

# CORRECTED VERSION

## ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

### **Inquiry into portability of long service leave entitlements**

Melbourne — 9 November 2015

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Ms Dee Ryall — Deputy Chair

Mr Jeff Bourman

Mr Peter Crisp

Mrs Christine Fyffe

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#### Witnesses

Mr David Humphrey, Senior Executive Director, Business, Compliance and Contracting, and  
Mr Keith Ryan, Manager, Workplace Services, Housing Industry Association.

**The CHAIR** — Welcome to this public hearing for the Economic, Education, Jobs and Skills Committee’s Inquiry into the portability of long service leave entitlements. All evidence taken at this hearing is protected by parliamentary privilege. Any comments you make outside the hearing are not afforded such privilege. Hansard is recording today’s proceedings. We will provide you with a proof version of the Hansard transcript so you can correct any typographical errors. You will give us a briefing and then members will ask questions. Please state your name before you start.

**Mr RYAN** — My name is Keith Ryan. I am the Manager, Workplace Services, at the Housing Industry Association in Victoria.

**Mr HUMPHREY** — My name is David Humphrey. I am the Senior Executive, Business Compliance and Contracting, for the Housing Industry Association. Keith has a short opening statement that he would like to make.

**The CHAIR** — All right.

**Mr RYAN** — Okay. First of all, thank you for the opportunity to appear before the Committee today. We have provided submissions in response to the terms of reference. HIA notes that a portable long service leave currently applies to some workers in the construction industry. The scheme was established to recognise the unique nature of employment in the construction industry, where on-site trade employees are often engaged on a project basis and may never accrue enough leave from one employer to trigger an entitlement. The status quo is now an accepted feature of the industry, although it should be noted that the scheme does, however, impose a cost on HIA members and impacts on their cash flow.

While CoINVEST, the trustee of the scheme, does seek to simplify the process for employers, it is still an additional requirement that these employers must manage. Levees in Victoria are higher than those charged in comparable jurisdictions, and many HIA members are small businesses that already face significant red tape in managing their employees and operating their business.

The concept of portable long service leave also 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. A traditional justification for long service leave, being a reward for long service, is not being achieved. The Productivity Commission has only recently considered portability of long service leave as part of its inquiry into Australia’s workplace relations framework. In HIA’s submission, its draft report has identified some good and cogent reasons for not mandating portability of long service leave more generally. For the above reasons, HIA opposes the extension of portable long service leave to workers in the residential construction industry outside the coverage within the existing scheme.

**The CHAIR** — Would you like to add anything David?

**Mr HUMPHREY** — No, I would not.

**The CHAIR** — We will start with questions. Your submission notes that portable long service leave is not relevant in industries with traditional employment arrangements. Do you support the expansion of portable long service leave to industries characterised by contract work, and why or why not?

**Mr RYAN** — We do not have a position on what other industries should or should not have imposed on them or systems in place. We are more about our members in our industry, so our position would be neutral on that.

**The CHAIR** — Your submission identifies a number of concerns about Victoria’s construction industry long service leave scheme. What impact has that scheme had on employment and the competitiveness of Victoria’s building and construction industry?

**Mr HUMPHREY** — Each state does have portable long service leave for the construction industry. Unfortunately or fortunately—it does not matter how you look at it—each state does do it slightly differently, particularly in terms of the collection of premiums. It is done differently from state to state. We

have states like New South Wales, Queensland and the Northern Territory as well, which collect premiums at a development application stage, as opposed to the Victorian approach and some other jurisdictions like Western Australia and Tasmania similarly do it where the employer has to fill out a return, and it is based upon payroll. So each state has a construction industry scheme in place.

In terms of the impact on Victoria's competitiveness, it is hard to gauge how the Victorian scheme matches in terms of competitiveness against another scheme, except to say that we know in the Victorian scheme the levy being charged is higher than comparative states where they have a similar way of collecting the premium. So the 2.7 per cent, which it is my understanding is the current CoINVEST rate, is higher than the TasBuild rate, which is at 2.5 per cent.

**Mr BOURMAN** — Your submission notes that the employers who have had to grant long service leave to a relatively new employer are financially disadvantaged by that. Have you had any experience with some employers discriminating against the applicants who do have an overhead come with them, as opposed to someone who has maybe only got two or three years built up?

**Mr RYAN** — We have not—certainly I have not—heard anything like that having happened. 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.

**Mr BOURMAN** — If it were a reality, what sort of strategies would you think could be used to overcome that? As you said, it must happen to a degree, but whether it is just a tiny degree or a large degree, it is hard to tell.

**Mr RYAN** — It is pretty difficult to think of any strategy as such. Probably the employers will be looking at the actual skills and experience of the worker, and they might be making a judgement, 'Well, look, they could go on long service leave soon; however, the skills they have got, the experience they have got and the needs of my business at the moment'—it might make them still go ahead with the engagement of the worker. But realistically it is going to be very hard to mitigate. If it was a wider situation, it would be very hard. I suspect there would be a lot of employers who already potentially might be, in other industries, using factors to decide who to employ, who would go, 'Six years, seven years, eight years employment already. Maybe they are going to be on long service leave soon'. And as you get to 9 and 10, obviously that becomes a major issue.

**Mr BOURMAN** — And a very time-critical issue. Thank you.

**Mr HUMPHREY** — Just to add on, 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 or ...

**Mr BOURMAN** — Not a multi-year project or something like that?

**Mr HUMPHREY** — No. Look, 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. But a detached housing construction period is not 12 months. Of course the time taken from signing a client to delivering can get up to two years, but that is normally because of delays from planning or approvals and all those other things.

**Mr RYAN** — It is also probably if there was to be an extension of the scheme, there would be some workers who would be not covered by an existing scheme who would be suddenly at risk if they had eight, nine years experience about to be engaged for, say, jobs as salesmen or clerical officers. They could find themselves being disadvantaged by this sort of scheme.

**Mr BOURMAN** — The nature of the employment being longer term might have that effect.

**Mr RYAN** — Exactly. That is correct.

**Mrs FYFFE** — If I could just bring you to your submission, at 1.7, where you raise the issue in recent years of the construction industry portable long service leave. You allude there to problems with CoINVEST expanding coverages to workers involved in other areas. Can you give us some more information about that, please?

**Mr HUMPHREY** — On that specific example—and I understand that Ai Group have made some more detailed submissions on that; they were more proactively involved in the prosecution—more specifically we were looking at their members who were being impacted on by the CoINVEST approach to expand the definition of worker who is covered under the scheme. We are looking at a lot of manufacturing-type employees in the electrical manufacturing and some of those other associated industries as opposed to the on-site worker. That is where the basis for having a construction industry portable long service scheme in place was because it is project-based on-site workers. That type of argument does not seem to apply so much if you are working in a static and manufacturing-type environment, noting that there are people involved in doing manufacturing and installation, so there sometimes will be an on-site component to that manufacturing process.

**Mrs FYFFE** — You talked about domestic building and the changes that have been happening over the years, as with every industry now that you have. The trusses are manufactured in a factory, delivered on-site—the doors and the—not everything, but so many things happen in a factory. Do those people working in the factories making the trusses and the doors come under CoINVEST?

**Mr HUMPHREY** — I would have to look at the specific rules. But that is one of the issues; sometimes it is not that clear who is in and who is out.

**Mrs FYFFE** — But the ones in those factories have continuous employment usually.

**Mr HUMPHREY** — They do, yes. It is very difficult for them to be even engaged on a contracting basis, or lawfully on a contracting basis, because they are in that fixed environment. They are not exercising the type of discretion that you would be exercising if you were running your own small business as a contractor.

**Mr MELHEM** — To either of you: for CoINVEST for long service leave, do you know what the application rate is to your industry? I know your rules in the housing sector, where a lot of self-employed and other people move between major projects and smaller projects. With the coverage, and I am talking about the on-site construction, do you have any idea what the coverage is like? How many people are likely to be covered by the current portable long service leave, CoINVEST, to use that term?

**Mr RYAN** — If they were all working on site in the construction industry, they are all required at the very least to be registered with CoINVEST. If they are working subcontractors, they have a discretion about whether they wish to contribute to the scheme. But we do not have exact numbers because we do not administer the scheme and we have not been given that information. We cannot tell you what the coverage rate would be.

**Mr MELHEM** — So in broad terms, the housing subdivision—or the members you are representing are pretty much, one way or the other, more than likely to be covered by the current scheme. But the next question following from that is about the actual rate itself, the 2.7 per cent, because that is based on a formula of 1.3 weeks per year. But I think in the subdivision the rates might be different. It might be the state legislation of 0.866 weeks per year, so the 2.7 might be lower. Does that come to your mind at all, has that been looked at or have you come across that where there is a different rate of obligation? I just thought about it then when you were doing your presentation, that 2.7 might not be applicable to the bulk of your members because they will not be subject to an industry agreement of 1.3 weeks, like a major project. Rates of pay would be different.

**Mr RYAN** — Most of our members will be covered under the awards. They would be not be ...

**Mr MELHEM** — It will be under the state Act, their long service leave?

**Mr RYAN** — Yes, if they were not covered under CoINVEST, and the actual entitlement is linked to the state Act.

**Mr MELHEM** — So it is pretty much, as far as you know, the portable long service does exist in one way or another. In your submission you are talking about what sort of improvement could be made and taking the opportunity to look at some improvements or some things to be looked at. That is what I take from your comments, some of which are fair comments as well.

**Mr RYAN** — Our submission, yes, is very much that the scheme should pretty much remain as it is. If there can be improvements in how it is administered, of course we would be happy with that and our members would be very happy with that. But certainly our position is the status quo.

**Mr NARDELLA** — Give us some examples of some of the buildings that we have lost here in Victoria because of that anticompetitive nature of the industry—the long service leave to other states ...

**Mrs FYFFE** — You mean the ones currently covered by the portable?

**Mr NARDELLA** — By portable long service leave. Give us some examples of how we have lost—I do not know—buildings or something to other states because of that anticompetitiveness.

**Mr HUMPHREY** — It is difficult to do so because each state has portable long service leave in place for the construction industry, and as I said earlier, sometimes you cannot compare apples with apples in terms of the way they are collecting premiums or administering the scheme. Some use this trust-type approach that CoINVEST has while others have a statutory board. But each state does have it in place, and the most recent was the ACT. They were the last to come on board the best part of a decade ago. So it probably does not affect competitiveness in competing from state to state in the building industry anyway.

**Mr NARDELLA** — But your evidence to us today was that there was a lessening of the competitive nature by having these types of schemes in Victoria. That is why I asked if you could give us some examples of where we have lost a building here in Victoria, because of long service leave, to New South Wales, Queensland or any state. But there are none. That is okay; that is fine.

The other thing is everybody wants to criticise CoINVEST. It is 2.7 per cent—there are a whole range of issues. How would you make the scheme more efficient, better, rather than just whingeing and complaining about it? How would you make it better?

**Mr RYAN** — First of all, with all due respect, I do not think we are actually whingeing about CoINVEST. We are pointing out that the figure is higher. We do concede in our submission that they do their best to try to minimise the admin burden for our members and for other people in the building industry. However, that said, it is still a process which our members have to deal with. They have to engage bookkeepers or advisers to help them every quarter. They have to deal with queries from CoINVEST. They have to work out in some cases, particularly if it is a working director of a company, whether they are a working director or a working subcontractor. All those admin costs are borne by having a system, so anything that can be done by CoINVEST to simplify the process ...

**Mr NARDELLA** — So if CoINVEST were sitting here across the table, what suggestions would you have to make that process simpler or more efficient? Okay, I should not have said ‘whinge’, but how would you make that better? What advice would you give them?

**Mr RYAN** — Our main advice would be to try to, as much as possible, make the timing and the processes for complying with the CoINVEST scheme consistent with other schemes which are already well established, such as pay as you go, superannuation contributions and the like, so that the admin burden and also the complication of understanding the process is simplified. In part, to be fair to CoINVEST, they have legislation that also governs them, but they do have the ability to lobby and make suggestions to government about improving the scheme.

**The CHAIR** — What impacts would portable long service leave have specifically on regional and rural employers and small businesses?

**Mr RYAN** — Portable long service leave, just having to bring in the concept and explain it—by itself it is already a hard concept to explain to members. Explaining to them, ‘Look, yes, it is not really long service; yes, it is not really about long service leave, it is just about another entitlement’. Just the complication of understanding what it meant would be one issue for a lot of small businesses that are not used to a long service portable scheme. The extra cost of having to set up their business systems, get their bookkeepers up to speed, their accountants, their advisers, with what is required. If the rules were to be changing, that would also be another complication.

There would be a set-up cost to get used to the new system and to come to terms with it, and if the system was to become, dare I say, like some of the other systems out there—like tax—changing on a very regular basis, that would also add to the complication and the expense for the business. I would not discount the stress caused by not just the cost but also having to comply, get your returns correctly done and make sure that you have it all correct.

When the system becomes confusing, particularly if you are, say, dealing with a situation where some workers are not always working in the construction industry or you have directors who may or may not be working contractors or working directors, making those decisions and hoping that you are right can also add to the stress for the business, particularly the small business that cannot necessarily afford to get all the assistance and advice it might need.

**The CHAIR** — Are there any other subgroups of employers that would be particularly affected by portable long service leave? If so, how?

**Mr RYAN** — I guess employers who are in industries where they tend to be very small businesses, very much reliant on themselves, their partners and their family to help them, for them it would be a significant impact as well. Industries which may look a bit like the building industry could be affected by having an extra impact of having a portable long service leave brought in, but we are not really au fait with how exactly how those industries work. All we can suggest is maybe.

**The CHAIR** — I would like on behalf of the Committee to thank you for your evidence and contribution.

**Mr RYAN** — Thank you for having us.

**Mr HUMPHREY** — Thank you.

**Witnesses withdrew.**