RECRUITMENT AND CONSULTING SERVICES ASSOCIATION
AUSTRALIA & NEW ZEALAND

Friday, 11 December 2015

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee,

Re: Inquiry in to the feasibility of, and options for, creating a national long service standard, and the portability of long service and other entitlements

This submission is made on behalf of the Recruitment and Consulting Services Association (RCSA).

RCSA is pleased to put forward this submission to the Senate Education and Employment Committee. Whilst our submission is brief, we would welcome the opportunity to present to the Committee in the event that public forums or consultations are instigated.

About the RCSA

The RCSA is the leading industry and professional body for the recruitment and the human resources services sector in Australia and New Zealand. It represents over 3,800 members, all of which are drawn from a diverse range of organisations and individuals including small owner-operator businesses, listed and non-listed Australian companies and Australia's large multinational corporations.

Members of the RCSA provide an extensive range of employment services including on-hire employee services ('labour hire' and 'agency employment'), contracting services ("including on-hire independent contractors'), recruitment services, Job Network services and broader workforce consulting services.

The RCSA is instrumental in setting standards in the employment services industry and given the significant number of individuals employed by our

Members, workplace relations and employment matters are of primary concern. It is worth noting that the on-hire worker services industry is a significant contributor to the Australian economy, touching approximately 4% of Australia's workforce, and generating revenue in excess of $20 billion within Australia, more than that of accounting services and legal services.

Our Submission

RCSA members employ individuals to work within the business, such as managers and recruitment consultants, and also on-hire employees to perform work for clients, such as labourers, tradespersons and professionals.

Employees that work within the business are predominantly employed under traditional employment arrangements whereby they accrue long service leave in accordance with state legislation. On the other hand, on-hire employees, often referred to as 'labour hire' employees, 'agency workers' and 'temp's' are predominantly employed as casual employees however, a surprisingly large percentage of on-hire employees are employed on a permanent basis, either ongoing or for a specified term contract.

The length of tenure for employees working in a direct hire capacity within the employment services industry will vary considerably from one day to 50 years. The average length of service of permanent employees within the employment services industry would be consistent with that of other service industries such as real estate, business consulting and accounting.

On-hire employees, whethere permanently employed or casually employed are entitled to long service leave in most jurisdictions and a number of on-hire employees employed by members have enjoyed an entitlement to long service leave, especially when employed on an ongoing basis across a number of assignments.

RCSA support the harmonisation of regular long service leave entitlements within Australia, as proposed during the establishment of the National Employment Standard under the Fair Work Act 2009.

The maintenance of a state based system of long service leave results in unnecessary confusion and administrative cost for employers that employ employees across state borders.

The averge length of service of on-hire casual employees is estimated to be three months and for on-hire permanent employees 12 months. Therefore, it is accepted that many on-hire employees are unlikely to accrue enough continuous service with a single employer to accrue an entitlement to long service leave.

However, very importantly, casual employees receive a casual loading of approximately 25% which, in accordance with a range of decisions, accounts for long service leave. On 29 December 2000, a Full Bench of the Australian Industrial Relations Commission, in what has become recognised as the leading casual employment decision dealing with the introduction of a casual to permanent conversion provision in to the Metal, Engineering and Associated Industries Award – Part 1, stated that they "consider that a fair judgment of the relevance of long service leave as a component in casual rate loading is that it should be taken into account. However, the value of the benefit forgone needs to be so heavily discounted for contingencies that it must be merged with other less tangible components to be kept in perspective when striking what is considered to be a fair and reasonable level of loading".

Therefore, whilst casual employees in most state jurisdictions are entitled to long service leave under legislation they are, in fact, already compensated for long service leave and port such entitlement from one period of casual employment to another.

RCSA oppose any extension of portable long service leave within casual employment beyond existing schemes on the grounds that there is, in effect, portability within casual employment through casual loadings, as recognised by a Full Bench of the then AIRC.

RCSA's exposure to existing portable long service leave schemes has been frustrating and difficult. The primary exposure to portable long service leave has arisen under the *Construction Industry Long Service Leave Act* (Vic) 1975, which operates as the CoINVEST scheme. Members have reported significant frustration with the scheme arising through a lack of consistent interpretation and application of scope and coverage of occupations. Furthermore, there has been evidence of inconsistent information being provided on which earnings are required to be included in contribution calculations.

The most recent frustration of an RCSA member has related to the coverage of 'electrical services' within the definition of the 'construction industry' and have been the subject of lengthy legal proceedings. RCSA member experiences with

portable long service leave have been associated with apparent retrospective non-compliance following unilateral rule changes and interpretations which have made it extremely difficult for members to comply with the legislation, even when such compliance is unlikely to result in a significant cost burden. Statutory costs in an on-hire employment arrangement are typically passed on to a client as a statutory charge.

RCSA member frustration compelled us to address this via written submission to CoINVEST. On 13 August and 11 October 2013 RCSA, in conjunction with the Australian Industry Group, the Australian Mines and Metals Association, the Civil Contractors Federation and other peak industry bodies made a submission to CoINVEST raising strong concern that the re-writing of coverage rules created significant confuctions and breached section 7 of the relevant legislation. Those submissions are available upon request.

Finally, we draw your attention to the recently released Draft Report on the Workplace Relations Framework, prepared by the Productivity Commission. That Draft Report observed that portable long service leave was often the result of bargaining within an industry and imposes cost on an industry. The Draft Report stated that "a move to mandate portability at the current level of LSL entitlements would entail a significant increase in LSL costs to business".

RCSA is concerned that an extension of portable long service leave will increase cost and perpetuate confusion and unintended non-compliance which, we say, is both bad for business confidence and bad policy.

We thank you for the opportunity to make this submission and invite any questions to be directed to the undersigned.

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Yours sincerely

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