VACC Submission concerning Portable Long Service Leave

Dated 7 August 2015

Introduction

The Victorian Automobile Chamber of Commerce (VACC) established in 1918 and federally registered in 1940, pursuant to the then *Conciliation and Arbitration Act 1934*, represents the interests of almost 5,500 businesses in the automotive industry.

VACC is the peak body for the repair, service and retail sector of the automotive industry in Victoria and Tasmania. VACC members employ over 50,000 people and have an annual turnover of around $50 billion.

Our members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture) and recycling.

The Victorian automotive industry is largely made up of small businesses. Small businesses with between one and 19 employees comprise approximately 54% of all Victorian automotive businesses. Medium to large business make up just 4% of the Victorian automotive industry, with the remainder operating as sole traders. About 14% of businesses have an annual turnover of less than $50,000.

According to the Auto Skills Australia (ASA) Automotive Environmental Scan 2015, total employment in the Victorian automotive industry amounted to 100,687 for 2013-14. The planned departure of Ford, General Motors Holden and Toyota's manufacturing divisions will lead to further structural change in the industry, as importation of vehicles will rise to 100% rather than the current rate of 80%. ASA modelling shows that Victoria's automotive workforce will reduce to approximately 87,000 after the closure of manufacturing operations.

Some sectors of the industry have seen rationalisation and consolidation. As a consequence, the 2014 Automotive Environmental Scan Survey found that employment levels within the industry overall declined by 3,910 in Victoria alone over the 2012-13 financial year. Positively, the industry in Victoria has begun showing the early signs of a return to growth, with an overall increase of 1,454 jobs reported for the 2013-14 financial year in the 2015 Automotive Environmental Scan Survey. There remains significant softness in the Victorian automotive industry and VACC is concerned that anti-competitive change to the regulatory environment risks pushing the industry back into a cycle of job losses. Nonetheless, the industry has been a consistent contributor to the nation's GDP at around 2.5% as of 2013-14.

Key message

VACC opposes the introduction of a portable long service leave scheme across Victoria and the automotive manufacturing, repair, services and retail industry in particular.

Federal Long Service Leave Awards

Application of the federal award

The *Vehicle Industry – Repair, Services and Retail – (Long Service Leave) Award 1977* (the RS&R Award) prescribes the long service leave entitlements for the majority of employees employed by longstanding members of VACC. The RS&R Award prescribes an employee's long service leave entitlements where:

- the employee's employer is a member of a party bound to the RS&R Award per Clause 3(b); and
- the employee is covered under the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (the VMRSR Award).

VACC is a named party in Clause 3(b) of the VMRSR Award.

Item 2(1) of Schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (the T&C Act) states:

> "Each WR Act Instrument (see sub item (2)) that becomes a transitional instrument (see sub items (3) to (4A)) continues in existence in accordance with this Schedule from when it becomes a transitional instrument, despite the WR Act repeal."

Item 2(2) of the T&C Act states: "Each of the following instruments is a WR Act instrument: (a) an award…" Furthermore, Item 3 of the T&C Act states:

> "The following WR Act instruments become transitional instruments on the WR Act repeal day:
>
> (a) each WR Act instrument (other than a Division 2B State reference transitional award) that was in operation immediately before the WR Act repeal day…"

The effect of the above items of the T&C Act is that the RS&R Award is a WR Act instrument that is a transitional instrument as it was in operation immediately before 27 March 2006 (the WR Act repeal day).

As a transitional instrument, the RS&R Award has effect in place of the *Long Service Leave Act 1992* (Vic) (the LSL Act). Section 113(1) of the *Fair Work Act 2009* (Cth) (the FW Act) states:

> "If there are applicable award-derived long service leave terms (see subsection (3)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms."

The FW Act further states that:

> "Applicable award-derived long service leave terms, in relation to an employee, are:

(a) terms of an award, or a State reference transitional award, that (disregarding the effect of any instrument of a kind referred to in subsection (2)):
    (i) would have applied to the employee at the test time (see subsection (3A)) if the employee had, at that time, been in his or her current circumstances of employment; and
    (ii) would have entitled the employee to long service leave; and
(b) any terms of the award, or the State reference transitional award, that are ancillary or incidental to the terms referred to in paragraph (a)."

The RS&R Award therefore constitutes an applicable award-derived long service leave term as it establishes long service leave entitlements and would have applied to employees prior to 1 January 2010 (the test time).

Applying state legislation to a federal award

State legislation regarding long service leave should be written and understood in the context that it does not apply in circumstances where the RS&R Award applies. Eligible VACC member employers generally run the RS&R Award in parallel with the LSL Act, which applies to employees not covered by the VMRSR Award. Although this causes occasional administrative difficulties, particularly for small businesses, the entitlements in each instrument are roughly comparable. Creating additional differences between long service leave entitlements would add greater administrative complexity for eligible VACC members.

A portable long service leave scheme risks creating two tiers of long service leave entitlement. As previously stated, the LSL Act and the RS&R Award presently provide relatively similar entitlements. Portability of State long service entitlements would be such a change as to disadvantage employees covered by the federal system and employers under the Victorian model. VACC submits that the prevalence of the RS&R Award in the Victorian automotive industry makes such a two tiered system undesirable in our industry.

The interaction of portable long service leave and federal long service leave awards, such as the RS&R Award, has the potential to cause a great deal of confusion and unnecessary complication when employees move between employers. Consider, for example, the circumstances of an employee who begins working for an employer to whom the LSL Act applies, then moves to an employer where the RS&R Award applies, then moves to another employer where the LSL Act applies. Were the Victorian Government to establish a state-wide portable long service leave, VACC submits that circumstances such as these should break the employee's continuous employment.

Staffing availability

A portable long service leave scheme will particularly hurt small businesses in the automotive industry. All businesses, but particularly small businesses (which make up the majority of the automotive industry in Australia and Victoria), struggle to fill temporary holes in staffing availability. Smaller businesses often lack the capacity for staff to cover the absence of another employee for extended periods of time.

The long term absence of an employee performing vital functions for a business will need to be covered either through additional overtime hours where possible, hiring casual staff or reducing outputs over that period. Costs associated with each of these options can significantly affect a small business' bottom line. While an employee's wage costs may be shared in a portable long service leave scheme, the operating costs lie solely with the employer at the time the long service leave is taken.

The disproportionate additional costs for small businesses of portable long service leave risks a migration of such workers towards larger businesses that are better equipped to manage employees with significant accumulations of long service leave. Portable long service leave therefore risks further exacerbating the existing business churn occurring among small businesses in the automotive industry.

Although the costs associated with staffing availability while an employee is on long service leave already exist under the current long service leave system, portable long service leave threatens to greatly expand these costs. More employees will be entitled to long service leave as there will be no incentive to remain with a particular employer. Equally, businesses will be cognisant of this additional cost when considering hiring an employee with industry experience from another employer.

Impact on older workers

Increased operational costs for employers when their employees take long service leave act as a disincentive on businesses from hiring employees nearing their long service leave entitlement. This harms the employability of older workers at a time when more experienced job applicants are struggling to re-enter the workforce. Older workers are already struggling to find employment in the automotive industry due to a range of factors, including:

- increased training and skill requirements for modern mechanics as technology advances;
- an influx of job seekers due to rising unemployment rates and redundancies at major employers such as Ford, General Motors Holden and Toyota; and
- systemic prejudice against older job seekers.

Unfortunately, age discrimination is prevalent in the hiring of employees across industries. Results from the Australian Human Rights Commission's 2015 survey on the prevalence of age discrimination in the workforce show that, in Australia:

- nearly three in five (58%) of those who looked for paid work were a target of discrimination because of their age; and
- over two in five (44%) of managers aged 50 years or older reported that they took a person's age into consideration when making hiring decisions.[1]

VACC submits that implementing portable long service leave will have the unintended consequence of further deterring employers from hiring older workers due to the perceived extra cost burden associated with them.

[1] Australian Human Rights Commission 2015, 'National prevalence survey of age discrimination in the workplace report', p. 9.

Keeping good staff

The 2015 Automotive Environmental Scan Survey found significant skills shortages across the sector. Automotive repair and maintenance technicians alone account for a national shortfall of over 16,000 skilled workers. Victoria is no exception to experiencing skill shortages in the automotive industry. The below table illustrates the key automotive skill shortages in Victoria by sector and occupation as of October 2014:

Sector	Occupation	Estimated Shortage (No.)
Automotive Repair and Maintenance	Light Vehicle Mechanic	1,206
	Diesel Motor Mechanic	390
	Panel Beater	588
	Vehicle Painter	420
	Automotive Electrician	125
	Motorcycle Mechanic	50
	Mobile Plant Technician	42
	Service Advisor	80
Motor Vehicle and Parts Wholesaling	Spare Parts Interpreter	145
	Parts Salespersons	59
Motor Vehicle Retailing	Vehicle Salesperson	252
	Finance and Insurance staff	90
Motor Vehicle Parts and Tyre Retailing	Spare Parts Salesperson	128
	Finance and Insurance staff	85

Source: 2015 Automotive Environmental Scan Survey; modelled ABS labour force data.

The Victorian automotive industry, particularly the body repair sector, is currently in a period of consolidation. Although more than 95% of the Australian automotive industry is currently comprised of small businesses (defined as employing less than 20 employees, including non-employing), this proportion is estimated to fall to 84% by 2020.[2] The highly competitive nature of the automotive industry and significant skills shortages have made it extremely difficult for many employers to keep highly trained staff. Small businesses in particular are vulnerable to graduated apprentices leaving for larger companies that can afford to offer better entitlements to highly trained workers.

Some employers are investing in apprenticeship schemes to futureproof their businesses from the industry's skills shortages. However, many other businesses can no longer afford to hire apprentices due to a wide range of factors, including but not limited to cuts in training, worsening economic conditions and the poor quality of training provided by some registered training organisations.

Respondents in the 2015 Automotive E-Scan survey pointed to the difficulty of attracting skilled workers as being the top key labour issue. Many automotive businesses are increasingly relying on the use of imported labour, such as those on 457 temporary visas, in order to employ skilled labour.[3]

Portable long service leave risks further reducing the ability of many businesses to maintain staff. Long service leave has traditionally been used as a means to reward employees for

[2] Auto Skills Australia, Automotive Environmental Scan 2015.
[3] Ibid.

long periods of faithful service. Portable long service leave removes one of the few entitlements that encourages employees to stay with their employer.

Cost of long service leave

Portable long service leave shifts benefits to employees at employers' expense

Current state and federal long service leave schemes provide benefits for both employers and employees. Employees appreciate the obvious financial advantages of long service leave, whether they take the opportunity for an extended break or cash it out when they leave. Likewise, employers gain from the encouragement long service leave provides to employees to remain with their employer for a number of years.

At present, a significant proportion of employees do not stay with one employer long enough to qualify for long service leave.[4] This preserves the special nature of long service leave as a reward for long and faithful service. However, portable long service leave systems extend long service leave to all employees, regardless of how long they stay with a particular employer. Portable long service leave therefore removes the special significance and reward factor associated with long service leave, while greatly expanding the cost of the entitlement to employers.

VACC submits that portable long service leave shifts the balance of benefits that long service leave provides too far towards employees at the expense of employers. It is difficult to see what benefits would remain for employers should long service leave not be limited to time spent with the one employer. Portability therefore risks removing the existing mutually beneficial consensus between employees and employers regarding long service leave.

A tax on employment

Long service leave poses significant financial, administrative and productivity costs on employers. The 2015 Automotive E-Scan survey ranked labour costs as the fourth biggest issue affecting the automotive industry in Australia. As a workplace entitlement, long service leave – like annual leave or personal/carer's leave – acts as a tax on employment like payroll tax. The analogy to payroll tax is even more obvious for portable long service leave, where employers must make regular payments for each employee.

By opening long service leave to all employees, regardless of how long they work with a particular employer, portable long service leave greatly increases associated employment costs. These additional costs come at a time of significant weakness in the Victorian economy, with the latest 2014 annual Gross State Product (GSP) growth for Victoria (1.7%) remaining below the State's growth rate average for the last 10 years (2.4%). In addition, Victoria suffered negative per capita growth of -0.2% in 2013-14. VACC submits that if the Victorian Government proceeds with portable long service leave across industry, this further tax on employment will further discourage businesses from hiring more people in Victoria.

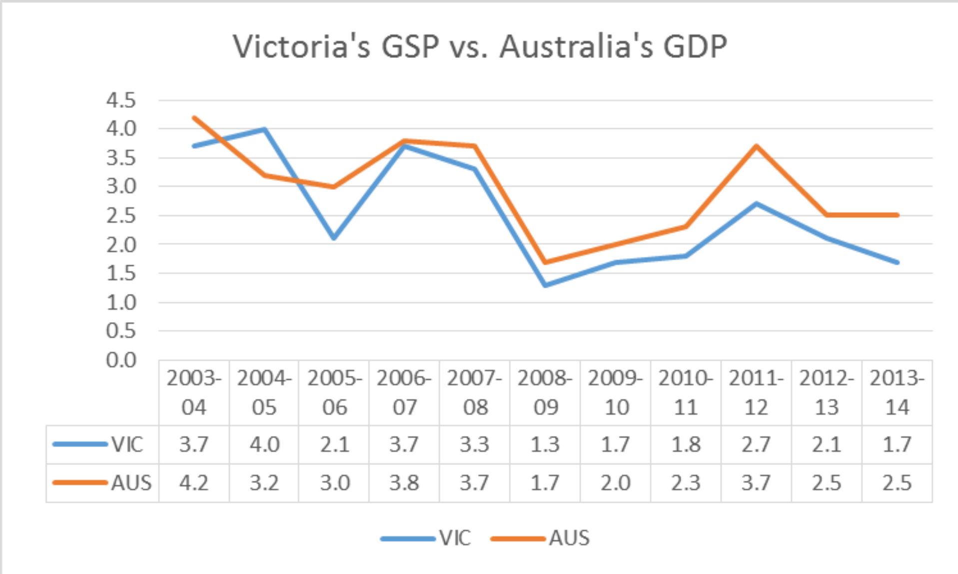
Softness in the Victorian economy

[4] According to the ABS Labour Mobility Survey 2012, 75 per cent of employees stayed with the one employer for less than 10 years.

Long service leave is an almost uniquely Australian entitlement, existing in few other jurisdictions. Increasing the cost of employing workers in Victoria through portable long service leave risks further dissuading foreign and interstate businesses from investing in Victoria. This comes at a time when the Victorian Government is expected to increase the number of all-day public holidays in Victoria by two to 13 – the most of any Australian State or Territory – further damaging Victoria's competitiveness.

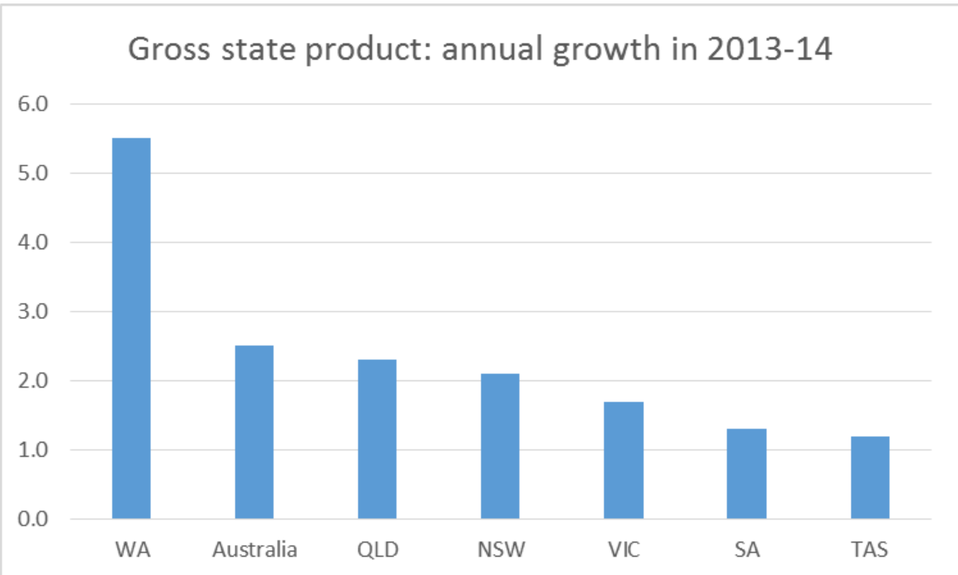
The softness of the Victorian economy is evidenced in the declining trend in the State's annual GSP from 2003-4 to 2013-14, with a clear consistent decline from 2011-12 to 2013-14. Furthermore, since the 2005-6 year, Victoria has consistently had annual GSP averages that have been lower than the national annual GDP average.

Since the 2007-8 Global Financial Crisis, Victoria has had a 6-year (2008-9 to 2013-14) annual GSP average of 1.9%. This is a stark contrast to the 6-year (2001-2) to 2006-7) annual GSP average of 3.6% prior to the 2007-8 Global Financial Crisis.



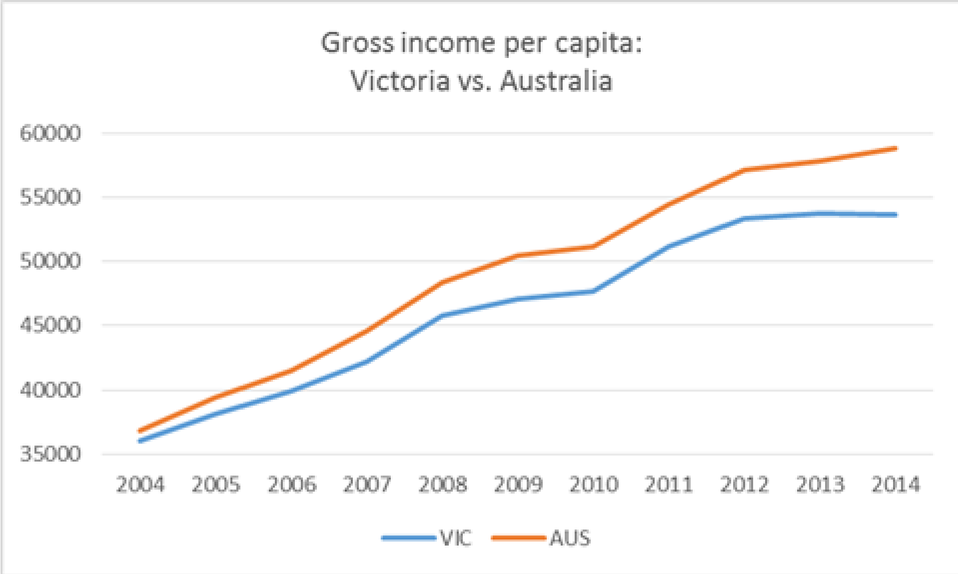
	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
VIC	3.7	4.0	2.1	3.7	3.3	1.3	1.7	1.8	2.7	2.1	1.7
AUS	4.2	3.2	3.0	3.8	3.7	1.7	2.0	2.3	3.7	2.5	2.5

Source: ABS, Australian National Accounts: National Income, Expenditure and Product cat. no. 5206.0, ABS, Australian National Accounts: State Accounts cat. no. 5220.0



Source: ABS, Australian National Accounts: State Accounts cat. no. 5220.0

There has been a widening gap in the gross income per capital of Victoria and Australia over the past 10 years. Taking into consideration state population growth, in 2013-14, Victoria recorded a negative per capita growth of -0.2%:



Source: ABS, Australian National Accounts: State Accounts cat. no. 5220.0

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Cash flow considerations

Portable long service leave risks creating problems of cash flow for some businesses. This is particularly relevant for small businesses, which deal with smaller sums and profit margins than larger businesses. This is supported in a Nielsen telephone survey of VACC members as part of the 2014-15 Annual Wage Review. According to the survey, 'profitability' and 'cash flow' were areas that were most negatively impacted by the 3% increase in modern award minimum wage rates from the 2013-14 Annual Wage Review decision. The survey noted that 35% of businesses experienced a decrease in the level of overall profitability in the business. This is followed with the level of cash flow in the business, in which 27% of businesses reported a decrease as a result of the 3% increase in wages. Compounding this effect, increases to the national minimum wage since 2010 amount to a combined increase of 15.3%.

Victoria's automotive industry, outside the major manufacturers, consists predominantly of small businesses. Therefore, as the Nielsen Report indicates, the automotive industry is especially vulnerable to restrictions on cash flow posed by the additional operating expenses of portable long service leave.

Problems with reduced cash flow are not limited simply to the ability of businesses to pay expenses as they arise without acquiring otherwise unnecessary debt. Businesses with reduced cash flow are less able to survive periods with lower than average turnover. Furthermore, businesses are more likely to invest in productivity boosting improvements when they can afford to do so. VACC therefore submits that Victorian employers, and the Victorian economy as a whole, would be better served if employers were able to reinvest the money that they save from not making regular long service leave payments back into their businesses.

Operating Expenses

The operating expenses of running a portable long service leave scheme compound the economic costs of such a scheme. The construction industry’s portable long service leave scheme uses a public company, CoINVEST Limited, to manage its customers’ benefits. It is reasonable to assume that CoINVEST’s operating expenses provide a model for any future state-wide portable long service leave scheme.

CoINVEST’s 2014 Annual Report listed operating expenses of $18,589,000 for the 2013-14 financial year, rising from $17,012,000 in 2012-13. Related party trust management fees and investment expenses constituted the vast bulk of these sunk costs, at a combined total of more than $16 million for the 2013-14 financial year. In that same year, a further $221,000 was spent on merely administering the portable long service leave scheme. VACC submits that the operating expenses from a state-wide scheme are likely to vastly outweigh the costs from managing the scheme across a single industry.

In comparison to the vast sums of money spent by CoINVEST on operating expenses, the current non-portable long service leave in Victoria is cheaper and easier for businesses to manage. Employers are already equipped through their payroll systems to administer long service leave in a single one-off payment or payment period. In comparison, employers under the CoINVEST scheme are required to make regular payments – constituting a greater administrative burden for payroll staff. These administration costs are felt most particularly by small businesses, who are often unable to afford a dedicated payroll employee.