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SUBMISSION BY THE  
**Housing Industry Association**

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

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# CONTENTS

1	Introduction .....	3
2	Long service leave as a concept .....	4
3	Response to the terms of reference - portable long service leave .....	5

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## 1 Introduction

- 1.1 HIA welcomes the opportunity to make a submission to the Victorian Parliament's Economic, Education, Jobs and Skills Committee in respect of the Inquiry into Portability of Long Service Leave Entitlements.
- 1.2 HIA represents over 40,000 members nationally. HIA members comprise all major building industry manufacturers and suppliers, including all Top 100 builders, as well as small to medium builder members, developers, contractors and consultants to the industry. HIA members construct over 85 per cent of the nation's new housing stock and also participate in the construction of commercial, public and institutional buildings.
- 1.3 HIA notes that the Committee's terms of reference are broad and including making inquiry into:
  - (1) the objectives of portable long service leave schemes;
  - (2) which sectors, industries or occupations may benefit from such schemes;
  - (3) the rationale for any difference in treatment between sectors or groups of employees;
  - (4) funding arrangements applying to existing portable long service leave schemes;
  - (5) governance, compliance and enforcement arrangements applying to existing portable long service leave schemes;
  - (6) the key components that should apply to any portable long service leave scheme for the community services sector including coverage, eligibility for and the calculation of long service leave benefits;
  - (7) whether alternative mechanisms or arrangements could better meet the objectives of a portable long service leave scheme for sectors of the workforce including the community services sector;
  - (8) the capacity to operate such schemes within or across jurisdictions, including recognition of service;
  - (9) the appropriate role for Government in facilitating portable long service leave schemes; and
  - (10) relevant implementation issues and options.
- 1.4 In making its recommendations, the Committee should have regard to:
  - constitutional or other legal issues or impediments arising from interaction with the *Fair Work Act 2009* (Cth), agreements and awards operating under the fair work scheme;
  - the distinction between schemes for portability of long service leave entitlements and legal structures underpinning other leave entitlements;
  - the financial impacts or benefits of portable long service leave entitlements on employers, employees and taxpayers; and
  - the economic impact on Victorian jobs, employment and investment and whether such schemes may disproportionately affect urban or regional areas.
- 1.5 HIA notes that portable long service leave currently applies to employees and workers in the construction industry.
- 1.6 Under section 4(1) of the *Construction Industry Long Service Leave Act 1997* (Vic), an employer must pay to CoINVEST a long service leave charge in respect of every worker



employed to perform 'Construction Work' in the 'Construction Industry'. The 'Construction Industry' means the 'Principal Construction Industry' (as defined) and the 'Allied Construction Industry' (as defined).

- 1.7 In recent years, the construction industry portable long service leave scheme in Victoria has been increasingly problematic due to attempts by the CoINVEST Board to inappropriately expand coverage to workers involved in manufacturing, telecommunications, labour hire and other industries via changes to the scheme's trust deed. While there has been some industry support for these extensions, the housing industry, as head contractors indirectly if not directly affected, has not supported these extensions.
- 1.8 HIA opposes the extension of portable long service leave to workers outside the existing scheme.
- 1.9 As the Productivity Commission has recently stated, the benefits of expanding the typical model of portable long service leave or the alternative proposed would be insufficient to justify the costs and complications entailed<sup>1</sup>.
- 1.10 HIA agrees and urges the Committee to similarly restrict portable long service leave to the current coverage.
- 1.11 HIA's submissions are expanded on in further detail below.

## 2 Long service leave as a concept

- 2.1 Whilst Australia is the only country where there is a legislated right to long service leave, it is equally important to recognise that these entitlement had their origins in the colonial public services of South Australia and Victoria. Historically, it was awarded to employees who had provided long service in the colonies to enable them sufficient time to visit the United Kingdom.
- 2.2 A number of rationales have since developed to underpin the retention of long service leave, being:
  - To provide employees with an extended leave of absence in order to renew their energies;
  - To reward long and faithful service with an employer; and
  - To reduce labour turnover.
- 2.3 Regardless, long service leave does represent a significant cost burden for employers. Of interest, are comments by the Fair Work Commission's Senior Deputy President Lacy (whilst he was sitting at the Australian Industrial Relations Commission) who has questioned the relevance of long service leave in today's environment. The following extract is relevant:

*'It seems that the rationale for a period of respite from a long period of service is no longer a valid assumption. The world today is a much smaller place than it was in colonial times. People are inclined to be far more mobile now than then. In addition to the fading of the tyranny of distance there has been significant change in the pattern of*

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<sup>1</sup> See *Productivity Commission, Workplace Relations Framework, Draft Report*, August 2015 at page 179



work that raises some questions about the relevance of long service leave as a benefit in employment.’<sup>2</sup>

### 3 Response to the terms of reference - portable long service leave

- (1) The objectives of portable long service leave schemes;
- (2) which sectors, industries or occupations may benefit from such schemes;
- (3) the rationale for any difference in treatment between sectors or groups of employees.

- 3.1 Portable Long Service Leave (PLSL) Schemes were established to recognise the unique nature of employment in the construction industry, whereby employees were typically engaged on a project basis, moving from employer to employer as one project is completed and another starts.
- 3.2 Key factors that led to the introduction of the relevant PLSL schemes have included:
  - The strategic nature of the industry;
  - High union density and industrial strength;
  - A well-established industry focus; and
  - Patterns of employment in the industry<sup>3</sup>.
- 3.3 HIA have concerns relating to construction industry PLSL in that the scheme:
  - 3.3.1 Effectively amounts to a tax on employment:
  - 3.3.2 Operates in a manner which is contrary to the historical purpose of long service leave;
  - 3.3.3 Requires employers to grant long periods of leave to employees with short periods of service, simply because the employee has worked in the industry for several years;
  - 3.3.4 Results in substantial cost increases for employers due to:
    - 3.3.4.1 The much larger proportion of employees who become entitled to long service leave then would otherwise be the case;
    - 3.3.4.2 The need to cover employees absent on long service leave (e.g. overtime costs, training costs, casual labour costs, etc.); and
  - 3.3.5 Impacts upon an employer’s cash flow where the upfront contributions are required.
- 3.4 Even though anecdotally many workers covered by PLSL accumulate their benefits for lump sum purposes, HIA members are concerned about the exposure of the end employer “when he music stops” and when the employee in question, who may been with that particular employer for a relatively short period of time, eventually takes their leave. The impact will not just be productivity losses whilst that business backfills the worker in question, but there will be the other on-costs as well.

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<sup>2</sup> See Re. Office of the Chief Electrical Inspector Enterprise Agreement 2003, SDP Lacy, 5 January 2004, PR942414.

<sup>3</sup> See discussion Paper 14 (2002) *Long Service Leave in the Building and Construction Industry*, Royal Commission into the Building and Construction Industry.



- 3.5 The current administration of the scheme is also an inconvenience and red tape burden; there are not insignificant administrative costs for our members in submitting quarterly returns to the trustee of the PLSL scheme in Victoria. While it is acknowledged that CoINVEST, seeks to minimise the impact of this administrative requirement, these costs cannot be completely mitigated.
- 3.6 To this end, the rationale for expansion of PLSL schemes does not exist in areas where traditional employment arrangements are the norm (e.g. where the employees are engaged on an ongoing basis with the one employer) and efforts to extend it are not supported by the residential building industry.
- 3.7 HIA further notes that the Productivity Commission recently considered portability of long service leave in its inquiry into Australia's workplace relations framework.
- 3.8 In its draft report, the Commission agreed that the existence of portability schemes are more a direct result of bargaining power by (industrial) parties in select industries, rather than a response to significant evidence of the benefits of such schemes for productivity.
- 3.9 Whilst there might be some arguable benefits in making LSL portable, the Commission stated that in considering the merits of introducing a portable scheme, those benefits must be compared with the costs entailed:

*“(i) While LSL may not be an efficient measure for creating employer loyalty, it must have some effect, which would be diluted with full portability.*

*(ii) Some employers may be reluctant to hire workers with accumulated entitlements as these would be more likely to request protracted leave close to their commencement date.*

*(iii) A move to mandate portability at the current level of LSL entitlements would entail a significant increase in LSL costs to business. Under current arrangements, the total costs of LSL for an employer depend on the tenure distribution of its workforce. As many employees leave before the qualifying period, the total claims under the current arrangements are much smaller than would apply under a portable scheme (where employees' tenure would be based on their working lives, not their specific tenure with an employer). The greater coverage of employees would be reflected in the levy imposed on employers, with one estimate suggesting that portable LSL costs could be up to 2.5 per cent of wage costs (McKell Institute 2012).<sup>3</sup>In the absence of any counteracting wage reductions, this would have some dampening effect on employment and encourage businesses to use more capital instead of labour.”<sup>4</sup>*

#### **(4) funding arrangements applying to existing portable long service leave schemes:**

- 3.10 The Victorian CoINVEST scheme operates on a defined benefits basis.
- 3.11 The contribution rate is set by the CoINVEST Board of Directors. The current rate is 2.7%. Whilst this rate has been in place since 1 July 2009 it has substantially increased throughout much of the past 2 decades. From substantial surpluses in the 1990s, HIA understands the fund is now in deficit.

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<sup>4</sup> See Productivity Commission, *Workplace Relations Framework, Draft Report*, August 2015 at page 178.



3.12 In 2001, the benefits in the scheme were expanded, as a result of industrial pressure.<sup>5</sup>

3.13 Commissioner Cole in his 2003 Royal Commission report observed:

*“The continuing provision of various benefits has steadily and incrementally widened the class of workers who can access a payment from the fund, to the point that the long service schemes in each of the participating jurisdictions now concern an additional payment to workers, and have little to do with ‘long service’.”<sup>6</sup>*

3.14 In HIA’s submission, in any funding arrangement for PLSL:

3.14.1 Payment to eligible workers should directly be distributed and administered by PLSL funds, not by or through their employers.

3.14.2 Funds raised for PLSL purposes should only be used for payment of entitlements and not for non-long service leave related purposes (such as public works projects or consolidated revenue) and hypothecated to respective industry sectors.

3.14.3 Funds should be managed in trust with a view to protecting employee entitlements and minimising industry costs and contributions.

**(5) governance, compliance and enforcement arrangements applying to existing portable long service leave schemes;**

3.15 The Construction Industry Long Service Leave Scheme is currently governed by a trust deed and is administered by CoINVEST, a public company acting as its trustee.

3.16 HIA notes that the justification for such a governance framework is that governments should not be directly involved in the administration of portable long service leave funds and should not be financially exposed to (or benefit from) a scheme.

3.17 In HIA’s view, whether an activity should be privatised or under government control is quintessentially a question for Government but the determination of whether or not the scheme is government or privately run it should have strong industry involvement and representation.

3.18 HIA is concerned with recent attempts by the CoINVEST Board to expand coverage of the scheme past the traditional construction industry.

3.19 For instance in July 2013, the Board approved a series of changes to the coverage Rules.

3.20 It was the view of HIA and other employer groups that these changes were unlawful. Any changes to coverage of the scheme, resulting in the imposition of costs and burdens on industry, should be approved by Parliament.

**(6) the key components that should apply to any portable long service leave scheme for the community services sector including coverage, eligibility for and the calculation of long service leave benefits;**

<sup>5</sup> See Coles Royal Commission (2003) Chapter 12: Long Service Leave Funds in the Building and Construction Industry at page 243.

<sup>6</sup> Ibid.



- .....
- (7) *whether alternative mechanisms or arrangements could better meet the objectives of a portable long service leave scheme for sectors of the workforce including the community services sector;*
  - (8) *the capacity to operate such schemes within or across jurisdictions, including recognition of service;*
  - (9) *the appropriate role for Government in facilitating portable long service leave schemes; and*
  - (10) *relevant implementation issues and options.*

3.21 HIA has no comment.