

Submission by Master Grocers Australia
to the Economic, Education, Jobs and Skills Committee Inquiry Victoria
in respect of the portability of long service leave entitlements.

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Inquiry into the portability of long service leave entitlements.

Master Grocers Australia (MGA) refers to the Inquiry into the portability of long service leave entitlements in Victoria, by the Victorian Economic, Education, Jobs and Skills Committee. (the Committee) MGA notes that the Committee is seeking submissions in relation to this important issue and welcomes the opportunity to provide comment to the Committee.

About MGA

MGA is a registered employer association and its members consist of Independent Supermarkets and liquor stores, which play a major role in the retail industry and make a substantial contribution to the communities in which they trade. In Australia there are 2400 independently owned FoodWorks, IGA & SPAR branded supermarkets employing over 110,000 full time, part time and casual staff, representing \$13.8 billion in retail sales.

In Victoria there are 515 independent supermarkets trading under such brand names as IGA, Friendly Grocers and FoodWorks, employing 23,500 staff (FT. PT & Casual) with sales in excess of \$3.5b per annum. There are approximately 3.75 million weekly customer transactions.

There are 1,005 independent packaged liquor outlets, employing 2,800 staff with sales of \$900m per annum. There are approximately 700,000 customer transactions per week.

These businesses are small to medium in size and many of them are family operated.

They operate their businesses under either the General Retail Industry Award or enterprise agreements. Independent supermarkets and liquor stores constitute a large sector of the retail industry in Victoria. As employers of thousands of workers in Victoria MGA members are fully conversant with their obligations in respect of long service leave, pursuant to the Long Service Leave Act 1992 (Vic) as amended. Any changes to the long service laws will impact on their businesses and therefore it is appropriate for MGA to make comment on this issue to the Committee.

Introduction

Long service leave (LSL) in Australia and New Zealand is regarded as an envied “phenomenon” by the rest of the world. Although it is regarded as specific to the Antipodes there are one or two lesser schemes in existence in Europe. However, in its current form the long service leave system is envied by other countries and it is deeply embedded in the Australian culture.

LSL was formed in Australia to reward long serving workers and to provide an opportunity for those who had originally come from Europe, in particular the United Kingdom, to re-visit their homeland. Historically, the return journey took so long that it was believed necessary to provide, not just sufficient time to workers to visit to their country of origin, but also allow the time for the travel.

However, times have changed and LSL has now become an entrenched part of the employment system in Australia. Each State and Territory has its own LSL legislation and the concept of a national LSL scheme was considered as an option for the future when the Fair Work Act (2009) was enacted and the Work, Health and Safety laws were harmonized in most States and Territories. There does not appear to be any

likelihood that LSL is under threat anywhere in Australia and in fact, as evidenced by this inquiry into LSL there is obvious interest in making changes to the system to extend it further. The inquiry into LSL is intended to investigate the opportunities to alter the current LSL system to provide for portability of the leave.

MGA supports the operation of the current system and is of the opinion that a portability scheme, although it may be workable and even necessary in some industries, is not a workable option in the supermarket retail industry. We intend to show that the current system works reasonably well in Victoria but if it becomes portable across all industries there will be a number of impracticalities, it could cost jobs and it will be expensive. It is the position of MGA that the current system should be retained in its current format. However, if it is demonstrated that in some industries, due to the fact that the contract nature of the work lends itself to portability then those industries may have a sound case for change.

The Victorian Long Service Leave Act and its operation in the independent supermarket industry

The Victorian LSL Act is a relatively simple Act to use and it is supported by Business Victoria. Basically it provides 8.6667 weeks of LSL after each period of 10 years of continuous service. MGA provides advice to our members on the operation of the legislation and regularly advises employers on their obligations in respect of payment of entitlements.

Workers who work in the supermarket industry sector may be short term or long term workers. Of those who only stay a short time they may be young people starting off as casual workers, who want to earn pocket money, or they may be tertiary students who regard having a temporary job in a supermarket as a means of supporting their education. This group is usually transient and the workers generally do not envisage a career in the retail industry. Another group of retail workers consists of those who work in the industry on a long term basis and remain dedicated to the employer for years. Employers concentrate on training workers because of the cost of training and help them to foster their careers. It is this group that naturally benefits from the years of continuity under the Long Service Leave Act, employed by the one employer.

Workers in the retail industry either focus on establishing themselves in a retail career, and being loyal to the one employer, or they use the retail industry for the convenience of short term employment.

When might portability of long service leave be appropriate, or not?

Portability of long service leave is suited to industries where workers have a qualification or skill that is associated with a specific industry, but the nature of the work is such that it is impossible to remain with the one employer for a considerable length of time. This usually arises out of the employment of a number of workers who are engaged during the term of a contract that operates for a number of years. Alternatively, a worker may make an individual contract as a tradesperson for a short term with a large contractor.

The building and construction industry is an example of how the long service leave laws have been successfully utilized. Without portable long service leave in the construction industry workers would have to work for seven years, with no more than three months break, to have an entitlement to long service leave.

In the construction industry the nature of the work is such that an employee might have to move from employer to employer because of working on separate projects. To overcome the unfair situation that this created the Victorian Government introduced a portable long service leave scheme for the construction industry in 1976.

As part of the Victorian Portable LSL Act a central scheme was established, with a fund now known as CoInvest and, after registration of an individual worker, an amount of money is paid to CoInvest by an employer and a record of the hours that a worker works at different sites in the industry is maintained. Over time the worker accumulates a period of entitlement to long service leave, in accordance with the requirements of the legislation and after seven years of accumulated employment with various employers becomes entitled to long service leave. This is clearly a fair process for an industry where longevity with one employer is just not possible.

The fact that there are portable long service leave schemes in the construction industry in every other Australian State and Territory is testament to the need to provide for that particular industry. There is now a National Reciprocal Agreement which has been agreed to by all the States and Territories to enable interstate construction workers to count towards a worker's long service leave.

It is the nature of the employment that dictates the ability to remain in the service of one employer for a length of time. There is no justification for implementing a system of portable long service leave just because workers choose to move on from one employer to another. It has become quite common for workers to change jobs on a regular basis and to adopt a system that grants long service leave simply for being in the workforce for a period of time would defeat the purpose of the legislation, which is to reward length of service with one employer, not length of service simply because a worker moves from one job to another. MGA submits that the type of industry should determine whether portability is appropriate.

Industries suited to portable long service leave

It is clear from the success of the portable long service leave for the construction industry that there are other industries that could benefit from similar arrangements.

In NSW the Government has implemented a portable long service leave scheme for the contract cleaning industry, along similar lines to the construction industry. The NSW LSL Corporation allows contract cleaners to register and once they have recorded 10 years' service with several employers they are eligible for leave. Payments are made by the employer into a fund. The workers in the cleaning industry are itinerant and therefore because of the nature of the industry may work for many years but not have the advantage of the long service leave holiday reward.

The ACT has also chosen to implement portability of long service leave for industries such as security and the community sector as well as construction. In particular the purpose of introducing the scheme for the community services sector was to provide support to that industry and attract and retain the skills needs in a very demanding industry sector.

It appears that the industries that are suited to the need for portable long service leave are those where it is not possible for the workers to remain in the industry, either because of the nature of the employment or the very high standards of training required to work and remain in the industry. The models that have been implemented for payment of contributions and recording of collected information on individual workers has been established similar to CoInvest in the Victorian Construction industry. Clearly there is no reason in industries such as the contract cleaning, and security that the same principles and arrangements could not be established.

Reasons why portable long service leave is not appropriate for the supermarket industry

Portable long service leave is appropriate for industries where it is only equitable that it be implemented. That is, industries where an employee cannot remain employed continuously due to the business operations of the employer. Supermarket retail outlets are generally small to medium retail outlets in size and they may employ permanent or casual workers. When a person chooses to work in the retail industry they can learn customer service skills and are generally competent in at least the basic principles of the industry in a short time. They are able to move from one employer to another if they choose to do so. Therefore, if they exercise that choice it is because the opportunity is available but, in industries such as construction or cleaning there is generally no choice. The same applies in many other industries, whether it be a professional or a blue collar worker. Where there is a choice to remain in a position, there is no reason for portable long service leave because that is not what a reward for years of service was ever intended to achieve.

In the event that there was never an intention to provide for portable long service generally and it was implemented it would incur a massive cost for employers. It would place an immediate cost burden on an employer to contribute to a scheme and impose yet a further administrative responsibility. It would result in unemployment because it would become unsustainable for employers who struggle with sustainability on a daily basis. It would be an unworkable situation for the retail industry.

Conclusion

It is clear that there are opportunities to consider portable long service leave in industries where the worker is disadvantaged. This is confirmed in the success of the portable LSL in the construction industry confirmation. If, in other industries such as cleaning and security, there are workers who are disadvantaged then a scheme similar to CoInvest Victoria should be considered. However, MGA submits that for other industries, such as the supermarket industry, where an employee has a choice to remain with an employer for the requisite period of time to qualify for long service leave there is no reason for portability. MGA submits that the implementation of portable long service leave in the supermarket industry would result in a prohibitive cost burden to the employer and should not be considered by the Victorian Government.

MGA thanks the Committee for the opportunity to make this submission.



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