



Submission to the Senate Education and Employment References Committee

*Inquiry into the Feasibility of, and Options for, Creating a
National Long Service Standard, and the Portability of Long
Service and Other Entitlements*

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Introduction

The Queensland Nurses' Union (QNU) thanks the Senate Education and Employment References Committee (the Committee) for the opportunity to make a submission to the *Inquiry into the feasibility of, and options for, creating a national long service standard, and the portability of long service and other entitlements* (the inquiry).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNU is the principal health union in Queensland covering all categories of workers that make up the nursing workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 53,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNU.

As an entitlement that was historically granted as leave to visit Britain, Long Service Leave (LSL) is still an important means of providing workers with an extended break partway through their working life. This remains a key objective of the scheme but the working environment of today is vastly different. Insecure work, high labour market mobility and an extended span of employment make it timely to consider the most effective way to award and administer LSL. Our submission concentrates on LSL, however we recognise the Committee has scope under this inquiry to also explore standards and portability for other entitlements.

Recommendations

The QNU recommends the Committee:

- Proposes implementation of portable LSL accounts modelled on the superannuation system or administered by a central government fund, and/or industry based portable LSL schemes along the lines of those operating in the building and construction industry and the contract cleaning industry in Queensland;
- Defines the concept of 'portability' because this will impact on the need for a national standard on the quantum. Portability could be based on geography, industry or profession;
- Conducts this inquiry to its full scope by taking into account portability of other entitlements such as sick leave or other forms of leave.

Objectives and key components of portable LSL schemes

LSL in Queensland

Traditionally, the industrial relations system in Australia and Queensland has only provided benefits to those employees covered by awards or industrial agreements. Very few entitlements, except for long service leave (LSL), extended to all employees regardless of employment arrangements (Blackwood & Rafferty, 2009).

The National Employment Standards (NES) of the *Fair Work Act 2009* do not prescribe any consistent national LSL arrangements. As a result the states and territories are free to make their own laws in respect to LSL. In Queensland, the LSL provisions of the *Queensland Industrial Relations Act 1999* (IR Act) determine LSL entitlements for public and private sector employment.

Under Part 2, Division 6, Subdivision 3 section 71HB of the IR Act, the Queensland Employment Standards currently provide (for workers other than seasonal employees)

(2) The employee is entitled to long service leave, on full pay, of -

(a) if the employee has completed 10 years continuous service - 8.6667 weeks; and

(b) after 10 years service, if the employee has completed at least a further 5 years continuous service - a period that bears to 8.6667 weeks the proportion that the employee's further period of continuous service bears to 10 years.

General provisions related to LSL are set out under Part 3 of the IR Act.

During the last review of Queensland's industrial relations system in 1998 (there is currently another under way), the taskforce did not recommend a variation in the legislated LSL provisions, despite being 'aware that some states, as well as a number of awards, provide for more favourable long service leave conditions than currently apply in Queensland legislation' (Industrial Relations Taskforce, 1998, p.47). The panel undertaking the current review is giving consideration to nationally consistent LSL arrangements (Office of Industrial Relations, 2015).

In its submission to the Productivity Commission's inquiry into the Workplace Relations Framework the Queensland government stated that it supports the current LSL NES as ensuring the maintenance of LSL entitlements. The Queensland government has indicated it is prepared to work with other jurisdictions towards improving the consistency of LSL entitlements through appropriate and genuine consultation with industrial parties and recognises that harmonisation is likely to be achieved over the longer term (Queensland Government, 2015, p.7).

A nationally consistent LSL scheme could potentially simplify current arrangements for both employers and employees, particularly those operating in various state and federal jurisdictions. However, harmonisation would inevitably mean that some states would see either an increase or decrease in current entitlements. Although transitional provisions can phase in a new scheme, any loss of entitlement is likely to attract opposition.

The QNU has consistently stated we will not accept any reduction in entitlements for our members. In our experience, entitlement to LSL is a matter that attracts many enquiries from our members. Nursing and midwifery is a distinctly feminised workforce (around 90% are women) with a high proportion of part-time workers (around 60% of Enrolled Nurses and 45% of Registered Nurses) (Australian Institute of Health and Welfare, 2013). Within the health and community industry sector, all levels of nursing categories suffer significant numbers of musculoskeletal and traumatic injuries (Workplace Health and Safety Queensland, 2012). This is due to a number of factors including exposure to high risk, hazardous tasks (the manual handling of people) and the age of the nursing and midwifery workforce. It is important all nurses and midwives across the public, private and aged care sectors have access to LSL so they have an opportunity to rest and recover following extended periods of service.

Productivity Commission Review of the Workplace Relations Framework

The Productivity Commission (2015) has considered LSL within its review of the workplace relations framework. In its view, any change would produce winners and losers, and this may explain why there has been little appetite by states to change the status quo. Overall, there remains some uncertainty about the net benefits of moving to a uniform system, the appropriate transition to any such standard, and the scope for some more minor simplification of the current system (Productivity Commission, 2015, p. 20).

The following table sets out the legislative provisions across the Australian states.

<i>State</i>	<i>Legislation</i>	<i>Qualifying Period</i>	<i>Entitlement</i>
New South Wales	Long Service Leave Act 1955	10 years	2 months
Victoria	Long Service Leave Act 1992	15 years	13 weeks
Queensland	Industrial Relations Act 1999	10 years	8.667 weeks
Western Australia	Long Service Leave Act 1958	10 years	8.667 weeks
South Australia	Long Service Leave Act 1987	10 years	13 weeks
Tasmania	Long Service Leave Act 1976	10 years	8.667 weeks
Australian Capital Territory	Long Service Leave Act 1976	7 years	6.06 weeks
Northern Territory	Long Service Leave Act 1981	10 years	13 weeks

Source: Productivity Commission, 2015, p. 174.

Clearly South Australia and the Northern Territory have superior entitlements to the other states and territories.

Many of those who submitted to the Productivity Commission's review agreed on the benefits of moving to a uniform national standard. The Australian Council of Trade Unions (ACTU) argued that 'the missing element in the comprehensive suite of minimum standards set out in the NES is long service leave' (ACTU, 2015, p.174). Without agreeing on the specifics of any entitlement, the Australian Workers' Union, the Australian Industry Group, the Australian Mines and Metals Association and the Victorian Government joined the ACTU in endorsing, in principle, a national approach.

The Productivity Commission did, however, identify some concerns about the challenges associated with establishing a national standard. The South Australian Government argued that the development of a national uniform standard is unlikely, and that simplifying the current arrangements to reference state and territory legislation only would be a more practical alternative (Productivity Commission, 2015, p. 175).

While there may be some benefits in determining a uniform standard, the associated costs and likelihood of agreement are less clear. The Productivity Commission (2015) identified 'grandfathering' existing entitlements as one option which may bring any proposal for a nationally uniform LSL entitlement closer to consensus.

This would mean that once the states agree to a new national standard, these arrangements would only apply to new employees, *not* to existing employees. The current workforce would not lose its entitlements, but new employees would attract the new national standard. While we welcome further discussions around LSL with other state and territory governments, we reiterate we would not accept any reduction in entitlements for existing or new employees.

Extent and Nature of Labour market Mobility

The new divide in the Australian workforce is between those who are in full-time permanent employment and those who work on the periphery in various insecure arrangements of casual, contract or labour hire. Many do not know the hours they will be required to work from week to week, often juggle multiple jobs and are frequently in low paid positions in restaurants, catering or retail.

According to the report from the Independent Inquiry into Insecure Work -

Their work is not a “career”; it is a series of unrelated temporary positions that they need to pay rent, bills and food. For them, flexibility is not knowing when and where they will work, facing the risk of being laid off with no warning, and being required to fit family responsibilities around unpredictable periods of work (Independent Inquiry into Insecure Work in Australia, 2012).

Although long service and other types of leave are factored into casual rates of pay, many workers may prefer to have accruals for long service and other forms of leave rather than a small hourly loading. Portable leave arrangements would be of great benefit to the contingent workforce.

Which sectors may benefit?

The following 2013 industry data on labour market mobility (ABS Cat. No. 6209.0) gives an indication of the sectors where portable long service leave would benefit employees most.

People Working as at February, 2013

There were 11.5 million people aged 15 years and over who were working at February 2013. Of these, 9% (1.1 million people) had changed their employer/business in the last 12 months.

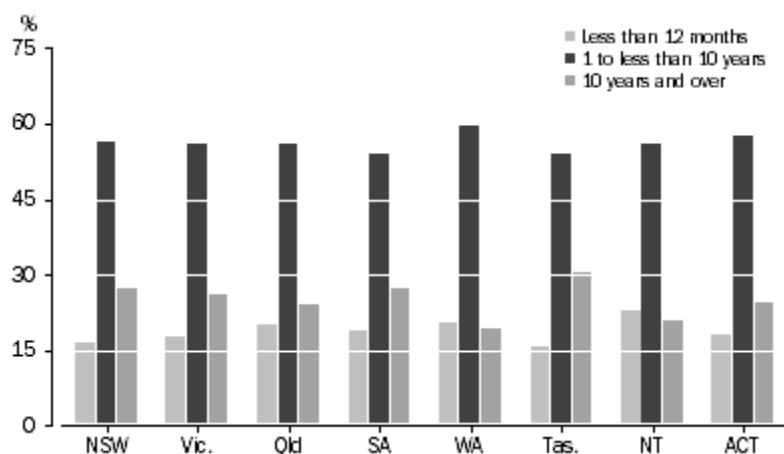
Duration with employer/business

There were 2.1 million people working at February 2013 who had worked for their employer/business for less than 12 months. This included 1.1 million people who had changed employer/business and a further 1 million who had not changed their employer because they either were not working 12 months ago, or they were multiple jobholders, temporary or seasonal workers who worked for less than 12 months during the year in their current main job and did not change their employer/business.

There were 9.4 million people who had been working for the same employer/business for one year or more.

Persons working at February 2013

Duration with current employer/business-By State or territory of usual residence

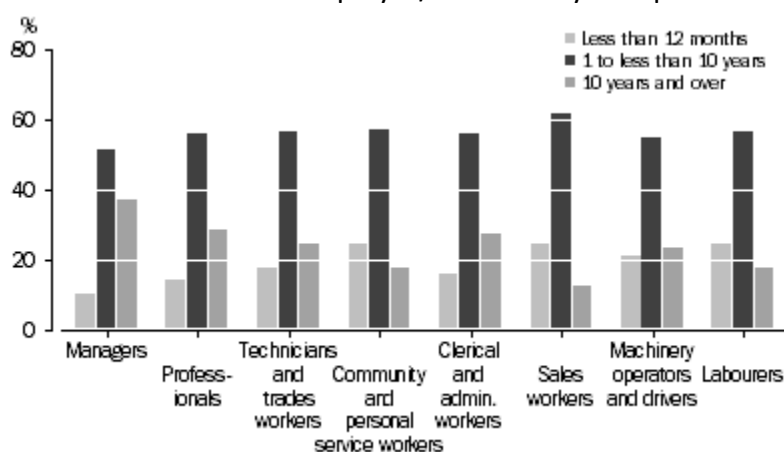


The Northern Territory, Western Australia and Queensland had the highest proportions of people who had worked for their current employer/business for less than 12 months (23%, 21% and 20%, respectively).

Tasmania had the highest proportion of people who had worked for their current employer/business long-term, with 30% having worked for their employer for 10 years or more, and 14% having worked for their current employer/business for 20 years or more.

Persons working at February 2013

Duration with current employer/business-By occupation



Of those working at February 2013, the following occupation groups had the highest proportion of people who had worked with their current employer/business for 10 years or more:

- Managers (38%);
- Professionals (29%); and
- Clerical and administrative workers (28%).

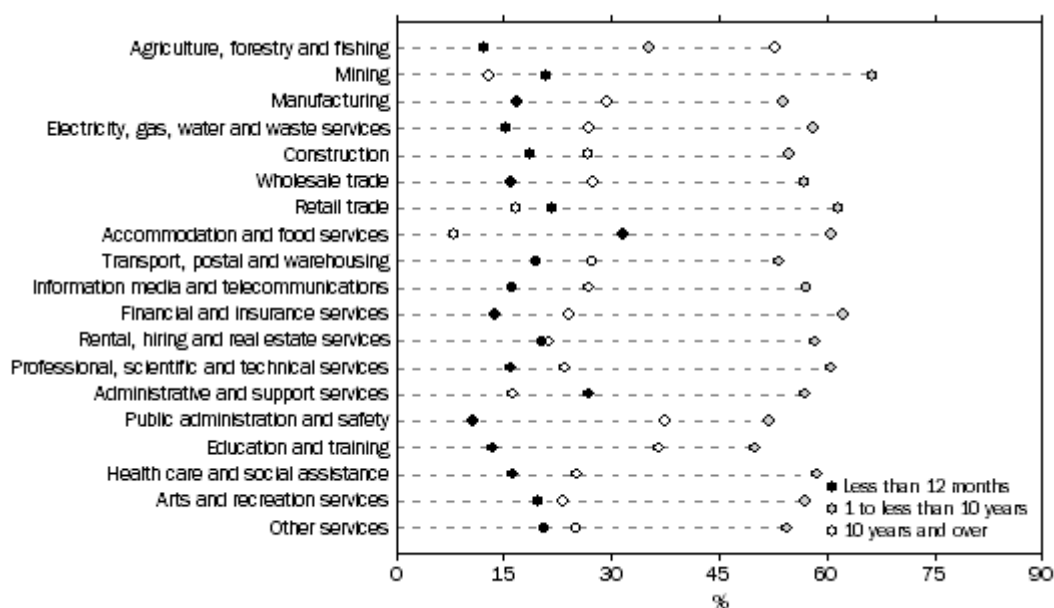
People working in these occupations were also least likely to have worked for their current employer/business for less than 12 months.

Occupation groups with the highest proportion of people who had worked with their current employer/business for less than 12 months were:

- Sales workers;
- Labourers and Community and personal service workers (all 25%); and
- Machinery operators and drivers (21%).

Persons working at February 2013

Duration with current employer/business-By industry



There were 2.9 million people who were working at February 2013 who had been with their current employer/business for 10 years or more. This represented 27% of men and 23% of women who were working at February 2013.

The industry Divisions with the highest proportion of people who had been with their current employer/business for 10 years or more were:

- Agriculture, forestry and fishing (53%);
- Public administration and safety (37%); and
- Education and training (37%).

In contrast, the industries with the highest proportion of people who had been with their employer for less than 12 months were Accommodation and food services (32%); and Administrative and support services (27%). Clearly, workers in these industries would gain from a portable LSL scheme as would those in other sectors with high mobility.

Within nursing and midwifery the private and aged care sectors would benefit most from a portable LSL scheme. Nurses and midwives working in the public sector have portability within Queensland Health, the major employer. There is no recognition of prior service for the purposes of long service leave between sectors.

How and by whom might they be run?

Like the introduction of compulsory superannuation more than 20 years ago, there may inevitably be resistance by employers and their representatives to the introduction of a portable LSL scheme. However, there are benefits for those who are prepared to invest in a secure, long term workforce. The current Prime Minister has urged the country to be 'innovative' (Turnbull, quoted in Thomson, 2015) and we see this as an ideal opportunity for the state and territory governments to exercise their creativity by developing a scheme that would have long term benefits. In that spirit, we ask the Committee to consider the proposal put forward by the McKell Institute (2013, p.74) in its assessment of different models for designing a nationally-consistent portable long service leave scheme.

The Institute identified three options:

- The ADF model;
- The Defined Benefit Fund model;
- The Accumulation Fund model.

Each model assumes the operation of a number of different funds, largely industry based, as with superannuation. A further option might be the creation of a single national fund for all employees, on a defined benefit or accumulation basis. However, according to the Institute, this was not considered in detail because it seemed an unlikely choice in the contemporary public policy environment, and because there are strong models already provided in the superannuation approach.

Each of the three models examines the provision of fully vested and portable LSL benefits. Each model has different advantages and disadvantages for employers and employees. We refer the Committee to the McKell Institute's publication, *The Case for a National Portable Long Service Scheme in Australia*, for further details of these schemes.

Portable LSL Schemes in Queensland

There are currently two legislated portable LSL schemes operating in Queensland in building and construction and the contract cleaning industries.

The *Building and Construction Industry (Portable Long Service Leave) Act 1991* provides for long service leave payments for workers in the Queensland building and construction industry, regardless of whether they work on different building and construction works for one or more employers.

Employers must register with QLeave, the authority administering the scheme, and advise when they start and end workers' employment. At the end of each financial year QLeave provides employers with a list of their registered workers. The employer must check the list, provide details of employment periods and return it to QLeave.

A LSL Statement listing periods of employment is then provided to all registered workers. Workers are advised to check their statements and contact their employer/s if any service is missing.

QLeave operates on a service credit system. Eligible workers who are registered with QLeave receive one (1) service credit for every day they work up to a maximum of 220 credits in any financial year. After 2,200 credits are recorded which will take at least ten years to accrue, workers will be entitled to 8.67 weeks of LSL paid by QLeave. Service credits accrued in interstate portable long service leave schemes can count towards this total. A worker can make a claim to QLeave for LSL after ten years recorded service or after seven years membership with at least 1,155 service credits for a worker who has permanently stopped working in the industry.

There is no cost for employers or workers to be registered with QLeave. The Scheme is funded by a levy on all building and construction work performed in Queensland, where the total cost of work is \$150,000 (excluding GST) or more. The levy is paid in conjunction with the Building and Construction Work Health and Safety (Queensland) levy and the Construction Skills Queensland levy.

Currently, the combined levies are 0.475% of the total cost of the building and construction work which equates to four dollars and seventy-five cents for every thousand dollars (or part thereof). Of this, \$1.25 is paid directly to Workplace Health and Safety Queensland and \$1.00 is paid to Construction Skills Queensland to provide industry training. The remaining \$2.50 is invested to provide ongoing funds for long service leave entitlements.

The applicable levies must be paid prior to the issue of a development permit for building work, plumbing and drainage work, or operational work, or, if no development permit is given, before the work starts.

Entitlements are based on time spent in the industry rather than time spent with any individual employer. Given that the building and construction industry is project driven, it would be extremely difficult for most workers to accrue enough service with any one employer to be eligible for long service leave.

Once workers are eligible to take LSL, they can take all of their leave at once or take it in small portions (no less than 5 days unless it is likely to be the last payment for LSL). As long as they continue to work, their entitlements will keep growing. For example, workers can allow their entitlement to keep accruing and take 13 weeks paid LSL after the equivalent of 15 years full time work (3,300 service credits) (QLeave, 2015a).

QLeave also administers the portable LSL scheme for workers and employers in the contract cleaning industry in Queensland under the *Contract cleaning Industry (Portable Long Service Leave) Act 2005*. The scheme was introduced in 2005 to ensure that cleaners, in this industry who have seven or more years recorded service, are eligible to accrue a LSL entitlement (QLeave 2015b).

We ask the Committee to consider the benefits of establishing an authority such as QLeave operating across industries for a nationally consistent LSL scheme.

Conclusion

At present, Australians are working increasingly long hours, struggling to balance their work, family and other commitments and the nature of the labour market is changing. It is time to introduce portable long service leave for the health and wellbeing of the workforce and the community in general.

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