

# CORRECTED VERSION

## ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

### Inquiry into portability of long service leave entitlements

Sydney — 1 December 2015

#### Members

Mr Nazih Elasmr — Chair

Ms Dee Ryall — Deputy Chair

Mr Don Nardella

Mr Jeff Bourman

Mrs Christine Fyffe

Mr Cesar Melhem

Mr Peter Crisp

#### Staff

Executive Officer: Ms Kerryn Riseley

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#### Witnesses

Ms Mel Gatfield, Assistant Secretary, and  
Mr Mark Boyd, NSW Branch Secretary, United Voice NSW

**The CHAIR** — Welcome, first of all, and allow me to introduce myself, Nazih Elasmr, I am the Chair. Dee Ryall, Don Nardella, Jeff Bourman, Peter Crisp, Chris Fyffe and Cesar Melhem. I would like to welcome you to the public hearing of the Economic, Education, Jobs and Skills Committee Inquiry into the portability of long service leave entitlements. All evidence taken at this hearing is protected by parliamentary privilege in accordance 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. Hansard is recording today's proceedings, we will provide a proofed version of the Hansard transcript so you can correct any typographical error. You will give a statement and members will have some questions. So please state your name before you start. Welcome.

**Mr BOYD** — Thank you. My name's Mark Boyd, I'm the Branch Secretary of United Voice in New South Wales. I'm sorry about the voice but there's been a bug going around our office.

**Ms FYFFE** — Where's your mask?

**Mr BOYD** — It's much better than it was last week.

**Mr BOURMAN** — It's been through the Victorian Parliament.

**Ms GATFIELD** — We heard that it's been through Victoria. My name's Mel Gatfield, I'm the Assistant Secretary for the New South Wales branch.

**The CHAIR** — Okay, Mark.

**Mr BOYD** — So I would like to thank the Committee for the opportunity to address it on what we see is an important issue. If I could just address the Committee on why we believe this is an important issue for cleaners and security guards and why and how we have now got a scheme in New South Wales for cleaners. Historically cleaners in New South Wales rarely got to a point in their employment with any one employer where they would have had enough service or length of service to actually get long service leave and what would often happen is the cleaning company would be subject to a tender process and what we often saw was that the client would often go from one cleaning company to another. That would often happen in a three or four year period.

So the cleaner would find themselves working with a new employer after a short period of time, therefore not having their service recognised with the incoming contractor or employer, therefore never accessing long service in any circumstances. So in these cases for the majority of the cleaners what it really meant for them is that they would remain in the same building as the cleaner but for a new employer. They would be doing the same job, they would be working in the same building, they'd be working with the same work colleagues, in a sense working for the same client. The only real difference for them is that from a Friday to a Monday they'd be in a different work uniform with a different logo on it. So for most cleaners at that time of contract change they would be paid out their annual leave entitlements but that's all they would ever get and as I said would never have been with the one employer for a period of time where they would have had enough period of time to have long service leave payments or recognition and certainly their service wasn't recognised with the

incoming contractor.

So here in New South Wales we actually—there was one example that we used when we spoke to the then state government here in New South Wales and there was many that we could have used. But one stark contrast of where this was a real problem, being a cleaner who had worked at Westfield Hurstville for 22 years, doing the same job 22 years and turning up for work, predominantly working for the same people but in that period this one cleaner worked for five different companies doing the same job and under any normal circumstance had she been with the one employer for that 22 years would have had up and around 17 and a half years of long service leave but because of the change in contract never ever got to take any long service leave or accrue any long service leave in that 22 years.

In 1994 in this state—again the then state government—made a decision to privatise school cleaning and up until that point school cleaners in this state they employed by the state and would access long service leave after, probably back in those days, 13 years or certainly if they left that employer at a certain time would have had accrued service and would have received the payment. When those changes were made in New South Wales the only option for cleaners at that time and we are proud of as a union we were able to negotiate with the state government at the time that part of the contractual arrangements for those cleaners that they would still have their service recognised even at the change of contract and at some point were able to access long service leave unlike other cleaners in the state.

The difficulty with that sort of scheme was that every time there was a new contract in schools you had to renegotiate that same condition staying in those contracts. So we had in New South Wales some cleaners at some point accessing long service leave, albeit for those school cleaners since 1984 predominantly became a payment rather than a scheme where they could take the leave because again of change of contractors and many thousands of cleaners across the state in many examples never accruing long service leave or the ability to take them. What was important for us in New South Wales when we approached the state government re the issue of a portable long service leave scheme for cleaners, it was really important that we actually had the approach was an industry approach, so it wasn't just a union going off talking to the government about the needs of the scheme, we actually went with the industry and here in New South Wales there's basically two industry schemes, one you've just heard from this morning and another one.

We actually made a joint approach to the government because our view was it was an industry problem and it needed industry approach to government to rectify the problem. A couple of things that we took into account when we went and spoke to the government, it was the cost of the scheme and what was the level of ongoing levies that needed to apply. The view was if it wasn't a legislated scheme it wouldn't work. There was the issue of the initial costs to set the scheme up. I'm sure the Committee is aware that these schemes—there is some cost to set them up. So we had to work through that, and the other issue here in New South Wales was working through was it a payment scheme or a leave scheme that we wanted in New South Wales for cleaners and I'll touch on that a little bit later.

So in respect to sort of point 1, sort of the general view and talking particularly to the major companies here in New South Wales, 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. The point of why it needed to be legislated. Pretty much the view that we took and industry took if it wasn't legislated that you would have a whole range of companies who would not pay into the scheme unless it was legislated and I think the point that needs to be made on the way this industry works in New South Wales, if there is a scheme or entitlement to an employee by the employer and it's legislated, the fact is that companies in their tender process build that cost in to their client. So there is a slight argument that some of this is cost neutral for the cleaning company itself.

On point 3 we took a proposal to the then state government on how we thought they could fund the scheme up front at no cost to them and that was a proposal that we understand happened in Queensland and that would have been to borrow money off the building scheme. It's fair to say the government didn't choose that option, they took a different route on setting up the scheme and on the last point there was discussion in setting the scheme up in New South Wales and we looked at the building scheme. The building scheme in New South Wales is best described as a payment scheme. So if you're working on a building site, the contract comes to an end, you can make a claim and you get a payment for long service leave. Our view here in New South Wales is given that cleaners do come and go but 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. So that's a sort of a bit of the history of where we got to in New South Wales. So just as I said I thank the Committee for hearing us today and hopefully we can help with questions.

**The CHAIR** — Thank you, Mark. Mel, would you like to add anything or are you happy with it?

**Ms GATFIELD** — No, I'm happy to just help out with any questions.

**The CHAIR** — Mark, thanks for that. How well is the portable long service scheme for the cleaning industry in New South Wales operating and have your members raised any concerns?

**Mr BOYD** — I think our view is the scheme is running extremely well. We haven't necessarily raised any concerns but Mel and I sit on the committee that helps oversee it. If there are any sort of issues that we have raised and they are being worked through and it hasn't been a problem to date is the issue of non-compliance and companies not paying into the scheme. But we get regular reports when we meet and I think to our great surprise, given that we've both been around a long time and dealt with the cleaning companies, to our great surprise there is a high percentage of compliant payment to the funds here in New South Wales.

**The CHAIR** — Are there major differences between New South Wales, ACT, Queensland cleaning schemes and if so which scheme operates more efficiently in your opinion?

**Mr BOYD** — I don't think there's much difference between the New South Wales and the ACT scheme. There might be some variances to the Queensland scheme, I can't say that we've really looked at the Queensland scheme but from our experience the New South Wales scheme works extremely well.

**The CHAIR** — Okay. Deputy Chair?

**Ms RYALL** — There seems to be very little data, apart from ABS shows high mobility outside the industry. What percentage of cleaners actually stay in the industry for more than five years?

**Mr BOYD** — Anecdotally I think ...

**Ms RYALL** — Data-wise is there any data?

**Mr BOYD** — No.

**Ms RYALL** — There is a lot of anecdotal but no fixed data.

**Ms GATFIELD** — No. There are different types of cleaning jobs so we've talked about the pay of contract cleaning in public schools since 1984 you have a very high level of people staying in their jobs. For jobs with decent employers in office blocks and in shopping centres again, but I think that ABS data will include cleaners across the board, so someone that could come and clean your house perhaps and I think the numbers aren't really clear. I think what we can say is there are over 50 000 cleaners now covered by the New South Wales scheme, I think that's pretty exciting and in those companies especially with our members we haven't seen a high turnover. But you're right, there is not great data, right.

**Mr BOYD** — You've really got to break the industry down into different sectors and sort of try and understand what's happening.

**Ms RYALL** — It just seems that there is very little data around and the schemes have been running for a time, very little data around, apart from ABS, that acutely shows—with smaller companies obviously it would be considerably less they would be putting in but obviously retraining people and so forth has a cost to it. So if they're putting in on their own normal circumstances as they do now, they will cover that when that person takes the time if they do stay with the organisation but the money that goes in is lost forever if the person moves out of the industry and they can't use that as working capital to retrain in that sense. I think that's a considerable concern for smaller organisations. I understand yours is legislated that they have to move into it but I think there is that concern particularly to small business in an economy where jobs are an issue.

**Ms GATFIELD** — I think we would say that they have to have that liability anyway and I think you've kind of discussed the 1.7 was actually less than small businesses were actually putting aside for industry information when we entered into this was 1.75 was the kind of common amount. So in fact to start with they were paying less and again it is anecdotal, you don't have the data but we are finding that people are staying in these jobs because they see them as more secure because they know that the money is put aside. There are unfortunately in this industry a lot of players, a lot of businesses that come in and come out, so it's not necessarily the staff don't want to stay but the employer you know disappears and then reappears.

**Ms RYALL** — ABS showing movement out of the industry and into the industry and I guess it is

always costly staff turnover, particularly for a small business. That's the concern we have.

**Mr MELHEM** — When the employees change contract, have you got any idea of the percentage of employees who tend to sort of stay with the client or someone from this building, for example, changes hands four times in 14 years, high percentage or high percentage of people staying?

**Mr BOYD** — A high percentage of people stay. There are reasons why they probably stay, they like where they work and the fact is that the incoming contractor, I often say that when sort of —cleaners say we're really worried about if there's a change of contractor what it means for us or from time to time you get a threat from an existing contractor we're just going to walk away and all your members are going to lose their jobs. But sort of my view, it's a bit of a throwaway line, 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. It's a fact of the industry and so what we often find, the incoming contractor needs the workers, so they would when they get access to the cleaners, they will start an interview process and start talking to the existing cleaners four weeks prior to taking over the contract so the cleaner then can secure oncoming employment with the incoming contractor.

**Mr MELHEM** — Because I suppose it's in the interests of the client and the new contractor to maintain the existing employees, they don't have to retrain them, and normally may be—a small percentage may be—they're not happy, they might sort of go but 90 per cent ...

**Mr BOYD** — Will stay.

**Ms RYALL** — Do we know that it's 90 per cent, Cesar? Do we know that it's 90 per cent?

**Mr MELHEM** — Yes, I do actually, as a matter of fact I do in my experience, actually more than 90 per cent and I'm talking from experience and that's the common interest between the new contractor and the client and then normally we have the people that are not happy with the performance issue, that's what happens the reality isn't it? That's basically it.

**Mr BOYD** — Yes.

**Mr MELHEM** — Have you given any consideration to the security industry?

**Mr BOYD** — Yes.

**Mr MELHEM** — Are you in discussion with anyone about that?

**Mr BOYD** — About 12 months ago the state government asked for submissions on the scheme and we made a submission to expand it from cleaning to security and the next opportunity to do that will be the five year review ...

**Ms GATFIELD** — Which is coming up.

**Mr BOYD** — Which is coming up.

**Ms GATFIELD** — So when the scheme was legislated for it was recognised that security guards were in a similar position and we do see the same things there on the outside of the building and the cleaners are on the inside, the same issues around contracting, around them staying in the same place but the employer changing over. You have got the added issue with insecurity of the licensing regulations so that security guards are less likely to disappear, they want to stay in those places. So we are very keen for this scheme to include it and I think that the ACT and other schemes do so.

**Mr BOYD** — The ACT does, yes.

**Ms FYFFE** — In your experience and knowledge someone who is wanting staff, are they known to discriminate against say you have someone who is applying whose got seven years' long service leave accrued and you have got someone who is just coming in on two years because not only is it the cost of 1.7 per cent to employ you've got to replace that person for the period of the long service so you need to get another casual in for those seven weeks or eight weeks, has there been any discrimination that you're aware of that when someone has taken over a contract they've actually looked at it and said no, we're not employing him because he's going to take seven weeks off in a couple of years and I've got to cover it?

**Mr BOYD** — Not in my experience I haven't seen that.

**Ms GATFIELD** — And I think you know 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. So I think that in our experience the contractor—if the cleaner is there they're going to want to use them because they don't have that surplus of labour when they're taking over.

**Mr BOYD** — And more often they would view the existing workforce as having experience in that building. I don't think we can underestimate the importance of that experience in a particular building because it is really about keeping the client happy and if you've got an experienced workforce who knows the client and understands the client's needs ultimately the contractor ends up with a very happy client.

**The CHAIR** — Any other questions, Peter?

**Mr CRISP** — Yes, I would like to explore your thoughts on alternate mechanisms to long service leave for contractors. We heard from Terry when he made some comments about there was a transfer of entitlements where contracts changed and he got a spreadsheet and a cheque when he took over from one contract to another. Would it be feasible to introduce legislation requiring businesses that win tenders to recognise workers' prior service?

**Mr BOYD** — From my experience of this industry having the new employer recognise the service is easy if the outgoing employer has got proper records and I can tell you that our experience in school cleaning, and these are big companies with lots of employees, their records are normally appalling and a change of contract you ultimately—we find ourselves in disputes with cleaners arguing with the

outgoing employer of how long they've been employed there and then an argument with the incoming contractor of what their service was so there are some difficulties in there. I think ultimately you can overcome the recognition part of the service. I would be really less confident about a transfer of funds from one employer to another. That's my experience from the industry and I think it's—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.

**Ms RYALL** — So just on that, why wouldn't you therefore just not legislate and certainly for all government contracts that it happened, not that its paid into a separate account but it's sort of paid forward?

**Ms GATFIELD** — I think the administration and the disputation that you would create based on our experience of that doesn't ...

**Ms RYALL** — The Tax Office compliance, is it?

**Mr BOYD** — Yes.

**Ms RYALL** — The onus is on you to do it.

**Ms GATFIELD** — So the beauty of the long service portability scheme is that everyone who is on that level playing field, everyone that is working in the cleaning industry is in that level playing field and is contributing and there are really good compliance mechanisms, there is an industry standard. I think if you went to the kind of scheme that you're talking about you'd create a lot of headaches for a lot of cleaners for a lot of the good companies versus the bad companies and then you'd need some kind of other compliance mechanism which is either the Tax Office or shifting the problem around elsewhere.

**Mr BOURMAN** — Just one quick one. Let's take a leap of faith and say the government's decided to go ahead with this. What lessons learned would you guys like to pass on to the government so we don't make the same mistakes?

**Ms GATFIELD** — One of the things that I—presuming that the Victorian workforce is similar to the New South Wales workforce which is a presumption, but 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, so that was a really important to do that at the start so that would be wonderful.

**Mr MELHEM** — Just a quick one. How's the scheme travelling now financially, is it in surplus, deficit, break even? Is there any pressure on raising the formula, the 1.7 per cent, just a quick snapshot?

**Mr BOYD** — It's in surplus.



**Mr MELHEM** — Surplus.

**Mr BOYD** — It's also important to note there was—I can't remember the amount—but there was technically a loan to the scheme in start-up and it was paid back in around 12 or 14 months which was much quicker than the expectation was to repay that loan.

**The CHAIR** — Okay.

**Mr BOURMAN** — One quick question. Based on the fact it's in surplus, not knowing how much the surplus is, would it be feasible to drop the percentage from say 1.7 to 1.6 and still have ...

**Mr MELHEM** — One day, one day.

**Mr BOURMAN** — No, I'm just curious because I mean I could say 1.7 to 1 or whatever, but I don't know if it's making millions of dollars a year or just enough to keep afloat?

**Mr BOYD** — As a starting point we would say you never dropped the contribution.

**Mr BOURMAN** — Of course.

**Mr BOYD** — You would expand the scheme rather than drop the contribution is our view. What is unknown as we come up to sort of the four and five year period and given that cleaners who came into the scheme from day one were essentially granted 12 months' leave up front, we are not too sure what claims are going to be made on the scheme in the next 18 months. So whilst it sits in surplus at the moment, there may be a rush on the scheme in the next 18 months. One we don't see coming but we have had discussions with the administrators and we're aware there may be claims—more claims coming on the scheme in the next 18 months.

**Ms GATFIELD** — Sorry, can I just add one thing to the lessons learnt is around compliance, one of the issues that the committee that oversees it was worried about was compliance and the Long Service Leave Corporation have created relationships with other organisations like WorkCover to make sure that if an employer is registered for WorkCover that then they're also registered with this scheme and that's been a really good way of making sure, they've done a lot of proactive work in that space and that again—kind of that was a lesson.

**Ms FYFFE** — So two schemes can exchange information legally?

**Ms GATFIELD** — Yes, and they made sure that that was able to happen, so identified where would be a good place to do that and then sought the appropriate permissions, got those and then have made sure their compliance was improved.

**The CHAIR** — Thank you very much, on behalf of the Committee. Thank you for your time and your evidence. Thank you.

**Witnesses withdrew.**