

CORRECTED VERSION

ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

Inquiry into portability of long service leave entitlements

Melbourne — 9 November 2015

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Mr Lance Wallace, Deputy Secretary, Corporate Services Division, Department of Health and Human Services.

The CHAIR — Welcome to the public hearing for 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. Any comments you make outside the hearing are not afforded such privilege. Hansard is recording today's proceeding. We will provide a proof version of the Hansard transcript so you can correct any typographical errors. I invite you now to make a statement, and after that members will have some questions. Please state your name before you start.

Mr WALLACE — I am Lance Wallace, and I hold the position of Deputy Secretary of Corporate Services for the Department of Health and Human Services. I would just like to make a brief opening statement, probably to reinforce some of the issues you are currently aware of.

I think the Committee is well aware that in 2003 the then Minister for Community Services, Bronwyn Pike, announced a community services sector improvement fund of \$7 million to enhance the sustainability of community sector organisations. In consultation with the community services sector a portable long service leave scheme was identified as having the potential to improve workforce recruitment and retention and to enable community services workers to better access long service leave benefits. The fund commissioned a feasibility study in 2007 and an actual report in 2008 to determine the practicalities of the scheme. Based on these reports a government commitment to establish a portable long service leave scheme was made in 2008.

The Department of Human Services, as it then was, undertook work between 2007 and 2010 on the development of a community sector long service leave portability scheme. Extensive stakeholder consultation occurred in that period of time. Consultation commenced in 2007 and included over 200 one-on-one consultations, a series of public forums, presentations to industry groups and the opportunity for written submissions. A reference group was also established at that point in time, and key stakeholders, including government departments, sector peak bodies, unions and employers were consulted and had an impact on the scheme development process.

These consultations along with other research and analysis undertaken by the Department resulted in the scheme design, and the scheme design was contained in the Community Services Long Service Leave Bill 2010, which was read for a second time in October 2010. Debate was adjourned, and due to the state election in November 2010 debate did not resume on the bill. With a change of government at that time this issue was not further pursued, and the Department has not undertaken additional work on the scheme since 2010. Probably as just a brief summary, I think people are probably aware the bill was intended to deliver multiple benefits, including approved attractiveness of community services roles, high retention rates across the sector and improved employee benefits to a low-paid and predominantly female workforce.

The scheme aimed to enable community workers to retain their long service leave entitlements when changing employers to enable them to remain working within the community sector. The scheme was prospective, compulsory and provided benefits commensurate with the entitlements described in the Long Service Leave Act 1992. The fund was to be managed by a governing board of a statutory authority which was to be established by legislation. Employers were required to pay a levy set as a percentage of their employee's pay, and this was to be estimated to cover their entitlements, including a small administrative fee.

That was fairly much a summary of where we got to at that point in time. Without me saying anything more of a general nature, probably the best use of our time is just to head into what questions the Committee is seeking to ask.

The CHAIR — You have shared that, and thank you very much. The Committee is interested in the size of the community services sector and the cost implications of establishing a portable long service leave scheme. How many employees do you estimate work in a community services occupation in Victoria and what is the breakdown of community service employees working in the for-profit, not-for-profit and government sectors?

Mr WALLACE — I do not have an exact answer to that question. There were a range of estimates made. At the time that the bill was developed, the bill was aimed to cover about 40 000 community services workers. Again it depends on how widely you are casting the net. If you want to be a little bit more specific on the question, I would be happy to provide some data to the Committee. Obviously the way that the bill coverage was developed there were certain inclusions and exclusions—whether preschools are included in total, whether community health is included in total. There are a range of issues that would affect the total number of employees in coverage.

The CHAIR — How many community services employees do you estimate work full-time, and what would be the average weekly earnings of full-time and part-time employees in the sector?

Mr WALLACE — Sure, and I would be happy to take that question on notice.

The CHAIR — Thank you.

Mr WALLACE — The definition of community services employees: I presume there is an act definition, but if there was another definition that you wanted to use, then I would be comfortable to work with that as well.

Mr BOURMAN — That brings me to a good next question. What was the rationale for excluding workers in aged care and early childhood from the proposed 2010 scheme?

Mr WALLACE — I think the rationale for inclusion or exclusion of different groups was fairly much a policy decision of government. I think the Committee will be aware that there was extensive consultation. During the consultation period, the coverage of people to be included in the bill changed based on the consultation.

Committee members may also be aware that there was a PwC report done in 2010. That particular report is a public document. If you Google it—if you have not already got it in front of you—it is available. That actually went through some advice that came out of the initial consultations and went through a series of stakeholder areas and some of the advantages and disadvantages. That advice was provided to government. If you have a look at that report and then look at the final shape of the bill, you will find that they are not exactly one for one, and that is because the Government as part of its policy prerogative will make decisions on the relative merits or otherwise of inclusion.

I would add that Committee members would be aware that in the health sector there is already ostensibly a fairly significant degree of portability of long service leave in that most of the health services have reciprocal rights and transfers, and there is fairly much a commonality in that sector. Whilst there is not a portability scheme per se, there is portability within major health services. I think people would be well aware that there are certain issues within preschools and the scale of employers and the way that existing entitlements work which would mean that there would be considerations that a government would make about whether to include or not include them.

Ms RYALL — You referred to the research and consultation. Is it possible for our Committee to have that research and consultation that was undertaken back then for us to consider?

Mr WALLACE — The point I was making earlier was that the PwC report was fairly much a summary of ...

Ms RYALL — This is more the consultation that the Government of the day undertook with, you mentioned, business groups, with unions and with others to look at what was said back then.

Mr WALLACE — Again I will start by saying that the PwC report, which is in the public domain, is a reasonable summary of the consultation that occurred. If the Committee wanted to request additional material, I think the normal thing to do would be to request it through the Minister, and I think you have requested other material through the Minister.

Ms RYALL — In terms of the funding situation—and I think we have requested to get some information, but I just wanted to understand what your understanding was—obviously we have private and not-for-profit and then we have government-related services, particularly in the community services area. In the funding envelope for not-for-profits that are given funding to function—I am thinking in terms of Wesley Mission or those types—do you have any idea what the value would be of that funding that is given to these organisations to function?

Mr WALLACE — If I understand the question, you are asking what component of long service leave is in that funding or what the total funding ...

Ms RYALL — No, what the total funding would be to non-government organisations to provide services on behalf of the Government in the community services and health sector.

Mr WALLACE — Again, it would get down to definitions. There is very substantial funding going into the community services sector. I could provide you with more detail of the actual funding by major service type if you wanted. Probably it would be easier than me trying to, from memory, give you that number—just to break it down for it you. I would be happy to provide that to the Committee.

Ms RYALL — It would just assist with, if we come to the point where we are looking at cost ...

Mr WALLACE — You want to know what the base is.

Ms RYALL — That is it. Those organisations obviously need to fund anything or the Government will need to put that in there, so yes, just to get a context around how much we are talking about.

Mr WALLACE — Sure, and it will make more sense if I break it down into categories—disability versus youth services versus ...

Ms RYALL — Yes, thank you.

Mr WALLACE — That is fine. I am happy to do that.

Mr MELHEM — Just to follow on from that point, your industry—the health services and the community services industry—is a bit unique because there has been some talk in the past, as you said, about doing that portability. If you are working within government, you have got portable long service leave, but if you go across to the private sector in the hospital sector, for example, then you are not covered. The same will apply to the community sector.

In my understanding the ACT has portable long service leave in the health and community sector. What is your view, or the Department's view, about introducing something similar to the ACT, for example, which combines the public sector employees and private sector employees in relation to health, hospitals and allied services and the community sector? What is your view on that? I understand you are a public sector employee, but I am interested in the concept—the benefit and the downside of it.

Mr WALLACE — As a bureaucrat, there are a number of examples which the Committee would be aware of where portable long service leave schemes are in operation. They seem to be able to be run effectively, provided that you have a critical mass of employers who are involved in those schemes. I think the Department's viewpoint is that these schemes are possible to operate and there are proven examples that they can operate. Then it is just really a balance between the cost effectiveness of the schemes. The bill, as I think people are aware, proposed a contribution rate of 1.6 per cent, including a 1.4 per cent contribution for long service leave entitlements and a 0.2 per cent administrative fee. So that was going to be the rate of charge.

I think they can operate. For the bill that was envisaged previously, the view was that about 40 000 people would be involved in that scheme and there was reasonable confidence based on the reports and material the Department had developed that that scheme could operate effectively within that scope.

Mr MELHEM — Following on from that, I picked up the point about the request to the Minister to provide information. I think that is something we should pursue through the Chair because realistically, in looking at portable long service leave throughout the state for every single employee, I do not see that as likely at this point in time. But from what I have heard, your sector could be a potential candidate—that is my own opinion. Maybe the security and cleaning areas might be other candidates for some schemes. Therefore I am really keen to hear the Department's view about the model.

You talked about the PwC report and other things. I think it would be great to have an up-to-date picture, if a portable long service scheme were to be recommended for your industry, of what that would look like and what the cost would be like, because there would be substantial costs for the Government, I suppose, and a portion of the private sector. I think it is important for us to be able to get that so at least we can have an informed opinion. Whether the Committee recommends it or not, that is another discussion. But I think it is important to have that.

Mr WALLACE — I will just make a short response and take the conversation from there. The Department has not done a lot of work recently on this particular scheme, so in terms of absolute up-to-date information the Department is fairly much working on quite a large body of work that was completed through 2007–2010. Because that work culminated in a draft bill, there is a lot of decision-making that goes into drafting a bill so many of the features of the scheme were fairly well developed in drafting the bill. If you read the bill, it goes into a reasonable amount of detail about the characteristics of the model at that particular point in time.

I think for the Committee's viewpoint that was quite a well-developed model, and you have a number of submissions from various parties. From the submissions I have looked at, I think there is a general consensus that if this type of scheme were to move forward, the model that was developed at that point in time was a fairly robust model and many of the features of the model—whether it was going to be a centralised model and a statutory authority or whether it was going to be a decentralised, dispersed model—a number of those sorts of characteristics, including what would be the likely charge, issues about whether pro rata or not would be allowed, issues about whether it would be prospective or retrospective, all of those issues were worked through and were embodied in the bill. So I think we have a fairly solid platform to move forward.

I think there are a couple of issues that are important to the Committee in considering moving forward. I suppose in particular I would just mention that there were issues at the time. The Minister at the time indicated that for the bill to be fully enabled it would require federal support. I think the Minister at the time indicated that the bill will be implemented at a date to be proclaimed as it will be of no effect until such time as the Commonwealth passes legislation to allow the scheme to operate with the intended scope. I think the Committee is aware that there are some issues between the interaction of the Fair Work Act and state legislation that would need to be considered. Probably the other 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.

Mr MELHEM — Just on that, who is the employer with the NDIS? Is it federal, state or private, or a combination?

Mr WALLACE — I think some of those details are yet to be fully resolved. That is a large body of staff, so there would be extra work there.

In answer to your question, I think that the proposal in the bill is a very good starting point and would mean that the Department would be well placed to work with the Government of the day in bringing forward a scheme in the community services sector. But there are a couple of provisos.

Mrs FYFFE — Bearing in mind that you just said it would have needed federal support for this to be enacted, what monetary or administrative support was the Department planning to put in place for this when the legislation was introduced?

Mr WALLACE — At the time, there was a commitment to deal with some transition and start-up costs.

Mrs FYFFE — So what sort of figures, recognising that it was almost five years ago?

Mr WALLACE — Yes. From memory I think there was a couple of million dollars-type of figure that was quoted at the time, but I think the most important thing was that there was further work to be done with the sector before the bill was enacted. As I indicated, the Government had a commitment to work through some of the start-up-type costs, and I do not think they had completely landed at that particular time.

Mrs FYFFE — What about the administrative side?

Mr WALLACE — Again, if you are talking about the administrative side, the major proposal was that the administration of the scheme would be funded from ...

Mrs FYFFE — No, sorry—the administrative side more for the not-for-profits in the administration of fitting in with the scheme. The actual funds would be self-funding.

Mr WALLACE — I understand the point you are making. Again I would just refer you back. I do not think the Government in 2010 had fully landed on that, but they had made a commitment to actually work with the sector on transition costs. What exactly that would be and how that would have played out I do not think is certain. But there was an indication that the Government was at least committed to actually working with the sector to review those costs.

Mrs FYFFE — Because so many of the not-for-profits operate on the smell of an oily rag, as we all know, any extra cost can be devastating for them.

Ms RYALL — You mentioned early on about former Minister Pike determining that retention and recruitment would be enhanced through a portable long service leave scheme. What was that based on? What research was that based on?

Mr WALLACE — 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.

Ms RYALL — So it would be fairly safe to say then that there is no empirical evidence or research that would tell us that it actually would enhance recruitment and retention.

Mr WALLACE — Again, through stakeholder consultation I think the general consensus of stakeholders, people who are on the ground doing the work every day ...

Ms RYALL — So it is anecdotal?

Mr WALLACE — Yes. They indicated that they thought it would improve those issues, but it is correct to say that we have not been able to quantify that number. Part of the reason we have not been able to quantify it is because the datasets have not really allowed that to happen.

Ms RYALL — So it would be, if I may say so, a very expensive exercise to go down that track to find out that perhaps it did not have an impact on retention and recruitment.

Mr WALLACE — I have not seen the data, but obviously one of the things you could do is look at other areas where this has been introduced and see whether there were any patterns that are discernible in those areas. That would be another way that we could tackle that.

Mr NARDELLA — Certainly, my understanding of the consultation and the idea behind the long service leave—because there was also a further package around increasing the wages of people in the private sector—was that the private sector was bleeding and still is bleeding people into the public sector. It is about trying to give them parity, because, if I lose contracts, I lose long service leave, I lose holidays, I lose a whole range of other things apart from the 20 per cent; I think they were looking at increasing it by 20 per cent.

It might be empirical, but the reality is, if you talk to any of the private sector employers or organisations out there, people are gagging to get into the public service—doing the same job for a lot more money, long service leave and with security. The idea behind this is that the organisations themselves, I think through that consultative process, said, ‘We need to do something about this because we cannot sustain this. We lose our best people into the public sector’.

Ms RYALL — The issue you are saying there, Don, is the fact that there are contracts, so the contracts that start and end is the issue.

Mrs FYFFE — There is also pay parity and the fact that they do not get long service leave.

Mr NARDELLA — There is pay parity, long service leave, a whole range.

Ms RYALL — Yes, that is all wrapped up in contract, the fact that it is a contract.

Mr NARDELLA — Yes, that is right, but the long service leave component of that was also a major issue, because it might be Salvos for the first three years, then it might be Berry Street. As we have heard, you might be doing the same job.

Ms RYALL — The issue is the contract and what the contract does not provide in that instance. I am just trying to understand.

The CHAIR — How many community service employees would you estimate have at least 10 years of service in the sector? Again, you can take it on notice if you do not have the answer. And, in your experience, do community services employees tend to move between the for-profit and not-for-profit and government sectors when changing jobs? My last one: does the Department have any data on the number of community service employees who leave the sector when changing jobs?

Mr WALLACE — The simple answer to your question is we do not have centralised data of that nature, because we do not run a centralised payroll and human resources system for the sector. I think there has been some survey work done of that nature and am very happy to take the question on notice and see if there is anything in that survey material that may help the Committee.

Ms RYALL — I just want to clarify: so there is really no data, no research, but just anecdotal suggestions that this will impact in the desired way in terms of recruitment and retention?

Mr WALLACE — In specifically recruitment and retention I am not aware of quantitative data of that nature.

Ms RYALL — Do you think it would be helpful—just given the cost that potentially is involved not just to government but to employers—for that research to be made available or conducted to be made available?

Mr WALLACE — I would just emphasise my previous comment: 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.

The CHAIR — Other than the commissioned actuarial studies, did the Department do its own costings for the proposed 2010 scheme, or was the Department of Treasury and Finance consulted? If so, what were the findings, and can the Committee obtain a copy?

Mr WALLACE — To understand the costs of these types of schemes is a technical specialist's role, so the normal people who undertake this type of work are actuaries. The Department and even the Department of Treasury and Finance do not tend to employ actuaries on an ongoing basis because they are a specialist role, so they tend to consult. What the Department did was engage external actuaries who are specialists in these superannuation and long service leave-type calculations to undertake calculations on our behalf. And, yes, those calculations were reviewed in a broad sense to make sure that a professional job was done of those calculations. There was a range of figures provided by the actuaries at the time. I think the ACT scheme is working on a 1.6 per cent levy rate, has been working on that rate for some period of time and seems to have been operating stably on that rate. That also gave the Department comfort that the rates that the actuaries were calculating seemed to be reasonable.

Mr MELHEM — To follow on from the work that was carried out in 2010, a number of points you might need to take it on board. Resulting from the Fair Work Act 2009, part of that was the modern award coming into place, and employees were covered by premodern awards and left there in limbo as well. How can we package something to cover everyone? What work needs to be done with the Commonwealth, for example, to capture all that to make sure employees on pre-modern and postmodern awards are covered? What sort of work needs to be done in relation to capturing that?

Mr WALLACE — My understanding of the way state legislation and federal legislation would operate is that ideally the Federal Government would make changes to the Fair Work Act, which would assist state legislation in regard to portable long service leave operating. 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. With the change of Federal Government there has not been any progress on that enabling legislative change.

Ms RYALL — Just to follow up on what you have said, the way things are at the moment is no different to the way things were then in that it could not be introduced without those changes happening—so nothing has changed; is that right?

Mr WALLACE — That is my understanding.

Mr MELHEM — One last question. If we were to recommend or the Government wanted to introduce portable long service leave for the community and the whole sector—and correct me if I am wrong—from your own point of view as a bureaucrat would it be sensible to include not-for-profit as well as for-profit and government employees as one sector versus, for example, just having one for the public sector employees full stop? What would be your advice?

Mr WALLACE — 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. Multiple schemes, particularly if they were run separately, would not be a preferred model.

Mr BOURMAN — In 2010 the ACT introduced a scheme for the community sector. Is the Department aware of any problems that occurred during the introduction of that scheme?

Mr WALLACE — We are not aware of any specific problems. Again I am just going from memory, I think the scheme financially started with a levy rate of around 1.65, and that levy rate was subsequently reduced to 1.6 as the scheme went forward. So I think on face value that indicates that a more conservative approach was taken on the adoption of the scheme, but I am not personally aware of any significant issues.

Mr BOURMAN — Is the Department monitoring what is going on with the ACT scheme, I guess with the object of it possibly being reintroduced into Parliament again?

Mr WALLACE — Again, the Department has not been really actively working on a portable long service leave scheme for some period of time, but obviously if there is renewed interest by government in the scheme, one of the first things we will do is make sure we keep in touch with that scheme because it is a live scheme with some similar characteristics.

Mr BOURMAN — Lastly, if Victoria did introduce the portable long service scheme for the community sector, what sort of practical legal issues would need to be addressed to set up a reciprocal agreement between the ACT and Victoria?

Mr WALLACE — I think those issues can be done. 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.

Mr BOURMAN — So to paraphrase, given it has happened elsewhere you would not see too many dramas in this scheme?

Mr WALLACE — This is a little bit different. The arrangements I previously talked about are more informal arrangements, but I agree it would seem that it would be at least possible to do.

The CHAIR — On behalf of the Committee, I would like to thank you for giving your evidence. Thank you very much.

Mr WALLACE — Thank you. I have a couple of questions on notice which I will come back to you on.

The CHAIR — Thank you very much.

Witness withdrew.