



## Portable Long Service Leave

### Policy Background

- Long Service Leave (LSL) is a uniquely Australian entitlement with its origins in the colonial public services of SA 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. As a consequence, Australia is the only country where it is a legislated right.
- During the last thirty five years, Australian states and territories have passed specific legislation to provide building and construction workers with access to portable long service leave (PLSL), regardless of whether they work on different projects or for one or more employers.
- PLSL schemes were established to recognise the unique nature of employment in the construction industry, whereby employees are typically engaged on a project basis and move from employer to employer as one project is completed and another starts. The rationale for portable long service leave 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).
- PLSL arrangements vary from state to state, including in the way they collect levies to fund the scheme (e.g. based on payroll or based on the value of each building approval) and defining which workers have entitlements for long service payments under the scheme (e.g. employees only, any worker who satisfies 'on the job' criteria or any workers including independent contractors who work on construction site).

### Policy Issues

- Key concerns relating to construction industry PLSL is that such schemes are unfair on employers as they:
  - Amount to a tax on employment;
  - Operate in a manner which is contrary to the purpose of long service leave;
  - Require employers to grant leave to employees with short periods of service, simply because the employee has worked in the industry for several years;
  - Result in substantial cost increases for employers due to:
    - The much larger proportion of employees who become entitled to long service leave;
    - The need to cover employees absent on long service leave (e.g. overtime costs, training costs, casual labour costs, etc.); and
    - Impact upon an employer's cash flow where the upfront contributions are required.
- There is no evidence to indicate whether long service entitlements are taken during times of low building activity (to replace wages during unemployment), as a retirement entitlement, or progressively during the worker's employment.
- In all jurisdictions, administrative workers employed in the building and construction industry are ineligible to participate in the portable long service schemes. They are covered by other awards and legislation.

- There are often attempts to broaden the scope of the schemes. This has included attempts to extend the schemes beyond onsite workers and tradespeople up to managerial type employees, such as supervisors.
- There have also been moves to broaden the notion of construction to include offsite prefabrication and delivery drivers who, although they have little interaction with onsite work, happen to be employed by the one employer. There have been similar moves to incorporate new trades and occupations such as carpet installers into the schemes.
- Many construction businesses will be involved in the manufacture, supply and installation of building products, such as window frames. Those employees involved in the manufacturing process will often have little to no interaction with the onsite installation, which is often performed by separately engaged independent contractors.

### **HIA's Policy Position on Portable Long Service Leave**

1. HIA does not support the expansion of portable long service leave schemes beyond their current coverage.
2. Any changes to portable long service leave schemes should be directed towards:
  - Minimising administration and financial burden on business; and,
  - Encouraging workers to remain in the residential construction industry.
3. PLSL entitlements should only apply to those nominated trades and labourers engaged in undertaking onsite construction work.
4. There should be minimum periods of engagement employment with a particular employer and a requirement to give adequate notice before a worker can request or take PLSL.
5. Payment to eligible workers should directly be distributed and administered by PLSL funds, not by or through their employers.
6. 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.
7. Funds should be managed in trust with a view to protecting employee entitlements and minimising industry costs and contributions.
8. Sectors should be proportionally represented in the governance and administration of the funds.
9. Contributions by an employer should only be mandatory if of a direct benefit to an employee.