

jobwatch
Employment Rights Legal Centre



Submission to the Economic, Education, Jobs and Skills Committee Inquiry into Portability of Long Service Leave Entitlements

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Summary of Recommendations

1. A system of portable long service leave ('PLSL') schemes be introduced for all Victorian employees. In the alternative, PLSL be introduced to industries which have high employee mobility and/or an undersupply of workers in a particular geographic region and/or a high percentage of women.
2. These schemes replicate the model of 'CoINVEST'. This is the Victorian portable long service leave system for the building and construction industry.
3. These schemes be administered by one authority.
4. Efforts be made to unify the portable long service models across States and Territories or the implementation of a national regime be considered.
5. Research be undertaken into the feasibility of extending PLSL to all Australian employees.

1. Introduction

Job Watch Inc (**JobWatch**) is pleased to contribute to the Economic, Education, Jobs & Skills Committee's inquiry into the portability of Long Service Leave Entitlements.

In this submission, JobWatch makes several recommendations regarding the expansion of portable long service leave schemes. JobWatch is confident that these recommendations, if implemented, will increase equality of long service leave opportunities for Victorian workers and will have benefits for the fairness and productivity of Victoria's workplaces.

2. About JobWatch

JobWatch is an employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It is an independent, not-for-profit organisation which is a member of the Federation of Community Legal Centres (Victoria).

JobWatch was established in 1980 and is the only service of its type in Victoria. The centre is funded by State and Federal funding bodies to do the following:

- a) provide information and referrals to Victorian workers via a free and confidential telephone information service (**TIS**);
- b) engage in community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other appropriate organisations;
- c) represent and advise vulnerable and disadvantaged workers; and
- d) conduct law reform work with a view to promoting workplace justice and equity for all Victorian workers.

Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our telephone information service. To date we have collected approximately 170,000 caller records with each record usually canvassing multiple workplace problems including, for example, contract negotiation, discrimination, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time. JobWatch currently responds to approximately 8,000 calls per year.

The content of this submission is based on the experiences of callers to and clients of JobWatch and the knowledge and experience of JobWatch's legal practice and data from our caller database. The case studies used in this submission are of actual but de-identified clients of JobWatch.

3. Long Service Leave: Rationale and current arrangements

Long service leave is an entitlement for an employee to take an extended period of leave after an extended period of service. The purpose of this entitlement is to incentivize long and faithful service, to reduce staff turn over and to allow an employee to renew their energies.¹

The Victorian system is governed by the Long Service Leave Act 1992 (Vic). Under this act, an employee is entitled to take long service leave after 10 years of continuous service to one employer.² After 7 years of continuous employment, an employee is entitled to be paid out at the rate of 1 week per every 6 weeks of employment on the ending of the employment relationship. In some cases, a pre-modern award,

¹ Australian Industrial Relations Commission, *Long Service Leave in Australia- Towards a National Standard*, Report (2004), 2. Available at: http://www.airc.gov.au/familyprovisions/aig/TAB_12.pdf

² *Long Service Leave Act 1992 (Vic)* s 56 A.

registered agreement or private agreement that is no less favourable than the statutory minimum will apply. However, where an employee resigns or is dismissed, their length of service doesn't follow them to their new job even if it is the same or similar job in the same or similar industry. Therefore, despite the employee's commitment to their profession and industry, their long service leave accruals/entitlements are lost. This disincentivises employee commitment to their profession and can represent a loss of valuable skills or expertise.

4. Portable Long Service Leave

A portable long service leave ("PLSL") system allows an employee to cumulate long service leave across their career within the one industry. Without PLSL, where an employment relationship ends before seven years, the employer is able to keep the money set aside for the employee's long service leave.

CoINVEST- The Victorian Portable Long Service Leave System

There is already a PLSL system in the construction industries in all Australian States and Territories. In Victoria, the system is called "CoINVEST" and has been operating since 1976. The PLSL systems operating currently are a response to the inherently 'mobile' nature of construction work.³ That is, most building and construction workers are employed project by project and thus do not enjoy 'continuous' employment for the purpose of accruing long service leave.

5. The objectives of portable long service leave schemes

JobWatch submits that the advantages of a PLSL scheme include:

1. Encouragement of employee retention within industries with high rates of labor mobility.
2. Support of regional development by enabling skilled and experienced labour to leave their employer to move to a geographic area to meet a demand without losing their long service leave entitlements.

³ As stated on the AusLeave website , "...for people who work on different projects for various employers, it is often difficult to accrue this leave" <http://www.ausleave.com.au>.

3. Mitigation against the possibility of termination because of long service leave accrued. Where an employee is terminated before the 7 year minimum, the employer is entitled to retain the entire sum of the long service leave entitlements.

Case Study

Joe⁴ was a manager who accrued 6.5 years of service. His position was terminated by his employer before he reached the 7 year minimum. Therefore he was not eligible to be paid his long service leave entitlements.

Had Joe been able to register PLSL, he would have been able to transfer his long service leave accrued to his new employer.

4. Strengthens female workforce participation by supporting women to return to the workforce after leaving employment for child rearing purposes.

Case Study

Amy⁵ worked for 5 years in the health industry. After 5 years of service, Amy's manager terminated her job because she was pregnant.

Under the statutory long service leave system, Amy was not able to carry forward her long service leave entitlements even though due to no fault of her own, she was unlawfully dismissed.

Comparatively, had Amy been registered with a PLSL scheme, she could have carried forward her long service leave entitlements.

5. Enables employees to take a break in their careers half way through their working life to renew their energies, obtain experience in different occupations/industries or increase qualifications through study and then return to their primary profession without losing their accrued long service leave entitlements.

⁴ This is a pseudonym for a caller to the JobWatch telephone information service.

⁵ This is a pseudonym for a caller to the JobWatch telephone information service.

6. Rationale for introducing portable long service leave schemes to particular industries

JobWatch submits that PLSL should be introduced to all industries. This would ensure that no worker is disadvantaged by virtue of the industry in which they work. However, if this is found to be administratively unworkable, JobWatch submits that the following industry classes in particular require a PLSL scheme:

1. **Industries with high employee mobility-** Employees in these sectors are typically employed to complete particular tasks and are therefore disadvantaged because they are unlikely to reach the statutory minimum period of service for long service leave. Generally speaking, portable long service schemes are designed to recognise the cyclical and transient nature, in addition to the project/contract based structure, of these industries. **Examples:** cleaning work, healthcare, social work and construction.

It is relevant to note that the industries in which mobility is high are also predominantly those that are more physically and/or emotionally demanding and which have a disproportionately high rate of work related illness and injury.⁶ This furthers the need to address the problems surrounding inaccessibility of leave. Indeed, increasing accessibility of leave to employees who perform emotionally or physically demanding roles may prevent 'burnout', thereby possibly reducing workers compensation claims and increasing retention of employees within the particular industry.

2. **Industries where there is an undersupply of skilled workers in particular geographic areas-** There is a significant public and commercial interest in incentivizing employees to move to geographic areas where there is an undersupply of experienced workers in a particular industry. **Example:** An experienced doctor is interested in moving to a hospital in a regional area may be reluctant to move because she will lose her long service leave entitlements.
3. **Industries with a high percentage of women-** The current statutory system discourages women to return to the workforce after having children outside of the parental leave system. This is due to the fact that if a woman ends employment with one employer to have children and subsequently takes up employment with

⁶ *Compendium of Workers' Compensation Statistics, Australia 2009-10*, Safe Work Australia, 2012, p 6.

another employer within the same industry, it is considered a gap in employment and her service performed before having children is not recognized for the purposes of long service leave.

Examples: Clerical and administrative staff, community & personal service workers and sales professionals.⁷

7. Implementation: A PLSL scheme should replicate the CoINVEST model

JobWatch recommends the CoINVEST PLSL model should be replicated in other industries as designated by legislation for all employees in those definable industries. The CoINVEST scheme provides a portable long service leave scheme for workers in the building and construction industries.

A CoINVEST model has the following features:

1. All workers, employers and working subcontractors are required by law to register with the scheme.⁸
2. The employer must complete a Workers' Days and Wages form every three months which details the amount of days an employee has worked.⁹ These days add up to what the scheme calls 'service credits'.¹⁰
3. The scheme keeps track of the service credits even if the employee changes employers.¹¹ Once an employee has built up 7 years service credits recorded with the scheme, they can make a claim for long service leave.¹²
4. In the system, employers contribute a designated percentage to the Long Service Leave Fund every three months- this is an on-cost to employers and not deducted from workers' wages. The contribution rate is currently based on 2.7% of the total

⁷ According to the ABS, women comprise over 60% of these industries in Australia.

⁸ CoINVEST, Q&A

<http://www.CoINVEST.com.au/media/W1siZiIsIjIwMTUvMDMvMTcvMTVfNTIifNDRfMzQwX0NvSU5WRVNUX1FhbmRBLnBkZiJdXQ/CoINVEST%20QandA.pdf>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² CoINVEST, *How Co-Invest Works*, <<http://www.CoINVEST.com.au/about-CoINVEST/how-CoINVEST-works>>.

gross wage of all their workers – this is to keep the costs uniform and relative between the smaller and larger employees.¹³

Nevertheless, although CoINVEST's focus is on 'continuous' service, JobWatch submits that any PLSL scheme should prioritise 'aggregate' service over 'continuous' thereby allowing breaks from an employee's primary industry without detriment to their PLSL accruals.

Additionally, there may also be some constitutional 'cover the field' issues that may need to be dealt with because some Victorian employees' long service leave entitlements still come from federal pre-modern awards which currently override the Long Service Leave Act 1992 (Vic) and may therefore have the same effect in relation to any PLSL scheme.

8. Administration: One Authority

JobWatch recommends that the PLSL system be administered by one authority across industries. The advantages of this system are:

1. Cost efficiencies available through scale and purchasing power;
2. Consistency and fairness between industries by having the same resources and policies available; and
3. It would make reforms towards consistent PLSL schemes between States and Territories more achievable.

This model is currently in operation in the ACT (where 'ACTleave' administers the long service leave systems of the construction, cleaning, community sector and security industries.)¹⁴

In the alternative, JobWatch recommends that the function of administering a PLSL scheme could be delivered by the employee's superannuation fund as they already have access to employment data. However, this would require the cooperation of the Commonwealth Government.

¹³CoINVEST *Who pays for portable long service leave?* <http://www.CoINVEST.com.au/about-CoINVEST/how-CoINVEST-works>.

¹⁴ *Long Service Leave (Portable Schemes) Act 2009*, s 6.

9. Unify PLSL models across States and Territories or a National Regime

JobWatch recommends that any new PLSL scheme have as an objective a mutual recognition scheme between State and Territory PLSL authorities. Other states which have implemented PLSL schemes include Queensland¹⁵ in 2005, the Australian Capital Territory¹⁶ in 2009 and NSW¹⁷ in 2011. This mutual recognition scheme should provide for:

1. Recognition of work performed in the particular industry of the worker's home State or Territory; and
2. Clear processes to claim work performed in another State or Territory.

JobWatch recommends the implementation of National PLSL Standards. The advantages of National Standards are:

1. Provides employees greater flexibility for employment across different States and Territories, further increasing employee mobility;
2. Reduces the administrative burden for employers who operate across more than one jurisdiction.

A mutual recognition scheme and the implementation of national PLSL Standards would be consistent with the aims of the current Productivity Commission report into Mutual Recognition Schemes, that is, the improving of efficiency and competitiveness by removing obstacles to trade and labour mobility within Australia.

10. Further Research

JobWatch recommends further research be conducted into the efficiencies that a national PLSL system could provide. JobWatch notes that there is a PLSL scheme at the national level for the coal mining industry.¹⁸ The rationale for this scheme is the same as that for the CoINVEST-style systems: the high rates at which workers move between employers in the mining industry makes it difficult for those workers to qualify for long service leave. In

¹⁵ Qleave, <<http://www.qleave.qld.gov.au/webdb/wsmanager.nsf/%28web%29/69068076AC79A6A84A2576E10029A8DD>>.

¹⁶ ACTLeave <<http://www.actleave.act.gov.au/>>.

¹⁷ Long Service Corporation <http://www.longservice.nsw.gov.au/>.

¹⁸ Coal Mining Industry (Long Service Leave) Funding Corporation is established by the *Coal Mining Industry (Long Service Leave) Administration Act 1992*.

many ways this scheme has advantages over the Co-Invest system- for example, it recognises 'aggregate' rather than 'continuous' employment and operates nationally.


Nevertheless, as this submission is focused on Victorian law reform, JobWatch suggests that replicating the Victorian Co-INVEST model may be more practical as it is already functioning well and fairly balances the interests of both employers and employees, but the focus could be shifted to 'aggregate' service as discussed earlier.

11. Conclusion

JobWatch believes that an expansion of PLSL to new sectors rewards employee loyalty to their industry in which they work. As employment trends change towards more transient forms of employment, it is crucial that there is not an erosion of long service leave entitlements.

Thank you for considering our submission. JobWatch is confident that the above recommendations will increase productivity and fairness in Victorian workplaces. We would welcome the opportunity to discuss any aspect of this submission further. Please contact Ian Scott on (03) 8643 1118 if you have any queries.

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