



Australian Manufacturing Workers Union

**Submission to the Senate Inquiry into
the feasibility of, and options for, creating a
national long service standard, and the portability
of long service and other entitlement**

11 December 2015

Executive Summary

The AMWU's position is that all workers, permanent, casual and contractors, should have an entitlement to at least 3 months' long service leave ("LSL") after 10 years' employment. Moreover, this entitlement should be portable across different employers and industries, especially as the modern economy and labour market see workers moving between employers with an ever greater frequency, effectively barring access to long service leave entitlements.

A portable entitlement to LSL is required if a new generation of workers are to have access to Long Service Leave. A portable long service leave scheme (PLSL) is particularly important for workers in precarious and insecure employment like casuals and labour hire workers. Many insecure workers are trapped in various forms of insecure employment, across many jobs and over several years. Without a portable entitlement to long service leave, it is extremely unlikely that this important workplace right will be available to these workers.

This submission will provide details about the scale of insecure work in Australia, its nature and the long term impact that it has on workers. It will focus primarily on casual and labour hire employees as these are the most common forms of insecure work in the manufacturing industry.

The objectives, principles and recommended approach to implementation for a PLSL scheme will be provided, together with a brief summary of the benefits, risks and costs.

The AMWU believes that, without action from government, LSL will become a thing of the past. It is incumbent on the government to implement much needed reforms to support this important workplace entitlement, rather than simply allow it to fade into memory.

The number of Australians in insecure work

There are millions of Australians currently engaged in insecure employment. These include 2.3 million casual employees, 125,000 labour hire workers, 356,000 fixed term contract workers and 439,000 independent contractors that have only one contract¹. Together, these 3.22 million Australian workers make up 28% of all employed persons in August 2014. In our submission, the AMWU will focus on the forms of insecure employment that are most likely to be experienced by our members in the manufacturing industry – casual employment and labour hire.

The AMWU has already completed a comprehensive analysis of the issues surrounding casual employment in Australia. This body of work was submitted to the Fair Work Commission and a copy has been provided to the inquiry for its consideration. Chapters 4 and 5, and Attachments 5 and 12 are of particular interest to this inquiry. Given the detailed nature of that background material, the focus of this submission will be to provide a detailed summary of the second category of insecure employment that we wish to address – labour hire.

Labour Hire

The AMWU believes that it is important to understand the conditions and desires of labour hire workers, to fully appreciate the situation in which many find themselves. The significant, long term disadvantages of this form of employment highlight the need to improve conditions for these workers who are often marginalised. There is some evidence that this form of employment is used by some unscrupulous operators to replace permanent, on-going employment and deny employees access to entitlements, including long service leave. Establishing PLSL will ensure that labour hire workers have access to this important workplace entitlement into the future.

¹ ABS, Characteristics of Employment, 6333.0, August 2014, Tables 5, 33, 37 & 42.

ABS Data

Recently released ABS data shows that the manufacturing industry is the largest user of labour hire workers in Australia, with 23,500 labour hire workers². The most common occupations among labour hire workers are labourers (26,200), Technicians and Trade Workers (23,300) and Machinery Operators and Drivers (21,600)².

Across the economy, labour hire workers are predominantly male (68%). Full-time hours were much more common for male employees (80%) than female (54%) employees³.

Survey Data

The ACTU and AMWU have both recently surveyed labour hire and casual employees as part of a submission to the Fair Work Commission (FWC). The ACTU Survey received responses from 43 labour hire workers and 838 casual workers. It was conducted by a survey company (SSI International) at arms length from the ACTU, and its respondents were chosen from the wider community. The AMWU Survey received responses from 157 labour hire workers and 266 casual workers. The AMWU Survey was sent to AMWU members by email and text message and it was posted on various AMWU-run social media accounts. As a result, 88% of respondents to the AMWU Survey are union members. There is an extensive discussion of the methodology and sample of these surveys in attachment 5 of the FWC submission, so it will not be covered again here.

AMWU Survey

Of the 157 labour hire workers that responded⁴, 129 (82%) were casual and 28 (18%) were permanent (AMWU Survey, Question 1). 83 respondents (64%) worked full-time hours and 47 (36%) worked part-time hours (AMWU Survey, Question 3). Most

² ABS, Characteristics of Employment, 6333.0, August 2014, Table 42

³ ABS, Characteristics of Employment, 6333.0, August 2014, Table 43

⁴ In some cases, respondents did not answer all questions, which is why the total respondents to some questions do not add to the total respondents for each survey.

of them work in industries covered by the AMWU, manufacturing (43%), mining (24%) and construction (21%; AMWU Survey, Question 4). There is also little evidence to suggest that labour hire employment is any more flexible than traditional kinds of employment with only 7% (8 of the 118 respondents who answered this question) of labour hire employees having a lot of say with their hours (AMWU Survey, Question 19).

Many labour hire workers have been with their employers for extended periods of time, 54% having been in the same job for more than a year and 11% for more than 10 years (AMWU Survey, Question 22). Due to the nature of labour hire work, many of these long term workers will have experienced periods of unemployment during their tenure, limiting their access to LSL. Labour hire workers were also more likely to be older, with more than half of the labour hire workers between 45 and 64 years of age (AMWU Survey, Question 26). This data shows that labour hire work is not being used simply to 'test out' new workers, or to give younger employees a start in the workforce – labour hire employment has replaced full-time, permanent, ongoing roles for a significant number of employees in the manufacturing, mining and construction industries.

ACTU Survey

Of the 43 labour hire workers that responded, 17 respondents (40%) worked full-time hours and 26 (60%) worked part-time hours (ACTU Survey, Question 14). Half of them work in manufacturing (50%), with other representation from retail trade (12%) and transport (9%; ACTU Survey, Question 5). Similar to the AMWU survey, only 16% (7 of 43) of labour hire workers have the flexibility to choose their hours (ACTU Survey, Question 18).

Many labour hire workers have been with their employers for extended periods of time, 49% having been in the same job for more than a year and 9% for more than 10 years (ACTU Survey, Question 13). Labour hire workers in the ACTU Survey were slightly younger than the AMWU Survey with 30% aged between 25 and 34 (13 of

43) and 49% (21 of 43) aged between 35 and 54 years of age (ACTU Survey, Question 3). These findings align with the AMWU Survey and paint a picture of labour hire as a form of long term, ongoing, full-time work for established workers.

Anecdotal Information

The AMWU represents around 100,000 manufacturing workers across Australia, including labour hire workers. Our organisers have significant experience dealing with the concerns raised by labour hire workers and operating in workplaces where labour hire is introduced or where it is an established practice.

It is our submission, based on that experience, that labour hire workers are present in all sectors of the manufacturing industry (metals, engineering, food, printing, etc.) and in all parts of the country. It tends to be more common amongst smaller businesses, but many large companies also retain a significant number of labour hire workers at any given time.

Labour hire workers are less likely to speak up about their concerns in the workplace and are more likely to be 'moved on' if they do. Given the structure of the current workplace relations laws, it is very difficult to prosecute employers who request that particular labour hire workers are moved on for questioning safety or seeking better pay and conditions.

Many labour hire workers feel very insecure in their employment, despite some of them enjoying quite significant tenure in their current roles. While some labour hire companies (mainly the larger, more established companies) have some staff for whom the unique nature of labour hire work suits their skills and lifestyles, they are a small minority of labour hire workforce.

Most labour hire companies offer casual employment, often with short periods of work with little or no notice of commencement or termination. The few permanent labour workers tend only to be engaged by larger labour hire firms where they have

a long term contract with a larger client. This not only provides little stability for the workers, it can make it harder to find permanent ongoing work for the significant majority of workers who would prefer it.

It is clear from the conditions and experiences of labour hire workers in the manufacturing industry that a national system of portable entitlements, including long service leave is required if labour hire workers are ever going to be able to access these important workplace entitlements and enjoy the full benefits of industrial citizenship.

The extent and nature of labour market mobility

Mobility has been described as one of the major trends in the modern Australian labour market⁵. A cluster analysis, based on HILDA data⁶ suggests that many workers in low-skill occupations tend to move between many unrelated roles, with little prospect of career development, interspersed with periods of unemployment. The report finds that these conditions are exacerbated by insecure employment. It also describes marginally attached workers who have periods of paid employment at the margins of the labour market, with workers moving in and out of the workforce, primarily affecting women and older workers.

ABS figures show that 2 million workers left their employer in the 12 months prior to February 2013, with 60% leaving voluntarily and 40% leaving involuntarily⁷. The RBA has highlighted that younger workers are more likely to have ended their employment voluntarily⁸. Despite the significant number of separations each year, nearly 45% of employees have been with their employer longer than 5 years⁹. The data also shows that tenure in employment is not evenly distributed, with higher skilled workers more likely to enjoy longer tenure⁶.

As the economy continues to change, there will be additional pressure for workers to retrain and redeploy to areas where there is employment growth. The current trends suggest that this is more likely to result in lower paid, lower skilled workers being required to change between occupations and industries¹⁰.

Combined with the information above and the information contained in the AWMU submission to the FWC in relation to casual employees, there is a clear case to be made that PLSL will disproportionately benefit women and low paid, low skilled and marginally attached workers. These workers are more likely to be involuntarily made redundant, they are more likely to experience periods of unemployment and they

⁵ McKell Institute, The Case for a National Portable Long Service Leave Scheme in Australia, 2013, 124

⁶ NCVER, Vocational trajectories within the Australian labour market, 2012, p 7

⁷ ABS, Labour Mobility, 6209.0, February 2013, Table 11

⁸ Reserve Bank of Australia, Labour Market Turnover and Mobility, 2012, p 5

⁹ ABS, Labour Mobility, 6209.0, February 2013, Table 5

¹⁰ Reserve Bank of Australia, Labour Market Turnover and Mobility, 2012, p 6

are more likely to be structurally required to change occupation and industry. PLSL will ensure that these workers are able to access to a workplace entitlement which they are currently unable to enjoy.

The objectives of portable long service leave schemes

Australia's system of LSL is relatively unique in the world and has a long history dating to pre-Federation Australia in the 1860's. An entitlement originally intended to allow civil servants to visit family back in Britain has grown to become a marker of the value Australian's place on leisure time and time spent with family and friends in particular. However, as discussed above, this entitlement is now under threat as a result of workplace changes (namely higher job turnover) rather than any rejection of the need or desire for the entitlement from the Australian community. It is the AMWU's view that in a case like this, the onus is on governments to ensure LSL remains a relevant and accessible entitlement rather than be allowed to be made 'collateral damage' from broader workplace changes.

The AMWU's objective is for a fully portable LSL benefit for all workers. The benefits of a new, portable entitlement – which is required if a new generation of workers are to have access to Long Service Leave – are outlined below.

LSL provides workers with an opportunity to take a break from the workforce and return rested and refreshed. It improves the wellbeing of workers and their families in countless ways with flow on benefits for employers including via impacts on productivity and safety, and is an explicit recognition of the fact that most people work to live rather than live to work.¹¹

The highly structured and tenure-based industrial system in which current LSL provisions were developed are unrecognisable to current workers. Increased casualisation and high levels of labour mobility mean that a growing number of workers will never be able to access LSL under the current terms. Without significant reform, in the form of portable LSL schemes, the various state-based LSL Acts will become a dead letter to most workers.

¹¹ For a more comprehensive review of the evidence of benefits of Long Service Leave, see McKell Institute, *The Case for a National Portable Long Service Leave Scheme in Australia*, 2013, p. 58.

For those workers that do still access LSL, the desire to access this entitlement can act as an impediment to labour mobility in the face of better employment opportunities, especially as tenure of service approaches the entitlement threshold. This has a cost on the individual worker as well as on the legitimate flexibility of the labour market.

Furthermore, as the retirement age is moved back, and efforts to keep older workers engaged in the workforce are stepped up, LSL can play a key role in keeping workers engaged later in life.

Portable LSL will also increase the number of women who are able to access this entitlement. As women are much more likely to leave the workforce for caring responsibility, for children or elderly parents, they are much less likely to maintain tenure for the period required to access LSL. A portable LSL scheme would allow service to be accrued on either side of a career break.

No worker should be worse off, or have a reduced entitlement for Long Service Leave under any new arrangements. It is vital that workers who have accrued an entitlement under the current arrangements are able to maintain those entitlements. As such, any PLSL scheme will need to include grandfathering arrangements for all employees that have accrued some entitlement to LSL when any new scheme is introduced. Furthermore, any new scheme should not impinge on existing industry-based PLSL schemes that are already in place.

Which sectors, industries or occupations may, or may not, benefit from such schemes

The AMWU believes that all workers will benefit from PLSL, regardless of their industry or occupation. Given the rise in insecure work and the increased mobility, portable long service leave is a vital step in ensuring that workers continue to have access to this important workplace entitlement.

Establishing a national, universal entitlement to PLSL which supplements the existing industry-based schemes will protect this important entitlement for workers as they move between industries during their working lives.

The operation of a portable long service scheme

Recommendation

The AMWU recommends the establishment of a workplace entitlement that requires employer contributions to portable long service leave accumulation accounts for all workers. Given the state-based nature of long service leave entitlements, minimum contributions to PLSL accounts could be set by federal legislation, with different contribution levels set by each state to ensure that funds were able to provide long service leave in line with the relevant legislation.

Alternatively, the states could agree to refer the powers to set the conditions for long service leave to the Commonwealth. This possibility was foreshadowed in the Explanatory Memorandum to the Fair Work Act 2008¹². To ensure that no workers are worse off, the Commonwealth would have to adopt the highest LSL standards from across the country, with particular carve-outs for industries with entitlements that are above the general standard. In the absence of such an agreement, contribution levels would need to differ by state, industry to ensure that workers' entitlements are protected.

¹² Fair Work Act 2008, Explanatory Memorandum, paragraphs 436-439

These PLSL arrangements proposed are not intended to replace existing, industry-based PLSL arrangements, and should be specifically limited to workers who are not currently covered by an existing industry-based PLSL scheme. Any legislation must enable transfer of PLSL entitlement between states and different industry-based schemes.

Transitional arrangements would need to be put in place to ensure that workers with an existing entitlement with their current employer are not worse off. The ACTU and Victorian Trades Hall submissions to the Victorian inquiry into portable long service leave provide some principles for the transition to, and operation of, PLSL and these submissions are recommended to the committee.

Benefits

The ‘accumulation fund’ approach is very simple and their operation is well understood by employers and employees. One of the main benefits of this scheme is that any compliant organisation could manage the PLSL account for any worker. For example, many superannuation funds may be well placed to manage PLSL funds which would serve to keep the administrative costs low, allow operation within established governance structures and provide confidence in the solvency of the bodies managing workers’ funds. A more detailed analysis of this option can be found in the report by the McKell Institute report on long service leave in Australia¹³.

There are significant benefits to employers as well as employees from ensuring that workers have access to the mid-career break which they are able to access through PLSL.

Risks

The main draw back of an accumulation scheme is the risk that falls on the employee who, through no fault of their own, may not have sufficient funds in their PLSL account to cover their LSL entitlement when it falls due. It will therefore fall to state

¹³ McKell Institute, The Case for a National Portable Long Service Leave Scheme in Australia, 2013

and federal government to obtain reliable actuarial advice prior to setting the employer contribution level to ensure that this does not happen.

Costs

This approach would result in a small but manageable increase in costs for businesses in Victoria. While it will reduce business' cash flow – as they won't have access to the money which is provided to these LSL funds – it will also reduce their liabilities by an equivalent amount. In addition, cash flow impacts should be minimal as good financial management would dictate accumulated 'cash' to meet LSL obligations should not be used for other purposes in any event.

The largest impact is likely to be for employers who engage labour for shorter periods, and thus, under the existing LSL Act, the employer never or very rarely grants LSL. Given the social and economic costs of short-term, insecure employment, the AMWU would consider it beneficial if portable LSL encouraged more employers to engage employees under more secure arrangements. In addition, the situation where employees lose accumulated LSL entitlements upon changing employers is effectively a transfer of this entitlement value to employers. This is not justified on any grounds and a portable LSL scheme as outlined above would ensure employees do not lose this value and employers are required to meet their obligations, even if employees leave prior to being able to access their LSL entitlement.

Conclusion

It is clear that LSL will become a thing of the past for many workers without significant legislation being developed and implemented by government. The growth of insecure work and the increase in mobility require this old entitlement to take on a new form. Establishing a workplace entitlement for PLSL through accumulation funds is a reasonable and appropriate response to changing circumstances within the Australian economy. It will provide workers with access to their entitlements at a minimal, with significant benefits to both employers and employees.