



**Submission of the Australian Services Union**

**Victorian Private Sector Branch**

**Economic, Education, Jobs & Skills Committee**

**Inquiry into Portability of Long Service Leave Entitlements**

**August 2015**

**Ingrid Stitt**

**Branch Secretary**

**Australian Services Union**

**Victorian Private Sector Branch**

[istitt@asupsvic.org](mailto:istitt@asupsvic.org)

**0418 357 440**

## 1. **Background**

The Australian Municipal Administrative Clerical and Services Union (known as the Australian Services Union – ASU), Victorian Private Sector Branch, covers clerical, administrative and customer service employees in the private and not-for-profit sectors.

The ASU Victorian Private Sector Branch has members in a range of industries including but not limited to:

- Armoured Transportation;
- Road Transport, Freight & Logistics;
- Airlines and Related Industries;
- Call Centres;
- Manufacturing;
- Pharmaceutical;
- Gaming & Wagering;
- Non-profit Organisations;
- Retail;
- Legal Services;
- General Clerical & Administrative

The vast majority of ASU members employed in the above industries have their employment conditions regulated by Modern Awards and/or Collective Agreements in the Federal jurisdiction.

## 2. **ASU - Victorian Submissions**

The ASU Victorian Private Sector Branch supports the submissions of the ASU Victorian/Tasmanian Authorities and Services Branch.

We have some areas of shared coverage where we share the same concerns around long service leave entitlements and portability.

In particular the ASU Victorian Private Sector Branch supports the submissions of the ASU Victorian/Tasmanian Authorities and Services Branch in respect to portability of long service leave in the Social and Community Services Sector (SACS).

### **3. Long Service Leave in Victoria**

Long service leave has had a proud and unique history in Victoria having existed in one form or another since the 1860s.

A recent review into a national portable long service leave scheme by the McKell Institute identified three key benefits to long service leave. These benefits include:

1. Reduction in workforce turnover;
2. Provides encouragement and reward to employees for lengthy and loyal employment; and
3. Enables employees a short 'career break' from which they can return refreshed and re-energised.

Unfortunately, these benefits of LSL are not being realised. Only one in four Australian workers will be able to take long service leave.

With the workplace constantly evolving and people spending greater proportions of their lifetime in employment, new forms of LSL are needed.

Portable long service leave is widely available within the public sector, with relevant clauses incorporated throughout various enterprise agreements.

It is far less structured within the private sector and legislative amendment may be required to establish such schemes. These schemes are not unprecedented with PLSL existing within the building and construction industry in Victoria since 1976.

Due to the unique history of LSL, there are no international models of LSL portability which could further inform our local debate. However, models of superannuation accrual, as well as current industry-based arrangements for a broad range of ACT employees, gives some idea as to how LSL can be reformed in Victoria.

#### 4. Current Victorian legislative framework

The standard long service leave period is 8.67 weeks leave after 10 years of service and an additional 4.33 weeks leave after every additional 5 years of service.

Currently, portable long service leave is limited to specific industries.

The following table copied from the McKell Institute review provides an overview of what industries have PLSL schemes around Australia.

STATE	PLSL SCHEME	START	KEY LEGISLATION
NSW	Building and Construction	1986	Building and Construction Industry Long Service Payments Act 1986, Building and Construction Industry Long Service Payments Regulation 2011
	Contract Cleaning	2011	Contract Cleaning Industry (PLSL Scheme) Act 2010
ACT	Building and Construction	1981	Long Service Leave (Portable Schemes) Act 2009
	Contract Cleaning	1999	"
	Community Services	2010	"
	Security	2012	"
QLD	Building and Construction	1992	Construction Industry Long Service Leave Act 1987 Building and Construction Industry (PLSL) Act 1991, Building and Construction Industry (PLSL) Regulation 2002
	Contract Cleaning	2005	Contract Cleaning Industry (PLSL) Act 2005
VIC	Building and Construction	1976	Construction Industry Long Service Leave Act 1997 Rules of the Construction Industry LSL Fund as at 7 April 2009
SA	Building and Construction	1987	Construction Industry Long Service Leave Regulations 2003.
WA	Building and Construction	1986	Construction Industry Portable Paid Long Service Leave Act 1985 Construction Industry Portable Paid LSL Regulations 1986
TAS	Building and Construction	1971	Construction Industry (Long Service Leave) Act 1997
NT	Building and Construction	2005	Construction Industry Long Service Leave and Benefits Act 2005 Construction Industry LSL and Benefits Regulations as in force at 3 August 2012
Commonwealth	Coal Mining	1949	Coal Mining Industry (LSL) Administration Act 1991 - Amended by Coal Mining Industry (LSL) Legislation Amendment Act 2011. - Two related Coal Mining Industry Payroll Levy Acts also apply (both 1992 Acts)

## **5. Long Service Leave entitlements for ASU members**

Many workers move employer between particular industries or sub-sectors of industries. Only through a comprehensive portable scheme will many ASU members realise long service leave entitlements.

In the experience of the ASU two tiers of long service leave entitlements exist for our members in Victoria.

1. Those reliant on the provisions of the LSL Act, and;
2. Those who have over time, through collective bargaining, won a more generous entitlement of 13 weeks leave after 10 years-service in their workplace.

13 weeks after 10 years-service is available to ASU members in parts of the following industries:

- Airlines
- Transport, Freight & Logistics
- Legal Services
- Manufacturing
- Pharmaceuticals

Currently no portability scheme operates in Victoria that applies to ASU members.

## **6. Impact of Precarious Employment on Workers and Long Service Leave Entitlements**

The impact of precarious employment on workers has been well documented in research and submissions to this and other inquiries.

In particular the following issues are prevalent amongst the labour hire, casual and temporary workers the union organises:

- Lack of job and income security;
- Periods of employment with one host employer without access to annual, long service or sick leave entitlements;
- Fear of raising work and OHS concerns;
- Lack of training;
- Lack of career opportunity;
- Sometimes poorer wages and conditions than the host employer;

The very nature of insecure work means a labour hire, temporary, casual or seasonal worker is highly unlikely to qualify for long service leave through a combination of job turn over and the restrictive definition of 'one employer' under the current Victorian Long Service Leave Act.

The introduction of industry wide portability schemes would overcome the disadvantage currently experienced by workers in precarious employment and those subject to job turnover, as well as those who are currently disadvantaged by the definition of 'one employer'.

## **7. ASU Private Sector Case Study**

The ASU was proud to win long service leave entitlements for Tabcorp casuals in the 1990's. This was significant given the seasonal and fluctuating nature of the racing industry and the casual tenure of the majority of the workforce.

Despite the casual nature of employment at Tabcorp, the length of casual employment of individual employees was, and remains, long. The Long Service Leave provisions covered casual employees in telephone betting, on-course and in Tabcorp operated retail outlets.

This is still the case today for Tabcorp casuals working On-Course.

In the franchised Tabcorp retail outlets the long service leave arrangements are not ideal.

Each Tabcorp Agent operating a retail outlet is treated as a separate employer. Because of the casual and low paid nature of this employment it is common for Tab Retail Operators to work for more than one Agent at a time, and/or over their employment history.

Currently employees (whether casual or permanent) working for consecutive Agents do not qualify for long service leave. An employee would have to be with the same Agent (or multiple Agents over the required years) in order to be eligible for pro-rata LSL.

Up until 2008 Tabcorp facilitated all long service leave for Agency staff through a central arrangement.

In 2008 a new contract was negotiated between the Agents Association and Tabcorp.

The ASU understands that as part of the arrangements under the new contract, Tabcorp no longer administer the LSL for Agency staff.

For any service up to 2008 the Tab Agents Association set up a designated Trust Fund overseen by Trustees from the Agents Association where all long service leave accruals up to 2008 were paid into.

There is a process whereby each Agent has to make an application to the Trust fund on behalf of their Agency staff for any LSL applications accrued prior to 2008.

Any LSL payments post 2008 are the responsibility of the individual Agent to administer and pay.

It is not un-common for ASU members employed in Tab Agencies to move between outlets. Under the provisions of the LSL Act each Tab Agent is considered a separate employer even though they are a franchised network.

Under the current provisions of the Victorian Long Service Leave Act each Agent is treated as a separate employer even though the Tabcorp brand and retail operations are generic.

This is a barrier for Agency staff to accrue enough service to qualify for long service leave.

*The ASU recommends that the definition of separate employer be reviewed and amended for franchised businesses. In addition a portable scheme would mean such consecutive service would count towards an entitlement to long service leave.*

## **8. Meaning of Continuous Employment & What Counts as Service**

Women are currently disadvantaged when it comes to long service leave entitlements. Women still take on the lion's share of caring responsibilities in this country.

Whilst career breaks as a result of taking maternity, paternity or adoption leave do not break continuity of service they are not counted as service towards long service leave accruals and therefore it can be argued that many women will take much longer to ever realise a paid entitlement when their employment periods are broken as a result of having and caring for children.

*Portable long service leave arrangements must give due consideration to how women's disadvantage in the system can be addressed.*

## **9. Proposed Solutions**

In order to modernise long service leave entitlements and ensure that workers receive an entitlement in a modern workforce context a universal portable scheme should be created.

As previous research has highlighted a number of models are possible.

### **Proposed Models for PLSL in the private sector**

#### **Option A: The Approved Deposit Fund (ADF)**

This model is similar to those in the superannuation industry. These provide for employees to receive defined benefit-based lump sum entitlements from employers when they exit a job, and roll them over into an ADF where the money is invested in an accumulation-style account until the employee is eligible to receive LSL. Employees with a number of jobs would have all entitlements paid into the one account.

#### **Option B: The Industry-based Defined Benefit Fund Model**

This model involves the creation of a range of industry-based defined benefit funds. There are already more than a dozen established industry-based PLSL arrangements; however, each of these provides only limited

portability. Workers only accrue LSL benefits while working within the industry, and may forfeit their entitlements if they cease working in the industry prior to completing the vesting period of service.

Workers who complete the vesting period and then leave the industry are usually entitled to claim a cash payout. If these schemes are extended to provide full portability, then presumably the LSL benefit entitlements would be transferred to a different industry fund if a worker shifted employment to a different industry.

The ACT has extended this model to the broadest range of industries including security, community services, contract cleaning and building and construction.

### **Option C: The Accumulation Model**

This would require employers to make regular contributions for all eligible employees into designated LSL accounts administered by superannuation funds and/or authorised financial institutions. (The minimum contribution would be determined by the National Employment Standards.)

Account funds would be invested on behalf of the account holder and investment earnings would be credited. Administration fees would be deducted. The account-provider would be required to maintain records sufficient to determine the worker's eligibility for LSL cash payments in the future.

The employee would be entitled to choose their LSL account provider and to transfer their LSL account from one provider to another. This would enable an employee to combine LSL payments from two or more employers into one account.

## **10. ASU Recommendations**

***1. The ASU recommends that the definition of separate employer be reviewed and amended for franchised businesses.***

***2. Consideration should be given to recognising and counting as service periods of maternity, paternity and adoption leave when calculating long service leave entitlements.***

***3. An appropriate model to deliver portable long service leave across appropriate industries in the private and community sectors be implemented.***

The ASU thanks the Committee for the opportunity to address these issues.