



SUBMISSION TO THE AUSTRALIAN GOVERNMENT ON NATIONAL EMPLOYMENT STANDARDS LONG SERVICE LEAVE

Introduction

The Board of CoINVEST Limited wishes to make a brief comment on the proposed National Employment Standards in respect of long service leave.

CoINVEST Limited is the Trustee of the Victorian Construction Industry Portable Long Service Leave Fund. It administers the scheme in Victoria in accordance with *The Construction Industry Long Service Leave Act 1997* and the Trust Deed. The scheme rewards service to the industry rather than any single employer in an industry where workers are necessarily itinerant as they move from project to project and employer to employer. Over 92% of claimants on the scheme have had two or more employers prior to their claim.

The scheme also protects the long service leave entitlements of workers where an employer is unable to meet its obligations because of financial circumstances such as company failure.

The fund size at 30 June 2007 was \$512 million. There were around 150,000 active workers and over 15,000 employers covered by the fund. Total claims paid out in 2006/07 were \$42 million. Total long term liabilities were \$491 million.

The CoINVEST scheme is one of eight separate schemes operating in the construction industry in every state and territory of Australia. The schemes are linked by a National Reciprocal Agreement whereby workers moving from state to state or territory and remaining in the construction industry do not forfeit their entitlement to long service leave.

The schemes are successful and well administered with several having been established for over thirty years.

The Board of CoINVEST Limited is a mix of industry representative and independent 'specialist' directors.

Comment

The CoINVEST Board strongly supports the intention that workplace agreements cannot override state and territory laws regarding long service leave. In Victoria, a small number of employers have attempted to use certified agreements to contract their workers out of the scheme. Some employers have been successful in avoiding their obligations to the fund by this method, while others are the subject of pending costly legal action.

CoINVEST is concerned about this development for several reasons:

Ability of the funds to make payments to employees

As a defined benefit scheme, CoINVEST is required to make payments to employees for long service leave in certain circumstances even where it has not received a contribution from the employer.

The nature of employment in the construction industry means that employees move regularly from one employer to another. An employee may be employed for a period of time with an employer who contributes to CoINVEST. The employee may then, for a period of time, be employed by an employer who does not contribute to CoINVEST because of the terms of a workplace agreement. At some subsequent stage, the same employee may then be re-employed by an employer that contributes to CoINVEST.

In the circumstance described above, the employee will be entitled to a payment from CoINVEST for long service leave irrespective of whether his or her employers over the period have paid the charges levied by CoINVEST. CoINVEST is therefore required to make payments to employees who have served a qualifying period, despite not receiving employer contributions during the entirety or part of the qualifying period. The situation is unsustainable in the long term.

Potential increased charges on employers

Employers who remain in the Victorian Scheme may potentially, over time, face increased charges.

Employers who seek to avoid the Victorian Scheme will no longer be required to pay the charge levied for their employees. Employees of those employers, as described above, will nevertheless have an entitlement to receive a payment for long service leave when they join an employer who contributes to the Victorian Schemes. The gap between the contributions paid and amounts owing to employees will need to be funded. The main way it is likely to be funded will be to increase the charge on employers who remain in the Victorian Scheme.

This represents an unfair burden on employers who remain in the Victorian Scheme.

Employers will be encouraged to leave the Victorian Scheme

As the charges on employers who remain in the Victorian Scheme increases, those remaining employers will look to reduce costs. The easy option will be for those employers to also attempt to opt out of the Victorian Scheme by signing workplace agreements that are inconsistent with the Victorian Act .

Continued operation of the Victorian Scheme and loss of long service leave entitlement

A consequence of the reasons set out above is that the Victorian Scheme may become economically unviable. Construction workers may therefore lose the ability to access long service leave benefits where they change employers but remain in the construction industry.

If the Victorian Scheme is not able to operate (either because it has insufficient funds or because its operation is excluded by workplace agreements), employees in the construction industry will lose their entitlements to long service leave. This circumstance would also undermine the operation of the National Reciprocal Agreement.

Loss of recognized service and entitlements

An employee is not able to claim payment for long service leave when employed by an employer who is not involved in the Victorian Scheme. This is despite the fact that prior to joining a non contributory employer, an employee may have been engaged by contributing employers for a period that exceeds the qualifying period for payment.

For these reasons the Board strongly supports the proposal and does not foresee any wider issue with it. However in view of the pending legal actions in Victoria, the Board urges the Australian Government to take an interim measure to prevent employers contracting out of their obligations under the Victorian act in the short term. This can be achieved by making a regulation under section 17(2) (d) of the Workplace Relations Act 1996 as soon as possible.

A suggested draft regulation is attached.

The Board has also made a submission to the Minister for Industrial Relations in Victoria asking him to make similar representations to the Federal Minister. This submission has been made as part of a co-ordinated approach to this issue by all state and territory construction industry long service leave authorities.

Portable long service leave has been successfully established for the construction industry in Australia. While there are differences between aspects of the state and territory schemes, these are generally minor and all states and territories work co-operatively.

In finalising the long service leave aspects of the National Employment Standards the CoINVEST Board urges the Government to recognise the role these schemes play in an important industry for Australia.

If you require any further information about this submission or any aspect of portable long service leave for the construction industry, please contact the CEO of CoINVEST Limited, Mr John Hartley on 03 9664 7600.

Kathy Grigg
Chairman, CoINVEST Limited

Annexure

Proposed Amendment to Workplace Relations Regulations 2006

Insert as proposed regulation after regulation 2.1.6(1)(c):

"(d) long service leave, to the extent that an employer and employee are subject to portable long service leave legislation.

1.6(1A) For the purposes of regulation 1.6(1)(d), "portable long service leave legislation" means the following:

- (a) Construction Industry Long Service Leave Act 1997 (Vic);
- (b) Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld);
- (c) Construction Industry Portable Paid Long Service Leave Act 1985 (WA);
- (d) Construction Industry (Long Service Leave) Act 1997 (Tas);
- (e) Construction Industry Long Service Leave Act 1987 (SA);
- (f) Construction Industry Long Service Leave and Benefits Act 2005 (NT);
- (g) Building and Construction Industry Long Service Leave Payments Act 1986 (NSW); and
- (h) Long Service Leave (Building and Construction Industry) Act 1981 (ACT)."