

Ai GROUP SUBMISSION

Long Service Leave (Portable Schemes) Amendment Bill 2022

The Standing Committee on
Economy and Gender and
Economic Equality

ACT Legislative Assembly

19 January 2023

Ai
GROUP

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health, community services and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

Introduction

Ai Group welcomes the opportunity to make a submission regarding the *Long Service Leave (Portable Schemes) Amendment Bill 2022 (the Bill)* currently before the Standing Committee on Economy, Gender and Economic Equality for Inquiry. The Committee is required to report back on the Inquiry on 23 January 2023.

Many businesses, including those impacted by the Bill, have been in full or partial close over the December – January holiday season. The period over which the Inquiry is occurring and the short time frame for the report back may not result in the full range of issues relating to the Bill being canvassed before the Committee.

The Bill proposes a significant expansion of the ACT portable long service leave scheme (**PLSLS**) into the industry sectors of hairdressing and beauty services and accommodation and food services. A significant number of ACT employers, including many small businesses, will be impacted by the Bill's provisions.

Ai Group opposes the Bill.

In July 2022, Ai Group prepared a detailed submission outlining our reasons for opposing the expansion of the ACT PLSLS as part of the ACT Government's consultation process. A copy of that submission is [here](#).

In summary, our concerns are:

- The proposal to expand the ACT PLSLS to other industries and occupations is inconsistent with the fundamental purpose of long service leave which is to reward employees for a period of extended service with one employer.
- Portable long service leave schemes are significantly more costly to the community than accruing LSL in the traditional manner under workplace laws. Ai Group's analysis in response to a 2015 inquiry into whether a national portable LSL scheme should be introduced for all Australian workers, estimated that the cost burden on employers would be more than **four times** the cost burden imposed by the general long service leave laws in Australia.
- The expansion is inconsistent with the Australian Productivity Commission's conclusions that the costs and complexity of portable long service leave schemes outweigh any community benefit.
- The industries and occupations identified for ACT PLSLS extended coverage are inappropriate and based on broad concepts of labour mobility, including high levels of voluntary labour mobility. This is not a valid basis for expanding ACT PLSLS, particularly given that the original and fundamental purpose of LSL is to reward extended service with one employer.

- The proposed expansion of ACT PLSLS would be a set-back to gender equality in respect of female small business owners in those nominated industries, such as hair and beauty services. The PLSLS expansion into female-dominated industries to support time out of the workforce for caring responsibilities, is likely to broaden the gender pay gap and limit women's economic security later in life.

Together, these reasons should be considered by the ACT Government as grounds not to expand the ACT PLSLS. The Bill should not proceed.

If, despite Ai Group's strong opposition to the Bill, the Committee recommends that it proceeds, Ai Group suggests the following important amendments.

Section 4 – who is an employer?

The Bill's definition of employer has been broadened such that the PLSL scheme may be inappropriately expanded to cover employers and employees who may not operate in the identified industries covered by the Bill. The expanded definition may potentially capture employers who have an indirect association or ad hoc connection with a particular industry, notwithstanding that they may squarely operate in a different industry sector. In addition, the broadening of the definition creates confusion as to whether certain employers and employees would be in fact be covered

Specifically, the phrase "*in any way and to any extent*" in section 7(1)(a) should be deleted and the original definition restored.

Commencement date of Sections 4 and 5

Consistent with the Bill's provisions regarding the commencement date of the PLSLS's expanded operation identified as 2 years after the Act's notification day, section 4 and 5 should also have a commencement date of this day, rather than the 30th day after the Act's notification day as set out in section 2.

In particular, the expanded definition of an employer in section 4 and the substitution of the term *cleaning work* with the new enlarged term of *services work* in section 5 (amending section 11 of the Act's current definition of work) would have limited application prior to the operation of the Bill's remaining provisions. Sections 4 and 5 should form part of the remaining provisions in the Bill that commence 2 years after the Act's notification day as set out in section 2(3).

Section 13 – what is services work?

It is important that workplace laws that purport to cover a particular industry or industries are clear, unambiguous and targeted to the intended classes of employers and employees. It is foreseeable however, that the Bill's reliance on the ANZSIC to define the Bill's definition of *services industry* and

services work in section 2.1 and 2.2 may lead to ambiguity and confusion about whether employers and employees are covered by the Bill's expanded PLSLS.

It is not unusual for the ANZSIC to be used to inform the scope of workplace laws and industrial instruments. For example, the ANZSIC was adopted by the then Australian Industrial Relations Commission (**AIRC**) to inform the making of modern awards during the 2008-2010 Award Modernisation Proceedings in which Ai Group as registered employer organisation was heavily involved. During these proceedings, a Full Bench of the AIRC specifically determined modern award provisions to address circumstances of competing or uncertain modern award coverage, including by identifying specific industry exclusions from various coverage terms of modern awards.

Similarly, the Bill should be amended to ensure that ambiguity over coverage is minimized by ensuring that the meaning of *services work* is appropriately defined and that the PLSLS is properly targeted to those specific industries identified in the policy intent of the Bill.

Consistent with the Bill's definition of *services work* in relation to the cleaning services industry, Ai Group suggests that the phrase "*work that has, as its only or main component...*" used in section 2.2(1)(a) be replicated in the definition of *services work* as it relates to hairdressing and beauty services in 2.2(1)(b) and accommodation and food services industry in 2.2(1)(c) as follows:

(b) in relation to the hairdressing and beauty services industry- work that has, as its only or main component, the provision of hairdressing services or the provision of beauty services (including nail care services, facials or applying make-up); and

(c) in relation to the accommodation and food-services industry- work that has, as its only or main component, the provision of short-term accommodation for visitors, or meals, snacks, and beverages for consumption by customers (whether at the provider's principal place of business or elsewhere).

The provisions as they currently stand would likely capture a broad range of occupations and other associated industries that should not fall within the PLSLS's coverage because, they relate to work in other industries, or because the occupations themselves may concern senior managerial or professional work.

Specifically, Ai Group does not consider it appropriate that employees earning above the *Fair Work Act's 2009 (Cth)* high-income threshold (currently around \$162,000) or who are professionals or senior managers should be covered by the PLSLS as these classes of employees are less likely to face the same level of impact as other employees from involuntary or voluntary labour mobility and may have a more transferrable skill set to other sectors. For example, a general manager of a large corporation providing food services, an executive of a hotel chain or a marketing professional of a beauty business would be inappropriately covered by a PLSLS ostensibly designed to remedy the lack of access to long service leave because of involuntary job mobility. The definition of *services work* should be clarified and narrowed as they relate to the particular work intended to be covered

within an industry, rather than the Bill's loose definition of *services work* based on industry activity associated with the ANZSIC.

We note that the Bill has contemplated a range of other industry and occupational exclusions in statutory notes to section 2.2(1) and in the text of 2.2(2). These exclusions are inadequate and must be expanded to ensure that the Bill is appropriately confined to intended employees and employers. To address this Ai Group recommends the amendments below.

Firstly, a further statutory note in section 2.2(1) should be added to say:

Note 4 For s (1)(b), work performed within the meaning of ANZSIC, Division G, Retail Trade is excluded

Secondly, section 2.2(2) should be expanded to read:

(2) However, in relation to the accommodation and food services industry, services work does not include work covered by any other Division of the ANZSIC other than ANZSIC Divisions specified in section 2.1(1)(b) and (c). For the avoidance of doubt, the services work in relation to the accommodation and food services industry does not include:

- (a) providing professional, scientific and technical services within the meaning of the ANZSIC, Division M, Professional, Scientific and Technical Services;
- (b) Food Product Manufacturing within the meaning of the ANZSIC, Division C, Manufacturing;
- (c) Beverage and Tobacco Product Manufacturing within the meaning of the ANZSIC, Division C, Manufacturing;
- (d) Food Retailing within the meaning of the ANZSIC, Division G, Retail Trade;
- (e) Transport, Postal and Warehousing within the meaning of the ANZSIC, Division I.
(amendments underlined)

It appears consistent with the policy intent of the Bill that work in the other industry sectors identified above are not intended to be covered by the expansion of the PLSLS. Accordingly, it is vital that this be clarified in the Bill.

In conclusion, Ai Group opposes the Bill.

If the Bill is to proceed, despite Ai Group's opposition, it must be amended as described above.



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