates*, Legislative Assembly, 6 October 2010, 4001 (Lisa Neville), 4002.

³⁹⁴ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 2.

³⁹⁵ Urbis, *Portable long service leave for the ACT community services sector*, report for Department of Disability, Housing and Community Services (2008), 5-6.

However, some employer groups were supportive if there was sufficient government funding to minimise employers' costs. For example, the ACT Council of Social Service (ACTCOSS) endorsed the scheme subject to sufficient government funding on the basis that the scheme protected workers' entitlements, avoided worker burnout, provided more career options for workers and was likely to reduce employer costs over the long term through the creation of a centrally managed pool of funds.³⁹⁶

ACT Leave, which administers the scheme, informed the Committee a formal review of the scheme's operation has not been conducted.³⁹⁷ In the absence of an evaluation, the Committee considered a range of other presented evidence about the operation of the ACT scheme, which suggests the scheme is functioning well. ACT Leave informed the Committee that at 30 June 2015, the scheme had a ratio of total assets over total liabilities of 143%. As this ratio was above ACT Leave's target of 110%, the employer levy contribution rate was reduced to 1.6% in April 2015 (from 1.67%).³⁹⁸ When asked by the ACT Public Accounts Committee in 2013 if he had received negative feedback about the scheme from community service organisations, the then Minister for Workplace Safety and Industrial Relations, Mr Simon Corbell, stated:

it is not an issue that has been raised with me. I have not had anybody from the community sector knocking on my door or raising with me concerns about issues to do with the implementation of portable long service leave into that sector.³⁹⁹

Mr Llewellyn Reynders, Policy Manager at VCOSS, also noted:

We are very aware that there was some initial worry about the scheme. There were some teething problems in the implementation, but five years on it is part of normal business, and certainly our colleagues in the ACT give no reports of any contemporary concerns or worries about the operation of the scheme.⁴⁰⁰

Evidence from the Australian Services Union (ASU), which represents workers in community services, also suggested the administrative and financial burdens have been less than anticipated. Ms Lisa Darmanin, Branch Executive President of the Victorian and Tasmanian Authorities and Services Branch of the ASU, stated that the ACT scheme:

has lowered its fees to 1.6 per cent of ordinary wages, which is partly due to the high number of participant workers in the scheme ... They initially anticipated around 6,000, and it is around 14,500, so the contributions are much more than what they initially anticipated. [The scheme has] been able to accommodate extra benefits that employers may offer to their employees, which is above the minimum entitlement,

³⁹⁶ ACT Council of Social Service, *Community services sector portable long service leave scheme*, submission to the ACT Government (2008), 3.

³⁹⁷ Letter from Tracy Savage, CEO and Registrar, ACT Long Service Leave Authority, to Nazih Elasmr, Chair, Economic, Education, Jobs and Skills Committee, 4 December 2015, 4.

³⁹⁸ *ibid*, 3; ACT Leave, *Community sector fact sheet* (2015).

³⁹⁹ Mr Simon Corbell, Minister for Workplace Safety and Industrial Relations, *Transcript of evidence*, ACT Public Accounts Committee, Canberra, 23 April 2013, 205.

⁴⁰⁰ Mr Llewellyn Reynders, Policy Manager, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 14.

through enterprise agreements, thereby addressing the position that administrative burden is about having to have two schemes sitting on top of each other. That is not the case there.⁴⁰¹

Both Ms Darmanin and Ms Helen Westwood, Organiser with the ASU, NSW and ACT Services Branch, stated that no community service organisations in the ACT have gone out of business due to the introduction of the portable long service leave scheme.⁴⁰² Ms Westwood added that community service organisations ‘certainly budget for [portable long service leave]. It’s not been an impediment to them continuing to provide quality services.’⁴⁰³ She explained to the Committee there was some initial opposition to the scheme, particularly from the disability services sector, but she said that she:

spoke to one of [the] strongest disability advocates in the ACT just a few days ago [who] said look, there was this concern but since it’s been introduced and it’s been operating now in its fifth year those concerns have disappeared and people see it now as a real way of attracting staff.⁴⁰⁴

However, Mr David Moody, State Manager, Victoria of National Disability Services, the peak body for non-government disability service providers, stated the ACT scheme is immature and it is too early to assess how well the scheme is operating.⁴⁰⁵ He also claimed the ACT has a much smaller population than Victoria, and therefore there may be challenges when trying to scale up the ACT model for Victoria.⁴⁰⁶ This argument was rejected by Mr Lloyd Williams, National President of the Health Services Union and State Secretary of the Health and Community Services Union (HACSU), which represents staff working in intellectual disability, mental health and alcohol and other drug services. He stated:

The scheme in the ACT appears to be working. Even though it is on a smaller scale, scale is relative. On a larger scale a scheme can have more capacity, just like a larger superannuation fund can have more capacity to enhance greater investment on the returns that go into the fund ... We also note that CoINVEST is a large established company administering the scheme here in Victoria for the building and construction industry, and they could be used to bring about the sort of capacity Victoria would need to lead a portable long service leave scheme.⁴⁰⁷

401 Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 2.

402 *ibid.*, 3; Ms Helen Westwood AM, Organiser, Australian Services Union, NSW & ACT, *Transcript of evidence*, Sydney, 1 December 2015, 4.

403 Ms Helen Westwood AM, Organiser, Australian Services Union, NSW & ACT, *Transcript of evidence*, Sydney, 1 December 2015, 4.

404 *ibid.*

405 Mr David Moody, State Manager, Victoria, National Disability Services, *Transcript of evidence*, Melbourne, 19 October 2015, 5.

406 *ibid.*, 8.

407 Mr Lloyd Williams, National President, Health Services Union and State Secretary, Health and Community Services Union, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

FINDING 6: Experience of the ACT community services portable long service leave scheme

Despite initial concerns, evidence suggests that the portable long service leave scheme for the ACT community services sector appears to be functioning effectively five years into its operation.

5.1.2 Arguments for and against a Victorian community services sector scheme

The majority of community services sector stakeholders who provided evidence to the Committee supported the introduction of a portable long service leave scheme. However, most community services employer groups were only supportive if community service organisations were funded to offset the additional costs. The arguments presented for and against the expansion of portable long service leave to the community services sector were similar to those presented for expanding portability in general (as discussed in Chapter 3). However, stakeholders stressed the unique nature of employment and funding in their sector required special consideration. The main arguments heard by the Committee for expanding portable long service leave to community services workers were to ensure workers had equitable access to long service leave and to help improve staff recruitment and retention. The main arguments against expanding portable long service leave were the increased costs to employers and the lack of proof that portability would deliver benefits to the sector. The arguments for and against are discussed under the headings below.

Arguments for portability

Equitable access to long service leave

Community sector unions and employee representatives stressed the inequity of workers in the sector not always being able to stay with a single employer long enough to access long service leave despite working in the same role or area for over 10 years. As discussed in Chapter 3, the short-term funding arrangements of community services forces workers into short-term contracts. Ms King from VCOSS welcomed the Inquiry because:

It is not about casting aspersions on employers or employees around loyalty. It is actually saying, 'Let's recognise the reality of a system where people would like to continue working for one particular employer but through no fault of either party that simply cannot [occur] on quite a regular basis'.⁴⁰⁸

Stakeholders argued lack of access to long service leave was particularly unfair due to the emotionally and physically demanding nature of the work. In its submission, the ASU noted that when community services workers are required to change jobs, they often:

⁴⁰⁸ Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 9.

move from one [community service organisation] to another, thus remaining within the community sector ... It is fidelity to the community sector, its values and the socially rewarding work being done—not an individual employer *per se*—that holds the attraction for staff to endure the low-pay, high stress environment work in the sector brings ... It is manifestly unfair that individuals performing the type of work required in this sector cannot access their long service leave despite spending decades doing this work. Staff are denied a much needed break from the stresses of community sector work access to long service leave provides.⁴⁰⁹

CASE STUDY 5.1: 'I have not been able to access any long service leave entitlements'

'I have worked in women's and family violence services for more than thirteen years. During this time I have had ten different employers and no breaks in service. I have built up a high level of professional expertise in my field doing direct service work supporting women and children escaping family violence, but this work is emotionally taxing, which has contributed to times when I have felt burnt out, despite wanting to continue to apply my considerable expertise to the job I love.

Some of the reason for needing to change jobs so often in my field has been due to funding insecurity and program changes. Thus, despite my long tenure in the community sector, I have not been able to access any long service leave entitlements which would enable me to take an extended break to allow me time to refresh and recharge so that I can keep doing direct client work. Instead, in order to look after my health, I have had to move to an education and policy role.

I feel this is detrimental to both my own career prospects in further developing my professional expertise in a safe way, along with compromising service delivery, through losing experienced frontline workers who can deliver outstanding service.

Many of my colleagues are in the same position. The ability to access long service leave to have a break by recognising my years of service within the industry but with different employers would definitely sustain me in being able to continue to work in the sector I love doing direct client work for longer.'

Ada, Community services worker

Source: Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 14.

Ms Helen Westwood from the NSW and ACT Services Branch of the ASU added that community services workers are often required to move to other jobs for a chance at career progression. She said some organisations:

might have three or four staff. Some have only got two staff, so you get to a level and there's nowhere else for that person to go, they then need to move over to a larger organisation and that's where the risk was they were then moving onto the public service and the sector was losing these highly skilled workers.⁴¹⁰

⁴⁰⁹ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 9.

⁴¹⁰ Ms Helen Westwood AM, Organiser, Australian Services Union, NSW & ACT, *Transcript of evidence*, Sydney, 1 December 2015, 7.

CASE STUDY 5.2: 'I have never had long service leave'

'My name is Chris Chaplin. I work for the Port Phillip Housing Association, which is a housing company. I have worked in the community sector for 22 years, and in the housing and homelessness sector in particular for 17 of those 22 years. By my reckoning I have worked with seven different employers at an average of about three years per employer. I think I am a good worker. I am very passionate about working in housing and homelessness, and like many involved in direct service delivery, because I throw myself into the role, I burn out. My experience is that those who burn out still want to remain in the sector, and the best way to refresh is to move to a different employer—do the same work but move to a different employer.

The other thing that strikes me is that it is very hard to move upwards. The career pathway is very limited because funding means there are very few managerial roles and basically those who stay around the longest tend to be appointed as team leaders and so on. So another way to achieve a career pathway is to move sideways across different organisations. Again, you are picking up new skills, perhaps a more responsible position, slowly moving upwards, and that has certainly been my case, but it takes a long time and it also means you are moving around.

As I said, my average is about three years. My longest is six years and four months. So I have never had long service leave; I have never qualified for it. I was only eight months short of qualifying for pro rata long service leave with one organisation, North East Housing Service, but I was working part time, three days a week. I would ask them repeatedly if there were any opportunities for full-time work, and their funding meant that there was just nothing they could offer me and finally they suggested that I look for full-time work elsewhere because they thought that was where my skills lay. I was eminently employable elsewhere, and I found a full-time job.

When I got that position, as a policy officer for the Community Housing Federation, the peak body in the sector, I spoke to both organisations about whether there was a chance to transfer my long service leave entitlement from one to the other. The employer I was moving to was quite open to the idea; the employer I was leaving said, 'Too difficult'. Perhaps it was too difficult. It also meant they saved about \$3,500, which they would have had to pay out if I had moved across.'

Chris Chaplin, Community services worker

Source: Mr Chris Chaplin, Member, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 3–4.

Ms Westwood said another unique factor in the sector is that most services are funded by State and Federal Governments which 'are moving more and more of that service delivery out of the public service and into the non-government sector.'⁴¹¹ Since portable long service leave is available in the public service, she argued 'that it should then be allocated to the grants that are given to NGOs to provide the services that government is now outsourcing.'⁴¹²

HACSU noted community service organisations are already funded to cover long service leave for their employees. It stated:

411 *ibid.*

412 *ibid.*

Funding agencies have already acknowledged that provision for employee entitlements, which include long service leave, are made in the Funding and Service Agreement reached with the Victorian Government ... Agencies acknowledged prior to the drafting of the 2010 Bill the funding is invested and utilised for other employer purposes when not required for long service leave. A Portable Long Service Leave scheme would merely be ensuring that these funds already provided by the Government are set aside and dedicated to these worker entitlements.⁴¹³

FINDING 7: Access to long service leave in the community services sector

Due to the short-term funding of community services and the high risk of worker burnout, workers in the community services sector are often unable to, or choose not to continue working for a single employer long enough to qualify for long service leave.

Attracting and retaining a skilled workforce

As mentioned in Chapter 3, stakeholders commonly used the potential for portable long service leave to assist in the attraction and retention of staff as an argument for its expansion into the community services sector. The ASU argued that due to staff shortages and the inability for employers to increase staff wages, portable long service leave could be used, similar to salary packaging arrangements, to offset low wages and attract staff. It stated:

By having access to long service leave portability—and keeping in mind employers are funded for and required to set aside money to fund staff long service leave entitlements regardless of whether an employee has accrued enough length of service to access the entitlement—many community sector workers will for the first time have access to an entitlement previously beyond their reach, one that may also serve the purpose of retaining skilled and experienced staff for the sector.⁴¹⁴

The Health Workers Union, which represents staff working in hospitals and pathology, dental, Aboriginal and aged care services, cited research showing staff shortages in the health, disability and aged care sectors ‘can be attributed to low wages, high workloads, and a lack of job security, training and career development opportunities.’⁴¹⁵ In its 2007 report on priorities for the community services workforce, the ASU noted the sector would experience more staff shortages as demand for its services increased. The increased demand would come from:

- greater participation of women in the workforce (requiring more child care services)
- an ageing population (requiring more aged care services)
- a trend towards shorter hospital stays and the deinstitutionalisation of mental health care and other services (requiring more community services).⁴¹⁶

⁴¹³ Health and Community Services Union (Victoria), *Submission 30*, 8–9.

⁴¹⁴ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 9.

⁴¹⁵ Health Workers Union–Victoria, *Submission 52*, 12.

⁴¹⁶ Australian Services Union, *Building social inclusion in Australia: Priorities for the social and community services sector workforce* (2007), 8.

The report suggested portable long service leave could be used as a strategy to retain older and experienced staff along with other leave entitlements, and career support and development.⁴¹⁷

Ms Darmanin from the ASU noted the fast growth of the sector and, despite increases to staff wages from the Equal Remuneration Order (explained in Section 5.1.4), stated:

sector turnover remains high, length of service is relatively low, and growth and turnover limit the community sector's ability to attract and retain a skilled workforce. This all points to a crisis in which we think portable long service leave can assist. [Employers and government] agree that a skilled, stable workforce is vital to the wellbeing of many people who the community sector supports, yet we see no plan to deal with this growth in the sector or tangible forward planning or other incentives to attract workers in the sector. Despite the equal remuneration order, workers can still earn more money as cleaners than they can working in community services.⁴¹⁸

Ms King from VCOSS agreed the growth of the sector required strategies to combat staff shortages stating:

We think [portable long service leave] will absolutely help attract and retain staff within the community sector, who for understandable reasons will otherwise look to where they can get greater security of employment and a whole range of other benefits as well.⁴¹⁹

She added portable long service leave could also help school leavers to consider community services work as 'a genuine career path ... I think it adds to the status of what is and needs to be a very professionalised workforce.'⁴²⁰

Arguments against portability

Increased costs for employers

A major concern for employers in the community services sector was the additional costs of a portable long service leave scheme. Although some employer groups acknowledged portable long service leave would be valuable for their workers, their endorsement was subject to the sector receiving enough government funding to offset the additional costs. The evidence from VCOSS supported this. Ms King stated:

employers or organisations that operate within the community sector are fundamentally running on the smell of an oily rag. They do not have additional funds to be able to contribute towards portable long service leave—the operation of the scheme. Any additional costs simply cannot be borne by employers. If they are, what will occur is that it will take away from services that are delivered to those who are the most disadvantaged and those who are the most vulnerable in our community.

⁴¹⁷ *ibid*, 43.

⁴¹⁸ Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 2.

⁴¹⁹ Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

⁴²⁰ *ibid*.

We are absolutely supportive of portable long service leave, but on the proviso that it is not at the cost of the community sector organisations that are delivering those services at the coalface, because we think it would simply take away from service delivery.⁴²¹

In its submission, VCOSS highlighted the indexation rates that applied to government funding were not adequate to cover the rising costs of community service organisations. When the increases associated with wages and non-wage components (prices) are taken into account:

VCOSS calculates community service organisations overall sustained a 2.63 per cent cut in real funding during the 2012–15 period, due to inadequate indexation (including a failure to fully fund mandatory superannuation increases).⁴²²

It added that further efficiencies could not be found in the sector, stating an independent report by Allens Consulting found:

the community sector has already made significant productivity gains, and that achieving further gains would be difficult because of the labour-intensive, people-oriented nature of its services. Cutting expenditure means people needing support will receive a lower standard of care, or that fewer people will get the support they need.⁴²³

Ms Sarah Fordyce, Policy Manager, Victoria at National Disability Services, was concerned that changes to funding created through the introduction of the NDIS (explained further in Section 5.1.4) decreased the capacity of not-for-profit disability services employers to absorb additional costs. She said:

We see the not-for-profits as already facing some significant challenges in the transition to NDIS. They are moving from a situation where they have been block funded in advance by governments—they are very predictable funding amounts year by year—moving to a situation where they deliver a service to individuals and then receive the funding for that. It is big differences for your working capital and your cash flow. You need significant working capital to make this transition. Some of our members may not have enough working capital.⁴²⁴

However, Ms Darmanin from the ASU stated employers are already funded to cover workers' on-costs, but that '[e]mployers are choosing to put it elsewhere at the moment.'⁴²⁵ She also claimed employers have managed other cost increases without cutting jobs or services:

The equal remuneration order as an example is a significant increase for social and community services that employers have had to pay and we have seen no evidence of cuts to service or jobs as a result of that. That is treated in the same way as what we believe long service leave costs are treated in funding and service agreements, whereby there are provisions for reasonable on-costs.⁴²⁶

421 *ibid.*

422 Victorian Council of Social Service, *Submission 36*, 9.

423 *ibid.*, 10.

424 Ms Sarah Fordyce, Policy Manager, Victoria, National Disability Services, *Transcript of evidence*, Melbourne, 19 October 2015, 6.

425 Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 8.

426 *ibid.*, 5.

Ms King admitted that in the ACT, employers have been able to absorb the additional costs of portable long service leave, but she emphasised this was due to sufficient government funding. She stated:

When we look at the ACT scheme the sky has not fallen in. The reality is there are other schemes that actually show that this can happen. As [we mentioned], it is looking at the seed funding et cetera that was put in there in the first instance ... we are not looking to hold back the implementation of a long service leave scheme. What we are wanting to flag loud and clear is that we want to attract and retain the very best staff to the community sector, but we want to make sure we do that in a way that does not take services away from those who are the most vulnerable and disadvantaged in our community.⁴²⁷

Potential cuts to services

The Committee heard that the additional costs created by portable long service leave could reduce employers' cash flow and ultimately lead to service cuts. The McKell Institute noted that prior to the introduction of the portable long service leave scheme for the community services sector in the ACT, community service organisations were concerned as they were operating 'on very tight budgets, the additional cost would lead to a reduction of service standards; lay-off of some staff; or an increase in the fees charged to customers for their services.'⁴²⁸

However, in her presentation to the Committee, Ms Darmanin from the ASU stated 'that we have seen no evidence of cuts to service provisions or agencies closing down in the ACT as a result of portable long service leave being introduced there.'⁴²⁹ This claim is supported by evidence given to the ACT Public Accounts Committee. When asked about community service organisations' initial concerns about reduced cash flow, Mr Goran Josipovic, Acting General Manager of the ACT Long Service Leave Authority stated, 'We have only experienced one employer that had an issue with cash flow, and they have gone into receivership. But, by and large, the most compliant employers in our three schemes are the community sector.'⁴³⁰ Mr Josipovic added that no community service organisations in the ACT had raised issues about cash flow to the ACT Long Service Leave Authority.⁴³¹

Uncertainty about proposed benefits

The PricewaterhouseCoopers report on the proposed 2010 Victorian scheme noted employers were sceptical that portable long service leave would help attract and retain workers to the community services sector. Some employers also queried whether not-for-profit organisations would realise a benefit from the scheme because 'the flow of workers from their own organisations tended to be

⁴²⁷ Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 13.

⁴²⁸ The McKell Institute, *Submission 1*, 54.

⁴²⁹ Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

⁴³⁰ Mr Goran Josipovic, Acting General Manager, ACT Long Service Leave Authority, *Transcript of evidence*, ACT Public Accounts Committee, Canberra, 23 April 2013, 202.

⁴³¹ *ibid*, 203.

into and out of other organisations (such as government) which are not part of the proposed scheme.⁴³² National Disability Services continues to have this concern, noting that in 2010 there was a:

lack of evidence that such schemes represent contemporary effective means of addressing genuine attraction and retention issues. The intervening years have not seen a resolution of these concerns.⁴³³

In response to this argument, Ms Darmanin from the ASU stated:

Whilst many opponents argue that there is no evidence that a portable long service leave scheme will affect these things, we do not see alternative strategies currently proposed and our members tell us differently. Furthermore there is widespread consensus that an improved focus on workforce planning is required in community services.⁴³⁴

Table 3.1 in Chapter 3 provides the estimated worker turnover costs for community services employees.

5.1.3 Scope and coverage issues for the community services sector

One of the possible difficulties of creating a portable long service leave scheme for the community services sector is defining which workers should be covered by the scheme. This is because of the wide range of services that could fall under the sector. The coverage of the proposed 2010 Victorian scheme was complicated. During the consultation period, the scope of the scheme changed in response to concerns from stakeholders. The scheme presented in the Bill was to have covered community services workers in the not-for-profit sector who provided the following services:

- training and employment support, or employment placement, for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- financial support or goods for the assistance of persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- accommodation, or accommodation-related support services, for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- home care support services for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- other support services for persons with a disability or their carers or persons who are vulnerable, disadvantaged or in crisis;
- community legal services, community education and information services, or community advocacy services;

⁴³² PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund*, 12.

⁴³³ National Disability Services, *Submission 31*, 5.

⁴³⁴ Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 2.

- community development services;
- fundraising assistance for community groups; and
- services providing assistance to particular cultural or linguistically diverse communities.⁴³⁵

Employees covered by particular awards, which included employees working in community health centres, children's services, residential aged care or education (including early childhood), were not covered.⁴³⁶ In contrast, the current ACT scheme covers all community services work except for aged care, and covers workers in both the for-profit and not-for-profit sectors.⁴³⁷

VCOSS noted that at the time there was confusion in the sector about which organisations came under the scope of the proposed 2010 Victorian scheme because some community service organisations did not easily fit or identify with the listed activities.⁴³⁸ VCOSS proposed that if a new scheme was to be developed:

A better activities-based approach would be to use an organisation's primary activity as reported to the Australian Charities and Not-for-profit Commission (ACNC) in the Annual Information Statements (AIS) ... Provided the type of activities included in the scheme were clear, using the reported primary activity has the advantage of using an organisation's own reporting, thus making it easier for organisations to identify whether they are included in the scheme.⁴³⁹

As discussed in Chapter 2 in relation to the CoINVEST scheme, problems can arise if the coverage of a portable long service leave scheme is not clearly defined. It is important that employers and employees can easily comprehend who is and is not included in any portable long service leave scheme. The Committee considers a clear coverage definition is imperative if a scheme for the community services sector is introduced due to the multifaceted nature of the sector.

FINDING 8: Definition of coverage for the proposed 2010 Victorian community services sector portable long service leave scheme

Stakeholders found the definition of coverage in the proposed Victorian 2010 portable long service leave scheme for the community services sector difficult to interpret.

VCOSS also noted that prior 'to the tabling of the 2010 Bill, some community sector organisations felt the broad scope of the proposed scheme did not reflect typical mobility patterns for their employees.'⁴⁴⁰ These employers stated their workers moved between their sector (not-for-profit), and the for-profit and government sectors. HACSU argued both for-profit and not-for-profit employers should be included within the scope of the scheme so as not to give a competitive advantage to employers who are not required to be part of a scheme.⁴⁴¹

⁴³⁵ cl 6 Community Services Long Service Leave Bill 2010 (Vic).

⁴³⁶ cl 5 Community Services Long Service Leave Bill 2010 (Vic).

⁴³⁷ ACT Leave, *Community sector fact sheet*; Katy Gallagher, ACT Government, *New scheme to strengthen community sector workforce* (Media release, 10 September 2009).

⁴³⁸ Victorian Council of Social Service, *Submission 36*, 5.

⁴³⁹ *ibid*, 6.

⁴⁴⁰ *ibid*, 7.

⁴⁴¹ Health and Community Services Union (Victoria), *Submission 30*, 5.

In its submission to the ACT Government during the development of the ACT scheme, ACTCOSS agreed that including for-profit employers was important to put ‘both community and private providers on a level playing field.’⁴⁴² It added that including for-profit employers would provide employees with more career pathways and options, and increase the scale of the scheme, which would reduce administrative costs.⁴⁴³ When asked by the Committee whether a future Victorian scheme should include for-profit as well as not-for-profit employers, Mr Wallace from the Department of Health and Human Services responded:

My view would be that you need to be careful about the administrative costs of these schemes, so you definitely want enough scale to make sure that you have low administrative costs.⁴⁴⁴

5.1.4 Recent changes to the community services sector and their potential impact

There have been several developments in the community services sector since 2010 when the Bill for Victoria’s portable long service leave scheme for the sector was introduced into Parliament. These developments include the 2012 Equal Remuneration Order and the introduction of the National Disability Insurance Scheme. Stakeholders informed the Committee the impact of these changes will need to be taken into account if a scheme is introduced for the sector in the future. Each of these developments and their potential impact are explained under the headings below.

Equal Remuneration Order

In March 2010, unions representing social and community sector workers applied to Fair Work Australia for an Equal Remuneration Order on the basis that workers were not receiving equal remuneration compared with State and local government employees doing comparable work. On 1 February 2012, Fair Work Australia found in favour of the applicants and awarded workers covered by the Social, Community, Home Care and Disability Services (SCHADS) Industry Award with wage increases ranging from 19% to 41% depending on their classification.⁴⁴⁵ The increases will be gradually phased in over eight years in nine equal instalments between 1 December 2012 and 1 December 2020. An additional 4% loading will be provided in nine equal instalments over the same period.

The Equal Remuneration Order will increase labour costs for employers. The percentage increase is applied to the award rate rather than employees’ current rate of pay, so employers who were paying above award rates will be less affected by the changes.

⁴⁴² ACT Council of Social Service, *Community services sector portable long service leave scheme*, 9.

⁴⁴³ *ibid.*

⁴⁴⁴ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 8.

⁴⁴⁵ State Government of Victoria Funded Agency Channel, *Pay equity implementation*, <www.dhs.vic.gov.au/funded-agency-channel/spotlight/pay-equity-implementation> viewed 7 October 2015.

While Ms Darmanin from the ASU acknowledged the impact of the Equal Remuneration Order needs to be taken into consideration if a scheme is implemented in the future, she added workers in the sector may still be underpaid by the time all of the increases are phased in. She said:

the work that has been done from 2007 to 2010 certainly needs to be updated to take account of the changing circumstances, but specifically regarding the equal remuneration order I would say that we still have five years until it is fully implemented ... over the life of the implementation of the equal remuneration order, which is eight years, we are seeing other comparative sectors continuing to enterprise bargaining and achieve pay rates that will be in excess of the minimum wage adjustments, which means that because of the eight-year phasing there is still going to be a gap.⁴⁴⁶

She added that during a time of increased growth of the sector, a continuation of the wage gap could exacerbate staff shortages if community services workers leave for better paid work in the government sector or another industry.⁴⁴⁷

National Disability Insurance Scheme

The National Disability Insurance Scheme launched in July 2013 at selected sites nationally including the Barwon region in Victoria. The full rollout of the scheme in Victoria will begin in July 2016 and be completed over three years. The NDIS commenced in the ACT on 1 July 2014.

The NDIS will provide individualised support to people with permanent and significant disability and their families and carers. It will give individuals more choice in how, when and where their supports are provided and it will tailor supports to individuals' current and future needs. The focus on individualised support plans will shift the funding model from State-based block funding of organisations to a national program that provides individualised funding to participants. According to National Disability Services:

This seismic shift in the disability funding model will create a competitive market for disability services where not for profit services will operate alongside and in competition with for profit providers, while the future role of government service provision remains unclear. It is expected that the full commencement of a national scheme will also see increasing delivery of disability services by organisations operating across several Australian states, rather than by state-based organisations.⁴⁴⁸

Mr Moody from National Disability Services argued if portable long service leave is introduced to the community services sector in Victoria, Victorian providers who are in competition with national providers will be disadvantaged.⁴⁴⁹ Ms Fordyce, also from National Disability Services, added that if for-profit

⁴⁴⁶ Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 6.

⁴⁴⁷ *ibid*, 9.

⁴⁴⁸ National Disability Services, *Submission 31*, 3.

⁴⁴⁹ Mr David Moody, State Manager, Victoria, National Disability Services, *Transcript of evidence*, Melbourne, 19 October 2015, 6.

providers are excluded from a future scheme (as was the case with the proposed 2010 scheme), then not-for-profit providers will again be at a competitive disadvantage.⁴⁵⁰

National Disability Services also argued the NDIS funding for service providers is already insufficient and the introduction of portable long service leave would have a negative impact on employers' cash flow. It argued:

it is already evident from the experience in the Victorian NDIS launch site in Barwon that the pricing for services is extremely lean, and that providers are facing substantial financial pressures to adapt and restructure in order to survive in the new environment. [National Disability Services] estimates that the NDIS 'efficient price' allows for funding of less than one day of [long service leave] per employee per annum, based on an assumption that this provision is used by a very limited proportion of employees.⁴⁵¹

In addition, National Disability Services noted the NDIS prices are based on the SCHADS Award and many Victorian disability service providers operate under Victorian enterprise bargaining agreements, which provide more generous benefits than the SCHADS Award, disadvantaging Victorian providers from the outset.⁴⁵²

On the other hand, unions and VCOSS argued the rollout of the NDIS will increase the risk of staff shortages in the sector and make incentives such as portable long service leave more necessary. For example, Ms Darmanin stated:

the NDIS is a big train that is coming that we need to take account of. The workforce requirements around skilled workers and the competition for workers is going to increase, which means, I think, that the scope for what community services would cover could potentially be bigger and the need for adequate strategies to attract people into our sector, as opposed to other sectors where they can be paid more money, is only more important now than it was in 2007.⁴⁵³

The Australian Education Union (AEU), which represents teachers and education support staff, stated the NDIS could have a negative impact on disability services workers because providers were changing the way they operate to cope with the change in funding model. For example, providers were increasing the number of casual staff they employ, employing workers with no qualifications, increasing staff to client ratios, taking on clients with higher needs and reducing or merging programs.⁴⁵⁴ As a consequence:

450 Ms Sarah Fordyce, Policy Manager, Victoria, National Disability Services, *Transcript of evidence*, Melbourne, 19 October 2015, 7.

451 National Disability Services, *Submission 31*, 4.

452 *ibid.*

453 Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 7.

454 Australian Education Union, Victorian Branch, *Submission 16*, 3.

These changes have increased the number of [occupational health and safety] issues, reduced the quality of the services provided and created job insecurity, which has many current disability workers considering leaving the sector. This is a major concern as this has been identified as a growth employment area, with the need to retain the current workforce as well as attract new people to the sector.⁴⁵⁵

The AEU argued these ‘developments stress the need for a portable [long service leave] scheme ... A lack of such a scheme acts as a disincentive for workers to remain in the sector.’⁴⁵⁶

HACSU agreed the lack of guaranteed ongoing funding could make disability service providers more reliant on precarious employment, which ‘will only serve to exacerbate both the current attraction and retention issues faced by the disability’ sector, where ‘demand for service [is predicted to] outstrip supply in less than 10 years due to an aging workforce’ in addition to the predicted ‘doubling of the disability workforce required to meet the needs of the NDIS.’⁴⁵⁷ HACSU added:

It is clear that there will be a short fall in the workforce if something is not done to address these issues and capacity for employees to have access to a Portable Long Service Leave scheme would, in part, act as an incentive to the potential future disability workforce. Given the imminent arrival of the NDIS it is our view that a Portable Long Service Leave scheme is imperative.⁴⁵⁸

Furthermore, Mr Williams from HACSU said:

it is not unreasonable to expect that some providers will not survive the new environment [so workers] will be required to move from employer to employer to an even greater extent ... This disadvantage will not act as an incentive to prospective employees to the sector, which must expand rapidly in order to deliver the outcome the NDIS envisages.⁴⁵⁹

5.1.5 Weighing up the evidence for a community services sector scheme

It is unclear what the net impact of a portable long service leave scheme will be on the community services sector following the introduction of the NDIS and the Equal Remuneration Order. According to Ms Westwood of the NSW and ACT Services Branch of the ASU, portable long service leave has not had a noticeable impact on disability providers in the ACT. She said:

455 *ibid*, 3–4.

456 *ibid*, 4.

457 Health and Community Services Union (Victoria), *Submission 30*, 7.

458 *ibid*.

459 Mr Lloyd Williams, National President, Health Services Union and State Secretary, Health and Community Services Union, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

the union quite recently held a national summit on the NDIS and we had workers and organisations from all round Australia talking about the NDIS and the issues were the same. They were not any worse or any better in the ACT because of the long service leave scheme there.⁴⁶⁰

However, representatives from the Victorian Government stated the studies undertaken by the then Department of Human Services between 2007 and 2010 on the proposed portable long service leave scheme for the sector need to be updated to account for recent developments. Mr Wallace from the Department of Health and Human Services said:

I think we have a fairly solid platform to move forward [but a] matter that would need to be updated is the NDIS, which has occurred during that period of time. The Department has not worked fully through the implications of the NDIS.⁴⁶¹

Ms Melissa Skilbeck, Deputy Secretary, Budget and Finance at the Department of Treasury and Finance, also recommended a review of the assumptions used in the actuarial studies, stating:

Certainly I would think a number of those assumptions that went into the modelling need to be tested. Then you would have a look to see whether the modelling would then need to be redone depending on how much of a change in those inputs. The sector is soon to be under significant change if only because of the NDIS, so intuitively I would think it would require some additional work if not replicating what has been done.⁴⁶²

In terms of whether portable long service leave has the potential to improve staff recruitment and retention in the sector, Mr Wallace and Ms Skilbeck highlighted this analysis would be difficult to undertake. Mr Wallace noted:

you can only do that research if you have good longitudinal data, and I think the difficulty in undertaking that research in the sort of detail that you would be looking for is the data availability.⁴⁶³

Ms Skilbeck added:

I would note that that data has to be created, so one hopes in the ACT they are asking questions of the participants in the scheme. Otherwise you are still speculating on the motivations of those entitled to long service leave through it.⁴⁶⁴

Further, Ms Skilbeck said:

⁴⁶⁰ Ms Helen Westwood AM, Organiser, Australian Services Union, NSW & ACT, *Transcript of evidence*, Sydney, 1 December 2015, 5.

⁴⁶¹ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 5.

⁴⁶² Ms Melissa Skilbeck, Deputy Secretary, Budget and Finance, Department of Treasury and Finance, *Transcript of evidence*, Melbourne, 7 December 2015, 5–6.

⁴⁶³ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 7.

⁴⁶⁴ Ms Melissa Skilbeck, Deputy Secretary, Budget and Finance, Department of Treasury and Finance, *Transcript of evidence*, Melbourne, 7 December 2015, 6.

I found coming to this issue new and looking at the public information available, the question to my mind as a policy adviser is: specifically what is the issue we are seeking to respond to? A portable long service leave scheme encourages mobility within the sector. That has costs too. The extent to which that impact offsets the impact of potentially overall retention within the sector, that is an open question in my mind. Certainly from reading, albeit only the publicly available material, I could not get a read on that question. Given we are talking about a sector that is so sensitive to additional overheads, I think the onus is particularly high to ensure that [one's] comfortable the policy outcome will be a net benefit to the industry as a whole.⁴⁶⁵

FINDING 9: Lack of data on the impact of portability on staff recruitment and retention

There is a lack of data on the impact of portable long service leave on staff recruitment and retention in the community services sector.

Another factor that requires further research is whether for-profit providers should be included in a scheme if one was to be introduced to the sector, and how that would affect the actuarial estimates.

The Committee acknowledges there is not enough evidence to accurately determine the costs of introducing a portable long service leave scheme for the community services sector following the introduction of the NDIS and wage increases from the Equal Remuneration Order. Prior to recommending the introduction of a portable long service leave scheme for the community services sector, the assumptions used in the previous modelling for the 2010 scheme require updating to reflect the impact of recent developments.

FINDING 10: Updating assumptions used in previous community services sector modelling

Due to recent developments in the community services sector, the 2010 modelling is no longer current to determine the operating costs and most appropriate scope of a potential future portable long service leave scheme for that sector.

FINDING 11: Portable long service leave for the community services sector

There is merit in introducing portable long service leave for the community services sector on the basis of providing equity to workers and the existence of a similar scheme in the ACT.

5.2 Contract cleaning industry

As discussed in Chapter 2, portable long service leave schemes for the contract cleaning industry exist in New South Wales (NSW), Queensland and the ACT. The attributes of each scheme are presented in Table 2.3 (also in Chapter 2). This Section provides background information on existing portable long service leave schemes for the industry and presents the arguments the Committee heard about expanding portable long service leave to contract cleaners.

⁴⁶⁵ *ibid*, 5.

5.2.1 Background to contract cleaning portable long service leave schemes

Portable long service leave exists for a small proportion of contract cleaning workers in Victoria. The Building Services (Victoria) Award 2003 provided portability of long service leave entitlements. However, when the award was modernised in 2010, the entitlement was removed because modern awards are unable to include long service leave clauses. Under transitional provisions, some workers have retained portability if they continue to be employed by one of the 28 contractors who are on the prescribed list of employers. The original list contained 109 companies, but the remaining companies are no longer operating.⁴⁶⁶ Ms Erin Keogh, Senior Industrial Officer at United Voice Victoria, which represents workers in the cleaning and security industries, claimed:

the lion's share of the market are not bound by any portability long service leave scheme, and there is a gap where those employers under the old system do have an additional obligation that perhaps gives them a degree of disadvantage in competing in the market.⁴⁶⁷

Ms Keogh recommended Victoria establish a portable long service leave scheme similar to the one operating in the ACT, even though United Voice saw the 'Queensland and New South Wales models as also being effective, positive models.'⁴⁶⁸

The ACT scheme commenced in 2000 and is the oldest of the contract cleaning schemes. According to ACT Leave, the scheme's ratio of total assets over total liabilities at 30 June 2015 was 169%. As with the ACT's community services sector scheme, the ratio was above the target of 110% so the employer levy contribution rate was reduced in April 2015 (from 2.0% to 1.6%).⁴⁶⁹

Queensland's contract cleaning scheme commenced in 2005 and NSW's scheme in 2010. Mr Terry Corby, President of the NSW Division of the Building Services Contractors Association of Australia (BSCAA), which represents building services employers, stated the number of registered companies in the NSW scheme exceeded original expectations. He said, 'we figured we'd get 500. We have currently pretty close to 800 companies, so we think we have captured a significant portion of the market.'⁴⁷⁰

The NSW Industrial Relations Advisory Council's review of the contract cleaning industry scheme in 2013 also found 'a broadly positive (an average of 97% for all seven quarters) level of compliance has been achieved on the lodgement of returns by registered employers.'⁴⁷¹ The scheme is currently in surplus (total assets exceed total liabilities); however, Mr Mark Boyd, NSW Branch Secretary

⁴⁶⁶ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 10.

⁴⁶⁷ *ibid.*

⁴⁶⁸ *ibid.*, 8.

⁴⁶⁹ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 3; ACT Leave, *Cleaning industry fact sheet* (2015).

⁴⁷⁰ Mr Terry Corby, President, Building Services Contractors Association of Australia NSW, *Transcript of evidence*, Sydney, 1 December 2015, 2.

⁴⁷¹ Industrial Relations Advisory Council, *Contract cleaning industry portable long service leave scheme: 12 month review* (2013), 12.

of United Voice NSW who is on the committee that oversees the scheme, stated it is unlikely the employer levy contribution rate will be reduced soon because workers will begin to qualify for long service leave in the next 18 months and there may be a rush on claims.⁴⁷²

Mr Corby and Mr Boyd both highlighted the aim of the scheme was to retain workers in the industry by protecting their entitlements and that the industry and the union jointly approached the NSW Government to introduce the scheme.⁴⁷³ Mr Boyd noted that during the development of the NSW scheme, cleaning companies were asked about the employer levy and:

they told us their general approach to accruing long service leave, they sort of used a figure of around 1.75 per cent of their payroll for accrual towards long service leave. The view was if the levy was set at 1.7 not much would change for companies, it's basically what they were doing now. So the view was not much cost or no cost at all to companies.⁴⁷⁴

Mr Corby informed the Committee that from an industry perspective, it was important to keep the employer levy contribution rate manageable. He noted:

we have a scheme in Queensland [where] the percentage is decreasing because it keeps building up the fund. ACT is a problem because it's above what we think should be the rate and it doesn't look like moving for a little while. New South Wales is 1.7 per cent which is pretty much the gazetted cost. That's 1.7 per cent of your payroll. You get support from the industry if you keep it at that. If you want to raise it above that because you want to be cautious you'll have a problem because we can't recover the cost because the customer will understand 1.7 per cent of payroll is the gazetted rate.⁴⁷⁵

Mr Corby added the NSW model is 'a good model' that is administered by the same body administering the State's construction industry scheme. He stated, 'I have found their administration and the way they've set it up ... to be very satisfactory and their costs are not—they're never low enough but they're not too bad.'⁴⁷⁶

5.2.2 Arguments for and against introducing a contract cleaning scheme

The arguments presented to the Committee for expanding portable long service leave to the contract cleaning industry were based on the contract model of employment in the industry, which made it difficult for workers to

⁴⁷² Mr Mark Boyd, NSW Branch Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 9.

⁴⁷³ Mr Terry Corby, President, Building Services Contractors Association of Australia NSW, *Transcript of evidence*, Sydney, 1 December 2015, 3–4; Mr Mark Boyd, NSW Branch Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 3.

⁴⁷⁴ Mr Mark Boyd, NSW Branch Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 3–4.

⁴⁷⁵ Mr Terry Corby, President, Building Services Contractors Association of Australia NSW, *Transcript of evidence*, Sydney, 1 December 2015, 2–3.

⁴⁷⁶ *ibid*, 3.

qualify for long service leave. Another reason was the physically demanding nature of the work, which increased the importance of adequate breaks for rest and rejuvenation.

Ms Mel Gatfield, Assistant Secretary of United Voice NSW, added that the physical nature of the job made staff shortages even more pronounced. She said:

cleaning is quite a hard job and one of the things I say about the demographics and the turnover is that in our membership it's an ageing population and a lot of these people who have been cleaners for many years and attracting younger people to be cleaners is sometimes hard. They're not necessarily going to stay around once they realise you know the physical nature of the work and the hours, the unsocial hours that often cleaners are working.⁴⁷⁷

Mr Corby noted that from an employer's perspective, the rationale for introducing portable long service leave to the contract cleaning industry was to look after workers so they remain in the industry. He stated:

We have a transient workforce, we are a transient business. That is the company is transient but it doesn't necessarily mean that the actual cleaners are because we can have the same cleaner clean this hotel for 10 years, but it could be three different companies. So she has given 10 years of service to the hotel but gets no recognition in terms of long service leave and I think that's very poor ... So we recognise this was a problem because to keep good people you have to pay them and compensate them in some way and it's not all about 20 bucks an hour, it's about what's there in five years' time.⁴⁷⁸

United Voice Victoria informed the Committee that the contract model of employment meant cleaners 'average between four and seven employers across their careers, and will generally change employers about once every four and a half years.'⁴⁷⁹ Ms Keogh added that for cleaners the:

average service is as high as 20 years, and only 39 per cent of those with enough service in their industry will ever achieve a long service leave entitlement ... As a result the majority of cleaners are unable to achieve long service leave despite working at the same building for the large part of their career.⁴⁸⁰

When the Committee asked Ms Keogh whether contractors often changed when contracts are retendered, she responded:

We find the rate at which clients elect to change contractor at the time of re-tendering to be very high ... Less so in public [sector], I would say, but in private it is very high because there is a high degree of competition in the market.⁴⁸¹

⁴⁷⁷ Ms Mel Gatfield, Assistant Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 7.

⁴⁷⁸ Mr Terry Corby, President, Building Services Contractors Association of Australia NSW, *Transcript of evidence*, Sydney, 1 December 2015, 3.

⁴⁷⁹ United Voice Victoria, *Submission 40*, 3.

⁴⁸⁰ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 2-3.

⁴⁸¹ *ibid*, 5.

FINDING 12: Access to long service leave in the contract cleaning industry

Due to the contract-based nature of employment in the contract cleaning industry, some workers are unable to work with a single employer long enough to qualify for long service leave.

Mr Boyd from United Voice NSW noted when contractors change, many workers remain at the same work site. He said:

There are reasons why they probably stay, they like where they work and the fact is that the incoming contractor ... just doesn't have spare cleaners or employees that they can pick up from other jobs and place onto a new job.⁴⁸²

By keeping workers at the same site, employers benefit by having cleaners who know the work site and do not need further training. Ms Keogh explained that when:

considering the benefits of establishing portable long service leave in the Victorian cleaning and security sectors, it is vital to note that productive retention in security and cleaning is not gained by retaining an employee to an employer, it is instead gained by retaining an employee to their work site.⁴⁸³

The Committee was not presented with any arguments against introducing portable long service leave to the contract cleaning industry specifically. General arguments against portable long service leave were discussed in Chapter 3 (Section 3.2). BSCAA, the relevant employer group, supported the introduction of a Victorian scheme. Mr Corby, President of the NSW Division, said, 'We sought our members' approval and I have canvassed members in Victoria and have no major objections to pursuing the scheme.'⁴⁸⁴ Another employer group, Master Grocers Australia, which represents owners of independent supermarkets, liquor retailers and hardware stores, stated while it does not see a case for changing long service leave arrangements for workers in the retail industry, 'if it is demonstrated that in some industries, due to the fact that the contract nature of the work lends its self to portability then those industries may have a sound case for change.'⁴⁸⁵ It then referred to existing portable long service leave schemes in Victoria and interstate, and said '[c]learly there is no reason in industries such as the contract cleaning, and security that the same principles and arrangements could not be established.'⁴⁸⁶

The Committee considers the inability for contract cleaners to stay with a single employer long enough to qualify for long service leave is inequitable. The loss of workers' long service leave entitlements following contract changes and potential ways to incorporate recognition of prior service into contracts are discussed in Chapter 7.

⁴⁸² Mr Mark Boyd, NSW Branch Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 6.

⁴⁸³ Letter from Erin Keogh, Senior Industrial Officer, United Voice Victoria, to Executive Officer, Economic, Education, Jobs and Skills Committee, 12 November 2015, 1.

⁴⁸⁴ Mr Terry Corby, President, Building Services Contractors Association of Australia NSW, *Transcript of evidence*, Sydney, 1 December 2015, 2.

⁴⁸⁵ Master Grocers Australia, *Submission 39*, 3.

⁴⁸⁶ *ibid*, 4.

FINDING 13: Portable long service leave for the contract cleaning industry

There is merit in introducing a portable long service leave scheme for the Victorian contract cleaning industry on the basis of providing equity to workers and the existence of similar schemes interstate.

RECOMMENDATION 1: Feasibility study for a contract cleaning industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the contract cleaning industry.

5.3 Security industry

The ACT is the only jurisdiction that has established a portable long service leave scheme for the security industry. Table 2.4 in Chapter 2 lists the attributes of the scheme. This section provides some background information about the existing scheme in the ACT and then outlines the arguments presented to the Committee for and against expanding portable long service leave to the security industry.

5.3.1 Background to the ACT security industry scheme

As discussed in Chapter 2, the rationale for introducing portable long service leave to the ACT security industry was to provide equity to workers who, due to contract work, are unable to serve long enough with a single employer to qualify for long service leave. The industry's similarities with the contract cleaning industry in regards to contract work and the physically demanding nature of the job were also used to push for portability.

The ACT scheme commenced in January 2013 and covers employees who work as a security guard, security consultant, monitoring centre operator or crowd controller. The scheme's ratio of total assets over total liabilities at 30 June 2015 was 160%. While this ratio is above ACT Leave's target of 110%, ACT Leave informed the Committee it does not foresee a reduction to the employer levy contribution rate for some time because the scheme is still young and the level of future claims is uncertain.⁴⁸⁷

A few months after the scheme commenced, the ACT Public Accounts Committee asked Mr Corbell, the then Minister for Workplace Safety and Industrial Relations, about the implementation of the scheme. He responded:

Certainly the feedback I have had is that the changes in relation to the security industry have been very well received by people in that industry. Obviously it is a very transient industry with a lot of change not just amongst employees but also amongst changes in employers and the need for people to transition from one employer to another as contracts change and so on. So there is quite a bit of support from the people working in that industry.⁴⁸⁸

⁴⁸⁷ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 3.

⁴⁸⁸ Mr Simon Corbell, Minister for Workplace Safety and Industrial Relations, *Transcript of evidence*, ACT Public Accounts Committee, Canberra, 23 April 2013, 202.

Mr Josipovic of the ACT Long Service Leave Authority added:

It has been implemented successfully because a large portion of the employers that are registered for security are also registered in the cleaning and construction industries as well. So they are very familiar with the authority's processes in relation to submitting returns and their obligations.⁴⁸⁹

As with the ACT contract cleaning and community services sector schemes, no formal review of the security industry scheme has been undertaken since it began operating.⁴⁹⁰ The Committee asked the Australian Security Industry Association Limited (ASIAL), which represents owners and operators of security businesses in Australia, how well the scheme in the ACT was operating and whether their members have any concerns. Mr Chris Delaney, Industrial Relations Advisor at ASIAL, responded:

The rate that's deducted in the ACT is 1.68 per cent for security companies—security employees. Our information from our members is that the administrative costs that is on top of that for them to create all of the paperwork and so on to go with that scheme takes it up to about 3 per cent. It sounds a bit high but that's what they tell us. We haven't got any definitive information on that.⁴⁹¹

He explained the extra administrative costs are caused by employees working in both NSW and the ACT, and that employers are required to run separate payroll systems for each jurisdiction.⁴⁹² It should be noted the employer levy contribution rate for the ACT's security industry scheme is 1.47% and has been that rate since the scheme started.

5.3.2 Arguments for and against introducing a security industry scheme

United Voice Victoria argued portable long service leave should be expanded to security workers because they are unable to qualify for long service leave due to contract work. Ms Keogh informed the Committee of results from a membership survey, which found the average length of service for security guards was 11 years and that 26% of workers with long enough service to qualify for long service leave in their industry will ever get a long service leave entitlement.⁴⁹³

FINDING 14: Access to long service leave in the security industry

Due to the contract-based nature of employment in the security industry, some workers are unable to work with a single employer long enough to qualify for long service leave.

⁴⁸⁹ Mr Goran Josipovic, Acting General Manager, ACT Long Service Leave Authority, *Transcript of evidence*, ACT Public Accounts Committee, Canberra, 23 April 2013, 202.

⁴⁹⁰ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 4.

⁴⁹¹ Mr Chris Delaney, Industrial Relations Advisor, Australian Security Industry Association Limited, *Transcript of evidence*, Sydney, 1 December 2015, 4.

⁴⁹² *ibid*, 5.

⁴⁹³ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 2; United Voice Victoria, *Submission 40*, 7.

Ms Keogh also noted that employment in the industry is growing as demand for security services increases, and portable long service leave could encourage workforce retention, which would also benefit employers. She stated:

In security, for example, if a contract goes out for tender, the guard has two choices. He can leave his industry, take his skills, take his expertise with him, or he can choose to stay and take on employment with the incoming contractor. If he stays and takes on employment with the incoming contractor, he brings a wealth of experience and knowledge tailored to the site where he works. Not only will he not require training for his site but he is often the one that will train the incoming contractor about the particulars of his site.⁴⁹⁴

CASE STUDY 5.3: 'Security is contracted out, so the contract goes up every three years'

'I have worked in security at the national gallery for just over 12 years now. I have never had long service leave. Security is contracted out, so the contract goes up every three years, and every three years you are looking at the possibility of losing your job, or you just carry on with the one company, or you stay where you are. I have stayed where I am.

In my time there we have had three major contract changes, from Wilson to [ISS Facility Services], now to BRI [Business Risks International]. The first contract was with Wilson. I was there for six years and three months. That left me nine months short of being eligible to get paid any long service leave. When the contract ended Wilson had no work for us, so you basically had two options: be out of work, or you stay at the gallery. Contract changes can make a fairly significant impact on your earnings ... Losing long service leave is a fairly large financial loss, because I reckon I have lost around \$6,000 to \$6,500 in entitlements in the time I have been there ...

My son also works in security and his wife works, so we had a situation during the school holidays where everybody was at work and we had to find someone to look after the kid. If we had long service leave, it would provide the additional option to do that. If I had been employed by the gallery, I reckon I would have about 10 weeks of long service leave accrued, but because I work contract I have got nothing ...'

Richard Riley, Security officer

Source: Mr Richard Riley, Delegate, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 3-4.

On the other hand, ASIAL claimed that portable long service leave was not relevant for workers in the security industry. It stated:

The security industry in Victoria, like other states and territories throughout Australia is characterised by high levels of casual employment (usually staffed by people using security work to supplement other full time work in other industries) and high turnover out of the industry amongst that group.⁴⁹⁵

⁴⁹⁴ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 4.

⁴⁹⁵ Australian Security Industry Association Limited, *Submission 18*, 3.

It added that for security workers who wish to stay in the industry long term, the provisions in the current Victorian long service leave legislation were adequate. According to Mr Delaney, the high worker turnover in the industry meant:

many employees who might be the beneficiary of a portable long service leave scheme will never see that money. It will be contributed by their employer and it will go into a fund, but those employees will leave the industry before they have even hit five years of service, they will leave the industry and go into another industry. So they won't ever see any benefit arising out of that.⁴⁹⁶

Mr Delaney also argued there are low profit margins in the security industry and employers are unable to absorb the additional costs of portable long service leave.⁴⁹⁷ However, Ms Keogh refuted ASIAL's claims, stating:

Contrary, we believe, to the assertions made by the submission of ASIAL, these are not all casual workers or workers performing a second job; these are people who are professionals in their career, and security is their primary form of long-term employment. However, in the 11 years that they are likely to work in security, they will change employer five to six times. This is not a matter of choice; this is a result of contracting.⁴⁹⁸

Ms Keogh's assertion that most security industry workers are working in the industry full time and are not supplementing a full-time job in other industries is backed up by data from the Census. Analysis of 2011 Census data showed 69.5% of employed security officers and guards reported they were employed on a full-time basis in their main job in the week prior to the Census.⁴⁹⁹ There are no publicly available data from the Australian Bureau of Statistics on the proportion of security officers and guards who are employed on a casual basis. Data are available on the proportion of employees in the public administration and safety industry (which includes government, defence, police and security workers) who are casual, but these data may not accurately reflect the employment patterns of security officers and guards specifically.

Workers in the security industry face a similar situation to contract cleaners in relation to employment contracts, the physically demanding nature of their work and the benefits gained by employers by keeping them at a specific worksite. The loss of workers' long service leave entitlements following contract changes and potential ways to incorporate recognition of prior service into contracts are discussed in Chapter 7.

FINDING 15: Portable long service leave for the security industry

There is merit in introducing a portable long service leave scheme for the Victorian security industry on the basis of providing equity to workers and the existence of a similar scheme in the ACT.

⁴⁹⁶ Mr Chris Delaney, Industrial Relations Advisor, Australian Security Industry Association Limited, *Transcript of evidence*, Sydney, 1 December 2015, 4.

⁴⁹⁷ *ibid*, 3-4.

⁴⁹⁸ Ms Erin Keogh, Senior Industrial Officer, Victoria, United Voice Victoria, *Transcript of evidence*, Melbourne, 5 October 2015, 2.

⁴⁹⁹ Based on Australian Bureau of Statistics, *2011 Census of Population and Housing*.

RECOMMENDATION 2: Feasibility study for a security industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the security industry.

5.4 Other sectors characterised by non-traditional forms of employment

Worker representatives from a number of other industries also argued for the expansion of portable long service leave to their industries. These included workers in the textile, clothing and footwear industry, the non-emergency patient transport sector and the media, arts and entertainment industry, where employment is characterised by contract or project-based work.

5.4.1 Textile, clothing and footwear industry

Representatives from the Textile Clothing and Footwear Union of Australia (TCFUA), which represents workers in the textile, clothing, footwear and felt hatting industries, argued the recent contraction and restructuring of the industry has created job insecurity and ‘the systemic loss of [long service leave] entitlements experienced by large numbers of [textile, clothing and footwear] workers through no fault of their own.’⁵⁰⁰ As discussed in Chapter 3, the industry has contracted over the past few decades following the lowering of tariffs on imported textile, clothing and footwear goods, which accelerated moves for cheaper, offshore production and created a shift from factory to home-based or outwork production domestically. As a consequence, factories closed, companies collapsed and workers lost their jobs and entitlements if their employer became insolvent.⁵⁰¹

Ms Vivienne Wiles, the National Industrial Officer of the TCFUA, claimed that most workers in the industry have little power to assert their rights, stating the workforce is:

characterised by a high percentage of women, with significant numbers coming from a non-English-speaking background. It is also an ageing workforce. In this environment bargaining power is low or virtually non-existent, particularly in the outwork sector.⁵⁰²

She also estimated that in some of the major supply chains, there were between four and 10 outworkers for every worker in a factory, stating ‘it is a significant part of the clothing industry, and the industry itself says that they cannot survive without outwork in terms of the industry.’⁵⁰³

⁵⁰⁰ Textile Clothing & Footwear Union of Australia, *Submission 48*, 2.

⁵⁰¹ *ibid.*, 1.

⁵⁰² Ms Vivienne Wiles, National Industrial Officer, Textile Clothing & Footwear Union of Australia, *Transcript of evidence*, Melbourne, 5 October 2015, 2.

⁵⁰³ *ibid.*, 5.

Ms Wiles highlighted it is common for employers in the industry not to comply with their obligations:

It is also an industry with widespread non-compliance with minimum wages and conditions and other legal entitlements. Employee record keeping is often poor, including in relation to leave accruals. As part of its day-to-day compliance work, the union has experienced difficulties in accurately calculating leave accruals, including long service leave, when employee records have not been kept in accordance with the Fair Work Act. This task is often complicated when the employer is a transmittee of an earlier company and records verifying continuity of service are either non-existent or inadequate.⁵⁰⁴

As discussed in Chapter 3, the TCFUA argued for the expansion of portable long service leave to its industry in the context of employees losing their jobs and entitlements. By requiring the recording and funding of long service leave accruals, a portable long service leave scheme would ensure workers' entitlements are protected in the event of job loss or company collapse.⁵⁰⁵

When the Committee asked whether the problem of lost entitlements could be better managed by improving compliance in the industry, Ms Wiles responded:

I wish it was that easy. To be honest, it is a really hard industry in terms of compliance. It takes a lot of work because you have got to map the supply chain, and that is a huge amount of investigation and tracking. A lot of businesses open and shut, and reopen again, so it is pretty constant and you have to be very vigilant. Often we have worked with a supply chain. What I mean by that is that we have often worked with the principal of the fashion house and have gone to the fashion house principal and said, 'Look, we have found this issue in your supply chain. We want you to work with us to clean up that supply chain'. When they do they are often surprised about how many people are actually working in their supply chain. They have got no idea. They think it is 30, and it ends up being 200.⁵⁰⁶

Ms Wiles noted the contraction and restructure of the industry has stabilised over the past couple of years, and the union is optimistic about the future of the industry. She said, 'We think that the industry can move forward on an ethical basis, and part of that is that workers' rights and entitlements are respected and protected.'⁵⁰⁷

5.4.2 Non-emergency patient transport sector

The non-emergency patient transport sector transports patients who do not require a time-critical ambulance response, but need clinical monitoring or assistance during transfer. Most transfers occur between hospitals or between a hospital and the patient's home. Ambulance Employees Australia Victoria (AEAV), which represents Victorian paramedics, ambulance attendants and patient transport officers, explained Ambulance Victoria and private and

⁵⁰⁴ *ibid*, 2.

⁵⁰⁵ Textile Clothing & Footwear Union of Australia, *Submission 48*, 2.

⁵⁰⁶ Ms Vivienne Wiles, National Industrial Officer, Textile Clothing & Footwear Union of Australia, *Transcript of evidence*, Melbourne, 5 October 2015, 5.

⁵⁰⁷ *ibid*, 4.

public hospitals contract companies in the non-emergency patient transport sector on four-year terms to provide services. Due to the high degree of change in contractors when contracts expire, an AEAV member survey found 88% of non-emergency patient transport workers have never been able to access long service leave.⁵⁰⁸

In addition to protecting long service leave entitlements for workers who have to change employers due to the competitive tendering process, the AEAV argued for portability based on the physically and mentally demanding nature of the work. The AEAV claimed greater access to long service leave through a portable scheme for the sector would improve the physical and mental health of employees and reduce WorkCover claims.⁵⁰⁹

CASE STUDY 5.4: 'Each time I went to a new company, I had to start from square one'

'I started in the industry 1997. In those 18 years I have worked for four different companies. I was originally a Patient Transport Officer but have upskilled to become an Ambulance Attendant ...

The first two companies I worked for actually lost their contracts and had to shut down. The third company I worked for lost contracts and reduced the size of its workforce.

It was never my choice to change employer, I had to leave. Each time I went to a new company, I had to start from square one regarding my accumulation of long service leave.

My first 6 years in the industry I didn't gain long service credits at all because I kept on losing them as I changed employer. I was unable to carry over accrued entitlements.

In addition, the first two companies I worked for engaged me on a casual basis so there was also no redundancy pay.

I wasn't leaving my employer for a promotion, I had to go where the work was. I have a family that I need to support. I don't think it's fair that I didn't have any opportunity to collect long service ...

I am now eligible for long service leave. However, if our company had lost their contract at the start of this year, I would have had to start all over again.'

Brett Howard, Ambulance attendant

Source: Ambulance Employees Australia Victoria, *Submission 20*, 6.

The AEAV also noted workers are unable to transfer their long service leave entitlements when they move between the emergency (public) and non-emergency (private) sectors of the ambulance industry. Ms Amanda

⁵⁰⁸ Ambulance Employees Australia Victoria, *Submission 20*, 5.

⁵⁰⁹ *ibid*, 11.

Kaczmarek, Industrial Officer at AEAV, explained that while the majority of non-emergency transport workers stay in the sector, movement can occur at the start and end of careers in the emergency sector. For example:

There are more ambulance graduates than paramedic positions with Ambulance Victoria, so we are seeing more moving to the private sector as, I guess, a gateway to the industry. There is that proportion of workers, but then there is also at the other end a transition to retirement. Because of [emergency services superannuation rules], once you are done with being a paramedic, for financial reasons you resign because of the way the superannuation is structured, but it is not unusual for them to move back to the private sector once their career as a paramedic has finished.⁵¹⁰

The AEAV argued previous service in the ambulance industry should be recognised for long service leave purposes. It supported the introduction of a portable long service leave scheme for the non-emergency patient transport sector based on the ACT's scheme for the cleaning industry.⁵¹¹ It also stated a portable long service leave scheme should cover workers in all sectors of the ambulance industry and provide the same long service leave entitlements as the emergency sector (26 weeks of leave after 15 years of service).

5.4.3 Media, arts and entertainment industry

Another union that argued for portable long service leave for its workers was the Media, Entertainment & Arts Alliance (MEAA), which is the peak organisation for workers in the media, entertainment, sports and arts industries. The MEAA claimed the majority of its members were unable to access long service leave because of the contract and project-based nature of work in the industry. For example, workers in the arts and recreation industries such as musicians, venue workers, performing artists and technicians are employed for a production. These workers may be out of work between productions, and they often lose their long service leave entitlements because they are unable to accrue 10 years of service with a single employer. The MEAA referred to ABS data, which showed 43% of arts and recreation employees had been in the workforce for 10 years or more but with their current employer for less than 10 years.⁵¹²

The other workers represented by MEAA are those in the information media and telecommunications industry, such as journalists and broadcasters. Of these workers, 41% had been in the workforce at least 10 years, but were with their current employer for less than 10 years.⁵¹³ The MEAA noted that work in this industry was becoming more insecure following the global financial crisis and the shift from print to digital media. It stated there had been an increase in the number of its members engaged as contractors and freelancers.⁵¹⁴

⁵¹⁰ Ms Amanda Kaczmarek, Industrial Officer, Ambulance Employees Australia Victoria, *Transcript of evidence*, Melbourne, 9 November 2015, 3.

⁵¹¹ Ambulance Employees Australia Victoria, *Submission 20*, 8.

⁵¹² Media, Entertainment & Arts Alliance, *Submission 32*, 3.

⁵¹³ *ibid*, 2.

⁵¹⁴ *ibid*, 1–2.

Ms Carolyn Dunbar, Regional Director, Victoria of the MEAA, argued it was inequitable for media, arts and entertainment workers to miss out on long service leave due to the nature of employment in these industries. She stated these workers:

are professionally trained, and in the main consider their current vocations to be permanent. What they have been trained in is their primary and preferred profession. However, the simple facts are that they rarely, if ever, find security of employment that culminates in an entitlement to long service leave.⁵¹⁵

Ms Dunbar argued for the introduction of a portable long service leave scheme to the industry, which would have a ‘threshold in place concerning a minimum period of service within an industry within a certain year’ in recognition of the instability of employment in the industry.⁵¹⁶

5

5.4.4 Weighing up the evidence about other sectors

The Committee acknowledges the inequity experienced by workers regarding access to long service leave in sectors such as the textile, clothing and footwear industry, the non-emergency patient transport sector and the media, arts and entertainment industry. However, due to the unique nature of these industries and the lack of portable long service leave schemes for these industries in other States, there is less clarity about how such schemes could be successfully implemented at this stage. For example, the large proportion of outworkers in the textile, clothing and footwear industry, and how this would impact on a potential scheme, requires further consideration. The interaction of a potential scheme for the non-emergency patient transport sector with the existing portability arrangements for the emergency sector also needs to be carefully considered. Similarly, the insecure employment and freelance work that characterises the arts and recreation industry poses some challenges in relation to regulating how portable long service leave entitlements would be accrued.

FINDING 16: Access to long service leave in other sectors characterised by non-traditional forms of employment

Some workers in the textile, clothing and footwear industry, the non-emergency patient transport sector and the media, arts and entertainment industry are unable to access long service leave due to the casual, contract or project-based nature of employment in these industries.

5.5 Sectors in which existing portability could be improved

Several stakeholders used the Inquiry to present the Committee with evidence that existing portability arrangements in some industries could be improved. The particular industries or sectors highlighted by stakeholders were the health

⁵¹⁵ Ms Carolyn Dunbar, Regional Director, Victoria, Media, Entertainment & Arts Alliance, *Transcript of evidence*, Melbourne, 5 October 2015, 3.

⁵¹⁶ *ibid.*

sector, State and local government, the early childhood sector, the education sector and neighbourhood houses. The evidence presented for each industry or sector is discussed below.

5.5.1 Health sector

As explained in Chapter 2, portable long service leave is available for Victorian health professionals working in the public sector through their respective enterprise agreements. The Victorian Branch of the Australian Nursing and Midwifery Federation (ANMF) argued restricting portability to the public sector is inequitable for nurses and midwives in the private sector (which includes for-profit and not-for-profit health providers and aged care providers) and acts as a barrier to mobility between the sectors.⁵¹⁷ While Mr Paul Gilbert, Assistant State Secretary of the Victorian Branch of the ANMF, acknowledged the majority of nurses stay in the same sector, this was not the case for all nurses. He said:

we had a big movement in 1999, 2000, 2001 from the private sector to the public sector, and we have movements back from time to time, predominantly I think because of, again, family responsibilities—[nurses] have a better chance of getting set shifts in a private hospital than they do in a public hospital.⁵¹⁸

The ANMF also gave the example of a nurse who moved from a regional public hospital to the local community health centre and was unable to have her prior service recognised and her long service leave entitlement transferred to her new employer.⁵¹⁹ According to Mr Gilbert, the number of agencies in which service can be transferred within the public sector has fallen as some health providers have turned into ‘non-government organisations in the last five years or so, predominantly for tax reasons.’⁵²⁰ Mr Leigh Hubbard, Senior Industrial Officer of the Victorian Branch of the ANMF, added that in regards to nurses changing sectors and losing their long service leave entitlements, most:

people make those decisions knowing what they are getting into, but we hear lots of stories about people who go from, say, the public sector to the Red Cross blood service, or the blood service to somewhere else, who later, to their horror, realise that they have to start again.⁵²¹

Another barrier to job mobility caused by existing arrangements was the inability of nurses to transfer their entitlements if they have been working for the same public hospital for more than 15 years. Under the enterprise agreements, entitlements are only transferred when nurses have between 10 and 15 years of service; if nurses have more than 15 years of service, they are paid out their long

⁵¹⁷ Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 9.

⁵¹⁸ Mr Paul Gilbert, Assistant State Secretary, Australian Nursing & Midwifery Federation (Victorian Branch), *Transcript of evidence*, Melbourne, 5 October 2015, 5.

⁵¹⁹ Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 15.

⁵²⁰ Mr Paul Gilbert, Assistant State Secretary, Australian Nursing & Midwifery Federation (Victorian Branch), *Transcript of evidence*, Melbourne, 5 October 2015, 2.

⁵²¹ Mr Leigh Hubbard, Senior Industrial Officer, Australian Nursing & Midwifery Federation (Victorian Branch), *Transcript of evidence*, Melbourne, 5 October 2015, 6.

service leave when they change employer. The ANMF argued nurses could be reluctant to change jobs because they may not wish to have their leave paid out at the time they move to a new employer.⁵²²

The ANMF also estimated between 10% and 15% of its members work in two or more jobs, either to earn extra money or to gain skills in specialty areas. It stated:

Where this involves separate employers rather than the same employer, as you would expect the enterprise agreement treats them as completely separate. This involves separate accrual of service, separate applications for leave (and potentially separate refusals to allow leave), separate payments for that leave etc. It would make more sense for employment with multiple employers to build one pool of [long service leave] (rather than two or three) and for that [long service leave] pool to be used when it is convenient to the nurse, with a common application process where the nurse is working for more than one employer at the time they want to take the leave.⁵²³

As a solution to these issues, the ANMF recommended the introduction of a portable long service leave scheme covering nurses and midwives in:

public and private hospital or acute sectors, public and private aged care (including not-for-profit providers and in-home care providers), community health centres, bush nursing centres, day procedure centres, nursing agencies, Australian Red Cross Blood Service and the Royal District Nursing Service.⁵²⁴

Nurses outside of the health industry, such as those working in schools or local government maternal and child health centres would not be included. The ANMF also suggested there was potential to broaden the scope to cover other health professionals working in the health industry.⁵²⁵

5.5.2 State and local government sectors

This section presents the concerns raised by stakeholders about the existing portability arrangements in the Victorian public sector and Victorian local government.

Victorian public sector

Long service leave entitlements can be transferred when employees move between the Victorian public sector and other Commonwealth, State and Territory public services, as mentioned in Chapter 2. Portability also exists between the Victorian public sector and some public entities. Public entities are organisations that provide services such as health, environmental and transport services, but operate outside the public service. Some public entities used to be part of the Victorian public sector and therefore, employees had access to portable long service leave. However, as some public entities moved

⁵²² Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 15.

⁵²³ *ibid.*, 16.

⁵²⁴ *ibid.*, 9.

⁵²⁵ *ibid.*, 10.

out of the Victorian public sector (such as Parks Victoria, the Transport Accident Commission and the Country Fire Authority), portability arrangements changed for employees. Depending on the public entity, prior service may only be recognised subject to conditions, such as the transfer of the long service leave funds or reciprocal recognition of service between employers. In some cases, prior service was no longer recognised between a public entity and the Victorian public sector.

The Community and Public Sector Union, which represents employees of the Victorian public sector and a number of public entities, argued the inconsistent application of portability disadvantages some of its members. It stated:

For some employees it is hit and miss whether their prior service is recognised. It is possible an employee could have their service recognised with an interstate public sector employer, but not from elsewhere in the Victorian public sector. Employees have no control over whether funds are transferred or not.⁵²⁶

Employees may also be disadvantaged by the existing portability arrangements between Victorian public entities and the Australian Government. The Committee received two submissions from firefighters working for the Country Fire Authority who noted their frustration at not being able to have their prior service with the defence force recognised.⁵²⁷ They explained the Country Fire Authority only recognises service with Commonwealth departments or agencies if the accompanying long service leave funds are transferred. However, the Australian Defence Force only transfers funds to other Commonwealth organisations, not State authorities.

Local government sector

Employees in the Victorian local government are able to transfer their long service leave entitlements between Councils and Victorian public sector State authorities if an agreement is in place. As mentioned in Chapter 2, the portability of long service leave entitlements for local government workers are contained in the *Local Government (Long Service Leave) Regulations 2012* (Vic).

Some stakeholders raised concerns about how these portability arrangements are realised in practice. For example, Meerkin & Apel Lawyers, which represents the industrial relations interests of all but two Victorian Councils and the majority of Regional Library Corporations, maintained the introduction of the 2012 Regulations created two difficulties for its clients.⁵²⁸ First, Councils are required to recognise the prior service of workers without any transfer of funds to cover long service leave entitlements, which puts Councils in a difficult financial position. Second, Councils and Library Corporations find it difficult to determine which public service bodies should be recognised for prior service. Meerkin & Apel stated:

⁵²⁶ Community and Public Sector Union, SPSF Group, Victorian Branch, *Submission 49*, 7.

⁵²⁷ Mr Geoffrey Barker, *Submission 12*; Mr Andrew Fox-Lane, *Submission 14*.

⁵²⁸ Meerkin & Apel, *Submission 21*, 1.

At no time has the sector been provided a list of public service bodies or special bodies to assist them in knowing when they need to recognise service. There seems to be no logic in who can and cannot have their service recognised. Interestingly, the 2012 [Long Service Leave] Regulations do not make it compulsory for local government to recognise prior service with a Water Corporation. This is despite the extensive joint history between these two types of organisation who have traditionally been bound by the same award.⁵²⁹

After consultation with the Councils and Library Corporations it represents, Meerkin & Apel stated '[l]ocal government is supportive of the portability of long service leave entitlements so long as there is a "level playing field" in the recognition of service between all employers.'⁵³⁰

The ASU also presented the Committee with similar concerns. It argued the lack of a central fund resulted in a lengthy and cumbersome process when employees moved within local government and employee service information and accompanying long service leave payments needed to be exchanged.⁵³¹ It also argued for portability to be broadened to include local government and the entire Victorian public sector, including statutory water authorities, due to the frequency of employee movement between these sectors and the lack of clarity about which State authorities were included.⁵³²

The ASU also raised the inequity faced by local government contractors, such as street cleaners and gardeners, who lose their long service leave entitlements when contracts change and they have a new employer. These workers may have been directly employed by Councils prior to their work being outsourced to the private sector. Mr Robert Bozinovski, Research Officer at the Victorian and Tasmanian Authorities and Services Branch of the ASU, stated:

we have seen members, and indeed employees of our own, who spent, as an example, six years working at a Council and then had their job contracted out and spent another six years working with a contractor, and then the contract changed over. All the while they have been doing the same role, they have been working the same streets, the same parks and gardens and so forth. The only change has been their uniform logo pattern; everything else has remained the same. So it is a question of not so much, 'Is this worker loyal to the employer?', because they are loyal to the job. They have been doing their job consistently for enough time where they would have qualified, had their employer not changed over, for long service leave.⁵³³

Mr Bozinovski argued a portable long service leave scheme which covered these workers would reflect changes in employment models and practices that have restricted workers' access to long service leave.⁵³⁴

529 *ibid.*, 2.

530 *ibid.*

531 Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 18.

532 *ibid.*, 19.

533 Mr Robert Bozinovski, Research Officer, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 9.

534 *ibid.*, 10.

5.5.3 Early childhood sector

As mentioned in Chapter 2, the ability for early childhood teachers and assistants in Victoria to transfer long service leave entitlements when they move between community kindergartens was legislated for in 1984. However, the list of kindergartens to be covered by the legislation was never gazetted, and in 1994, the then Department of Human Services' central payment system (which paid out these long service leave entitlements) was dismantled. Currently, portability for early childhood teachers and assistants is allowed through an informal agreement, which is not legally binding. According to the Australian Education Union, the lack of a formal portable long service leave scheme creates logistical and financial issues for kindergartens when they seek information on employees' prior service and funds for previously accrued long service leave.⁵³⁵

The early childhood sector was initially slated for inclusion in the proposed 2010 Victorian community services sector scheme. However, this scheme was to be prospective, and early childhood teachers and assistants would have lost their previously accrued entitlements. This was one of the reasons why the early childhood sector was removed from the 2010 scheme.⁵³⁶ The other reason was because the proposed 2010 scheme would not have included early childhood teachers and assistants working in the local government or private sectors. The AEU stated this exclusion:

disadvantaged those employees who moved from a community sector preschool/long day care centre and were employed in a local government preschool/long day care centre for anything longer than 4 years as they would lose their accrued entitlements given local government was excluded from the scheme. The same barriers would apply with movement to and from the for-profit sector. This sort of limitation, streaming the workforce into separate silos—community or local government or for-profit sectors—would place further pressure on early childhood teachers and assistants to leave the early childhood education sector.⁵³⁷

In its submission to the Inquiry, the AEU argued a formal portable long service leave scheme for the early childhood sector was imperative for attracting and retaining staff in the sector, particularly due to recent policy changes that could create staff shortages, such as the introduction of universal access to kindergartens for all four year olds from 2013 and new staff to student ratios that will be implemented in 2016.⁵³⁸

It also noted the proportion of early childhood teachers who are graduating with dual early childhood and primary qualifications is increasing, and the better pay and conditions offered by primary schools acts as a disincentive to work in the early childhood sector. Ms Shayne Quinn, Vice-President, Early Childhood at the AEU, stated primary school teachers:

⁵³⁵ Australian Education Union, Victorian Branch, *Submission 16*, 7.

⁵³⁶ PricewaterhouseCoopers, *Portable long service leave for early childhood teachers and assistants*, report for Department of Education and Early Childhood Development (2010), 2.

⁵³⁷ Australian Education Union, Victorian Branch, *Submission 16*, 4.

⁵³⁸ *ibid*, 7.

are employees of government, so it does not matter whether you are in this school or that school, your service goes with you wherever you are. That is one of the things for our dual-qualified early childhood teachers on graduation; they have a choice of, ‘Do I work in the early childhood sector or do I work in the schools sector?’. One of the advantages of opting to work in the school sector is that once employed by the Department of Education and Training their service is recognised. Because it is the one employer, there is not the same issue that we have for those who choose to work in the early childhood sector.⁵³⁹

Furthermore, the AEU noted the median age of pre-school staff was 44.6 years and a large number of early childhood teachers and assistants are close to retirement, making strategies for staff recruitment and retention more important.⁵⁴⁰

5.5.4 Education sector

The Australian Education Union noted the ability for employees in the technical and further education (TAFE) sector to transfer their long service leave entitlements has been recently threatened. Ms Elaine Gillespie, Deputy Vice-President, TAFE and Adult Provision at the AEU, stated:

the TAFE sector previously had the ability—because it was the State Government who looked after it and it was one system—to take their leave from one institute to another. When we started negotiations, now three years ago, we were asked to negotiate with each individual TAFE, and we ran the risk of actually losing the portability of that.⁵⁴¹

Ms Gillespie reported that a multi-enterprise agreement was signed in 2015 that protected portability for employees of stand-alone TAFEs. However, employees of dual university and TAFE institutions are not covered by this agreement and are at risk of losing portability.⁵⁴²

5.5.5 Neighbourhood houses

As mentioned in Chapter 2, Victorian neighbourhood houses that are signatories to a Multi-Employer Collective Agreement allow employees to transfer their long service leave entitlements when moving between these neighbourhood houses. However, the Agreement does not specify how the long service leave entitlements should be funded. As explained by Ms Clare Corbet, Sector Development Officer at the Association of Neighbourhood Houses and Learning Centres:

⁵³⁹ Ms Shayne Quinn, Vice-President, Early Childhood, Australian Education Union, Victorian Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 4.

⁵⁴⁰ Australian Education Union, Victorian Branch, *Submission 16*, 8.

⁵⁴¹ Ms Elaine Gillespie, Deputy Vice-President, TAFE and Adult Provision, Australian Education Union, Victorian Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 4.

⁵⁴² *ibid.*

There are no rules in the current agreements that say, ‘The new house pays for the liability’ or ‘The relinquishing house has to pay for the liability’. A negotiation has to go on and people find that difficult ... Some have split it half and half, some have just sent the dollars with the person, some have found that the full liability has ended up resting with their receiving employer.⁵⁴³

While Ms Corbet was concerned about the financial impact of a community services sector portable long service leave scheme on neighbourhood houses, she supported it in principle because it could ‘provide some real guidelines, ensure proper compliance with the requirements and also manage the financial side of it.’⁵⁴⁴

5.5.6 Addressing concerns with existing portability arrangements

The Committee acknowledges the concerns stakeholders raised about existing arrangements. However, as improvements to existing portability arrangements are beyond the scope of the Inquiry, the Committee has not made specific recommendations for each industry or sector. Since these schemes are non-statutory, the concerns that stakeholders raised should be addressed by the relevant industry or sector.

543 Ms Clare Corbet, Sector Development Officer, Association of Neighbourhood Houses and Learning Centres, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

544 *ibid.*

6 Issues for consideration for portable long service leave

The Inquiry's terms of reference required the Committee to consider some of the practical issues relating to the implementation of a portable long service leave scheme for workers in the same or similar industries. This chapter outlines the presented evidence to the Committee on the following issues: possible funding models; benefit calculations; scope; governance; compliance and enforcement; recognition of interstate service; legal implications; and the role of the Victorian Government. The chapter ends with a discussion of strategies that could be used to reduce costs for employers should a portable long service leave scheme be introduced.

The Committee requested information from the Government regarding the legal implications of introducing a portable long service leave scheme in Victoria. The Committee did not receive this information prior to the tabling of this report, which has impeded the Committee's ability to fully consider these issues in relation to the interaction of a Victorian portable long service leave scheme with the *Fair Work Act 2009* (Cth).

6

6.1 How would a scheme be funded?

Stakeholders presented the Committee with three alternative funding models for a portable long service leave scheme based on the work done by the McKell Institute: approved deposit fund; industry-based defined benefit fund; and accumulation. The McKell Institute did not recommend any particular model since each has its advantages and disadvantages. The three funding models are described below.

6.1.1 Industry-based defined benefit fund model

All of the existing statutory portable long service leave schemes are industry-based defined benefit funds, except for the black coal mining scheme which changed from an industry-based defined benefit fund to an accumulation model in January 2012.

In industry-based defined benefit funds, workers only accrue long service leave entitlements if they work in that particular industry. Employers provide information about each employee and pay levies to fund administrators on a periodic basis (usually quarterly). The levies are pooled together and the fund administrator invests the funds. When employees are eligible for long service leave, the benefit is payable directly from the fund or by the employer who then claims reimbursement from the fund.

The rate of employer levies will depend on the level of benefits employees are entitled to, the rate of wage growth and investment returns.⁵⁴⁵ If workers leave the industry before they qualify for long service leave, the money set aside for their benefits will stay in the fund and can be used to pay administration costs or reduce the employer levy.

The majority of stakeholders who commented on funding models supported having an industry-based defined benefit fund should a new portable long service leave scheme be introduced in Victoria. Table 6.1 lists the advantages and disadvantages of industry-based defined benefit funds.

Table 6.1 Advantages and disadvantages of industry-based defined benefit funds

Advantages	Disadvantages
The defined benefit structure provides employees with a benefit that replaces their current wage while on long service leave.	Schemes for small industries may not be able to attain economies of scale, which can result in high administration costs.
Administration systems may minimise employers' administrative burden.	Some employers may end up subsidising others if there is a difference between their staff turnover rates, there is employer insolvency or new employers are required to pay higher levies to cover deficits from previous years.
Larger funds can keep administration costs low.	Employer levy rates can fluctuate, especially in cyclical industries (such as the construction industry).
Funds can devote resources to ensure compliance, which benefits workers and employers (who could be at a competitive disadvantage if non-compliant employers undercut prices).	Funds may develop large deficits, especially if there is pressure to keep levy rates low.

Source: The McKell Institute, *Submission 1*, 99.

6.1.2 Approved deposit fund model

An approved deposit fund (ADF) is similar to the rollover funds that emerged in the superannuation industry in the 1980's. In this model, a number of ADFs would be established to administer and invest long service leave funds for employees. Following the termination of employment, a lump sum long service leave benefit would be rolled over into an employee's ADF account. The ADF invests the money on behalf of the employee until the employee is eligible to receive his or her benefit. When the employee qualifies for long service leave, the current employer only pays the proportion of wages based on the service completed with that employer, and the balance is made up from the benefits in the employee's ADF account. Employers would be required to supply the ADF with information on employees' period of service to determine eligibility for long service leave.

⁵⁴⁵ Professor Raymond Markey, Dr Joseph McIvor and Professor Louise Thornthwaite, Centre for Workforce Futures, Macquarie University, *Submission 19*, 53.

The ADF model is simple and easy for employers and employees to understand. It would not create much disruption for employers, as their cash flow would not be affected until a worker leaves the employer or qualifies for long service leave. However there are disadvantages to this model for both employers and employees. Table 6.2 lists the advantages and disadvantages of ADFs.

Table 6.2 Advantages and disadvantages of approved deposit funds

Advantages	Disadvantages
Simple to understand; can be phased in over time.	Employers would be subject to additional costs if many of their workers leave prior to qualifying for long service leave.
Employers' cash flow would not be affected as there is no pre-funding of long service leave.	Employees would be vulnerable to investment returns since the account balance would need to grow enough to cover the employee's rate of pay when long service leave is taken.
Low administrative burden for employers.	Administrative costs are likely to be high relative to account balances, which would erode workers' benefits.
A new administrative body would not have to be created since ADFs could be administered by banks or superannuation funds.	There is no in-built mechanism for ensuring that employers comply with their obligations.

Sources: The McKell Institute, *Submission 1*, 81–82; Professor Raymond Markey et al, *Submission 19*, 76.

6.1.3 Accumulation model

The accumulation model is similar to superannuation, where employers make regular contributions into individual employees' accounts that are administered by superannuation funds and/or authorised financial institutions. The money held in employees' accounts would be invested, with earnings credited to the account and administration fees deducted. Cash payments would be paid to workers when they qualify for long service leave. Table 6.3 lists the advantages and disadvantages of the accumulation model.

Table 6.3 Advantages and disadvantages of the accumulation model

Advantages	Disadvantages
Simple to understand for employers and employees.	Difficult to monitor and enforce compliance.
Employers' costs are stable and predictable.	Employees would be vulnerable to investment returns since the account balance would need to grow enough to cover the employee's rate of pay when long service leave is taken.
Administrative burden can be kept low if employers can use the same system for superannuation and portable long service leave.	Administrative costs are likely to be high relative to account balances, which would erode workers' benefits.
Avoids cross-subsidisation between employers.	

Source: The McKell Institute, *Submission 1*, 105.

The black coal mining portable long service leave scheme switched from an industry-based defined benefit fund to an accumulation model in 2012 because some employers were subsidising other employers' worker benefits.⁵⁴⁶ This cross-subsidisation can occur when there are large differences between employers in relation to staff turnover, wage growth, benefit entitlements and solvency. Cross-subsidisation is less likely to occur under an accumulation model. The black coal mining scheme has also found that using the same superannuation fund to administer portable long service leave and superannuation has reduced administration costs.⁵⁴⁷

6.2 How would long service leave benefits be calculated?

The Inquiry's terms of reference asked the Committee to consider how long service leave benefits should be calculated for a portable long service leave scheme. Based on the evidence available to the Committee, the calculations would depend on the entitlements outlined in the awards or employment agreements that apply to the industry in question. This can be complicated in industries where employees are covered by multiple awards, such as the community services sector (as discussed in Chapter 5). In addition, a number of other issues would need to be decided upon if a new scheme was established, such as the definition of ordinary rate of pay, the appropriate pro rata qualifying period, the allowed length of service breaks and the management of previous accruals. These issues are briefly described below.

6.2.1 Definition of ordinary rate of pay

In existing portable long service leave schemes, workers' ordinary rate of pay is used to calculate employer levies and the rate at which workers are paid when they take their long service leave. The definition of 'ordinary rate of pay' varies between the schemes. For example, the ordinary rate of pay in the Australian Capital Territory (ACT) contract cleaning, community services and security industry schemes does not include overtime, reimbursements or allowances, whereas the Western Australian (WA) construction industry scheme includes allowances and casual loading if applicable.⁵⁴⁸

There are also variations in how long service leave benefits are calculated. Depending on the scheme, the ordinary rate of pay for these calculations could be defined as the current rate of pay, the average pay over the previous four quarters, or the ordinary rate of pay 'in the opinion of the authority'.⁵⁴⁹ In the ACT contract cleaning scheme, benefits are calculated using the highest average wage of the last two, four, 20 or 40 quarters, and for the community services and security

⁵⁴⁶ Explanatory Memorandum, Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2011 (Cth), ii.

⁵⁴⁷ Coal Mining Industry (Long Service Leave Funding) Corporation, *Annual report 2014* (2014), 6.

⁵⁴⁸ Letter from Tracy Savage, CEO and Registrar, ACT Long Service Leave Authority, to Nazih Elasmr, Chair, Economic, Education, Jobs and Skills Committee, 4 December 2015, 2; MyLeave, *Employer FAQ*, <www.myleave.wa.gov.au/help/employer-faq/> viewed 11 November 2015.

⁵⁴⁹ Professor Raymond Markey et al, *Submission 19*, 44.

industry schemes, benefits are based on the highest average wage of the last two, four or 20 quarters.⁵⁵⁰ A decision on how the benefits are calculated in any future scheme would need to take into account typical employment patterns in the industry.

6.2.2 Pro rata payment periods

The qualifying period for pro rata payments also varies between existing portable long service leave schemes. For example, the construction industry schemes in Victoria, the ACT, New South Wales (NSW) and Queensland have a pro rata payment period of seven years; whereas the period in the Northern Territory, Tasmanian, South Australian and WA construction industry schemes is five years.⁵⁵¹

The ACT community services scheme has a pro rata payment period of five years. However, the period in the ACT contract cleaning and security schemes varies depending on workers' circumstances. The standard entitlement is seven years, but workers can access pro rata payments at five years if they leave the industry due to permanent incapacity, retirement or death.⁵⁵² According to ACT Leave, which administers each of the portable long service leave schemes in the ACT, the ACT schemes have different pro rata payment periods due to the variations in typical employment patterns between industries and because they were based on the different industrial arrangements existing at the time each scheme was implemented.⁵⁵³

6.2.3 Allowable breaks in service

In existing portable long service leave schemes, employees can be absent from their industry for a specified period without being considered to have broken their service. Tables 2.2 to 2.4 in Chapter 2 list the maximum breaks in service allowed in current statutory schemes, which range from two to eight years. In most cases, workers are permitted a service break of up to four years; however it varies according to the industry.

6.2.4 Management of previous long service leave accruals

During the development of a portable long service leave scheme, a decision is required regarding how workers' previous long service leave accruals will be managed. Workers' service prior to the implementation of a portable long service leave scheme has been managed in different ways by existing schemes.

⁵⁵⁰ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 2.

⁵⁵¹ Professor Raymond Markey et al, *Submission 19*, 44.

⁵⁵² *ibid.*

⁵⁵³ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 2.

In the ACT schemes, workers' prior service is recognised for the purposes of qualifying for long service leave, but the scheme will only pay for the leave that corresponds with the length of service following the scheme's commencement.⁵⁵⁴ In such cases (where workers have service prior to and after the commencement of a scheme), workers are required to make a claim with their employer, who can then seek reimbursement from ACT Leave for the portion of the payment relating to service after the scheme commenced.

For the NSW contract cleaning scheme, which commenced on 1 July 2011, current workers who had been working in the industry prior to the scheme's commencement were deemed to have begun working in the industry from 1 July 2011. That is, the scheme was prospective. However, in order to encourage employers to register in the scheme, these 'foundation workers' were credited with an extra 12 months of service if their employer registered them by 31 December 2011.⁵⁵⁵

The Health and Community Services Union (HACSU), which represents staff working in intellectual disability, mental health and alcohol and other drug services, argued for the implementation of a retrospective portable long service leave scheme, which would recognise workers' prior service in the community services sector, or at least their service with their current employer.⁵⁵⁶ Actuarial advice is required to determine the feasibility of a retrospective scheme as it would have a large impact on the scheme's liabilities. The proposed 2010 Victorian community services scheme was to have been a prospective scheme.⁵⁵⁷

6.3 How would scope be determined?

The scope of a portable long service leave scheme can have an impact on compliance, administration costs and scheme viability. A broad scheme will have more participating employers and employees, which can increase the scheme's revenue and reduce administrative costs. However, the scope should be clearly defined to simplify administration and ensure compliance. This section discusses the scope issues presented to the Committee, such as the coverage of different sectors and employment types, and then considers strategies to simplify scope.

6.3.1 Coverage of different sectors

In private sector industries with a portable long service leave scheme such as construction, contract cleaning and security, all employers are required to participate in the scheme, which creates a level playing field in regards to price setting and staff recruitment and retention. However, for industries that can be run through the public, private and not-for-profit sectors, such as health,

⁵⁵⁴ ACT Leave, *Community sector fact sheet* (2015).

⁵⁵⁵ Long Service Corporation, *When your record starts*, <www.longservice.nsw.gov.au/ccl/workers/overview/when-your-record-starts> viewed 8 February 2016.

⁵⁵⁶ Health and Community Services Union (Victoria), *Submission 30*, 5.

⁵⁵⁷ cl 102 Community Services Long Service Leave Bill 2010 (Vic).

education and community services, excluding one or more sectors from a portable long service leave scheme could work both for and against employers and employees.

As discussed in Chapter 5, some community services stakeholders were in favour of restricting the scope of the proposed 2010 Victorian scheme to not-for-profit organisations because it would encourage staff retention in the not-for-profit sector.⁵⁵⁸ The Australian Services Union (ASU), which represents workers in community services, also argued that any future portable long service leave scheme may need to exclude public health workers and kindergarten teachers and assistants because they already have access to portability through separate arrangements or their profession better aligns with another sector.⁵⁵⁹

On the other hand, excluding the government and private sectors could be disadvantageous. Organisations that provide a combination of not-for-profit and for-profit services, such as those in aged care, would have to apply different long service leave requirements for different employees, which would increase their administrative burden.⁵⁶⁰ Furthermore, private providers would gain an unfair competitive advantage because they would not be required to contribute to the scheme.⁵⁶¹

The ACT community services scheme includes private (for-profit) and not-for-profit organisations. During the development of the scheme, the ACT Council of Social Service supported the inclusion of private providers because it removed any competitive advantage between the sectors, provided more career diversity for workers and reduced the scheme's overall costs due to more workers registering with the scheme.⁵⁶² The initial feasibility study for the proposed 2010 Victorian scheme found that the larger the scheme, the lower the administrative costs per worker and the lower the employer contribution rate.⁵⁶³ However, the final design of the proposed scheme restricted participation to not-for-profit organisations.⁵⁶⁴

6.3.2 Coverage of different employment types

Several stakeholders recommended that a portable long service leave scheme should cover all workers on the basis of equity, including those who are employed on an ongoing, fixed-term or casual basis.⁵⁶⁵ HACSU and the Ambulance

⁵⁵⁸ Department of Human Services, *Portable long service leave for the community services sector: Draft consultation discussion paper* (2009), 3.

⁵⁵⁹ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 11.

⁵⁶⁰ Women's Health West, *Submission 27*, 5.

⁵⁶¹ Health and Community Services Union (Victoria), *Submission 30*, 5.

⁵⁶² ACT Council of Social Service, *Community services sector portable long service leave scheme*, submission to the ACT Government (2008), 9.

⁵⁶³ Bendzulla Actuarial Pty Ltd, *Feasibility study into a portable long service leave scheme for the community services sector in Victoria* (2007), 47.

⁵⁶⁴ cl 4 Community Services Long Service Leave Bill 2010 (Vic).

⁵⁶⁵ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 12; Australian Education Union, Victorian Branch, *Submission 16*, 2; Media, Entertainment & Arts Alliance, *Submission 32*, 4.

Employees Association Victoria added that a scheme for their members should follow the ACT community services scheme, which also includes independent contractors.⁵⁶⁶ Contractors are also included in some of the construction industry schemes. For example, Victoria's scheme for the construction industry allows working subcontractors the option to make contributions to fund their own long service leave.⁵⁶⁷

6.3.3 Strategies to simplify scope

The Committee has already explained the importance of a clear scope in Chapter 2 when discussing the coverage disputes that have occurred under the CoINVEST scheme, which does not have its scope defined in legislation. Some community services stakeholders made suggestions to the Committee about how to simplify the scope of a future portable long service leave scheme. For example, the Victorian Council of Social Service (VCOSS), the peak body for the social and community sector in Victoria, recommended that coverage should be determined using an activities-based approach. As mentioned in Chapter 5, the classification of activities should be the same as that used by organisations when they report annually to the Australian Charities and Not-for-profits Commission.⁵⁶⁸ Community Information & Support Victoria, the peak body representing local community information and support services, also recommended that coverage should be based on an organisation's primary purpose.⁵⁶⁹

The diverse range of services that fall under the community services sector complicates the definition of coverage for a potential scheme, as discussed in Chapter 5. In its review of the proposed 2010 Victorian scheme, PricewaterhouseCoopers recommended that a whole-of-organisation approach be the 'underlying principle to determine eligibility for the scheme', but noted that exceptions would have to be made in cases where an organisation's primary activity is not a community service.⁵⁷⁰ It also recommended that flexibility be built in to the scheme so that future refinements could be made regarding coverage.⁵⁷¹

Ensuring a level of flexibility in coverage definition was also recommended by ACT Leave:

⁵⁶⁶ Ambulance Employees Australia Victoria, *Submission 20*, 8; Health and Community Services Union (Victoria), *Submission 30*, 9.

⁵⁶⁷ CoINVEST, *WSC Responsibilities*, <www.coinvest.com.au/working-subcontractors/working-subcontractor-responsibilities> viewed 9 February 2016.

⁵⁶⁸ Victorian Council of Social Service, *Submission 36*, 6.

⁵⁶⁹ Community Information & Support Victoria, *Submission 15*, 2.

⁵⁷⁰ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund: Community services sector portable long service leave*, report for Department of Human Services (2010), 5.

⁵⁷¹ *ibid.*

For administrative effectiveness, there are advantages having industry definition and coverage articulated in legislation, with clear supporting explanatory memorandum, identifying the intention of coverage. Some level of flexibility in coverage definition, perhaps through a clarifying statement of intent, could also be considered to ensure that changing circumstances within an Industry are able to be accommodated.⁵⁷²

6.4 How would a scheme be governed and administered?

This section discusses the different governance models that could be used for a portable long service leave scheme and stakeholders' suggestions relating to governance and administration.

6.4.1 Governance models

Each of the existing portable long service leave schemes is governed differently; all are run by government bodies except for the construction industry schemes in Victoria and Tasmania, which were privatised in the 1990's.⁵⁷³ In these States, trusts were set up to administer the construction industry schemes whose rules, levies and governance are outlined in the trust deed. The boards of the Victorian and Tasmanian schemes include an equal number of representatives from employer and employee groups in addition to independent directors who are appointed by the industry representatives. In contrast, the members of the governing bodies of schemes in other jurisdictions are appointed either by the relevant Minister, the Government or the Governor.⁵⁷⁴ All the schemes have a board, except in NSW where the governing agency is under Ministerial control. The NSW scheme has independent industry-specific committees, to which employers and employees can appeal if they disagree with a decision made by the governing agency.⁵⁷⁵ The proposed 2010 Victorian scheme for the community services sector was to have been governed by a statutory authority whose board members would have been appointed by the Governor in Council.⁵⁷⁶

The 2003 Cole Royal Commission into the building and construction industry noted that with a privatised portable long service leave scheme, the 'government no longer has any "hands on" involvement in the scheme or any financial exposure to it.'⁵⁷⁷ The Cole Royal Commission concluded that the decision to privatise such schemes was a matter for individual governments, but noted a review of the South Australian scheme found that government 'involvement hampers the capacity of the funds to operate on an efficient commercial basis.'⁵⁷⁸

⁵⁷² Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 2.

⁵⁷³ Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry* (2003), 224, 236.

⁵⁷⁴ See Table 2.2 in Chapter 2 for specific details about the board composition of each jurisdiction's scheme.

⁵⁷⁵ See Table 2.2 in Chapter 2 for specific details about the complaint body of each jurisdiction's scheme.

⁵⁷⁶ cls 7, 13 Community Services Long Service Leave Bill 2010 (Vic).

⁵⁷⁷ Terence Rhoderic Hudson Cole, *Final report of the Royal Commission into the building and construction industry*, 244.

⁵⁷⁸ *ibid*, 249.

As discussed in Chapter 2, the Cole Royal Commission recommended that measures are put in place to restrict governments from appropriating long service leave funds for other uses.

Regardless of whether a portable long service leave scheme is privatised or not, the Housing Industry Association, the peak body for the residential building, renovation and development industry, recommended that a scheme should have strong industry involvement and board representation.⁵⁷⁹ This view was reiterated by other stakeholders. For example, Adult and Community Education Victoria (ACEVic), which represents Victoria's adult community education centres, recommended the establishment of a board consisting of independent legal and financial experts and sector participants to 'ensure that any [portable long service leave] scheme operates in the best interests of employees' financial contributions and employers' concerns.'⁵⁸⁰ The Australian Nursing & Midwifery Federation, the national employee group for nurses, midwives and nursing assistants, also insisted on employer and employee board representation, adding it would make 'communication to workers and members in the industry easier if the industrial parties are aware of major developments and decisions.'⁵⁸¹

6.4.2 Stakeholders' preferred administration arrangements

Of the stakeholders who argued for expanding portable long service leave, several recommended appointing a single administrator to run the scheme across industries within a jurisdiction. For example, JobWatch, an employment rights community legal centre, recommended the ACT model, where a single authority (ACT Leave) administers the portable long service leave schemes for the construction, contract cleaning, community services and security industries. JobWatch stated that having a single authority would create cost efficiencies due to scale and purchasing power, ensure consistency and fairness between the industry schemes and make reforms towards nationally consistent portable long service leave schemes more achievable.⁵⁸²

Other stakeholders suggested that CoINVEST, the administrator of Victoria's construction industry scheme, could administer any portable long service leave schemes that are established for other Victorian industries.⁵⁸³ The initial feasibility study for the proposed 2010 Victorian community services sector scheme also found that the preferred option was to outsource administration to CoINVEST.⁵⁸⁴ When asked about CoINVEST's capacity to administer such schemes, Mr John Hartley, CoINVEST's Chief Executive Officer, stated that there was good capacity due to the efficiency of their management and IT systems.⁵⁸⁵ He added:

⁵⁷⁹ Housing Industry Association, *Submission 45*, 7.

⁵⁸⁰ ACEVic, *Submission 44*, 4.

⁵⁸¹ Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 18.

⁵⁸² JobWatch, *Submission 41*, 9.

⁵⁸³ For example, Mr Lloyd Williams, National President, Health Services Union and State Secretary, Health and Community Services Union, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

⁵⁸⁴ Bendzulla Actuarial Pty Ltd, *Feasibility study into a portable long service leave scheme for the community services sector in Victoria*, 6.

⁵⁸⁵ Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 17.

What we have found in New South Wales and Queensland—where they have picked up cleaning, and in the ACT, where they have picked up the community services sector, security and cleaning—is really their costs are defrayed, so it becomes cheaper to run the construction industry scheme. We found—when I look at the figures every year before a conference—that New South Wales is costing less to run, because it can push its costs over two schemes. It has not increased its staff—maybe by only one or two. In the ACT they were very small, and they have got four schemes now. They have increased their staff by 4, which means they have got 12 staff. It is the same in Queensland. Queensland did not increase their staff at all, so the costs of operation benefit both schemes. We would not have any real problems implementing another scheme.⁵⁸⁶

Ms Shauna Ferris, Senior Lecturer in the Department of Applied Finance and Actuarial Studies at the Centre for Workforce Futures, Macquarie University, suggested that if portable long service leave was expanded in Victoria, the scheme design should be simple, stating, ‘If you make a system complex it makes it expensive and it’s also irritating for the people who have to work with it to deal with very complicated schemes.’⁵⁸⁷ Regarding the administrative difficulties and criticisms directed at CoINVEST by stakeholders, Ms Ferris stated:

Some of these are common in other schemes around Australia and some of them are not really CoINVEST’s fault, they are faults in the way the scheme was set up. The scheme was set up, I think, without really thinking through how to make the rules simple and easy to administer, and is just causing a lot of difficulties.⁵⁸⁸

6.5 How would compliance be attained?

The stakeholders who argued for the expansion of portable long service leave argued that any future scheme should be compulsory. A compulsory scheme not only ensures the scheme’s financial viability, but also benefits workers and law-abiding employers. If some employers are able to avoid participating in the scheme, they would have a competitive advantage because their labour costs would be lower.⁵⁸⁹ This section outlines the strategies used by existing schemes to gain compliance and their enforcement measures.

6.5.1 Strategies to achieve compliance

A clear definition of who is and is not covered by a portable long service leave scheme is important for compliance. The scheme’s statement of scope should be simple enough for employers to understand their obligations and workers to understand their entitlements easily.⁵⁹⁰ As discussed in Chapter 2 in relation to CoINVEST, compliance can be compromised if coverage rules are ambiguous and this may increase administration costs and the possibility of litigation.

⁵⁸⁶ *ibid.*

⁵⁸⁷ Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 6.

⁵⁸⁸ *ibid.*

⁵⁸⁹ The McKell Institute, *Submission 1*, 68.

⁵⁹⁰ *ibid.*

Existing scheme administrators primarily use an educational approach to achieve compliance.⁵⁹¹ Education to ensure workers and employers understand how their portable long service leave scheme works can include seminars, advertising in trade journals, attendance at trade shows or industry events, regular bulletins, online material and information sessions for apprentices.⁵⁹² The need to produce educational material for workers from a non-English speaking background was also raised by some stakeholders.⁵⁹³

In addition to education, other strategies used by compliance teams in existing schemes include:

- using reminder letters, text messages and phone calls to chase up late returns or payments
- creating a range of options for employers to lodge returns and make payments, such as online services and multiple payment methods
- reviewing advertisements, telephone directory listings, procurement websites, workers' compensation records and apprentice lists to check that named employers are registered with the scheme
- conducting site visits to check that all employees of a business are registered
- setting up systems to enable workers to check their long service leave records online
- investigating missing service or incorrect wages identified by employees in their online records or annual statements
- conducting audits to compare ordinary remuneration reported by employers with remuneration recorded on employee payslips
- conducting internal validations to detect unusual or erroneous data in employer returns.⁵⁹⁴

6.5.2 Enforcement measures

Existing portable long service leave schemes rely on education to attain compliance, but sometimes enforcement action is required. The enforcement measures used by existing schemes vary from late fines to solicitors' warning letters to court summons. Debt recovery agencies are used to recover outstanding debts and scheme administrators can use inspectors who may enter premises on

⁵⁹¹ Mr Robert Barnes, Chief Executive Officer and Registrar, ACT Long Service Leave Authority, *Transcript of evidence*, ACT Justice and Community Safety Committee, Canberra, 14 November 2013, 102.

⁵⁹² Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 3; Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 8; Professor Raymond Markey et al, *Submission 19*, 56.

⁵⁹³ Ms Mel Gatfield, Assistant Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 8; Industrial Relations Advisory Council, *Contract cleaning industry portable long service leave scheme: 12 month review* (2013), 5.

⁵⁹⁴ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 3–4; CoINVEST, *Submission 7*, 3; Professor Raymond Markey et al, *Submission 19*, 56; Ms Mel Gatfield, Assistant Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 9; Mr Goran Josipovic, Acting General Manager, ACT Long Service Leave Authority, *Transcript of evidence*, ACT Public Accounts Committee, Canberra, 23 April 2013, 204.

consent and access employer records. Depending on how the scheme is governed, instances of non-compliance may be referred to a civil and administrative tribunal or pursued in court.⁵⁹⁵

6.6 How would interstate service be recognised?

The terms of reference for the Inquiry required the Committee to consider the capacity of portable long service leave schemes to operate across jurisdictions. This section outlines the processes that currently exist for recognising prior interstate service and the issues facing interstate employers.

6.6.1 Recognition of prior interstate service in existing schemes

In industries where there is more than one jurisdiction with a portable long service leave scheme, a reciprocal agreement exists between the schemes that recognises workers' interstate service. Once workers are eligible for a long service leave payment from one scheme, they can make a claim for past service in any other jurisdiction they have worked in. Each State or Territory fund pays its own share of a worker's benefit. The funds in the former jurisdictions forward payment to the worker's current fund in order for the worker to access his or her benefit.⁵⁹⁶ Under the proposed 2010 Victorian scheme, reciprocal arrangements would have been in place to allow workers to claim for service in other jurisdictions with a community services portable long service leave scheme, such as the ACT.⁵⁹⁷

The Committee asked Mr Lance Wallace, Deputy Secretary, Corporate Services Division from the Department of Health and Human Services, about the legal issues to establish a reciprocal agreement between Victoria and the ACT if a community services scheme was to be established in Victoria. He responded that such an agreement could be set up, stating:

The analogy I would use is that there are a number of informal arrangements that I am aware of in other areas of the Department where health sector workers who work in interstate health services get recognised for long service leave when they shift States. So the principle of being able to transfer entitlements is one that has been dealt with in other areas. We have not looked at the detailed legal issues involved with it, but I would not think it would be insurmountable.⁵⁹⁸

6.6.2 Interstate employers

The Australian Chamber of Commerce and Industry, a peak council of Australian business organisations, maintained that employers who employ workers in Victoria and other States will face the added burden of meeting different long

⁵⁹⁵ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 4; CoINVEST, *Submission 7*, 3.

⁵⁹⁶ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 2.

⁵⁹⁷ cl 48 Community Services Long Service Leave Bill 2010 (Vic).

⁵⁹⁸ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 9.

service leave obligations for each jurisdiction they operate in.⁵⁹⁹ However, this would not be unusual for employers who work across jurisdictions because they already face different obligations in other areas, such as workers' compensation and occupational health and safety matters.⁶⁰⁰ These employers are also likely to have sophisticated systems in place to manage their payroll and workplace obligations.⁶⁰¹

The Committee received evidence from ACT Leave that it had encountered few problems with interstate employers. When asked about the issues that have arisen in relation to interstate companies whose employees work in the ACT, ACT Leave responded:

The experience of the Authority with interstate employers has been positive. Instances of non-compliance have generally been through a lack of awareness of the arrangements in the ACT rather than through any deliberate attempt to avoid obligations. Unregistered interstate employers are identified through regular compliance checks and missing service investigations initiated by employees. Since the commencement of the community sector scheme there have been 330 employer registrations, with 54 registrations from interstate employers located in Victoria, South Australia, Queensland and New South Wales.⁶⁰²

6.7 What are the legal implications of a Victorian portable long service leave scheme?

This section discusses the legal implications of introducing a new portable long service leave scheme in Victoria in relation to how the legislation would interact with the Fair Work Act, pre-modern awards and a potential long service leave National Employment Standard.

The Committee's Chair wrote to the Minister for Housing, Disability and Ageing, the Minister for Families and Children and the Minister for Industrial Relations requesting any existing legal advice they had received in relation to implementing a new portable long service leave scheme in Victoria. However, in each case, the Ministers refused to provide these documents. The Committee notes that the refusal to provide existing legal advice has hampered its ability to adequately respond to this term of reference.

6.7.1 Interaction with the Fair Work Act

As discussed in Chapter 1, workers' entitlement to long service leave is protected by the National Employment Standards set out in Part 2-2 of the Fair Work Act. The Act provides a transitional entitlement for employees based on an applicable

⁵⁹⁹ Australian Chamber of Commerce and Industry, *Submission 42*, 19.

⁶⁰⁰ Access Economics, *Economic impact of a project levy to fund the Victorian construction industry portable long service leave scheme*, report for CoINVEST (2007), 17.

⁶⁰¹ Productivity Commission, *Workplace relations framework, final report, volume 1* (2015), 526.

⁶⁰² Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 4.

pre-modern award until a uniform national long service leave standard is developed. If a pre-modern award does not apply to an employee, the entitlement to long service leave is derived from the relevant State or Territory laws.⁶⁰³

A potential impediment to the introduction of a portable long service leave scheme in Victoria is the interaction between the Fair Work Act and State legislation. Section 109 of the Constitution states that when there is an inconsistency between a State law and a Commonwealth law, the Commonwealth law will prevail. Therefore, legislation to introduce a portable long service leave scheme in Victoria might be invalid if it is inconsistent with the Fair Work Act.⁶⁰⁴ The Victorian construction industry scheme is not affected, because the operation of portable long service leave schemes existing prior to 2006 is preserved.⁶⁰⁵

ACT Leave stated that it did not encounter any legal issues regarding the Fair Work Act during the development of its recent schemes.⁶⁰⁶ However, evidence relating to the proposed 2010 Victorian scheme for the community services sector suggests that the Fair Work Act might be an impediment to a new portable long service leave scheme in Victoria. According to Mr Matt O'Connor, Deputy Secretary of Industrial Relations Victoria (the business unit responsible for industrial relations in the Department of Economic Development, Jobs, Transport and Resources):

When the former Labor Government was contemplating establishing a new portability scheme in the community sector, the view then, back in 2010, was that it would require an amendment to the Fair Work Act to ensure the operation of that scheme, so those who were working on the policy behind that scheme had formed the view, presumably based on legal advice, that there would need to be an amendment to the Fair Work Act to ensure the operation of that scheme.⁶⁰⁷

The Explanatory Memorandum of the Community Services Long Service Leave Bill 2010 also suggests that an amendment to the Fair Work Act was required in order for the Bill to operate in respect of all employees engaged in the community services sector. It stated that the Bill could not commence until such changes to the Act were made.⁶⁰⁸ Mr Wallace from the Department of Health and Human Services advised that some progress had been made to enable these legislative changes:

⁶⁰³ Fair Work Ombudsman, *Long service leave*, <www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/long-service-leave> viewed 12 February 2016.

⁶⁰⁴ Rebecca Casey, John McLaren and John Passant, 'Long service leave in Australia: An examination of the options for a national long service leave minimum standard' (2012) *Journal of Applied Law and Policy*, 17, 31.

⁶⁰⁵ Mr Matt O'Connor, Deputy Secretary, Industrial Relations Victoria, Department of Economic Development, Jobs, Transport and Resources, *Transcript of evidence*, Melbourne, 19 October 2015, 2.

⁶⁰⁶ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 2.

⁶⁰⁷ Mr Matt O'Connor, Deputy Secretary, Industrial Relations Victoria, Department of Economic Development, Jobs, Transport and Resources, *Transcript of evidence*, Melbourne, 19 October 2015, 3.

⁶⁰⁸ Explanatory Memorandum, Community Services Long Service Leave Bill 2010 (Vic), 1.

In 2010, at the point in time that the Bill was brought forward, there were some indications from the then Federal Government that they were happy to make those sorts of changes to bring the sort of clarity that you indicate needs to occur and to make sure that there were not legislative issues between Federal and State legislation.⁶⁰⁹

The Committee asked the Department of Health and Human Services for copies of the agreements with the Commonwealth regarding the 2010 scheme, but the Department refused to provide this information.

It is unclear from the evidence received by the Committee what specific changes needed to be made to the Fair Work Act. While it is clear that the Victorian Government received legal advice about the issue when drafting the Bill, the Committee's inability to review this advice prevents it from providing more detailed information. Any attempt to introduce portable long service leave in Victoria will need to be informed by detailed legal advice on this issue.

6.7.2 Interaction with federal pre-modern awards

An example of a potential inconsistency between a new Victorian portable long service leave scheme and the Fair Work Act is the situation where a Victorian employee derives their long service leave entitlements from a federal pre-modern award. Federal pre-modern awards override State long service leave legislation, so legislative amendments may be required to prevent the State legislation from being overridden.⁶¹⁰ The ASU argued that this may 'not require the Commonwealth to implement legislative change' and that mechanisms could be established to move employees who derive their long service leave entitlements from federal pre-modern awards out of the scope of Division 9 of Part 2-2 of the Fair Work Act.⁶¹¹ The ASU added that the proportion of employees who derive their entitlements from pre-modern awards is relatively small.⁶¹²

This is another area where detailed legal advice is required should a new portable long service leave scheme be introduced to Victoria.

6.7.3 Interaction with a future long service leave National Employment Standard

The constitutional issue might also create a problem for a new Victorian portable long service leave scheme if a uniform national long service leave standard is developed. If a future long service leave National Employment Standard is inconsistent with State long service leave legislation, or if it is intended to 'cover the field', State long service leave legislation, such as legislation for a new Victorian scheme, could be made invalid.⁶¹³

⁶⁰⁹ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 8.

⁶¹⁰ JobWatch, *Submission 41*, 9.

⁶¹¹ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 24.

⁶¹² *ibid.*

⁶¹³ Rebecca Casey et al, 'Long service leave in Australia: An examination of the options for a national long service leave minimum standard', 31.

One way to prevent this is if a future long service leave National Employment Standard is drafted so as to allow States and Territories to legislate aspects of long service leave not covered by the standard. The standard could set a minimum national entitlement for long service leave and allow States and Territories to provide more generous entitlements. A similar arrangement already exists for the community service leave National Employment Standard.⁶¹⁴

If a long service leave National Employment Standard is introduced in the future and existing portable long service leave schemes are allowed to continue operating, these schemes would need to ensure that they meet the entitlements provided by the minimum national standard.⁶¹⁵

The Committee wrote to the Australian Government Department of Employment asking for information about the progress of a uniform national long service leave standard and the impact of a subsequently implemented long service leave standard on an existing Victorian portable long service leave scheme. The Department of Employment did not provide direct answers to these questions, but referred the Committee to its submission to the Senate Inquiry on long service leave and the Productivity Commission's report on the workplace relations framework. Neither of these documents provided answers to the Committee's questions.

6.8 The Government's role in supporting the introduction of a portable long service leave scheme

Apart from setting up the framework of a portable long service leave scheme (as discussed in Section 6.4), the Victorian Government will also be required to provide support to the relevant industry should a scheme be introduced. Stakeholders informed the Committee that the Victorian Government would need to provide industry with financial assistance, education and administrative support in order to facilitate the operation of a new portable long service leave scheme. These views are discussed below.

6.8.1 Financial assistance

A number of stakeholders who supported the expansion of portable long service leave to other industries recommended that the Victorian Government provide seed funding to assist employers during scheme implementation.⁶¹⁶ For example, Ms Emma King, Chief Executive Officer of VCOSS, stated:

I would see the most pivotal role as being in setting up the actual architecture of the system and providing that initial funding, because the initial couple of years, you would imagine, would have a greater level of cost attached to them. If the economies

⁶¹⁴ *ibid.*, 32.

⁶¹⁵ *ibid.*, 25.

⁶¹⁶ ACEVic, *Submission 44*, 3; Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 13; Australian Nursing & Midwifery Federation (Victorian Branch), *Submission 3*, 16; Health and Community Services Union (Victoria), *Submission 30*, 8; Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 6.

of scale are such that enough employees are picked up within the scheme, you would imagine that by the time enough money is generated the scheme would then have its own funds to generate and cover its own costs. But in the first instance it will be really pivotal to cover that seed funding to set the scheme up.⁶¹⁷

HACSU explained that the seed funding would help to cover the scheme's establishment costs before employers begin paying contributions and could also provide employers with some financial support by covering the scheme's administration costs for an initial period.⁶¹⁸

In 2010, the then Victorian Government committed to cover the establishment costs of the proposed community services sector scheme.⁶¹⁹ Bendzulla Actuarial estimated the establishment costs to be around \$1 million.⁶²⁰ The PricewaterhouseCoopers report recommended that the Victorian Government fund the scheme's administrative costs for the first five years and contribute additional funding to cover the net cost increase for employers during an initial transition period. The report also recommended that this funding be paid directly to the scheme's central fund and be phased out over time.⁶²¹

A similar process occurred when the ACT introduced its community services sector scheme. As explained by Mr Llewellyn Reynders, Policy Manager at VCOSS:

the ACT Government put initial seed funding into the scheme itself. So they did not give it to organisations; they put it into the scheme, so it stayed in the scheme and helped build up the preserved funds within the scheme at the initial entry point, so that as the scheme has matured the cost to organisations has slightly fallen once the scheme has reached maturity. It is really the set-up phase where the big costs of a scheme exist.⁶²²

In addition to the initial establishment costs, a new portable long service leave scheme would also 'require some form of temporary financing facility to meet a projected cash flow shortfall in the first quarter of its operations' according to DeeDeeRa Actuaries, which undertook actuarial work for the proposed 2010 Victorian scheme. It suggested this advance should be able to be repaid during the scheme's second quarter of operations after employers commence contribution payments.⁶²³

⁶¹⁷ Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 7.

⁶¹⁸ Health and Community Services Union (Victoria), *Submission 30*, 8.

⁶¹⁹ Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services, *Transcript of evidence*, Melbourne, 9 November 2015, 6.

⁶²⁰ Bendzulla Actuarial Pty Ltd, *Actuarial assessment of a proposed portable long service leave scheme for the community services sector in Victoria* (2008), 35.

⁶²¹ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund*, 4.

⁶²² Mr Llewellyn Reynders, Policy Manager, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 6.

⁶²³ DeeDeeRa Actuaries, *Costs of a portable long service leave scheme for the community service sector in Victoria* (2010), 2.

6.8.2 Education and administrative support

In addition to financial assistance, stakeholders requested that the Victorian Government also provide education and administrative support to industry if a new portable long service leave scheme is introduced. Stakeholders who represented small community service organisations particularly stressed the need for training and administrative support. For example, the Association of Neighbourhood Houses and Learning Centres (ANHLC) stated:

Smaller community based organisations are generally disadvantaged through the lack of timely access to industrial relations, human resource or financial planning expertise. It is essential that provision is made for appropriate training and information specifically targeted for the volunteer community based committees of small organisations such as those with 5 or less employees.⁶²⁴

ACEVic added that regional and rural providers would specifically need ongoing support services and advice because they have ‘very limited access to professional support.’⁶²⁵ Both ACEVic and the ANHLC emphasised that administrative support and training needed to be a permanent feature of any scheme because there can be a high turnover of committee members in small organisations.⁶²⁶

When the ACT schemes for the community services, contract cleaning and security industries were implemented, ACT Leave undertook a number of activities to support employers. For example:

Various information and fact sheets were sent to employers advising of the new arrangements and employer obligations and offering assistance via phone, email or face to face. Authority staff were available to visit employer premises and assist with initial return submission and employers were able to attend Authority premises for assistance and information. Authority staff also held a number of employer and employee forums to provide information on the operation of the schemes.⁶²⁷

ACT Leave also offers ongoing support and education services to employers such as maintaining an online portal for employers to submit queries, updating employers on legislation or scheme changes via mail or email, providing current industry-specific fact sheets online and making presentations to employer and employee groups. Employers are also able to visit the ACT Leave office for assistance.⁶²⁸

The need to educate workers was also raised by stakeholders. For example, the Ethnic Communities’ Council of Victoria, the peak body for ethnic and multicultural organisations in Victoria, recommended that ‘information sessions and workshops be conducted for staff to help them understand the scheme

⁶²⁴ Association of Neighbourhood Houses and Learning Centres, *Submission 13*, 3.

⁶²⁵ ACEVic, *Submission 44*, 3.

⁶²⁶ *ibid*; Ms Clare Corbet, Sector Development Officer, Association of Neighbourhood Houses and Learning Centres, *Transcript of evidence*, Melbourne, 19 October 2015, 6–7.

⁶²⁷ Letter from Tracy Savage, ACT Long Service Leave Authority, to Nazih Elasmr, Economic, Education, Jobs and Skills Committee, 2–3.

⁶²⁸ *ibid*, 3.

and increase awareness of their rights.⁶²⁹ Ms Mel Gatfield, Assistant Secretary of United Voice NSW, which represents workers in the cleaning and security industries, also noted that in the NSW contract cleaning industry:

we have many cleaners from different backgrounds who English isn't a first language and what we've managed to do over the last five years that wasn't there at the start was provide information in really easily understandable forms in the translator service, the helpline, call centre. There's been real work put in to making this work for both the cleaners and the employers who might have issues around language.⁶³⁰

Ms Gatfield recommended having multilingual resources available from the start of any future scheme.⁶³¹

In addition to education and administrative support, ACEVic highlighted that organisations will need time to make financial and administrative provisions prior to the implementation of a scheme. It stated:

The introduction of a central [portable long service leave] scheme will require realistic timelines in relation to implementation readiness assessment and planning to enable full consideration of any proposed model, its scope, systems implications and organisational budget planning. This is especially so for organisations that need to review their [long service leave] accrual accounting regimes.⁶³²

6.9 Strategies to reduce costs for employers

This section outlines a number of strategies that could be implemented to reduce the costs of employers contributing to portable long service leave schemes such as improved administration processes, administration of above-base entitlements, restriction of claims, taxation benefits and investment strategies.

6.9.1 Improved administration processes

The efficient administration of portable long service leave schemes is important for reducing employer costs because funds are required to administer a large number of relatively small balances.⁶³³ This section describes the strategies that have been used by existing portable long service leave schemes to improve administration processes, such as electronic returns and the pooling of resources.

Electronic returns

Electronic returns can reduce a scheme's administrative costs. Most of the existing portable long service leave schemes have online return facilities to allow employers to submit returns and pay their contributions electronically.⁶³⁴

⁶²⁹ Ethnic Communities' Council of Victoria, *Submission 28*, 3.

⁶³⁰ Ms Mel Gatfield, Assistant Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 8.

⁶³¹ *ibid.*

⁶³² ACEVic, *Submission 44*, 3.

⁶³³ The McKell Institute, *Submission 1*, 71.

⁶³⁴ Professor Raymond Markey et al, *Submission 19*, 68.

The majority of employers registered in the schemes have taken advantage of online returns; for example, in the ACT, over 99% of returns are lodged online.⁶³⁵ Mr Goran Josipovic, former Acting General Manager of ACT Leave, stated that employers prefer the convenience of submitting returns online citing analysis which found that many electronic lodgements were submitted in the evening between 7pm and 2am.⁶³⁶ CoINVEST aims to have all registered employers complying electronically within three to four years.⁶³⁷

Resource sharing

Portable long service leave schemes need to be large enough to attain economies of scale; otherwise, higher employer levy contribution rates would be required to cover the administration costs.⁶³⁸ Jurisdictions which have more than one portable long service leave scheme already share resources between the schemes to reduce overheads and achieve economies of scale.⁶³⁹ In NSW, Queensland and the ACT, a single body administers all the schemes operating in that jurisdiction. In addition, the construction industry schemes in each jurisdiction are working on a project to set up a common back office for all the schemes in order to reduce operating costs.⁶⁴⁰

6.9.2 Administration of above-base entitlements

One of the concerns employers have about portable long service leave schemes is the duplication of administration that may be required if workers are entitled to benefits that are over and above the entitlements provided by the scheme. This administrative cost for employers could be reduced if the scheme has the authority to administer above-base entitlements for registered workers.

The proposed 2010 Victorian scheme for the community services sector was designed to be able to administer above-base long service leave entitlements on the behalf of employers.⁶⁴¹ It also would have been allowed to administer entitlements for out-of-scope workers if employers wished to make contributions for them.⁶⁴² Therefore, employers would have been able to outsource all their long service leave obligations to the scheme, reducing the need to maintain additional records and funds for above-base entitlements.⁶⁴³

⁶³⁵ Mr Goran Josipovic, Acting General Manager, ACT Long Service Leave Authority, *Transcript of evidence*, ACT Public Accounts Committee, Canberra, 23 April 2013, 204.

⁶³⁶ *ibid*, 205.

⁶³⁷ Mr John Hartley, Chief Executive Officer, CoINVEST, *Transcript of evidence*, Melbourne, 14 September 2015, 3.

⁶³⁸ Professor Raymond Markey et al, *Submission 19*, 55.

⁶³⁹ *ibid*, 68.

⁶⁴⁰ CoINVEST, *Submission 7*, 5.

⁶⁴¹ cl 55 Community Services Long Service Leave Bill 2010 (Vic).

⁶⁴² cl 56 Community Services Long Service Leave Bill 2010 (Vic).

⁶⁴³ PricewaterhouseCoopers, *Department of Human Services Community Sector Investment Fund*, 19.

6.9.3 Restricting long service leave claims

A number of employer groups were concerned about the costs of covering employees' absences, especially if a worker requested long service leave soon after commencing work with the employer. In order to prevent workers from taking leave soon after commencement, a scheme could restrict claims for long service leave until after a qualifying period, such as one or two years, is served.⁶⁴⁴ As discussed in Chapter 2, the portable long service leave scheme in the Catholic education sector specifies a qualifying period, but none of the existing statutory schemes do. Generally, the date at which long service leave is taken is negotiated between the employer and employee.

Employers also raised the issue of workers taking their long service leave as a lump-sum payment rather than as leave, which would cancel out the restorative benefits of taking extended leave. Mr Mark Boyd, NSW Branch Secretary of United Voice NSW, noted that in NSW:

there is a lot of cleaners who do stay in the industry and will work in the one building for many years, our view was ultimately it was better that they actually got access to leave and not just a payment for long service leave. We thought that was really important that people took it as leave and not as a payment.⁶⁴⁵

The NSW contract cleaning scheme, along with portable long service leave schemes in industries other than construction, do not allow workers to take their long service leave as a lump-sum payment. A similar restriction could be incorporated into any new portable long service leave scheme in Victoria.

Although the *Long Service Leave Act 1992* (Vic) currently prohibits workers from being paid out their long service leave, the Victorian Government's current review of the Act is considering whether the 'cashing out' of long service leave should be allowed if both the employer and employee agree.⁶⁴⁶

6.9.4 Taxation benefits

The Committee heard a portable long service leave scheme could also reduce some of the tax burden for employers. For example, employers do not pay tax on investment earnings from funds paid to the scheme, as would be the case if employers kept these long service leave funds in a bank account to cover future liabilities.⁶⁴⁷ Employers can also claim a tax deduction for the levy paid in a particular year because the payment is considered to be a contribution to a worker entitlement fund.⁶⁴⁸

⁶⁴⁴ Messers Thomas Alomes, David Cragg, Jackson Hitchcock, Sunil Kemppi, Sam Popovski and Mike Symon, *Submission 22*, 2.

⁶⁴⁵ Mr Mark Boyd, NSW Branch Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 4.

⁶⁴⁶ Industrial Relations Victoria, *Victorian Government long service leave discussion paper 2016* (2016), 14–15.

⁶⁴⁷ Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 12–13.

⁶⁴⁸ Professor Raymond Markey et al, *Submission 19*, 70.

Another way of reducing the burden on employers is to provide tax benefits. According to the McKell Institute, a portable long service leave scheme could be designed to provide employers with tax benefits such as linking the levy to company tax deductions or a refundable tax offset.⁶⁴⁹

6.9.5 Investment strategy

Good investment returns on employer contributions to a portable long service leave scheme can offset wage growth and the scheme's administration costs. This could allow the scheme to reduce the employer levy contribution rate if the fund is regularly in surplus, which has recently occurred in the ACT contract cleaning and community services schemes and the Queensland contract cleaning scheme. However, the Committee heard a buffer should be created so that any surpluses can fund future deficits caused by economic downturns, rather than requiring a subsequent increase to the levy.⁶⁵⁰

The investment strategy used by the fund can also affect the employer levy. While a high-risk strategy might generate higher returns, the returns are likely to be more volatile and could result in an increase to the employer levy to cover poor returns in later years. Ms Ferris from the Centre for Workforce Futures recommended a conservative investment strategy because it would reduce the volatility of investment returns and create more stability for employers in terms of their levy rates.⁶⁵¹ ACEVic, agreed that a conservative investment strategy would 'ensure that the pool of [long service leave] funds remains undiminished. Any excess returns are then used to minimize (or preferably pay for) any management fees charged to employers.'⁶⁵²

6.10 Strategies to prevent discrimination against job applicants

The Committee heard that one of the potential pitfalls of portable long service leave was that employers may discriminate against job applicants who are close to qualifying for long service leave. At the public hearings, the Committee asked several witnesses how discrimination against experienced job applicants could be prevented. While Mr Ian Scott, Principal Lawyer at JobWatch, noted that discrimination in these cases would breach employees' general protections under the Fair Work Act, he suggested:

There might be provisions to say that where a new worker is hired, although they have accrued the amount of leave, that they are not entitled to take it within the first year or two of service with that employer. That could be a compromise that seems fair and reasonable.⁶⁵³

⁶⁴⁹ The McKell Institute, *Submission 1*, 123.

⁶⁵⁰ Professor Raymond Markey et al, *Submission 19*, 64.

⁶⁵¹ Ms Shauna Ferris, Senior Lecturer, Department of Applied Finance and Actuarial Studies, Centre for Workforce Futures, Macquarie University, *Transcript of evidence*, Sydney, 1 December 2015, 11.

⁶⁵² ACEVic, *Submission 44*, 3.

⁶⁵³ Mr Ian Scott, Principal Lawyer, JobWatch, *Transcript of evidence*, Melbourne, 14 September 2015, 5.

This is a strategy that is used in some existing non-statutory portable long service leave schemes. For example, the scheme for the Catholic education sector only allows employees to take long service leave in their first year of employment with the new employer if there are exceptional circumstances.⁶⁵⁴ A similar clause exists for portable long service leave schemes in the university sector. For instance, the University of Queensland will recognise prior service at other Australian universities but only if the employee has served at least three years at the University of Queensland.⁶⁵⁵

6.11 Lessons for designing a portable long service leave scheme

This chapter has raised some of the practical issues that need to be considered when developing a portable long service leave scheme. While it has presented the available research and stakeholders' views on these issues, the Committee has not reached any conclusions about scheme design because that would depend on the characteristics of the industry for which the scheme would be introduced. Actuarial costings would also be required in order to determine the best option for some of these aspects of scheme design.

654 Catholic Archdiocese of Melbourne, *Portability of long service leave policy* (2015), 1.

655 University of Queensland, *Long Service Leave—Procedures*, <ppl.app.uq.edu.au/content/5.60.07-long-service-leave> viewed 18 December 2015.

7 Alternative mechanisms to portable long service leave

The Inquiry's terms of reference required the Committee to consider whether alternative mechanisms or arrangements could better meet the objectives of a portable long service leave scheme for sectors of the workforce including the community services sector. While most stakeholders participating in the Inquiry focused solely on the issue of portability, a few provided other options that could be used in place of portable long service leave. This chapter discusses the alternative mechanisms presented to the Committee, including other options for workers to renew their energies (such as alternative forms of leave), other strategies to improve staff recruitment and retention, and compulsory recognition of prior service.

7.1 Other options for workers to renew their energies

One of the purposes of long service leave is to provide long-serving employees with a period of paid leave to rest and rejuvenate.⁶⁵⁶ The Australian Chamber of Commerce and Industry, the National Retail Association and the Hardware Federation of Australia argued that increasing workers' access to long service leave through portability was unnecessary because other mechanisms have emerged in recent years to enable employees to 'renew their energies'.⁶⁵⁷ These mechanisms include other forms of leave and flexible working arrangements, which are discussed below along with the Productivity Commission's proposal for providing employees with additional days of annual leave as an alternative to portable long service leave.

7.1.1 Alternative forms of leave and flexible working arrangements

Several other forms of leave have been introduced to the Australian workplace since long service leave was mandated for all workers in the 1950's. Examples of other forms of leave that employees may have access to include:

- extended leave at reduced pay (where employees take extra leave at a lower rate of pay; for example, taking twice the length of annual leave at half pay)
- purchased leave (where employees prearrange to increase their amount of annual leave entitlement in exchange for giving up the equivalent amount of salary; for example, an employee arranges an extra four weeks of annual leave per year and is paid for 48 weeks of work spread out over 52 weeks)

⁶⁵⁶ Shauna Ferris, Nick Parr, Ray Markey and Tim Kyng, 'Long service leave: Past, present and future' (2015) 3 *Australian Journal of Actuarial Practice*, 5, 8.

⁶⁵⁷ Australian Chamber of Commerce and Industry, *Submission 42*, 9; National Retail Association and Hardware Federation of Australia, *Submission 17*, 15.

- extended leave schemes (where employees prearrange to receive 80% of their salary for four years in exchange for 12 months of leave in the fifth year paid at 80% of their salary)
- compressed working schedules (where employees work the equivalent of their normal work hours over a shorter number of days; for example, an employee works 38 hours over four days and takes one full day off each week).

Flexible working arrangements are another way for workers to achieve work-life balance. Examples of flexible working arrangements that employees may have access to include:

- flexible work hours (where employees alter their start and finish times to accommodate other commitments)
- job sharing (where two or more employees share one full-time position)
- working remotely (where employees regularly work from home or another location instead of the office).

While the abovementioned forms of leave and flexible arrangements offer employees extra periods of leave and/or greater work-life balance, not all employees may have access to these options. For example, working from home is not feasible for some employees (such as factory workers, cleaners and security guards) and some jobs require workers to be physically present during a business' trading hours (such as retail or hospitality work). In addition, employers are not required to offer employees the alternative forms of leave described above. The *Fair Work Act 2009* (Cth) provides workers with the right to request flexible working arrangements, however this right is not enforceable and there are no avenues for dispute resolution unless a collective agreement allows for such interventions.⁶⁵⁸

Even in organisations that offer their workers extended leave and flexible working arrangements, research shows that the level of uptake by employees is low. For example, an employee survey of Queensland public servants in 2010 found that 16.3% of respondents used flexible work hours, 4.4% used compressed working schedules, 3.5% worked remotely and 2.6% used purchased leave.⁶⁵⁹ Evidence suggests the low uptake of flexible work options could be due to employees' perceptions of access and management support. A 2010 case study of a Queensland public sector agency found that while the agency had a broad range of extended leave and flexible work policies and high levels of employee awareness of these policies, employees perceived low levels of opportunity to access these arrangements.⁶⁶⁰ Another study of four public sector agencies

⁶⁵⁸ s 65 *Fair Work Act 2009* (Cth); Linda Colley, 'Central policies, local discretion: A review of employee access to work-life balance arrangements in a public sector agency' (2010) 36(2) *Australian Bulletin of Labour*, 214, 215.

⁶⁵⁹ Queensland Government, *State of the Service report 2010* (2010), 79.

⁶⁶⁰ Linda Colley, 'Central policies, local discretion: A review of employee access to work-life balance arrangements in a public sector agency', 232.

in Western Australia found there was a gap in the provision of work-life balance policies and their utilisation by employees who did not perceive their organisations to be supportive of these policies.⁶⁶¹

7.1.2 Productivity Commission's proposal for additional annual leave

As mentioned in Chapter 1, the Productivity Commission proposed an alternative to portable long service leave in its inquiry into the workplace relations framework. The alternative proposal involved making a proportion of workers' long service leave entitlements accessible to workers each year. For example, two days per year of an employee's long service leave entitlement could be added to the employee's four weeks of annual leave from the commencement of work with an employer. The advantages of this proposal are that it would provide some benefit to employees who do not reach 10 years of service with a single employer and it would not require an employer levy or administration by a third party.⁶⁶²

However, the drawbacks of this proposal are that labour costs may increase for some employers, workers' incentive to stay with the same employer is reduced and workers who stay long enough to qualify for the full long service leave entitlement will receive lower benefits than they would have under the current arrangements.⁶⁶³ The Productivity Commission did not receive widespread support for its alternative proposal when it invited comments from the community.⁶⁶⁴ Also, none of the stakeholders in the Committee's Inquiry raised this proposal as an alternative to portable long service leave.

7.2 Other strategies to improve staff recruitment and retention

One of the rationales presented for introducing portable long service leave to the community services sector is that portability could assist in staff recruitment and retention.⁶⁶⁵ The community services sector has a high turnover of staff and demand for services is increasing as discussed in Chapter 5. High staff turnover in the community services sector has been attributed to low wages, heavy workloads, stressful work environments, lack of opportunities for career progression and job insecurity due to short-term funding arrangements.⁶⁶⁶

⁶⁶¹ Patricia Todd and Jennifer Binns, 'Work-life balance: Is it now a problem for management?' (2013) 20(3) *Gender, Work and Organization*, 219, 230.

⁶⁶² Productivity Commission, *Workplace relations framework, final report, volume 1* (2015), 524-525.

⁶⁶³ *ibid.*, 525.

⁶⁶⁴ *ibid.*

⁶⁶⁵ Victoria, *Parliamentary debates*, Legislative Assembly, 6 October 2010, 4001 (Lisa Neville), 4002.

⁶⁶⁶ Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 7-8; Health Workers Union-Victoria, *Submission 52*, 12.

Several stakeholders noted that portable long service leave is one way to improve staff recruitment and retention but a more comprehensive and multifaceted approach is required to alleviate worker shortages.⁶⁶⁷ This section presents other strategies that could be used to help attract and retain staff in the sector.

7.2.1 Increasing remuneration

One of the key issues affecting staff attraction and retention in the community services sector is the low rate of pay.⁶⁶⁸ Due to limited funding, community service organisations are unable to offer higher wages. Instead, organisations often offer non-cash incentives such as salary packaging to attract and retain staff.⁶⁶⁹ Several stakeholders indicated that better remuneration would help with staff recruitment and retention in the sector.⁶⁷⁰

The Australian Services Union (ASU), which represents workers in community services, noted that worker shortages are exacerbated by the inability of community service organisations to compete for employees with other sectors which pay better. It stated:

Employers in other sectors also have need for the skills provided by the [social and community services] workforce—hospitals; state government agencies; local government; employers in the private sector to name a few. It is on account of this inter-sector competition the community sector struggles to retain staff. It is an observable fact that hospitals, state and local government are able to pay prospective workers better than the majority of [community service organisations]. For example ASU analysis shows the average experienced social worker mentioned above is currently paid 15% less than the equivalent position employed by a public hospital.⁶⁷¹

Representatives from National Disability Services, the peak body for non-government disability service providers, stated that recent pay rises from the Equal Remuneration Order have helped to attract workers to the sector. The Equal Remuneration Order awarded workers covered by the Social, Community, Home Care and Disability Services Industry Award with wage increases ranging from 19% to 41% (depending on their classification) to be introduced incrementally between 2012 and 2020. Ms Sarah Fordyce, Policy Manager, Victoria at National Disability Services stated:

667 Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 5; Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 6; National Disability Services, *Submission 31*, 2.

668 Urbis, *Portable long service leave for the ACT community services sector*, report for Department of Disability, Housing and Community Services (2008), 5.

669 Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 7.

670 *ibid*, 8; National Disability Services, *Submission 31*, 3; Ms Clare Corbet, Sector Development Officer, Association of Neighbourhood Houses and Learning Centres, *Transcript of evidence*, Melbourne, 19 October 2015, 6; Mr Ian Scott, Principal Lawyer, JobWatch, *Transcript of evidence*, Melbourne, 14 September 2015, 5.

671 Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Submission 11, Part A*, 8.

there has certainly been a very positive response from the sector, and the anecdotal feedback we hear from our members is that this has helped to raise the profile of the sector and this is recognised. It is working as an attraction to the sector.⁶⁷²

Mr David Moody, State Manager, Victoria of National Disability Services, added ‘by definition, if you are being paid more to do a job of work, it will be less unattractive to you to remain in that setting, wherever it may be.’⁶⁷³

However, both the ASU and National Disability Services emphasised that simply increasing pay rates would not resolve the issue of worker shortages and that a more comprehensive workforce development strategy is necessary. According to Ms Fordyce:

We have huge challenges in terms of attracting sufficient workers, but also in attracting a much more diverse array of workers over these next few years ... What we are wanting to see and have been putting forward to the national government is a comprehensive strategy that includes a lot of promotion of the sector about what value it brings to our society and what great, flexible and very valuable jobs it can offer. Having decent pay is part and parcel of that, but we hear that what our workers value is feeling valued, having good supervision, having some career paths ... There is an array of different initiatives, and within that is where we want to see workplace pay and conditions.⁶⁷⁴

Ms Lisa Darmanin, Branch Executive President of the Victorian and Tasmanian Authorities and Services Branch of the ASU, also argued ‘a suite of measures that include portable leave, pay rates, adequate classifications and training support’ is required to attract and retain staff in the sector.⁶⁷⁵

7.2.2 Improving working conditions

The working conditions of staff in the community services sector can also have an impact on staff recruitment and retention. As discussed in Chapter 5, burnout is common in the sector due to the physically and mentally demanding nature of the work. Ms Clare Corbet, Sector Development Officer at the Association of Neighbourhood Houses and Learning Centres, added that heavy workloads can have an impact on staff retention and are related to funding levels:

What you do when you have less money is you get people to do more stuff—you know, you get the one person, where you could almost have two people doing some of the jobs that people actually do.⁶⁷⁶

⁶⁷² Ms Sarah Fordyce, Policy Manager, Victoria, National Disability Services, *Transcript of evidence*, Melbourne, 19 October 2015, 5.

⁶⁷³ Mr David Moody, State Manager, Victoria, National Disability Services, *Transcript of evidence*, Melbourne, 19 October 2015, 5.

⁶⁷⁴ Ms Sarah Fordyce, Policy Manager, Victoria, National Disability Services, *Transcript of evidence*, Melbourne, 19 October 2015, 5.

⁶⁷⁵ Ms Lisa Darmanin, Branch Executive President, Australian Services Union, Victorian and Tasmanian Authorities and Services Branch, *Transcript of evidence*, Melbourne, 19 October 2015, 6.

⁶⁷⁶ Ms Clare Corbet, Sector Development Officer, Association of Neighbourhood Houses and Learning Centres, *Transcript of evidence*, Melbourne, 19 October 2015, 6.

Research shows heavy workloads are commonly reported as a reason why health and community services workers leave their job. A systematic literature review of the factors that support the recruitment and retention of nurses in aged and dementia care found inadequate staffing levels created heavy workloads for nurses and obliged them to work unpaid overtime, which was found to contribute to aged care nurses' decision to leave their job.⁶⁷⁷ Increasing staffing levels was shown to be important for job satisfaction and the retention of nurses.⁶⁷⁸ A survey of 41 mental health workers in rural New South Wales also found one of the key reasons staff reported for leaving their position was heavy workloads or burnout.⁶⁷⁹ The findings of these studies could also apply to community services workers who often work in organisations that are understaffed and underfunded.⁶⁸⁰

7.2.3 Increasing the security of funding arrangements

Another factor that negatively affects staff recruitment and retention in the community services sector is the short-term funding of programs or services. Short-term contracts make it harder for community service organisations to attract staff, especially if they have to replace a worker soon before a contract ends and are unable to offer a long tenure. Engaging community service organisations on longer term contracts would make these organisations less reliant on grants funding and they could offer more security to employees.⁶⁸¹

The Committee asked Ms Emma King, Chief Executive Officer of the Victorian Council of Social Service (VCOSS), the peak body for the social and community sector in Victoria, what alternatives to portable long service leave could be used to improve worker retention in the sector. She responded:

one of the things that we feel would make a significant difference would be greater levels of security around funding arrangements. When we are looking at often what are one-year funding agreements, it is very difficult for workers who are highly committed towards the work that they are doing but are taking contracts with very limited tenure. That is one of the challenges.⁶⁸²

She added 'paying fairly for services, properly indexing agreements and looking at contracts that run for reasonable periods of time [would] offer some employment security to employees' and help to retain staff.⁶⁸³

⁶⁷⁷ Lynn Chenoweth, Yun-Hee Jeon, Teri Merlyn and Henry Brodaty, 'A systematic review of what factors attract and retain nurses in aged and dementia care' (2010) 19(1-2) *Journal of Clinical Nursing*, 156, 165.

⁶⁷⁸ *ibid.*

⁶⁷⁹ David Perkins, Karen Larsen, David Lyle and Pippa Burns, 'Securing and retaining a mental health workforce in far western New South Wales' (2007) 15(2) *Australian Journal of Rural Health*, 94, 96.

⁶⁸⁰ Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 10.

⁶⁸¹ ACT Council of Social Service, *Community services sector portable long service leave scheme*, submission to the ACT Government (2008), 4.

⁶⁸² Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Transcript of evidence*, Melbourne, 19 October 2015, 5.

⁶⁸³ *ibid.*, 7.

7.2.4 Providing career pathways

Employees value opportunities for career advancement and a lack of career pathways within an organisation can increase worker turnover as employees seek career opportunities elsewhere.⁶⁸⁴ Research indicates that offering career pathways is important for attracting and retaining staff, especially in regional and rural areas. A 2010 study of 90 dietitians working in rural New South Wales found that the key factors for attracting and retaining staff in rural areas were improved career pathways, professional networks and management support.⁶⁸⁵ The study's authors recommended that employers focus on improving employees' career options and that professional associations assist through the mentoring of new graduates and improving professional networks.⁶⁸⁶ A similar finding was made in a survey of mental health workers in rural New South Wales which showed that career opportunities were the most common reason for workers to either stay in their current job or move to another one.⁶⁸⁷

As discussed in Chapter 5, some community service organisations may find it difficult to offer employees career pathways due to their small size and insecure funding. VCOSS noted that a number of community service organisations are merging, creating larger organisations which can offer employees more opportunities for career advancement.⁶⁸⁸ Other strategies to retain community services workers through career opportunities include improving induction processes, providing a diversity of employment experiences through rotations, secondment opportunities and cross-agency training, and encouraging professional development.⁶⁸⁹

7.2.5 Marketing industry careers to potential employees

In addition to improving pay, conditions and career pathways, another strategy the community services sector could use to attract workers is marketing a career in the sector to school leavers, university students and workers looking for a career change.

The Community Sector Investment Fund, which was established by the Victorian Government in 2003 to advance the sustainability of community service organisations, held stakeholder forums which identified a number of workforce development strategies. Portable long service leave was one of these strategies, as was marketing to students and potential employees. Specifically, it recommended:

- providing more information about community services careers to potential employees

⁶⁸⁴ Victorian Council of Social Service, *Submission 36*, 3.

⁶⁸⁵ Leanne Brown, Lauren Williams and Sandra Capra, 'Going rural but not staying long: Recruitment and retention issues for the rural dietetic workforce in Australia' (2010) 67(4) *Nutrition & Dietetics*, 294, 300.

⁶⁸⁶ *ibid*, 301.

⁶⁸⁷ David Perkins et al, 'Securing and retaining a mental health workforce in far western New South Wales', 96.

⁶⁸⁸ Victorian Council of Social Service, *Submission 36*, 3.

⁶⁸⁹ HLB Mann Judd Consulting, *Department of Human Services Community Sector Investment Fund: Report on stakeholder forums*, report for Department of Human Services (2004), 17.

- promoting community services careers to students
- strengthening partnerships with universities and TAFE institutes to foster student placements and recruitment to regions with worker shortages
- considering mandatory rural placements in some courses.⁶⁹⁰

National Disability Services suggested that recruitment initiatives, such as CareCareers, are a more cost-effective recruitment strategy than portable long service leave.⁶⁹¹ CareCareers is a not-for-profit initiative that offers online information, a job board and access to career consultants to ‘attract talented staff from all backgrounds to work in the community care and disability sector.’⁶⁹²

7.3 Compulsory recognition of prior service

This report has highlighted the inequity experienced by employees whose long service leave entitlements are lost if their employer loses a contract for service provision through the competitive tendering process. For example, contract workers in the cleaning and security industries are often unable to work with the same employer for at least 10 years to qualify for long service leave, as discussed in Chapter 5. Portable long service leave was proposed as a mechanism to protect contract workers’ long service leave entitlements. However, an alternative approach could be to require employers to recognise employees’ prior service when contracts change hands. Compulsory recognition of prior service could be incorporated into contracts or ensured through changes to legislation. These alternatives are discussed below.

7.3.1 Recognition of prior service by an incoming contractor

In order for employees to retain their long service leave when contracts for services (such as cleaning and security) change hands, a clause could be inserted into contracts to force incoming contractors to recognise employees’ prior service.

There have been some instances where employers have chosen to recognise employees’ prior service voluntarily. Mr Terry Corby, President of the NSW Division of the Building Services Contractors Association of Australia, which represents building services employers, gave the example of when the cleaning company he worked for took over a particular contract, the previous cleaning company provided records to his company and deposited funds to cover the workers’ long service leave entitlements.⁶⁹³ While this worked in that instance,

⁶⁹⁰ *ibid.*

⁶⁹¹ National Disability Services, *Submission 31*, 2.

⁶⁹² CareCareers, *About CareCareers*, <<http://www.carecareers.com.au/about-carecareers>> viewed 18 February 2016.

⁶⁹³ Mr Terry Corby, President, Building Services Contractors Association of Australia NSW, *Transcript of evidence*, Sydney, 1 December 2015, 8.

Mr Corby warned that such a requirement would have to be made mandatory if it was to apply to all workers because employers would be unlikely to comply voluntarily due to the competitiveness of the contract cleaning industry.⁶⁹⁴

Mr Mark Boyd, NSW Branch Secretary of United Voice NSW, which represents workers in the cleaning and security industries, provided another example where United Voice was able to negotiate with the NSW Government to enable the recognition of school cleaners' prior service when school cleaning was privatised in 1994. However, Mr Boyd noted that each time contracts changed, this condition had to be renegotiated with the incoming contractor.⁶⁹⁵ When the Committee asked Mr Boyd whether it would be feasible to require businesses that win tenders to recognise workers' prior service, he responded:

From my experience of this industry having the new employer recognise the service is easy if the outgoing employer has got proper records ... I would be really less confident about a transfer of funds from one employer to another ... from my experience dealing with the cleaning industry for just over 20 years unless it's an entitlement in an industrial instrument or legislation it won't be paid.⁶⁹⁶

A similar arrangement was operating in Queensland prior to the introduction of a legislated portable long service leave scheme for the contract cleaning industry. Federal and State industrial tribunal decisions required incoming contractors to recognise prior service if existing employees were retained. However, employers were disadvantaged because when an employee qualified for long service leave, the current employer would be liable for the whole benefit regardless of how long the employee had worked with that employer. The statutory portable long service leave scheme for the Queensland contract cleaning industry was introduced so that employers would only be liable for the period of service the employees worked for them.⁶⁹⁷ By contributing for their employees' long service leave to a central fund, employers only pay the proportion of a worker's long service leave benefit that corresponds to the amount of time worked with them.

7.3.2 Recognition of prior service when a business is transferred

Industrial Relations Victoria, the business unit responsible for industrial relations within the Department of Economic Development, Jobs, Transport and Resources, is currently undertaking a review of the *Long Service Leave Act 1992* (Vic). As part of its review, Industrial Relations Victoria is considering whether the Act needs to be changed to ensure the transfer of employee entitlements always occurs when a business is transferred or sold.⁶⁹⁸ In most instances when a business is transferred, the new owner recognises existing employees' service with the previous owner. However, as explained in Chapter 3, there also must be a transfer of physical assets when the business is transferred

⁶⁹⁴ *ibid.*

⁶⁹⁵ Mr Mark Boyd, NSW Branch Secretary, United Voice NSW, *Transcript of evidence*, Sydney, 1 December 2015, 3.

⁶⁹⁶ *ibid.*, 7–8.

⁶⁹⁷ Queensland, *Parliamentary debates*, Legislative Assembly, 12 May 2005, 1454 (Marc Rowell), 1454–55.

⁶⁹⁸ Industrial Relations Victoria, *Victorian Government long service leave discussion paper 2016* (2016), 18.

for employees' prior service to be recognised.⁶⁹⁹ When contracts in the cleaning or security industries are retendered and the business is transferred to a new contractor, there is no transfer of physical assets and employees often lose their entitlements.

Industrial Relations Victoria's discussion paper proposes two options to ensure that employees do not lose their long service leave entitlements when a business is sold:

- amend the Act to provide a more comprehensive definition of 'transfer of business'
- amend the definition of 'assets' in the Act so that it covers both tangible and intangible assets.⁷⁰⁰

Industrial Relations Victoria invited responses from the community on how prior service should be recognised when a business is sold. Comments on this and other issues in the discussion paper are due shortly before the Committee's tabling date for this report and therefore the Committee is not able to examine these in detail. Industrial Relations Victoria notes that its review of the Act is a separate policy issue to portable long service leave and that the review and reform options are not intended to apply to portability issues.⁷⁰¹

7.4 Weighing up the evidence

The Committee received limited evidence about alternative mechanisms to portable long service leave, even when it specifically asked stakeholders about other options. This chapter has presented the alternative mechanisms raised with the Committee, however it is unclear whether they would better meet the objectives of portable long service leave. The range of alternative forms of leave and flexible working arrangements presented in Section 7.1 are not feasible for some employees and are not offered by all employers. Also, evidence suggests there is a low uptake of flexible work options when they are offered. Therefore, some workers may not gain any benefit from these measures.

Workforce development is an important issue for the community services sector and a multifaceted approach is required to improve worker recruitment and retention due to the range of factors contributing to high staff turnover in this sector. The evidence received by the Committee indicates that the strategies outlined in Section 7.2, such as increasing remuneration and funding security, improving working conditions and providing career pathways, should be pursued regardless of whether portable long service leave is introduced for the sector. While there is evidence that these strategies may be effective in aiding recruitment and retention, there is a lack of research on which ones are the most cost effective.

699 *ibid.*, 26.

700 *ibid.*

701 *ibid.*, 20.

The third alternative presented was enforcing the recognition of employees' prior service when businesses are transferred. This alternative appears to solve the equity issue relating to contract workers losing their entitlements when their employers change. However, the experience of the contract cleaning industry in Queensland suggests that a portable long service leave scheme could be a fairer option for employers because employers would only pay the proportion of a worker's benefits that correspond to the worker's length of service with the employer. The outcome of Industrial Relations Victoria's review of the Long Service Leave Act, particularly if it recommends changes relating to employees' entitlements following the transfer of business, may address the issue of contract workers losing their long service leave.

8

Conclusion

Long service leave is a minimum workplace entitlement, but not all workers can access it in practice. In this report, the Committee has acknowledged that some workers are precluded from qualifying for long service leave because their work arrangements are contract or project-based. In order for such workers to retain access to long service leave, statutory portable long service leave schemes exist in some industries in other Australian jurisdictions. In Victoria, the only existing statutory portable long service leave scheme is for the building and construction industry.

In its consideration of expanding portable long service leave to other Victorian workers, the Committee heard conflicting evidence about the impact this would have on employers, employees and the Victorian economy more broadly. The lack of data or research to support many of these claims hindered the Committee's ability to reach conclusions on the true costs and benefits of expanding portable long service leave.

In the absence of solid research or available data, the Committee looked at existing arrangements interstate, where several schemes operate for the contract cleaning, community services and security industries. The contract cleaning schemes in the Australian Capital Territory and Queensland have existed for 16 and 11 years respectively and the other three schemes have been running for six years or less. All these schemes are solvent and the Committee did not come across evidence indicating that employers are experiencing significant hardship or that employment or the economy in relevant jurisdictions have deteriorated due to the operation of these schemes.

The experience of interstate schemes and the desire to address the inequity experienced by workers who miss out on long service leave has led the Committee to recommend that the Victorian Government undertake feasibility studies into the introduction of portable long service leave schemes for the contract cleaning and security industries. Such work will provide a clearer understanding of the potential costs and benefits of expanding portability to these industries and assist the Government to determine whether to proceed with statutory schemes.

Regarding the community services sector, the Committee acknowledges that workers in this sector are also vulnerable to missing out on their long service leave entitlements. Consequently, the Committee finds that there is merit in introducing a portable long service leave scheme for the sector. While the Victorian Government undertook a considerable amount of work for the proposed 2010 community services portable long service leave scheme, recent changes to the sector such as the Equal Remuneration Order and the National Disability Insurance Scheme necessitate a review of the assumptions behind this work. New modelling that accounts for these changes and their effect on employment will provide the Victorian Government with greater insight into whether the benefits of portable long service leave for the sector will outweigh the costs.

The Committee is also in favour of further work into alternative mechanisms to portable long service leave, such as alternative forms of leave, flexible work arrangements, other ways to improve staff recruitment and retention and compulsory recognition of prior service for contract workers.

The Committee considers that the recommendations in this report will lay the groundwork for expanding portability to industries where workers are vulnerable to losing their entitlements through no fault of their own. The implementation of the Committee's recommendations will help to ensure that fewer Victorian workers will miss out on their long service leave due to nature of their work or their mode of employment.

**Adopted by the Economic, Education, Jobs and Skills Committee
2 May 2016**

Appendix 1

List of submissions

Submission no.	Individual or organisation	Date received
1	The McKell Institute	12 June 2015
2	Ms Anne Archer	21 July 2015
3	Australian Nursing & Midwifery Federation (Victorian Branch)	31 July 2015
4	Victorian Employers' Chamber of Commerce and Industry	3 August 2015
5	Aged & Community Services Australia (Victoria)	3 August 2015
6	Timber Merchants Association (Victoria)	4 August 2015
7	CoINVEST	5 August 2015
7A	Supplementary submission	4 September 2015
8	Victorian Transport Association	6 August 2015
9	Construction, Forestry, Mining & Energy Union, Construction & General Division, Victorian/Tasmanian Branch	6 August 2015
10	ARB Corporation Limited	6 August 2015
11	Australian Services Union	6 August 2015
12	Mr Geoffrey Barker	6 August 2015
13	Association of Neighbourhood Houses and Learning Centres	6 August 2015
14	Mr Andrew Fox-Lane	6 August 2015
15	Community Information & Support Victoria	6 August 2015
16	Australian Education Union, Victorian Branch	6 August 2015
17	National Retail Association and Hardware Federation of Australia	7 August 2015
18	Australian Security Industry Association Limited	7 August 2015
19	Professor Raymond Markey, Dr Joseph McIvor and Professor Louise Thornthwaite, Centre for Workforce Futures, Macquarie University	7 August 2015
20	Ambulance Employees Australia Victoria	7 August 2015
21	Meerkin & Apel	7 August 2015
22	Messers Thomas Alomes, David Cragg, Jackson Hitchcock, Sunil Kemppi, Sam Popovski and Mike Symon	7 August 2015
23	Victorian Trades Hall Council	7 August 2015
24	Centre for Excellence in Child and Family Welfare	7 August 2015
25	Australian Hotels Association (Victoria)	7 August 2015
26	Australian Industry Group	7 August 2015
26A	Supplementary submission	19 October 2015
27	Women's Health West	7 August 2015
28	Ethnic Communities' Council of Victoria	7 August 2015

Submission no.	Individual or organisation	Date received
29	Victorian Alcohol & Drug Association	7 August 2015
30	Health and Community Services Union (Victoria)	7 August 2015
31	National Disability Services	7 August 2015
32	Media, Entertainment & Arts Alliance	7 August 2015
33	Australian Public Transport Industrial Association	7 August 2015
34	Mr Barry Farmer, Managing Director, Visium Networks	7 August 2015
35	Victorian Farmers Federation	7 August 2015
36	Victorian Council of Social Service	7 August 2015
37	Air Conditioning and Mechanical Contractors' Association of Victoria	7 August 2015
38	Australian Council of Trade Unions	7 August 2015
39	Master Grocers Australia	7 August 2015
40	United Voice Victoria	7 August 2015
41	JobWatch	7 August 2015
41A	Supplementary submission	25 September 2015
42	Australian Chamber of Commerce and Industry	7 August 2015
43	Victorian Automobile Chamber of Commerce	7 August 2015
44	ACEVic	10 August 2015
45	Housing Industry Association	10 August 2015
46	Recruitment & Consulting Services Association Australia & New Zealand	14 August 2015
47	Confidential	14 August 2015
48	Textile Clothing & Footwear Union of Australia	14 August 2015
49	Community and Public Sector Union, SPSF Group, Victorian Branch	14 August 2015
50	Australian Mines and Metals Association	14 August 2015
51	United Firefighters' Union, Victorian Branch	18 August 2015
52	Health Workers Union-Victoria	28 August 2015
53	Associate Professor Steven Kates	18 December 2015
53A	Supplementary submission	8 March 2016

Appendix 2

List of witnesses

Melbourne, 14 September 2015

Name	Position	Organisation
Mr Stephen Smith	Head of National Workplace Relations Policy	Australian Industry Group
Mr Tim Piper	Director-Victoria	Australian Industry Group
Mr Luke Hilakari	Secretary	Victorian Trades Hall Council
Mr Dave Oliver	Secretary	Australian Council of Trade Unions
Mr Steven Wojtkiw	Executive Manager Policy and Chief Economist	Victorian Employers' Chamber of Commerce and Industry
Mr John Hartley	Chief Executive Officer	CoINVEST
Mr Brian Hansen	Manager, Membership Services	CoINVEST
Mr Richard Clancy	Director, Workplace Relations	Australian Chamber of Commerce and Industry
Ms Alana Matheson	Deputy Director, Workplace Relations	Australian Chamber of Commerce and Industry
Mr Ian Scott	Principal Lawyer	JobWatch

Melbourne, 5 October 2015

Name	Position	Organisation
Ms Erin Keogh	Senior Industrial Officer, Victoria	United Voice Victoria
Ms Helen Christoudas	Delegate	United Voice Victoria
Mr Richard Riley	Delegate	United Voice Victoria
Ms Patricia Murdock	Executive Manager, Workplace Relations and Human Resources	Victorian Farmers Federation
Ms Meg Parkinson	Chair, Workplace Relations Committee	Victorian Farmers Federation
Mr Paul Gilbert	Assistant State Secretary	Australian Nursing & Midwifery Federation (Victorian Branch)
Mr Leigh Hubbard	Senior Industrial Officer	Australian Nursing & Midwifery Federation (Victorian Branch)
Mr Brian Boyd	Convener, Building Industries Group	Construction, Forestry, Mining & Energy Union, Construction & General Division
Mr Simon Schweigert	Manager, Media and Government Relations	Recruitment & Consulting Services Association Australia & New Zealand
Mr Charles Cameron	Policy Adviser	Recruitment & Consulting Services Association Australia & New Zealand

Name	Position	Organisation
Mr Ross Fisher	Life Member	Recruitment & Consulting Services Association Australia & New Zealand
Ms Vivienne Wiles	National Industrial Officer	Textile Clothing & Footwear Union of Australia
Ms Ly Nguyen	Organiser	Textile Clothing & Footwear Union of Australia
Mrs Mai Tuyet Thi Dinh	Worker/Member	Textile Clothing & Footwear Union of Australia
Ms Carolyn Dunbar	Regional Director, Victoria	Media, Entertainment & Arts Alliance
Mr Peter Anderson	Chief Executive Officer	Victorian Transport Association
Mr Paul Ryan	Industrial Relations Adviser	Victorian Transport Association

Melbourne, 19 October 2015

Name	Position	Organisation
Ms Emma King	Chief Executive Officer	Victorian Council of Social Service
Mr Llewellyn Reynders	Policy Manager	Victorian Council of Social Service
Ms Lisa Darmanin	Branch Executive President	Australian Services Union, Victorian and Tasmanian Authorities and Services Branch
Mr Robert Bozinovski	Research Officer	Australian Services Union, Victorian and Tasmanian Authorities and Services Branch
Mr Chris Chaplin	Member	Australian Services Union, Victorian and Tasmanian Authorities and Services Branch
Ms Ada Conroy	Member	Australian Services Union, Victorian and Tasmanian Authorities and Services Branch
Mr David Moody	State Manager, Victoria	National Disability Services
Ms Sarah Fordyce	Policy Manager, Victoria	National Disability Services
Mr Lloyd Williams	National President State Secretary	Health Services Union Health and Community Services Union
Ms Samantha Stewart	Delegate	Health and Community Services Union
Mr David Eden	Assistant Secretary	Health Workers Union-Victoria
Mr Kamal Bekhazi	Research and Projects Officer	Health Workers Union-Victoria
Mr Matt O'Connor	Deputy Secretary	Industrial Relations Victoria, Department of Economic Development, Jobs, Transport and Resources
Ms Lissa Zass	Acting Assistant Director	Industrial Relations Victoria, Department of Economic Development, Jobs, Transport and Resources
Ms Clare Corbet	Sector Development Officer	Association of Neighbourhood Houses and Learning Centres
Ms Shayne Quinn	Vice-President, Early Childhood	Australian Education Union, Victorian Branch
Ms Elaine Gillespie	Deputy Vice-President, TAFE and Adult Provision	Australian Education Union, Victorian Branch
Mr John Graham	Research Officer	Australian Education Union, Victorian Branch

Melbourne, 9 November 2015

Name	Position	Organisation
Ms Amanda Kaczmarek	Industrial Officer	Ambulance Employees Australia Victoria
Mr Peter Strong	Chief Executive Officer	Council of Small Business of Australia
Mr David Humphrey	Senior Executive Director, Business, Compliance and Contracting	Housing Industry Association
Mr Keith Ryan	Manager, Workplace Services	Housing Industry Association
Mr Lance Wallace	Deputy Secretary, Corporate Services Division	Department of Health and Human Services
Professor John Freebairn	Ritchie Chair in Economics	University of Melbourne

Sydney, 1 December 2015

Name	Position	Organisation
Mr Terry Corby	President	Building Services Contractors Association of Australia NSW
Ms Barbara Connolly	Executive Director	Building Services Contractors Association of Australia NSW and ACT
Ms Mel Gatfield	Assistant Secretary	United Voice NSW
Mr Mark Boyd	NSW Branch Secretary	United Voice NSW
Mr Bryan de Caires	Chief Executive Officer	Australian Security Industry Association Limited
Mr Chris Delaney	Industrial Relations Advisor	Australian Security Industry Association Limited
Professor Raymond Markey	Director and Professor of Employment Relations, Department of Marketing and Management	Centre for Workforce Futures, Macquarie University
Ms Shauna Ferris	Senior Lecturer, Department of Applied Finance and Actuarial Studies	Centre for Workforce Futures, Macquarie University
Ms Helen Westwood AM	Organiser	Australian Services Union, NSW and ACT

Melbourne, 7 December 2015

Name	Position	Organisation
Ms Melissa Skilbeck	Deputy Secretary, Budget and Finance	Department of Treasury and Finance

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Extracts of proceedings

The Committee divided on the following questions during consideration of this report. Questions agreed to without division are not recorded in these extracts.

Extract from proceedings of Committee meeting 13 April 2016

Motion: That finding 5.7(b) and recommendation 5.2 as amended stand part of the report.

Finding 5.7(b): Addressing inequity for contract cleaners

There can be inequity in the contract cleaning industry where there is not availability of continuity of employment due to contract changes.

Recommendation 5.2: Research into ways to protect contract cleaning workers' entitlements

That the Victorian Government commission independent research to determine methods that remove long service leave inequity where there is not availability of continuity of employment due to contract changes.

Moved: Ms Ryall

The Committee divided on the question:

Ayes 4

Ms Ryall

Mr Bourman

Mr Crisp

Ms Fyffe

Noes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Carried.

Motion: That finding 5.7(a) and recommendation 5.1 stand part of the report.

Finding 5.7(a): Portable long service leave for the contract cleaning industry

There is merit in introducing a portable long service leave scheme for the Victorian contract cleaning industry on the basis of providing equity to workers and the existence of similar schemes interstate.

Recommendation 5.1: Feasibility study for a contract cleaning industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the contract cleaning industry.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Noes 4

Ms Ryall

Mr Bourman

Mr Crisp

Ms Fyffe

Defeated.

Motion: That finding 5.8(a) and recommendation 5.2(a) stand part of the report.

Finding 5.8(a): Portable long service leave for the security industry

There is merit in introducing a portable long service leave scheme for the Victorian security industry on the basis of providing equity to workers and the existence of a similar scheme in the ACT.

Recommendation 5.2(a): Feasibility study for a security industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the security industry.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Noes 4

Ms Ryall

Mr Bourman

Mr Crisp

Ms Fyffe

Defeated.

Motion: That finding 5.8(b) and recommendation 5.2(b) as amended stand part of the report.

Finding 5.8(b): Addressing inequity for security workers

There can be inequity in the security industry where there is not availability of continuity of employment due to contract changes.

Recommendation 5.2(b): Research into ways to protect security workers' entitlements

That the Victorian Government commission independent research to determine methods that remove long service leave inequity where there is not availability of continuity of employment due to contract changes.

Moved: Ms Ryall

The Committee divided on the question:

Ayes 4

Ms Ryall

Mr Bourman

Mr Crisp

Ms Fyffe

Noes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Carried.**Motion:** That chapter 5 as amended stand part of the report.

Moved: Mr Nardella

Carried.**Extract from proceedings of Committee meeting
2 May 2016****Motion:** That the Committee rescind the adoption of Chapter 5.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Noes 3

Ms Ryall

Mr Crisp

Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.**Motion:** That the Committee rescind the motions that findings 5.7(b) and 5.8(b) and recommendations 5.2 and 5.2(b) stand part of the report.**Finding 5.7(b): Addressing inequity for contract cleaners**

There can be inequity in the contract cleaning industry where there is not availability of continuity of employment due to contract changes.

Finding 5.8(b): Addressing inequity for security workers

There can be inequity in the security industry where there is not availability of continuity of employment due to contract changes.

Recommendation 5.2: Research into ways to protect contract cleaning workers' entitlements

That the Victorian Government commission independent research to determine methods that remove long service leave inequity where there is not availability of continuity of employment due to contract changes.

Recommendation 5.2(b): Research into ways to protect security workers' entitlements

That the Victorian Government commission independent research to determine methods that remove long service leave inequity where there is not availability of continuity of employment due to contract changes.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Noes 3

Ms Ryall

Mr Crisp

Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Motion: That findings 5.7(a), 5.8(a) and 5.6 and recommendations 5.1 and 5.2(a) stand part of the report.

Finding 5.7(a): Portable long service leave for the contract cleaning industry

There is merit in introducing a portable long service leave scheme for the Victorian contract cleaning industry on the basis of providing equity to workers and the existence of similar schemes interstate.

Finding 5.8(a): Portable long service leave for the security industry

There is merit in introducing a portable long service leave scheme for the Victorian security industry on the basis of providing equity to workers and the existence of a similar scheme in the ACT.

Finding 5.6: Portable long service leave for the community services sector

There is merit in introducing portable long service leave for the community services sector on the basis of providing equity to workers and the existence of a similar scheme in the ACT.

Recommendation 5.1: Feasibility study for a contract cleaning industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the contract cleaning industry.

Recommendation 5.2(a): Feasibility study for a security industry portable long service leave scheme

That the Victorian Government commission a feasibility study into the introduction of a portable long service leave scheme for the security industry.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3	Noes 3
Mr Elasmr	Ms Ryall
Mr Melhem	Mr Crisp
Mr Nardella	Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Motion: That Chapter 5 as amended stand part of the report.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3	Noes 3
Mr Elasmr	Ms Ryall
Mr Melhem	Mr Crisp
Mr Nardella	Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Motion: That the following paragraph be added above the heading 6.1 in Chapter 6:

Whilst submissions have provided information relating to models and technicalities for portable long service leave, required by the terms of reference as detailed below, the Committee believes there is an insufficient evidence base to demonstrate that a portable long service leave scheme meets objectives. Findings and recommendations have been made with regard to this.

Moved: Ms Ryall

The Committee divided on the question:

Ayes 3	Noes 3
Ms Ryall	Mr Elasmr
Mr Crisp	Mr Melhem
Ms Fyffe	Mr Nardella

There being an equality of votes, the Chair used his casting vote for the Noes.

Defeated.

Motion: That Chapter 6 as amended stand part of the report.

Moved: Mr Nardella

The Committee divided on the question:

Ayes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Noes 3

Ms Ryall

Mr Crisp

Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Motion: That the following paragraph be added above the heading 7.1 in Chapter 7:

Whilst submissions have provided information relating to alternative mechanisms for portable long service leave required by the terms of reference as detailed below, the Committee believes there is an insufficient evidence base to demonstrate that a portable long service leave scheme meets objectives. Findings and recommendations have been made with regard to this.

Moved: Ms Ryall

The Committee divided on the question:

Ayes 3

Ms Ryall

Mr Crisp

Ms Fyffe

Noes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

There being an equality of votes, the Chair used his casting vote for the Noes.

Defeated.

Motion: That Chapter 8 as amended stand part of the report.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3

Mr Elasmarr

Mr Melhem

Mr Nardella

Noes 3

Ms Ryall

Mr Crisp

Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Motion: That the Executive Summary as amended stand part of the report.

Moved: Mr Nardella

The Committee divided on the question:

Ayes 3	Noes 3
Mr Elasmarr	Ms Ryall
Mr Melhem	Mr Crisp
Mr Nardella	Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Motion: That the Lists of Findings and Recommendations as amended stand part of the report.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3	Noes 3
Mr Elasmarr	Ms Ryall
Mr Melhem	Mr Crisp
Mr Nardella	Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Motion: That the draft final report (including Chapters 1 to 8, Executive Summary, Preliminary pages, Appendices and Bibliography) as amended, together with the correction of any typographical errors, be the final report of the Committee.

Moved: Mr Melhem

The Committee divided on the question:

Ayes 3	Noes 3
Mr Elasmarr	Ms Ryall
Mr Melhem	Mr Crisp
Mr Nardella	Ms Fyffe

There being an equality of votes, the Chair used his casting vote for the Ayes.

Carried.

Minority Report

PARLIAMENT OF VICTORIA

Economic, Education, Jobs and Skills Committee



Inquiry into portability of long service leave entitlements.

Dee Ryall MLA

Christine Fyffe MLA

Peter Crisp MLA

Jeff Bourman MLC

Economic, Education, Jobs and Skills Committee Majority Report

Deputy Chair's foreword.

The committee received many submissions and is appreciative of the time taken in both preparations of written submissions and the appearance of stakeholders over the many days of public hearings. A large volume of evidence was provided to the committee.

I would also like to thank the secretariat of the Economic, Education, Jobs, and Skills Committee, Ms. Kerry Risely, Ms. Marianna Stylianou and Ms. Janelle Spielvogel for their patience and hard work.

In the history of decades of Joint Parliamentary Investigative Committees in Victoria, there is no record of a minority of committee members ever rescinding the will of the majority of the committee with the casting vote of the Chair. The casting vote of the Chair ultimately provides the Chair with two votes, one deliberative, and the other casting when there is a tied vote. This occurred on two occasions in this committee.

Decisions made by the vote of the full committee were rescinded by stealth when a committee member was, unfortunately, absent. This was then followed by the reintroduction of motions that had formerly been opposed by a vote of the full committee.

In addition to this unprecedented action, it was disappointing that members of the committee were unable to review the full assembled report prior to its adoption.

Also and unfortunately, after requests to Government Ministers for documents that would have assisted the committee in its deliberations to comply with the terms of reference, access to those documents was denied.

As a 'Majority Report' is one supported by a majority of Committee Members, the signatories to this report believe it, therefore, constitutes the Majority Report.



Dee Ryall MLA
Deputy Chair

Economic, Education, Jobs and Skills Committee Majority Report

Executive Summary

The extract of proceedings provides the details of divisions by the whole committee during consideration of the report. These divisions illustrate the motions supported by the committee members of this report and those that are not.

Historically portable long service leave was specifically introduced to the construction industry in Victoria in the 1970s because project work meant employees were often terminated at the conclusion of a project.

The terms of reference, for this inquiry, required the committee to have regard for the financial impacts or benefits of portable long service leave entitlements of employers, employees, and taxpayers as well as the economic impact on Victorian jobs, employment and investment.

Portable long service leave schemes require costs to be established. Those costs include scheme set up and commencement, ongoing overheads, as well as additional costs to employers regardless if public, private or not for profit. Employer costs are more than they would otherwise be required to pay under existing long service leave requirements. In addition, economists made the committee aware that extra costs borne by employers could mean slower wage growth to employees as those increased costs are offset.

When the committee examined the evidence and transcripts, as well as searching for related research, there was an absence of independent data to consider financial and economic impacts. The committee was also unable to identify if portable long service schemes have met defined and measurable objectives for implementation.

Workforce data from the Australian Bureau of Statistics showed significant movement between industries and a recent Deloitte Access Economics survey showed 60% of respondents who will pursue a new job in the next ten years are looking to change their industry, role or both.

With this movement in and out of industries, and the lack of available data from existing portable long service schemes the committee determined that prior to any consideration of portable long service leave introduction, independent research must be undertaken to determine the impacts.

Through submissions and public hearings, it was identified by the full committee that for some, there could be inequity in the contract cleaning, security and some other industries where an employee might maintain the same role with multiple employers due to the contract changing hands. This could mean the employee is excluded from accruing enough long service leave to reach eligibility for leave or pro rate payment.

Without data, the committee is unable to verify how many contract cleaning and security employees would be affected. If it were a very small number, due to increasing industry and employment mobility, a portable long service leave scheme may not be the best way to address it.

Economic, Education, Jobs and Skills Committee Majority Report

As additional recommendation arises from a finding of the full committee relating to the statutory CoINVEST scheme. It is clear from the submissions and transcripts that the lack of definition of the coverage in existing enabling legislation does create difficulties. With evidence identifying that court proceedings have resulted attributable to the lack of clarity, members of this report recommend that these difficulties be prevented with the amendment of the legislation to provide the required clarity.

Economic, Education, Jobs and Skills Committee Majority Report

Findings:

Finding 1:

Statutory portable long service leave schemes that do not have their coverage defined in the enabling legislation, such as the CoINVEST scheme, have the potential to generate disagreements about coverage, which can increase the possibility of litigation.

Finding 2:

Compared with an employer-levy funding model, a project-levy funding model for construction industry schemes can be simpler and less costly to administer and can result in greater compliance. However, the existing Victorian scheme is a complex scheme.

Finding 3:

While terms of reference requested information relating to models and technicalities for portable long service leave, there is an insufficient independent evidence base to demonstrate that portable long service schemes meets their objectives.

Finding 4:

There is a lack of data on the benefits and costs of portable long service leave, which makes it difficult to determine any net impact of portable long service leave.

Finding 5:

If portable long service leave is introduced to an industry, there is evidence that the rate of wage growth for employees in that industry is likely to slow down to compensate for the increase in benefits.

Finding 6:

There is a lack of empirical evidence on the potential impact on the Victorian economy and employment of expanding portable long service leave.

Finding 7:

Despite initial concerns, evidence suggests that the portable long service leave scheme for the ACT community services sector appears to be functioning effectively five years into its operation.

Finding 8:

Due to the short-term funding of community services and the high risk of worker burnout, workers in the community services sector are often unable to, or choose not to continue working for a single employer long enough to qualify for long service leave.

Economic, Education, Jobs and Skills Committee Majority Report

Finding 9:

Stakeholders found the definition of coverage in the proposed Victorian 2010 portable long service leave scheme for the community services sector difficult to interpret.

Finding 10:

There is a lack of data on the impact of portable long service leave on staff recruitment and retention in the community services sector.

Finding 11:

Due to recent developments in the community services sector, the 2010 modeling is no longer current to determine the operating costs and most appropriate scope of a potential future portable long service leave scheme for that sector.

Finding 12:

Due to the contract-based nature of employment in the contract cleaning industry, some workers are unable to work with a single employer long enough to qualify for long service leave.

Finding 13:

Due to the contract-based nature of employment in the contract security industry, some workers are unable to work with a single employer long enough to qualify for long service leave.

Finding 14:

Some workers in the textile, clothing and footwear industry, the non-emergency patient transport sector and the media, arts and entertainment industry are unable to access long service leave due to the casual, contract or project-based nature of employment in these industries.

Economic, Education, Jobs and Skills Committee Majority Report

Recommendations:

Recommendation 1:

That the Victorian Government commission independent, quantitative, research to determine if industry portable long service leave schemes outside Victoria, have resulted in an increase in the retention of employees eligible for long service leave.

Recommendation 2:

That the Victorian Government commission independent research to determine the economic and employment impacts of expanding portable long service leave as well as the costs to employers and employees.

Recommendation 3:

That the Victorian Government clearly define the coverage of the CoINVEST scheme in the enabling legislation.

Report Signatories:

Dee Ryall MLA



Christine Fyffe MLA



Peter Crisp MLA



Jeff Bourman MLC



