

CORRECTED VERSION

ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

Inquiry into portability of long service leave entitlements

Sydney — 1 December 2015

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Ms Dee Ryall — Deputy Chair

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Mr Terry Corby, President, Building Services Contractors Association of Australia NSW and
Ms Barbara Connolly, Executive Director, Building Services Contractors Association of Australia NSW &
ACT

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

Mr CORBY — My name is Terry Corby. I am currently the New South Wales President of the BSCAA but I wear another hat, I own a company called Solutions Property Services and I'm not here to talk about that, but I am part of the industry, have been for 35 years. In terms of portability of long service leave we discussed this over a period of about a year with the union, and our members. We have another smaller association in New South Wales which tends to look after very small members. We involve them in our discussions and then when we have progressed a little we involve the New South Wales Public Service who were very helpful, very good. We sought our members' approval and I have canvassed members in Victoria and have no major objections to pursuing the scheme.

I guess the main thing that we were concerned about is there have been a couple of schemes in New South Wales which had petered out or failed and the money had ended up in consolidated revenue, so we were very keen that our politicians in New South Wales legislated so that they couldn't get their hands on the money were the scheme ever to be wound up which we hope would never happen. That took a little bit of doing but I've got to say we had great support from a number of—from the Labour side in New South Wales who agreed with us and the legislation was enacted as such, that the money can't ever be touched, it's ...

The scheme has been operating for almost five years. When we did our projections we thought we would perhaps get 500 companies because nobody really knows how many registered cleaning companies because we know this is such a marvellous industry because you can start a cleaning company with \$300. So we have got some mums and dads who would never be caught up in the industry but 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. You're not going to always capture it all. There are almost 55 000 registered cleaners which is beyond our expectation, our original expectation, significantly beyond that. I'm not allowed to say too much about the financials of the scheme but suffice to say it's on a reasonable footing.

So it's basically tracking the way that we thought it would. From an industry perspective the important thing is obviously that if the scheme is implemented in Victoria and I don't know whether I'm supposed to say this but I hope it does, that we get the financial issues sorted and we have a

scheme in Queensland which 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. They don't want to pay 1.8 or 1.9 or 2 per cent. They won't pay it. They'll pay 1.7.

I guess from an industry—from the employer's perspective—if you concentrate on the 1.7 per cent and sell that it will be accepted because the customer will pay you that and our industry, which doesn't have a great reputation, but it's not nearly as bad as everybody thinks it is, is a low margin business and so .1 or .2 per cent is significant. So I would urge you, the legislators, to seriously if we take this forward to concentrate on that number and that way the unions will support that number because they want us to get recovery so we're not under the pressure and that's how we did it here. Mark Boyd who is the State Secretary of United Voice sat at every meeting, side by side. He's a fantastic man and he talked to the politicians not me.

But Ben Redford in Victoria is equally as good and I had a conversation with Ben because he knew I was coming today to see what my position would be and I explained to him that we would be very supportive and help in any way. The New South Wales scheme was set up alongside the current builders' scheme and it's administered by the same group and they seem to be doing an okay job. Obviously my members have contact with them because there could be issues that they might be, and I've had not a lot of negative comment. With any institution like that you're going to get the odd person who will say they don't answer their phone on time or whatever, but in general terms I have found their administration and the way they've set it up, I've been to their office a couple of times, to be very satisfactory and their costs are not—they're never low enough but they're not too bad. So that is a good model if you have got to look at that model, I think that that's a good model.

The CHAIR — Barbara, would you like to add anything?

Ms CONNOLLY — No, I think Terry has covered it quite well.

The CHAIR — Thanks Terry for that. What was the rationale for creating portable long service leave schemes for the cleaning industry in New South Wales and the security and cleaning industry in the ACT?

Mr CORBY — The rationale was simple, from my perspective. 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. It's a poor social attitude in 2015 and it was a poor attitude in 1915, but it's worse in 2015. 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 and unless they stay—unless metaphorically Mary who works in this building, if I lost the contract went to work for me in another building, Mary had no long service leave. So we wanted to fix that. The union obviously wanted to fix it, that's their job,

and we as an industry saw that was a problem too. That was the rationale, that was the motivation is to look after the people who are actually physically doing the cleaning work.

Ms RYALL — Just on that, so does metaphorical Mary get redundancies on each of those ...

Mr CORBY — Not—not—well, there weren't redundancies 10 years ago.

Ms RYALL — But currently if there were three different contractors?

Mr CORBY — Yes, she wouldn't necessarily get the redundancies.

Ms CONNOLLY — If she was employed in a contract?

Mr CORBY — That's right, for the term of the contract, so I think the term is normal and proper term. Customary turn over.

Ms RYALL — An ordinary turnover of labour.

Mr CORBY — So there was no—it's changed now.

Ms RYALL — That's what I'm saying, in current form?

Mr CORBY — Yes, yes, our friends in Canberra changed that with the new workplace reforms and I don't disagree with it.

Ms RYALL — So currently they're there.

Mr CORBY — Yes, currently they get redundancy.

Ms RYALL — So they get both redundancy and long service leave.

Mr CORBY — That's right. But if they stay in the industry they get long service leave which is what they didn't get before.

Ms RYALL — So it's both now.

Ms CONNOLLY — But if they get the redundancy from one then they'd start again with their long service for the next employer.

Ms RYALL — Yes, that's what I'm saying so they are getting both ...

MR NARDELLA — But they don't get the benefit because they don't end up getting long service leave in those circumstances.

Ms CONNOLLY — So they do three years with one redundancy.

Ms RYALL — Yes.

Mr NARDELLA — They get money but they don't get the ...

Ms RYALL — No, I'm saying the financial recompense, they get two financial recompense now.

Mr CORBY — That's right.

Mr NARDELLA — But they don't actually get the time off.

Ms RYALL — No, no.

Ms CONNOLLY — Because they lose the long service leave from the first one, isn't that what you're saying?

Mr CORBY — Unless they stay in the industry. If they get redundancy from

Ms CONNOLLY — Now if they stay in there?

Ms RYALL — Yes, so they financially get both.

Mr CORBY — Yes, yes.

Mr NARDELLA — I'm just trying to work it out. So I'm working for you for three years, you give me the bullet and so I don't get any money for long service leave with my redundancy.

Mr CORBY — No, no.

Ms RYALL — But you get a redundancy pay out.

Mr CORBY — But if you stay with me ...

Mr NARDELLA — But I get a redundancy pay out.

Mr CORBY — That's right.

Mr NARDELLA — We worked for that in Victoria and it was two weeks for every year worked up to four years or eight years or whatever but that is a redundancy payment, it's not a long service leave payment.

Mr CORBY — No, no.

Ms RYALL — But under this scheme here you get both.

Mr NARDELLA — No, no, you don't get both.

Mr CORBY — If you stay in the industry you get both.

Ms RYALL — If you stay in the industry you get both.

Mr BOURMAN — But you can get the redundancy if you stay in the industry?

Mr CORBY — Yes.

Mr NARDELLA — Yes, that's right, but with this scheme you then continue to accumulate further long service leave.

Mr CORBY — That's right.

Mr NARDELLA — You don't get paid out your long service leave?

Mr CORBY — No, no, not unless it's over five years ...

Ms RYALL — What we're saying is you get the benefit of long service leave and you get the redundancy payment.

Mr NARDELLA — Yes.

Mr BOURMAN — If you get made redundant three times in say 10 years you have three lots of redundancy payments and ...

Ms RYALL — Plus your long service.

Mr BOURMAN — Then again at the end of 10 years you get you long service?

Mr NARDELLA — Correct. But the thing about redundancy pay is that you might have accumulated—let's say you've worked really hard for your boss or your employer, so you might have accumulated eight weeks' holiday pay so that's part of your redundancy holding pay plus whatever redundancy, you know two weeks for every year whatever. So it's not as if it's a windfall.

Mr CORBY — Yes, it's not a windfall but the difference is that previously if you terminated after 4.2 years you never got long service years. You work another 4.2 years you still don't get it. But now you get the portability, you get 8.4 years.

Ms RYALL — And 16 weeks' pay.

Ms CONNOLLY — The other thing is they don't automatically—very often when a contract changes hands they take over the existing staff, so there isn't a redundancy payment then.

Ms FYFFE — That's what Cesar was just saying to me then.

Mr CORBY — Yes, that's right.

Mr NARDELLA — So there isn't a redundancy pay out?

Mr CORBY — There is.

Ms RYALL — Yes, there is.

Mr BOURMAN — Yes, it depends on the situation.

Ms RYALL — Yes.

Mr CORBY — Less—less of it, yes you're right.

Mr MELHEM — I think it's very important to clarify that. As you said if a new contractor takes over the employees there's no redundancy, so ...

Mr CORBY — No, no, that's right.

Mr MELHEM — But then, the interesting point though, pre their portable long service leave will there be a recognition of service? I think that was a lot of the problem in the past.

Mr CORBY — No, no, recognition of service.

Mr MELHEM — So they lose on both.

Mr BOURMAN — So no transmission of benefits?

Mr CORBY — No, no.

Mr BOURMAN — So you might be sitting in the same chair one day and the next day you've got a different uniform and employer in the same chair but no transmission of benefits?

Mr CORBY — No, you would have been paid out.

Ms RYALL — Yes, you get a redundancy.

Mr CORBY — No, you didn't get redundancy ...

Ms RYALL — You do then because when you say paid out as in paid holiday pay.

Mr CORBY — Sick and holiday pay. Holiday pay and any other entitlements.

Mr BOURMAN — As if you quit?

Mr CORBY — As if you quit. But now you don't. Your start date with the long service leave we're talking about now only and superannuation, the same thing applies but long service leave your start

date is your original start date, stays that way.

Mr MELHEM — Even if you don't employ less than 15 employees you can apply for an exemption for payment of redundancy and the redundancy itself is actually not—you could be working for 20 years and a maximum of 16 weeks. So if you finish it's not that sort of general risk redundancy package we might think of.

Mr NARDELLA — That's a minimum.

Mr MELHEM — So it's sort of—that's the uniqueness about this industry because you're not buying the business, you're not buying equipment, you're not even buying the employees, so therefore you just won the contract, transmission of business does not apply. But the point of transmission of business, and I'll ask you this, if let's say there's been some argument about it, maybe the way to fix it we'll have transmission of business. So if I win that contract off you, then I have and I take on the employees, transmission of business all the entitlement, annual leave, long service leave, sick leave transferred to the employer. In practical terms how would that work in the cleaning industry, would that work?

Mr CORBY — It could work. I'm showing my age here.

Mr MELHEM — In reality though.

Mr CORBY — Some years ago I worked for the biggest cleaning company in Australia and we had a particular agreement with the second largest. When we took over the contract we take their stuff and they would deposit into our account on the day we took over all the entitlements with a spreadsheet and those people would never lose one day's pay.

Ms FYFFE — Yes, that would be unusual.

Mr CORBY — And it worked and it can still work. But it will only work if it was legislated because if you don't make these things compulsory the competitive nature of our industry says if I don't like the look of you I'm not going to do business with you but certainly that's a wonderful idea and I worked in New Zealand for a couple of years and that's what they did everywhere.

Mr MELHEM — Sorry, that's for the big companies?

Mr CORBY — That's right.

Mr BOURMAN — The small companies might not.

Mr MELHEM — But the 80 per cent of—the other 80 per cent, small companies, 10, 15, 20, 30, it's going to be very hard to police that, some will go belly up and the whole entitlement thing is gone.

Mr CORBY — Yes. As it's going to be with a small company with the portability of long service leave.

Mr MELHEM — Yes.

Mr CORBY — It's very hard to legislate, but if you get 80 per cent that's 80 per cent more than you got before.

The CHAIR — Terry, the Committee understands that the Building Service Contractors Association was involved in the voluntary portable long service leave scheme for the Victorian building service sector. Can you tell us how the scheme came about and what were its key elements and what's its current state and what issues were encountered with operating a voluntary scheme?

Mr CORBY — I don't know a lot about that scheme. All I know is it was very unsuccessful and they ended up with some monies. We actually never got to the bottom of exactly how much. When I took over as the National President that was the first I've ever heard of the scheme because I've never operated in Victoria. So I did some investigation and I didn't like what I saw frankly and it had never been administered properly. Companies who had people in the scheme didn't claim, they didn't fill out the documentation correctly. It frightened the life out of me and I said, why are we involved with this and we walked away from that. Frankly to this day I don't actually know where the money is. There was a few hundred thousand dollars there. I think that the union may have taken control of it and I didn't really care because it was never our money anyhow, it was the members' money, cleaners' money, not our money. So I couldn't tell you but that scheme stay away from it. Start another one and make it compulsory. It will work that way, administered by you—by a quasi-body, not individual people.

Ms CONNOLLY — I've received a lot of complaints about that scheme because—not to correct Terry but actually the money belonged to the companies, the companies put it in as a guarantee whereas the scheme that we operate now, the money belongs to the cleaners and there's a—I get a lot of complaints where people have worked for a company for five years and they're now working for another—they're coming up to the 10 year anniversary and they're wanting to claim on the moneys that were owed by the company that they worked for earlier and nobody knows nothing about it.

Ms RYALL — What percentage of cleaners actually stay in the industry, just looking at the ABS data, they often—a large percentage actually come in and move out to other sectors.

Mr CORBY — They do but that's becoming less and less.

Ms RYALL — What percentage?

Mr CORBY — Look, it's difficult. The figures that we have are—the turnover rate in our industry is about 30 per cent. But it used to be much more.

Ms RYALL — Because the ABS data actually states that it's increasing.

Mr CORBY — Yes, I don't think that's—well, anecdotally that's not the evidence I have.

Ms RYALL — So I guess my question is if you've got a particularly small business paying into these essentially you know they might invest in a person in training—in putting what is a greater amount of

money than they would if they were putting the money away within their own organisation for a person's long service leave. They are out of the industry and that money is gone, under normal circumstances that would come back into their working capital to reinvest in employing somebody else and training somebody else.

Mr CORBY — I see what you're saying but the money that they put into the long service leave, as soon as it gets into that scheme is no longer theirs.

Ms RYALL — I'm just comparing it under normal circumstances it would be.

Mr CORBY — No, I understand.

Ms RYALL — And a lesser amount too.

Mr CORBY — Yes, but my feeling is about that is that if you are relying on—a lot of companies in Victoria when they tender on a job they will tender on long service leave costs of 1 per cent, not 1.7, because currently if you've got 100 employees you might get five of them ever qualify and my view is if the 1 per cent is the difference between you staying in business and not then you're in trouble.

Ms RYALL — No, it's more than a comparison of me as a small business, I have staff and normally if they transit out into another industry sector that potential money would come back into working capital to employ somebody else to train and those costs related with that. In this situation they go out, it's gone and I still have to train and bear the cost of doing that.

Mr CORBY — No, look I completely understand that but 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 and I've got to tell you our industry has not always been like that but in this case it was. And as I say because the main thing was because it was legislated, so there was never an issue about cost recovery.

Ms RYALL — So essentially small business is spending additional money than they would normally.

Mr CORBY — That's right.

Ms RYALL — And that they may lose and not be able to use to retrain people.

Mr CORBY — No, you're absolutely correct, that they would be spending around about .5 of 1 per cent more if you go to a portable scheme.

Mr NARDELLA — But if they're going to go down on .5 of 1 per cent then they shouldn't be in the industry.

Mr CORBY — Well, that's seriously what I think but ...

Ms RYALL — It's more about having to retrain the cost of ...

Mr NARDELLA — But if people stay in the industry then you don't need to be trained.

Mr CORBY — But you guys have got to sell it. You've got to sell the scheme so you're going to come ...

Ms RYALL — We don't have to sell the scheme, we're just inquiring into ...

Mr CORBY — But I mean—

The CHAIR — Jeff, any questions?

Mr BOURMAN — Not at the moment, we've covered everything I wanted to.

Ms FYFFE — When you started this third scheme, which is the one you've got going now, how much did the government help you because obviously you would have people coming into it who have been working for an employer for five, six, seven years and they would get their long service leave two or three years later, then you'd have new people coming in. Did the government give you any funding to set this up?

Mr CORBY — No, no, no, they gave us very significant brain matter. Brain matter. They gave us some actuarials who did the numbers and the actuarials who do our numbers also do ACT so you could find out from the ...

Ms FYFFE — So how did you draw the line under it when the workers would be eligible from this portable long service leave?

Mr CORBY — What we did was—well, what happens, we set the scheme up, everybody who—the initial inductees into the scheme were given 12 months extra service. So after one year they had two years' service in the scheme and if they had worked for their employer prior to that and so they were eligible, the scheme would pay pro rata and the employer would pay the rest.

Ms FYFFE — Right, okay.

Mr CORBY — Okay, so that's how the scheme worked and it works until today. If I have some member who's on 10 years' service then I pay what I owed up to the commencement of the scheme and the scheme pays the difference.

Ms FYFFE — And that was in the legislation?

Mr CORBY — That was legislated, yes, and we did that because we wanted—we gave the 12 months' bonus because we wanted people to join the scheme, you know, because it is very easy for people to sit back and say well, wait and see what happens but even though it's compulsory we know that you know people—employers don't always do the right thing. So that was an incentive to get them in and that worked.

Ms FYFFE — And then what about those where the employers went out of business, bankrupt and there wasn't a pool of money to pay that gap?

Mr CORBY — Okay, then—then that's unfortunate, you know. The person got pro rata.

Ms FYFFE — Yes, and then it's unfortunate the preceding years.

Mr CORBY — Yes, but if the boss is broke they don't get the money.

Mr CRISP — Is there any evidence the portable long service schemes improve worker retention in the industry?

Mr CORBY — Unfortunately we're not great gatherers of data but anecdotally I can tell you that I don't—in my business I have 300 or 400 staff. I have—I don't think it's necessarily improved my retention but I have a great retention rate, I have 90 per cent retention rate, nearly 95 this year, but I know that people who work for me and I have—my business is 24 years old and I have six people who have got 24 years' service and probably another 50 to 100 who have more than 10 years and they all get the money. Now they would have got the money from my company but they think this is fantastic, I can tell you that because they talk to their friends who would never have got long service leave.

Ms RYALL — So we're not sure in answer to that question about money?

Mr CORBY — Anecdotally I can't tell you but I think it has improved retention, yes.

Mr CRISP — But we don't have substantive evidence?

Mr CORBY — I don't have statistics.

Mr MELHEM — You said the Victorian company have already built in 1 per cent and their bidding, wouldn't that be for a new contract?

Mr CORBY — Yes.

Mr MELHEM — So they've already factored that in. So basically if employees for a four year contract are able to access long service leave that 1 per cent is kept by the company; is that right?

Mr CORBY — Yes. Well, when I say 1 per cent, 1 per cent is historically what they would have paid then. So that's what they quote.

Mr MELHEM — And last question. Can you tell us some example about the financial issues you face when the scheme was introduced, you had some problems or how did that go?

Mr CORBY — I think the administrators had some problems. They spent a lot of money on computers and software programs and we would have thought they'd have had that sorted out, given that they'd been administering the scheme for a long period of time. But the industry never had a

problem, only really that in the initial stages it was difficult to get them to accept your money which didn't make a lot of sense to me. But they have—I've got to say they've improved significantly and we're—I don't get any complaints but I don't know whether you could ever get a copy of their report but if you can you'll see they've spent a lot of money on software and computers and that's to improve the system so I'm hoping that that's going to work, you know. But in answer to your question there was no problem.

Mr NARDELLA — You said that the scheme was administered by the building scheme and then you put the cleaners into it, so has that transition occurred quite seamlessly, does that mean that then they use their expertise in trying to chase companies rather than setting up new systems. I mean what does it mean?

Mr CORBY — That's principally what it means. So they run parallel books, you know, we don't get involved in construction. The government came to us and said these are the experts at administering the scheme. I've got to tell you if I had my druthers I would have got Australian Super to do it—administer the scheme because I think they're brilliant but they can't do it, Ian Silk assured me that if he could he would have because it would have been a very simple thing for our industry because that's where cleaners get their super paid. But the scheme, as I say I cannot complain about the administration although it was difficult at the start it's now very good. As I say they're unparalleled.

Mr NARDELLA — So does that reduce or keep the industry costs down?

Mr CORBY — Costs, we're hoping that they will get better at that.

Ms FYFFE — But they haven't up until now.

Mr CORBY — They haven't got there yet, but I can assure you that that's one thing that I complain about, the administration costs. I still complain about it to Ian Silk, because we—I guess as I say coming from an industry like ours which is very low margin, our administration, we've got to squeeze—you can't have people sitting there pushing papers and not contributing. As I say, I have a lot of confidence in the director who runs it and feel assured that he will get there.

Mr NARDELLA — Okay, thank you.

Ms FYFFE — Could I please just ask one quick one. No, it's quick.

The CHAIR — Last one.

Ms FYFFE — A couple of times you've mentioned you've had no complaints, both of you, would this just be because the employers are just resigned to the fact it's legislation, I've got to go with it.

Mr CORBY — They understand that the scheme is legislated, so they have to pay the money but that's not where it ends because your relationship with the scheme is you pay the money and then you claim the money or you've got to let them know when a cleaner needs to be paid. So you have an ongoing relationship. I guess in New South Wales we were a little different to Victoria in that we always counted the cost as 1.7 per cent. It surprises me that in Victoria they don't. I don't understand

Mexicans sometimes, but ...

The CHAIR — Terry, on behalf of the Committee I'd like to thank you for giving your evidence. Thank you very much.

Mr CORBY — Thank you very much and if we can help in any way, please let us know.

Ms FYFFE — Okay, thank you very much.

Ms RYALL — Thank you.

Witnesses withdrew.