

Ai GROUP SUBMISSION

Long Service Benefits Portability Regulations: Exposure Draft

31 May 2019



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.

Australian Industry Group contact for this submission

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Ai Group welcomes the opportunity to make this submission about the Long Service Benefits Portability Regulations: Exposure Draft (**Regulations**).

We refer to our concerns about the **Long Service Benefits Portability Bill**, forwarded to the Minister for Industrial Relations on 14 May 2018 (**Submissions**), which are attached. We are of the view that some of our concerns regarding scope and double-dipping could and should still be addressed in the Regulations.

Contract Cleaning and Security

We note that the Regulations are limited to the Community Services sector and do not address the coverage issues we have raised regarding the Contract Cleaning and Security industries. To that end we seek that regulatory clarification is provided for the other two sectors to ensure that the scopes as set out in Schedule 2 and 3 of the *Long Service Benefits Portability Act 2018* do not inadvertently cover employers and employees that are not in the sector.

The following issues regarding double-dipping should also be addressed in Regulations that apply to these industries.

Community Services Sector

Coverage definitions

As we have previously stated, it is vital that the coverage provisions in the Act are as precise as possible.

“*Community service work*” is defined in Schedule 1 of the Act and is drafted in an extremely broad manner. In our view this would undoubtedly lead to a large number of businesses being inadvertently covered, with all of the consequent costs and risks involved. We refer you to our Submissions which outline these issues.

Whilst the Regulations address some of these concerns, the broadness of the scope is still of concern.

To provide more certainty, Regulation 9 should be amended to include the following awards:

1. *Manufacturing and Associated Industries and Occupations Award 2010*;
2. *Professional Employees Award 2010*;
3. *Building and Construction General On-site Award 2010*;
4. *Electrical, Electronic and Communications Contractors Award 2010*.

Double-dipping

We refer to Regulation 11 regarding double-dipping. Whilst it addresses some of our concerns, we believe that clarity around double-dipping should extend to include:

1. The *Long Service Leave Act 2018 (Vic)*;
2. The National Employment Standards under the *Fair Work Act 2009 (Cth)*;
3. Transitional instruments under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*; and
4. The *Construction Industry Long Service Leave Act 1997 (Vic)*.



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ATTACHMENT

14 May 2018

The Hon Natalie Hutchins MP
Minister for Industrial Relations
Level 27, 1 Spring Street,
Melbourne, VIC, 3000

Dear Minister

Re. Long Service Benefits Portability Bill 2018

We are writing to set out our concerns about the *Long Service Benefits Portability Bill 2018 (Bill)*. These concerns include our opposition to portable leave schemes being established for the community services, contract cleaning and security industries, as well as our concerns about particular provisions in the Bill.

Ai Group has amongst its membership many large organisations in the community services, contract cleaning and security industries.

Ai Group's opposition to the Bill

Ai Group opposes any extension in the portability of long service leave entitlements beyond the building and construction industry in Victoria where portable entitlements already exist, for the reasons set out in our [submission](#) to the Parliament of Victoria's Economic, Education, Jobs and Skills Committee inquiry into the portability of long service leave entitled in Victoria.

None of the Members of the Committee that conducted the inquiry recommended the establishment of portable long service leave schemes for the community services, contract cleaning or security industries. Only three of the seven Members of the Committee which conducted the inquiry (i.e. a minority of Members) supported the recommendation that a feasibility study be conducted into the introduction of portable long service leave in the contract cleaning and security industries (see the last seven pages of the Committee's [Final Report](#)).

Portable long service leave schemes are much costlier for industry than traditional long service leave schemes as demonstrated by the costings in Ai Group's submission to the Committee's inquiry. The levy which would be imposed on employers would operate like a tax on employment, with adverse effects on employment growth.

In addition, there would be substantial additional costs imposed on employers due to the regulatory burden of being required to comply with the portable long service leave schemes as well as the long service leave provisions in other legislation and in industrial instruments. The Bill is not able to prevent employers being required to

comply with other long service leave provisions which are binding upon them (e.g. the long service leave provisions in the National Employment Standards in the *Fair Work Act 2009*).

If passed, the Bill would make Victoria less competitive against interstate and overseas firms. It would deter investment in Victoria and reduce employment.

Concerns about particular provisions in the Bill

The following comments relate to particular provisions of the Bill. None of these comments should be taken as indicating any support by Ai Group for the Bill. Ai Group opposes the Bill for the reasons identified above.

Coverage definitions

It is vital that the coverage provisions in the Bill are as precise as possible. If a business believes that it is not covered by a portable long service leave scheme but is held to be covered years down the track, hundreds of thousands of dollars may be owing for the levy, which could force the business into insolvency with the employees losing their jobs.

Over the past 15 years, Ai Group's members have been involved in a large number of coverage disputes with CoINVEST – the administrator of the Victorian construction industry portable long service leave scheme – because the definitions of “*construction work*” and “*construction industry*” are not sufficiently precise. The coverage provisions in the Bill are even less precise than the problematic coverage provisions in the construction industry portable long service leave scheme.

Coverage definitions – community services sector (Clause 3 and Schedule 1)

“*Community service work*” is defined in Schedule 1 of the Bill in an extremely broad manner which would undoubtedly lead to a large number of businesses being inadvertently covered with all of the consequent costs and risks involved.

There are countless examples of businesses outside of the community services sector that could be captured by the definition, including (to name just a few):

- Manufacturers of products that may be used by people with a disability;
- Electricians, plumbers, carpenters, gardeners, etc, who carry out repairs and maintenance on places of accommodation for people with a disability or who are vulnerable, disadvantaged or in crisis;
- IT companies that design and/or sell software or hardware to assist people with a disability;
- Construction businesses that build places of accommodation for people with a disability or who are vulnerable, disadvantaged or in crisis;
- Banks and financial institutions that lend money to people with a disability or who are vulnerable, disadvantaged or in crisis;

- Hotels where people with a disability or who are vulnerable, disadvantaged or in crisis may choose to stay on a holiday;
- Private colleges and schools where people with a disability or who are vulnerable, disadvantaged or in crisis may attend; and
- Businesses that participate in community fundraising initiatives, such as the Cancer Council's *Australia's Biggest Morning Tea* and International Women's Day fundraising events, which support people with a disability or who are vulnerable, disadvantaged or in crisis.

Unlike the portable long service leave schemes that operate in the construction and coal mining industries, the proposed portable long service leave scheme does not exclude managers, professionals and head office staff. As drafted the Bill would apparently require the levy to be calculated and paid on the salaries of all staff of businesses that carry out any "community services work", including the salaries of CEOs. This approach will substantially increase the levy that employers will be required to pay to fund the schemes and exacerbate the adverse impacts on business viability and employment.

The obvious effect of the Bill will be to strongly discourage businesses outside of what is commonly regarded as the community services sector from developing and/or selling goods and services to people with a disability or who are vulnerable, disadvantaged or in crisis, and from participating in community fundraising initiatives. Such an outcome is obviously not in the interests of disadvantaged people and obviously not in the community's interests.

The definition of "community service work" in the Bill is completely unworkable.

If, despite Ai Group's opposition, the Bill has sufficient support to be passed by Parliament, more workable coverage definitions are set out in **Attachment A**.

Coverage definitions – contract cleaning industry (Clause 3 and Schedule 2)

The "contract cleaning industry" and "cleaning work" are defined in Schedule 2 of the Bill in a very expansive manner which would undoubtedly lead to a large number of businesses being inadvertently covered with all of the consequent costs and risks involved.

If, despite Ai Group's opposition, the Bill has sufficient support to be passed by Parliament, more workable coverage definitions are set out in **Attachment B**.

Coverage definitions – security industry (Clause 3 and Schedule 3)

If, despite Ai Group's opposition, the Bill has sufficient support to be passed by Parliament, the coverage provisions need to be tightened to avoid unintended consequences.

Some proposed amendments are set out in **Attachment C**.

Double-dipping and multiple obligations on employers

Common sources of long service leave entitlements of Victorian employees are:

- The Victorian *Long Service Leave Act 2018*;
- The National Employment Standards under the *Fair Work Act 2009*;
- Enterprise agreements and other fair work instruments under the *Fair Work Act 2009*;
- Transitional instruments under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and
- The Victorian *Construction Industry Long Service Leave Act 1997*.

The provisions in the Bill that are intended to avoid double-dipping neglect to deal with all of the above common sources of long service leave entitlements. This is a major problem.

The following amendments need to be made to the Bill:

Schedule 1 – Community services

17 No double-dipping

- (1) If a registered active worker for the community services sector has an entitlement to long service leave, or the payment of long service benefits, under the Long Service Leave Act 2018, the Fair Work Act 2009, a fair work instrument or a transitional instrument given continuing effect under the Fair Work Transition Act, the entitlements of the worker and the obligations of the employer and the Authority under this Act are to be determined in accordance with the regulations.
- (2) Regulations made for the purposes of subclause (1) must give effect to the following principles—
 - (a) a worker is not to be entitled to both long service leave under the Long Service Leave Act 2018, the Fair Work Act 2009, a fair work instrument, a transitional instrument given continuing effect under the Fair Work Transition Act or a corresponding law and payment of a long service benefit under this Act in respect of the same service period;
 - (b) an employer is not to be required to pay a worker for long service leave under the Long Service Leave Act 2018, the Fair Work Act 2009, a fair work instrument, a transitional instrument given continuing effect under the Fair Work Transition Act or a corresponding law and to pay a levy under this Act for the worker in respect of the same service period;
 - (c) the Authority is not to be required to pay a long service benefit to a worker under this Act and to reimburse an employer for long service leave granted to the worker under the Long Service Leave Act 2018, the Fair Work Act 2009, a fair work instrument, a transitional instrument given continuing effect under the Fair Work Transition Act or a corresponding law in respect of the same service period.
- (3) To avoid doubt, the regulations may modify the operation of the other provisions of this Act for the purpose of giving effect to the principles set out in subclause (2).

Schedule 2 – Contract cleaning

24 Benefits under other laws—election

- (1) A registered active worker for the contract cleaning industry must elect the law under which long service benefits are to be taken if the worker is eligible both for long service benefits under this Act and long service benefits under one or more of the following—
 - (a) the **Long Service Leave Act 2018**;
 - (b) a corresponding law;
 - (c) a fair work instrument or a fair work transitional instrument given continuing effect under the Fair Work Transition Act;
 - (d) the Fair Work Act 2009.
- (2) If so, the worker must nominate to the Authority in writing—
 - (a) the law or instrument under which the worker elects to take the long service benefits; and
 - (b) the service period, or part of the service period, for which the election is made.
- (3) If the Authority receives a written nomination, the Authority must—
 - (a) remove from the relevant workers register credit for service equal to the service period, or part of the service period, nominated; and
 - (b) keep a record of the credit for service removed.

Schedule 3 – Security industry

24 Benefits under other laws—election

- (1) A registered active worker for the security industry must elect the law under which long service benefits are to be taken if the worker is eligible both for long service benefits under this Act and long service benefits under one or more of the following—
 - (a) the **Long Service Leave Act 2018**;
 - (b) a corresponding law;
 - (c) a fair work instrument or a fair work transitional instrument given continuing effect under the Fair Work Transition Act;
 - (d) the Fair Work Act 2009.
- (2) If so, the worker must nominate to the Authority in writing—
 - (a) the law or instrument under which the worker elects to take the long service benefits; and
 - (b) the service period, or part of the service period, for which the election is made.
- (3) If the Authority receives a written nomination, the Authority must—
 - (a) remove from the relevant workers register credit for service equal to the service period, or part of the service period, nominated; and
 - (b) keep a record of the credit for service removed.

Dispute settling

It is very important that employers who believe that they are not covered by the relevant portable long service scheme, and the obligation to pay the levy, have a cost-effective and timely mechanism to challenge a decision of the Authority that they are covered. This is a major problem with the *Construction Industry Long Service Leave Act 1997*, and it is important that the problem is not duplicated in this Bill.

To address this issue, the following amendments need to be made to clause 56 in the Bill:

56 Review by VCAT

- (1) A person whose interests are affected by any of the following decisions may apply to VCAT for review of the decision—
 - (a) a decision of the registrar to refuse to register a person on the employers register or workers register for a covered industry;
 - (ab) a decision of the registrar to register a person on the employers register or workers register for a covered industry;
 - (b) a decision of the registrar to move a person from the active part of the employers register or workers register for a covered industry to the inactive part of that register;
 - (c) a decision of the registrar to refuse to remove a person from the inactive part of the employers register or workers register for a covered industry to the active part of that register;
 - (d) a decision of the registrar in relation to the service for which a worker is entitled to be credited;
 - (e) a refusal by the Authority to pay a long service benefit, or make a payment for or on behalf of long service leave, under this Act;
 - (f) a refusal by the Authority to pay a person under this Act on behalf of a reciprocal authority;
 - (g) a refusal by the Authority to reimburse an employer under—
 - (i) clause 25 of Schedule 2; or
 - (ii) clause 25 of Schedule 3.
 - (h) a decision by the Authority that an employer is covered by Schedule 1, Schedule 2 or Schedule 3;
 - (i) a decision by the Authority that an employer is obligated to pay a levy.
- (2) An employer or contract worker for a covered industry may apply to VCAT for review of a decision of the Governing Board determining or changing the rate of levy payable by the employer or contract worker.

57 Time limit for applying for review

An application for review under section 56 must be made within ~~28 days~~ 60 days after the later of—

- (a) the day on which the relevant decision is made; or
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Definition of “ordinary pay”

Other long service leave schemes, including portable long service leave schemes, do not typically include shift allowances, other allowances or weekend penalties in the definition of “ordinary pay”. For example, under the Victorian *Long Service Leave Act 2018*, shift loadings, weekend penalties and certain allowances are not “ordinary pay”.

The definition of “ordinary pay” in clause 9 of Schedule 1 of the Bill needs to be amended to make it clear that weekend penalties are not included in the definition. Shift allowances and other allowances are already excluded in this Schedule.

The definitions of “ordinary pay” in clause 13 of Schedule 2 and clause 13 of Schedule 3 of the Bill need to be amended to exclude shift allowances, other allowances and weekend penalties from the definitions.

Requirement to provide information

It is important that employers are only required to provide information to an inspector that is reasonably required for the inspector to carry out the functions under the Bill. The following amendment should be made to clause 62:

62 Power to require information or documents

- (1) For the purpose of monitoring compliance with this Act and the regulations, an authorised officer may by written notice require a person, within a reasonable period specified in the notice—
 - (a) to give the authorised officer any information that the authorised officer reasonably requires; or
 - (b) to produce to the authorised officer a document in the custody or control of the person.
- (2) A notice under subsection (1) must—
 - (a) warn the person that a refusal or failure to comply with the notice, without reasonable excuse, is an offence; and
 - (b) if directed to an individual, inform the person that the person may refuse or fail to produce documents (other than a record or other document that the person is required to keep under this Act) or provide information if producing the document or providing the information would tend to incriminate the person.

Note

See section 68 for offences related to giving information or producing documents.

- (3) An authorised officer may inspect, and make copies of or take extracts from, a document produced to the authorised officer under subsection (1).

Limitations on claims for back-pay of the levy

If a business believes that it is not covered by one of the portable long service leave schemes in the Bill but is held to be covered years down the track, hundreds of thousands of dollars may be owing for the levy, which could force the business into insolvency with the employees losing their jobs. Therefore, there needs to be a limit on

claims for back-pay of the levy and penalty interest. A six year limit would be consistent with the limit on underpayment claims under the *Fair Work Act 2009*.

Also, the Authority needs to be given the discretion to waive the requirement to pay penalty interest in appropriate circumstances (e.g. financial hardship of the employer, or the employer's genuine and reasonable belief that it was not covered by Schedule 1, 2 or 3). This discretion exists under other portable long service leave schemes (e.g. the coal industry scheme).

Clause 34 should be amended as follows:

34 Unpaid levy

- (1) Interest is payable on an amount of unpaid levy owing to the Authority at the rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** and calculated from the date on which the amount becomes due until the date on which the amount is paid or recovered. The Authority may waive the requirement to pay penalty interest if the Authority decides that this is appropriate in the circumstances, including in circumstances where the employer is experiencing financial hardship or where the employer held a genuine and reasonable belief that it was not covered by Schedule 1, 2 or 3.
- (2) The Authority may recover an amount of unpaid levy owing to the Authority, and any interest owing to the Authority under subsection (1), as a debt in a court of competent jurisdiction. A court must not make an order that relates to a period that is more than 6 years before the proceedings concerned commenced.

Service credits

The service crediting arrangements in the Bill are excessively generous which will substantially increase the amount of the levy that employers will need to pay to fund the portable long service leave schemes.

Under the provisions of the Bill, workers are entitled to be credited with one day of service for each day in each service period. A service period continues until a worker does not perform any work in the community services industry in a quarter. This apparently means that an employee who works on only four days of the 365 days in a year (i.e. one day in each quarter) could be entitled to the same long service leave entitlements as an employee who works five days a week each year. (See clauses 5, 6 and 7 in Schedule 1, clauses 6, 7 and 8 in Schedule 2, and clauses 6, 7 and 8 in Schedule 3). This is not logical or fair on employers or employees. It will also substantially increase the levy that employers will be required to pay to fund the schemes and exacerbate the adverse impacts on business viability and employment.

The excessively generous service credit provisions in the Bill contrast with the already very generous provisions in the Victorian construction industry portable long service leave scheme. Under the construction industry scheme, in calculating a period of service any period of employment with an employer for less than five days in a month is disregarded (see CoINVEST Rule 23.10).

Further, there should be no back-dating of service credits for the period prior to the implementation of the portable long service leave schemes. A large number of employees would have already accrued long service leave entitlements under other long service leave schemes for the period leading up to the date of implementation. Back-dating will lead to unnecessary complications for the Authority and businesses, and potential double-dipping.

Entitlement to take leave

We note that the community services sector scheme does not provide employees with an entitlement to take long service leave (see clause 8 in Schedule 1), and hence is not a long service “leave” scheme at all. In contrast, the contract cleaning and security industry schemes give employees an entitlement to take long service leave (clause 11 in Schedule 2 and clause 11 in Schedule 3).

Governance Board

The Governance Board needs to include representatives of industry organisations that not only represent the interests of employers in the community services, contract cleaning and security industries, but also those employers which provide products and services to these industries and whose interests may be adversely affected by any expansive interpretations adopted by the Authority of the coverage provisions in the legislation.

Ai Group has amongst its membership many large organisations in the community services, contract cleaning and security industries. We also have a large number of member companies which provide products and services to these industries. If, despite Ai Group’s opposition, the Bill has sufficient support to be passed by Parliament, Ai Group is well qualified to be represented on the Governance Board.

Transitional arrangements

Given the major changes to long service leave entitlements that would occur if the Bill is passed, employers in the community services, contract cleaning and security industry should be given at least six months’ notice (and ideally 12 months’ notice) of the implementation of the portable long service leave schemes, once the legislation comes into operation.

We would be happy to provide any additional information that you may require about these important matters.

Yours sincerely



Tim Piper
Head – Victoria

ATTACHMENT A

COVERAGE DEFINITIONS – COMMUNITY SERVICES SECTOR

The coverage definitions in the Bill relating to the community services sector are completely unworkable. The following amended definitions would be more workable.

2 What is *community service work*?

- (1) Subject to subclause (2), **community service work** is work that falls within the coverage of the *Social, Community, Home Care and Disability Services Award 2010* as in force on 1 June 2018 provides—
- ~~(a) training and employment support, or employment placement, for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis; or~~
 - ~~(b) financial support or goods for the assistance of persons with a disability or other persons who are vulnerable, disadvantaged or in crisis; or~~
 - ~~(c) accommodation, or accommodation-related support services, for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis; or~~
 - ~~(d) home care support services for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis; or~~
 - ~~(e) other support services for—~~
 - ~~(i) persons with a disability or their carers; or~~
 - ~~(ii) persons who are vulnerable, disadvantaged or in crisis; or~~
 - ~~(f) community legal services, community education and information services, or community advocacy services; or~~
 - ~~(g) community development services; or~~
 - ~~(h) fundraising assistance for community groups; or~~
 - ~~(i) services providing assistance to particular cultural or linguistically diverse communities; or~~
 - ~~(j) a service, or a service of a class, the provision of which is prescribed to be community service work.~~
- (2) **Community service work** does not include an activity, or an activity of a class, prescribed not to be community service work.

4 Who is an *employee*?

- (1) Subject to subclause (2), an **employee** for the community services sector is an individual employed by an employer for the sector (whether in Victoria or elsewhere) and includes an individual employed on a casual basis.
- (2) The following are not employees for the community services sector—

- (a) if the employer operates a business in addition to being a licensed children's service under the **Children's Services Act 1996** or an approved provider under the Education and Care Services National Law (Victoria)—an individual employed by the employer unless the individual's role is to care for children or coordinate the care of children for the licensed children's service or approved provider;
- (b) if the employer is a community health centre registered under section 48 of the **Health Services Act 1988**—an individual employed by the employer unless the individual's role is to carry out community service work at the community health centre;
- (c) if the employer provides services for persons with a disability or for persons who are vulnerable, disadvantaged or in crisis—an individual employed by the employer whose primary role is to provide health services to those persons;
- (d) an individual covered by ~~to whom~~ any of the following awards or agreements apply —
 - (i) the Aged Care Award 2010, as amended and in force from time to time on 1 June 2018;
 - (ii) the Manufacturing and Associated Industries and Occupations Award 2010 as in force on 1 June 2018;
 - (iii) the Professional Employees Award 2010 as in force on 1 June 2018;
 - (iv) the Building and Construction General On-site Award 2010 as in force on 1 June 2018;
 - (v) the Electrical, Electronic and Communications Contractors Award 2010 as in force on 1 June 2018;
 - (vi) a prescribed award or agreement;
- (e) an individual who is, or is a member of a class, prescribed not to be an employee for the community services sector.

ATTACHMENT B

COVERAGE DEFINITIONS – CONTRACT CLEANING INDUSTRY

The coverage definitions in the Bill relating to the contract cleaning industry are problematic. The following amended definitions would be more workable:

1 What is ~~the~~ **contract cleaning industry work**?

- (1) Subject to subclause (2), **contract cleaning industry work** is work that ~~falls within the coverage of the *Cleaning Services Award 2010* as in force on 1 June 2018.~~

~~The **contract cleaning industry** is—~~

- ~~(a) in relation to Victoria—the industry in which employers provide cleaning work to other people through the provision of workers' services; and~~
- ~~(b) in relation to a reciprocating jurisdiction—the contract cleaning industry within the meaning of the corresponding law of that jurisdiction.~~

2 ~~What is **cleaning work**?~~

~~(1) Subject to this clause, **cleaning work** is—~~

- ~~(a) work that has, as its only or main function, the bringing of premises into, or keeping of premises in, a clean condition; or~~
- ~~(b) an activity, or an activity of a class, prescribed to be cleaning work.~~

~~(2) **Cleaning work** includes the cleaning of a swimming pool and the grounds surrounding the swimming pool.~~

~~(3)(2) **Contract cleaning industry work** does not include—~~

- ~~(a) the removal of waste from commercial waste receptacles; or~~
- ~~(b) the bringing of grounds surrounding a building or house into, or keeping the grounds in, a clean condition; or~~
- ~~(c) work of a cleaning nature performed on a building or house under construction; or~~
- ~~(d) work of a gardening nature, including the removal or alteration of vegetation; or~~
- ~~(e) an activity, or an activity of a class, prescribed not to be cleaning work.~~

43 Who is an **employee**?

- (1) Subject to subclause (2), an **employee** for the contract cleaning industry is an individual employed by an employer for the industry (whether in Victoria or elsewhere) and includes—
- (a) an apprentice and any individual whose employment agreement requires the individual to learn or be taught cleaning work; and
- (b) an individual employed on a casual or seasonal basis.

- (2) An individual is not an employee for the contract cleaning industry if—
- (a) the individual's name is included on the register of workers kept by the trustee in accordance with the trust deed under the **Construction Industry Long Service Leave Act 1997**; or
 - (b) the individual is, or is a member of a class, prescribed not to be an employee for the contract cleaning industry;
 - (c) the individual is covered by any of the following awards or agreements —
 - (ii) the *Manufacturing and Associated Industries and Occupations Award 2010* as in force on 1 June 2018;
 - (vi) a prescribed award or agreement.

ATTACHMENT C

COVERAGE DEFINITIONS – SECURITY INDUSTRY

The coverage definitions in the Bill relating to the security industry are problematic. The following amended definitions would be more workable:

1 What is the *security industry*?

- (1) The *security industry* is—
 - (a) in relation to Victoria—the industry in which security activities are undertaken by persons licensed to undertake them under the **Private Security Act 2004**; and
 - (b) in relation to a reciprocating jurisdiction—the security industry within the meaning of the corresponding law of that jurisdiction.
- (2) In this clause—
security activity has the same meaning as in the **Private Security Act 2004**.

2 What is *security work*?

- (1) Subject to subclause (2), *security work* is—
 - (a) work performed in the security industry; or
 - (b) an activity, or an activity of a class, prescribed to be security work.
- (2) ***Security work*** does not include an activity, or an activity of a class, prescribed not to be security work.

Examples

- 1 The following are examples of activities that would be security work—
 - (a) protecting, guarding or watching property;
 - (b) acting as a bodyguard;
 - (c) acting as a crowd controller;
 - (d) installing, servicing or repairing security equipment;
 - (e) providing training in relation to private security.
- 2 The following are examples of activities that would not be security work—
 - (a) installing a lock as part of work as a builder;
 - (b) cutting unrestricted keys;
 - (c) operating a prison or other correctional facility;
 - (d) selling self-install security systems.

3 Who is an *employer*?

- (1) Subject to this clause, an ***employer*** for the security industry is a person engaged in the industry in Victoria who employs someone else (whether in Victoria or elsewhere) to perform work in the industry.
- (2) Also, a person is an ***employer*** for the security industry if—

- (a) the person employs or engages someone else (a **worker**) to perform work in the industry for another person engaged in the industry in Victoria for fee or reward; and
 - (b) there is no contract to perform the work between the worker and the person for whom the work is performed.
- (3) However, the following are not employers for the security industry—
- (a) the Commonwealth;
 - (b) the State;
 - (c) an entity that has a governing body appointed under an Act of the Commonwealth or the State;
 - (d) a municipal council or other public statutory body;
 - (e) a person who is, or is a member of a class, prescribed not to be an employer for the security industry.

4 **Who is an *employee*?**

- (1) Subject to subclause (2), an **employee** for the security industry is an individual employed by an employer for the industry (whether in Victoria or elsewhere) and includes—
- (a) an apprentice and any individual whose employment agreement requires the individual to learn or be taught security work; and
 - (b) an individual employed on a casual or seasonal basis.
- (2) An individual is not an **employee** for the security industry if—
- (a) the individual's name is included on the register of workers kept by the trustee in accordance with the trust deed under the **Construction Industry Long Service Leave Act 1997**; or
 - (b) the individual is, or is a member of a class, prescribed not to be an employee for the security industry.
 - (c) the individual is covered by any of the following awards or agreements —
 - (i) the *Manufacturing and Associated Industries and Occupations Award 2010* as in force on 1 June 2018;
 - (ii) the *Building and Construction General On-site Award 2010* as in force on 1 June 2018;
 - (iii) a prescribed award or agreement.
- (3) In this clause—
- trust deed*** and ***trustee*** have the same meaning as in the **Construction Industry Long Service Leave Act 1997**.