Reducing Barriers to Business Dynamism in Australia

Portable Long Service Authority Submission

Background on Portable Long Service Leave in Victoria

We appreciate the opportunity to contribute to the Productivity Commission's inquiry into reducing barriers to business dynamism.

The Portable Long Service Authority (the **Authority**) is an independent statutory body responsible for administering Victoria's Portable Long Service Benefits Scheme (the **Scheme**). The Scheme allows long service benefits to be transferrable for workers in the community services, contract cleaning and security industries.

Employers in covered industries are required to register with the Authority, record their workers hours and ordinary pay, and pay levies into Authority-administered investment funds. Upon accruing seven (7) years of recognised service in their industry, workers can claim portable long service benefits directly from the Authority, who then pays the benefits to the worker. Under the Scheme, covered workers accrue traditional long service benefits at the same time as portable long service benefits. Covered Community Services workers cannot claim both portable and long service leave for the same period of service. Where an employer pays long service leave for a period that is also recognised under the portable long service leave scheme, the employer may apply to the Authority for reimbursement. This arrangement prevents duplication of entitlements and ensures that employers are not required to incur double expenditure for the same service period.

Portable long service supports workforce movement without disadvantaging small businesses, as workers can accrue long service benefits across the industry rather than relying on continuous service with a single employer. For this reason, portable long service is growing in popularity as a regulatory method to drive worker retention in priority industries. All states and territories provide for portable long service leave in the building and construction industry, and most states and territories also provide for additional covered industries such as community services, contract cleaning and security. Some states and territories have also begun the legislative process to consider inclusion of hairdressing, beauty services, accommodation, food and hospitality services. In this way, portable long service leave reinforces worker entitlements and contributes to a more stable workforce across key industries.

Small Business Restructuring Practitioners and Insolvency Practitioners

The Authority regularly engages with insolvency practitioners. We have observed a high level of uptake of small business restructuring, which appears to be an accessible and effective method for businesses to stay operational while facing financial pressures in challenging market conditions.

Inevitably, some employers covered under the Scheme will enter insolvency. When this happens, the Authority works with insolvency practitioners to ensure workers are credited with their service. However, the Authority usually cannot recover any unpaid levy amounts. As a result, portable long service benefits for affected workers will therefore be funded through levies paid by other employers.

Section 556 of the *Corporations Act 2001 (Cth)* provides the priority order for debts and claims in the winding up of a company. Section 556 (1) (g) and (h) relevantly provide that employee entitlements and retrenchment payments are priority debts. We support this, noting that not all workers are eligible to make Fair Entitlements Guarantee claims for their unpaid employee entitlements.

In our experience, insolvency practitioners often interpret that debts to the Authority and other portable long service schemes are classed as employee entitlements. This is not the case, as confirmed in the Full Federal Court decision of *Construction Industry Long Service Leave Board v Irving* [1997] FCA 425.

The Authority respectfully submits that section 556 of the *Corporations Act 2001 (Cth)* should be amended to specifically address debts owed to portable long service bodies. We submit it would be appropriate for these debts to be priority debts, ranking directly below the employee entitlement provisions in section 556 (1) (g) (h). Such an amendment would provide clarity, better promote workers' rights in covered industries, and support worker mobility and business dynamism.

Yours sincerely,

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