

Background:

Long Service Leave (LSL) is unique to Australia and New Zealand. A Productivity Commission report in 2015 noted that:

“Long service leave (LSL) is an Antipodean idiosyncrasy. It was invented in the mid-19th century to allow citizens to sail to and back from England every decade. Despite its peculiar origins, it now has strong community support. However, the NES do not prescribe any consistent national LSL arrangements, so that there are relatively complex interstate variations. This means that national employers must deal with a diversity of qualifying periods and entitlements for LSL across the different arms of their national operations. This has been a longstanding complaint, and the last review of the Fair Work Act recommended a uniform national approach.”¹

The accepted purpose of LSL is to reward loyal employees with a period of rest and recuperation and to discourage staff turnover. Portable LSL is intended to provide fair access to long service leave entitlements to workers in industries that are highly mobile and characterised by short term contracts with multiple employers, such as the building and construction industry.

The Long Service Leave (Portable Schemes) Amendment Bill 2022:

The ACT Labor and Greens Governing Agreement for the Tenth Assembly agreed to *“amend the Portable Long Service Scheme to ensure more workers receive fair entitlements as they move jobs in their profession.”²*

The Long Service Leave (Portable Schemes) Amendment Bill 2022 expands portable LSL in the ACT to hairdressing, beauty, accommodation and food services industries. This comprises a large segment of the Canberra economy and includes barbers, as well as beauty, electrolysis, make-up, nail care, skin care and tanning services; hotel/motel/resort operations, holiday house/flat operations, serviced apartments and youth hostels, caravan parks and camping ground operations; cafes, restaurants and takeaway food services, pubs,

¹ [Australian Productivity Commission, Productivity Commission Inquiry Report No 76, 30 November 2015, Workplace Relations Framework, volume1. p.21](#)

² [ACT Labor and The Greens, Parliamentary and Governing Agreement, 10th Assembly, Appendix 2, p. 13](#)

taverns, bars and clubs. The extension of portable LSL in time, to real estate, travel agency and retail industries has been foreshadowed.

However, the Government has not established that involuntary labour mobility is a feature of the industries to which they wish to extend portability. Mobility in these industries is voluntary rather than associated with the nature of these industries. Indeed, employment in these industries is often casual or transient.

Impact on ACT small businesses:

The Explanatory Memorandum to this Bill recognises that contingent long service liabilities arising under the 1976 Act are only required to be recorded after 5 years of service, not quarterly.

Employers in hairdressing, beauty, accommodation and food services businesses will now have to register with the ACT Long Service Leave Authority and be forced into a new quarterly PAYG regime.

They will need to register each new employee with the ACT Long Service Leave Authority, calculate their quarterly earnings, multiply these by the variable contribution rate and remit this money to the authority. These employers will also become subject to an inspection and enforcement regime under the Act.

In its submission, the Canberra Business Chamber notes the regulatory burden this Bill will impose on Canberra small businesses. It will create additional direct financial costs of a new quarterly liability, and substantial additional administrative burdens.

The Ai Group and the Council of Small Business Organisations Australia submissions note the Bill's negative, disproportionate impact on female owned small businesses in the hairdressing and beauty sector.

The Ai Group's submission notes its previous estimate that portable schemes impose four times the cost burden imposed by general LSL laws in Australia.

The purported benefits to industry, outlined in the ACT Government's consultation paper – compliance problems reduced, greater cost stability and tax benefits - are risible.

A regulatory nightmare:

There has been no apparent regulatory impact assessment or study supporting this Bill or rigorous analysis of its purported benefits to employees or the economy

As the Canberra Business Chamber points out in its submission:

“There is insufficient analysis or evidence to support expansion of the (portable LSL) scheme to the proposed industries. The expansion of the scheme to personal care services (hairdressing and beauty services) and accommodation and food services is based on the assumption that these industries have “highly mobile workforces” (and that) both employers and employees would benefit from the PLSL. Yet the consultation paper does not provide any data or evidence to support this assumption.”

The Government has not explained what will happen to the money invested from quarterly LSL payments for the large number of employees who won't stay in these industries long enough to qualify for LSL, or who transfer to different occupations entirely, who will nevertheless stay on the books of the ACT Long Service Leave Authority. Business wants to know if the Government will be amassing money from them for short-term 'zombie' employees which will never actually be paid out.

The Bill's Explanatory Memorandum states that the expansion of portable LSL to hairdressing, beauty services, accommodation and food services *“does not have an ACT Government budget impact.”* However, it will create a new revenue stream for the ACT Government at the expense of small businesses, and require more staff, including more inspectors, at ACT Long Service Leave Authority.

This Bill also runs counter to the remit of the ACT Government's Better Regulation Taskforce, intended to make it easier to start up, run and grow a business in the ACT. As well as making ACT small businesses less competitive the Bill adds to the jumble of LSL regimes faced by national and cross border employers.

Questionable benefit to workers:

As noted by the Canberra Business Chamber's submission:

“The consultation paper circulated in 2022 provides no evidence of analysis of what benefits will flow to employees or the benefit to employers or the economy. Instead, it provides a vague and generally incomplete list of the possible advantages or disadvantages of extending the scheme, with no empirical evidence-base to demonstrate a benefit to employers or the precise benefits to employees.”

Indeed, the consequences for some employees could be dire, and opposite to the Bill’s purported intent.

The Australian Hairdressing Council submits that:

“The introduction to a Portable Long Service Leave Bill in the ACT will see salon owners close their businesses or employ less staff, especially Apprentices. The PLSL will encourage employers to become Sole Traders. As 70% of our industry’s business models are now Sole Traders, there is a real concern for the sustainability of apprenticeships and the future of skills.”

It has also been pointed out that some employers may be reluctant to hire workers with accumulated entitlements, as these employees would be more likely to request protracted leave close to their commencement date.

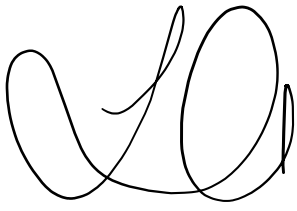
The Productivity Commission concluded in 2015 that the costs and complexity of portable long service leave schemes outweigh any community benefit.

The Government has not made out a case to the contrary.

Recommendation:

I recommend the Long Service Leave (portable Schemes) Amendment Bill 2022 not proceed because:

- involuntary labour mobility is not a feature of the industries to which the Government wishes to extend portability
- this Bill will impose additional direct financial costs and substantial administrative burdens on Canberra small businesses
- there has been no apparent regulatory impact assessment or study supporting this Bill or rigorous analysis of its purported benefits to employees or the economy
- most submissions received by the Committee oppose the Bill

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Leanne Castley MLA

23/01/2022