

**SENATE STANDING COMMITTEE ON  
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

**QUESTIONS ON NOTICE  
INQUIRY INTO THE FAIR WORK BILL 2008**

Senator **Marshall** asked on 16 February 2009, Hansard page 77.

**Question**

*Transfer of business – new qualifying period*

With regard to the transfer to business arrangements, I think it was the nurses federation of Victoria that put to us the proposition that, when a transfer of business takes place, often entitlements, particularly long service leave entitlements, go over but people who are re-employed have to restart a probationary period and if they are terminated during that probationary period then they lose all their entitlements. Is that the case? If you transfer from one business to another, do you recommence a probationary period?

Let me put this to you: if you have, say, 14 years service—if it is 15 years long service leave—your business is bought by another, you transfer and you are not protected by unfair termination provisions, so the qualifying period starts again, you can simply be terminated unfairly to avoid the payment of your long service entitlement, which has been transferred to the new employer and they keep it...

What is the logic, though, of having to start the qualifying period again?

**Answer**

Under the Fair Work Bill a transferring employees' previous service for the purposes of the minimum employment period for unfair dismissal will be recognised unless the new employer expressly informs transferring employees, in writing, of a requirement for a new minimum employment period. This is in contrast to the existing position, where the Australian Industrial Relations Commission has held that a new qualifying period applies unless it is expressly waived.

If the new employer is an associated entity of the previous employer, the employee's service with the previous employer will be taken to be continuous for the purposes of the unfair dismissal minimum employment period.

These provisions were established to reflect a balance between protecting employees who have already served a minimum employment period for unfair dismissal and the needs of the new employer.

In relation to the specific question about long service leave, the General Protections provisions in the Bill provide that an employee cannot be dismissed in order to prevent the employee from exercising a workplace right. A workplace right includes a benefit (for example long service leave) under a workplace law or workplace instrument.