

DRAFT

Ai GROUP SUBMISSION

Portable Long Service Leave Design Study Issues Papers

- **Contract cleaning industry**
- **Security industry**

ACIL Consulting for the Victorian
Department of Economic Development,
Jobs, Transport and Resources

April 2017



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

Stephen Smith, Head of National Workplace Relations Policy

Telephone: 0418 461183 or 02 9466 5521

Email: stephen.smith@aigroup.com.au

1. Introduction

The Australian Industry Group (**Ai Group**) welcomes the opportunity to comment on the Portable Long Service Leave Design Study issues papers for both the contract cleaning industry and security industry in Victoria (collectively the **Issues Papers**).

Ai Group provided a number of detailed submissions to the Parliament of Victoria's Economic, Education, Jobs and Skills Committee (**Committee**) inquiry into the portability of long service leave entitled in Victoria (**Committee Inquiry**). We continue to rely upon these submissions, and are opposed to any extension of the portability of long service leave entitlements beyond the building and construction industry in Victoria where these entitlements already exist.

We note the outcome of the Committee Inquiry (**Inquiry**) and final report, *Inquiry into portability of long service leave entitlements*, published June 2016 (**Final Report**). The recommendations of the majority of the Committee are found on the final page of the Final Report, and are contained within what the Final Report described as the 'minority report'. These recommendations, supported by four of the seven Committee members who conducted the inquiry, are set out below:

Recommendation 1:

That the Victorian Government commission independent, quantitative, research to determine if industry portable long service leave schemes outside Victoria, have resulted in an increase in the retention of employees eligible for long service leave.

Recommendation 2:

That the Victorian Government commission independent research to determine the economic and employment impacts of expanding portable long service leave as well as the costs to employers and employees.

Recommendation 3:

That the Victorian Government clearly define the coverage of the CoINVEST scheme in the enabling legislation.

We are disappointed that the Victorian Government has not taken account of the fact that the recommendations in the 'majority report' were only supported by three of the seven members of the Committee, in deciding to undertake a feasibility study into the introduction of portable long service leave in the security industry and contract cleaning industry in Victoria.

This submission includes Ai Group's responses to the questions raised by ACIL Allen Consulting (**ACIL**) within the following:

- Victorian security industry issues paper (**Security Issues Paper**); and
- Victorian contract cleaning issues paper (**Contract Cleaning Issues Paper**).

2. The introduction of portable long service leave in the security industry and contract cleaning industry should not proceed

Ai Group notes the following views of the majority of Members of the Committee that conducted the Inquiry:

The terms of reference, for this inquiry, required the committee to have regard for the financial impacts or benefits of portable long service leave entitlements of employers, employees, and taxpayers as well as the economic impact on Victorian jobs, employment and investment.

Portable long service leave schemes require costs to be established. Those costs include scheme set up and commencement, ongoing overheads, as well additional costs to employers regardless if public, private or not for profit. Employer costs are more than they would otherwise be required to pay under existing long service leave requirements. In addition, economists made the committee aware that extra costs borne by employers could mean slower wage growth to employees as those increased costs are offset.

When the committee examined the evidence and transcripts, as well as searching for related research, there was an absence of independent data to consider financial and economic impacts. The committee was also unable to identify if portable long service schemes have met defined and measurable objectives for implementation.

Workforce data from the Australian Bureau of Statistics showed significant movement between industries and a recent Deloitte Access Economics survey showed 60% of respondents who will pursue a new job in the next ten years are looking to change their industry, role or both.

With this movement in and out of industries, and the lack of available data from existing portable long service schemes the committee determined that prior to any consideration of portable long service leave introduction, independent research must be undertaken to determine the impacts.

Through submissions and public hearings, it was identified by the full committee that for some, there could be inequity in the contract cleaning, security and some other industries where an employee might maintain the same role with multiple employers due to the contract changing hands. This could mean the employee is excluded from accruing enough long service leave to reach eligibility for leave or pro rate payment.

Without data, the committee is unable to verify how many contract cleaning and security employees would be affected. If it were a very small number, due to increasing industry and employment mobility, a portable long service leave scheme may not be the best way to address it.

The case for extending portable long service leave entitlements beyond the building and construction industry has not been made out. Uncertainty surrounds the potential costs of portable long service leave schemes in the security industry and contract cleaning industry in Victoria, and the impacts of such costs on employers and employees in these industries.

The Final Report of the three Government Members of the Committee at 3.1 identifies that “[t]he main argument presented supporting portable long service leave was that it would provide equity to workers who through no fault of their own were unable to work with the same employer long enough to qualify for long service leave”. The Final Report of the three Government Members then identifies the benefits of portable long service leave as: “greater access to long service leave, the benefits to employers, costs savings to the Australian Government and the opportunity to collect workforce data”. These alleged ‘benefits’ are not enough to justify the expansion of portable long service leave in Victoria. They are significantly outweighed by the costs of a portable long service leave scheme to employers.

Ai Group’s submission to the Inquiry (**Ai Group’s 2015 Submission**) provided a cost estimate using ABS data of the introduction of portable long service leave to Victoria and provided a breakdown by industry. Our estimates show that if portable long service leave was to be introduced across the Victorian workforce, it would cost employers collectively about \$4 billion per year.

Table 1: Estimated annual cost of a 2.7 per cent long service leave levy on full-time ordinary time earnings in Victoria by industry

Industry	Employment numbers* ('000) Full-time employees***	Average Weekly Earnings (\$)*** Full-time weekly ordinary time earnings****	Total estimated weekly payroll (\$m) Full-time ordinary time earnings	Total estimated annual LSL costs @ 2.7% (\$m) based on full-time ordinary time earnings
Agriculture, Forestry and Fishing	56.6	n/a	n/a	n/a
Mining	11.0	2,494.5	27.3	38.4
Manufacturing	240.6	1,354.3	325.9	457.6
Electricity, Gas, Water and Waste Services	32.7	1,631.2	53.3	74.8
Construction	203.9	1,475.1	300.8	422.3
Wholesale Trade	90.1	1,414.0	127.4	178.9
Retail Trade	160.1	1,063.6	170.3	239.1
Accommodation and Food Services	80.6	1,037.2	83.6	117.4
Transport, Postal and Warehousing	120.4	1,451.8	174.9	245.5
Information Media and Telecommunications	51.9	1,671.4	86.7	121.7
Financial and Insurance Services	91.1	1,725.7	157.3	220.8
Rental, Hiring and Real Estate Services	33.2	1,283.0	42.6	59.9
Professional, Scientific and Technical Services	192.8	1,795.2	346.1	485.9

Ai Group Submission – Portable Long Service Leave Design Study Issues Papers

Administrative and Support Services	58.8	1,273.1	74.8	105.0
Public Administration and Safety	118.1	1,539.4	181.9	255.3
Education and Training	142.2	1,565.9	222.7	312.7
Health Care and Social Assistance	181.9	1,399.6	254.6	357.5
Arts and Recreation Services	31.7	1,291.6	41.0	57.6
Other Services	72.8	1,096.2	79.8	112.0
Total (ANZSIC06 DIVISION LEVEL)	1,970.7	1,477.0	2,910.7	4,086.6

* 4-quarter average up to May 2015. Australian Bureau of Statistics 2015, Labour Force, Australia, Detailed, Quarterly, May 2015, cat no. 6291.0.55.003, Table 05, ABS, Canberra. Data has been adjusted over four quarters.

** Australian Bureau of Statistics 2014, Average Weekly Earnings, November 2014, cat no. 6302.0, Table 10G, ABS, Canberra.

***Full-time employees are permanent, temporary and casual employees who normally work the agreed or award hours for a full-time employee in their occupation and received pay for any part of the reference period. If agreed or award hours do not apply, employees are regarded as full-time if they ordinarily work 35 hours or more per week¹

****Weekly ordinary time earnings refers to one week's earnings of employees for the reference period, attributable to award, standard or agreed hours of work. It is calculated before taxation and any other deductions (e.g. superannuation, board and lodging) have been made. Included in ordinary time earnings are award, workplace and enterprise bargaining payments, and other agreed base rates of pay, over-award and over-agreed payments, penalty payments, shift and other allowances, commissions and retainers, bonuses and similar payments related to the reference period, payments under incentive or piecework, payments under profit sharing schemes normally paid each pay period, payment for leave taken during the reference period, all workers' compensation payments made through the payroll, and salary payments made to directors. Excluded are amounts salary sacrificed, non-cash components of salary packages, overtime payments, reimbursements to employees for travel, entertainment, meals and other expenditure incurred in conducting the business of their employer, and other payments not related to the reference period.²

When considering the potential costs to the security industry, the relevant ANZSIC division is Public Administration and Safety. If a portable long service leave scheme was implemented for all employers in this ANZSIC Division, with a 2.7 per cent levy (the same as the building and construction industry scheme) the cost would be about \$250 million per year. While the division includes some employers not in the security industry the figure of \$250 million is very high, even when halved.

Likewise, when considering the ANZSIC division Administrative and Support Services, which comprises of contract cleaning, the cost of a portable long service leave scheme with a 2.7 per cent levy would cost about \$105 million. Again, while the division includes some employers not in the contract cleaning industry the amount of \$105 million is very significant, even when halved.

The Final Report of the three Government Members of the Committee overlooks the opinion of most employers that a portable long service scheme would present an additional administrative burden. The Final Report emphasises the opinions of the Health Workers Union–Victoria, Community Information & Support Victoria, United Voice Victoria, the ACT Council of Social Service, Community services sector portable long service leave scheme, United Voice Victoria, and the McKell Institute that the administrative burden would be reduced overtime and could potentially be of 'administrative benefit' (see evidence of United Voice). These organisations are not employers in the security industry or contract cleaning industry, nor do these organisations represent employers in these industries. It is stark omission that when discussing the *administrative burden* the Final Report does not include the views of employers in these industries.

¹ ABS 2014, Average Weekly Earnings, Australia, November 2014, cat. no. 6302.0, ABS, Canberra.

² ABS 2014, Average Weekly Earnings, Australia, November 2014, cat. no. 6302.0, ABS, Canberra.

Furthermore, when considering the disadvantage of ‘capacity to cover employee absences’, the Final Report of the three Government members relies on the view of United Voice which dismisses this as a disadvantage, stating that employers, particularly in the security industry and contract cleaning industry ‘are already accustomed to replacing staff’ (p.57).

At section 3.1.3 of the Final Report, a number of alleged ‘benefits’ are identified. However, throughout the commentary, it is clear that none of the alleged benefits have been advanced by employer participants in the Inquiry (pp.52-55).

The case in favour of expanding portable long service leave in Victoria to the security and contract cleaning industries is weak.

3. Responses to Questions in the Issues Papers

Definition of the security industry

The Security Issues Paper seeks stakeholder views regarding a definition of the security industry for determining the parameters of a portable long service leave scheme for the industry in Victoria.

Question 3.1 in the Security Issues Paper

How should the security industry be defined so that there are no gaps in coverage or overlaps with other industries and it is clear about who is intended to be covered by the scheme? How can this definition be made robust so that it remains relevant as the security industry evolves?

Answer

A portable long service leave scheme should not be established in the security industry.

If despite Ai Group’s opposition, the Government decides to implement a portable long service leave scheme in the security industry, it is important that:

- The industry is defined in a clear and limited way to avoid coverage disputes and the imposition of a levy on employers in other industries that may interact with the security industry. This is major problem with the Victorian Construction Industry Long Service Leave Scheme (**CILSL Scheme**) as administered by CoINVEST. Some of the problems with the CILSL scheme and CoINVEST are identified in Ai Group’s submissions to the Inquiry.
- The scheme only apply to permanent employees of employers principally engaged in contracting of security services, who are performing security work as their main function/role for the employer.
- Employer contributions are only required for direct employees of security services businesses and not sub-contractors.

The Security Issues Paper considers the adoption of the ANZSIC definition of the *Investigation and Security Services classification*. This definition includes the following activities (jobs):

“Alarm monitoring services, Armoured car services, Body guard services, Burglary protection services, Detective agency services, Enquiry agency services, Locksmith services, Night watchman services, Protection services, Security alarm monitoring services, Security guard services.”

and excludes:

- police services, prisons, correctional or other detention facilities
- selling of security systems (such as locking devices, safes and vaults) without installation or maintenance services, which are included in classes related to retail trade
- providing key cutting services which are the ‘Other Repair and Maintenance’ classification
- alarm installations are included in the ‘Fire and Security Alarm Installation Services’ classification.

If this definition is adopted, the following activities should be added to the list of exclusions:

- Work carried out by security personnel engaged by businesses that are principally engaged in industries other than the security industry. For example, a manufacturing business may directly employ one caretaker or gate-keeper;
- Advising clients on security requirements;
- Designing security equipment, services, systems and processes;
- Selling of security equipment and systems;
- Manufacturing of security equipment;
- Maintaining and repairing security equipment.

Definition of the contract cleaning industry

The Contract Cleaning Issues Paper seeks stakeholder views regarding a definition of the contract cleaning industry for determining the parameters of a portable long service leave scheme for the industry in Victoria.

Question 3.1 in the Contract Cleaning Issues Paper

How should the contract cleaning industry be defined so that there are no gaps in coverage or overlaps with other industries and it is clear about who is intended to be covered by the scheme?

How can this definition be made robust so that it remains relevant as the contract cleaning industry evolves?

Answer

A portable long service leave scheme should not be established in the contract cleaning industry.

If despite Ai Group's opposition, the Government decides to implement a portable long service leave scheme in the contract cleaning industry, it is important that:

- The industry is defined in a clear and limited way to avoid coverage disputes and the imposition of a levy on employers in other industries that may interact with the contract cleaning industry. This is major problem with the CILSL Scheme as administered by CoINVEST.
- The scheme only apply to permanent employees of employers principally engaged in contracting of security services, who are performing cleaning work as their main function/role for the employer.
- Employer contributions are only required for direct employees of cleaning contractors and not sub-contractors.

The portability of long service leave for the contract cleaning industry should only apply to permanent employees of employers principally engaged in the contracting of cleaning services, whom are performing cleaning work (as defined by the scheme) as their main function/role for the employer.

If it is decided that a portable long service leave scheme is funded by employer contributions, it is important that contributions are only required to be paid with respect to direct employees of cleaning contractors and not sub-contractors that may be engaged from time to time by the principle contractor.

The contract cleaning industry must be defined in a limited way to prevent a possible 'leaking' of a portable long service leave scheme into other industries. We bring ACIL's attention to the ongoing expansion of the CILSL Scheme by the scheme administrator CoINVEST into industries beyond construction.

The ANZSIC definition of Building and Other Industrial Cleaning Services classification includes (but is not limited to) the following primary activities:

- Bathroom/toilet cleaning;
- Building exterior cleaning (except sand blasting or steam cleaning);
- Building interior cleaning;
- Janitorial service (including transport equipment);

- Residential building cleaning; and
- Window cleaning.

Exclusions from the above ANZSIC definition include:

- sand blasting or steam cleaning of building exteriors
- providing laundry and dry-cleaning services.

If this definition is adopted, we are of the view the following activities (jobs) be added to the list of exclusions:

- Work that is not carried out by a cleaning contractor, being an entity principally engaged in the business of providing cleaning services (as defined) on a contract basis.
- Work carried out by cleaning personnel engaged by businesses that are principally engaged in industries other than the contract cleaning industry. For example, manufacturing and construction businesses often employ labourers who carry out some cleaning tasks;
- Road sweeping;
- Street cleaning;
- Swimming pool cleaning;
- Transport equipment cleaning;
- Duct cleaning;
- Gutter cleaning;
- Chimney cleaning;
- Waste removal, including from commercial waste receptacles;
- Ground maintenance; and
- Gardening.

4. Common elements relating to governance, administration and funding

The Security Issues Paper and Contract Cleaning Issues Paper seek responses from stakeholders to common questions dealing with governance, administration and funding of a portable long service leave scheme. Ai Group's responses to these 'common questions' is set out below.

Appropriate governance arrangements

Question 3.2

Should a scheme be administered by a statutory, industry, or private body? How should Board members be appointed? Should governance and administration come under one body? Can administration be separated from the governance, such as through outsourcing?

Answer

A portable long service leave scheme should not be established in the security industry or the contract cleaning industry. If despite Ai Group's opposition, the Government decides to implement a portable long service leave scheme in either or both of these industries, we urge ACIL to consider Chapter 6 of Ai Group's 2015 Submission as the matters raised are directly relevant to Question 3.2.

Ai Group's 2015 Submission sets out in significant detail the flaws with the governance and administration of the CILSL Scheme. It is very important that any new portable long service leave scheme is not administered by CoINVEST, or a similarly structured body.

The board membership of a scheme must be appointed on qualification and merit and represent the interests of the relevant industries. We refer ACIL to section 6.6 of Ai Group's 2015 Submission.

Initial establishment costs

Question 3.3

What are the important considerations in the initial establishment costs of a scheme? How would these costs be best estimated for the establishment of a scheme?

Answer

It is important that employers are not burdened by the initial establishment costs of any portable long service leave scheme. Any establishment costs of any new scheme/s should be funded by the Victorian Government.

The Security Issues Paper, on this point, says:

"As employers are already required to make allowance for long service leave under the Victorian Long Service Leave Act 1992 many of the costs associated with portable long service leave will not be new."

Despite the above comments, under the *Victorian Long Service Leave Act 1992* employers are not required to maintain a separate fund for long service leave entitlements. The requirement to pay into a separate fund (as occurs with portable long service leave schemes) adversely impacts upon employers' cash flow.

Also, portable long service leave schemes are much more burdensome than long service leave provided under the *Victorian Long Service Leave Act 1992* because under a portable long leave scheme an employer is required to make contributions for each employee regardless of their tenure.

Employer levy to make the scheme self-funding

Question 3.4

Should the basis of a levy be the ordinary rate of pay or something else? Should a levy vary over time to reflect investment conditions or be fixed, including a premium to account for uncertainty? Are the levies on other portable LSL schemes a reliable benchmark?

Answer

A portable long service leave scheme should not be established in the security industry or the contract cleaning industry

A portable long service leave levy on employers is analogous to a tax on employment, which would have adverse employment effects.

If, despite Ai Group's opposition, an employer levy is adopted, the levy should be calculated on the base rate of pay

The levy should be set at a low rate.

The levy should be set and adjusted by Government regulation. Under the CILSL Scheme, the legislation prescribed a 3% cap on the levy, but the actual levy at any point in time (currently 2.7%) is set by the CoINVEST Board. This approach does not require CoINVEST to ensure that its processes are efficient or cost-effective. If increased funding is needed, CoINVEST can decide to increase the employer levy (as it has done on a number of occasions since 2003).

Ai Group's 2015 Submission identifies various difficulties with the CILSL Scheme funding model.

Funding options for a portable long service leave scheme

Question 3.5

What is the preferred model for funding a security industry portable long service leave scheme in Victoria? What is the preferred model for funding a contract cleaning industry portable long service leave scheme in Victoria?

Answer

A portable long service leave scheme should not be established in the security industry or the contract cleaning industry. If, despite Ai Group's opposition, portable long service schemes are established, a defined benefit model would appear to be the best option.

The nature of an entitlement

Question 3.6

Should the ordinary rate of pay be used as the basis of a scheme? How should this be defined? How should previous long service leave accruals be treated? What is the appropriate allowable break in service? After what period should employees be able to access pro rata payments? Should long service leave be able to be cashed out under the scheme?

Answer

A portable long service leave scheme should not be established in the security industry or the contract cleaning industry. If, despite Ai Group's opposition, portable long service schemes are established, the entitlements in the *Victorian Long Service Leave Act 1992* are an appropriate benchmark for determining the long service leave entitlements to be provided by a portable long service leave scheme/s. However, we are of the view that any employer contributions and employee entitlements should be based on the employee's base rate of pay.

The management of previous long service leave accruals and future accruals must avoid 'double dipping'. The *Victorian Long Service Leave Act 1992* would need to be amended to exclude any service under portable long service leave schemes.

A 'prospective model' is preferable. That is, employees working within the industry prior to the scheme's commencement would be deemed to have begun working in the industry, for portable long service leave entitlements, from the scheme's commencement.

Cashing out of entitlements should be permitted, by agreement between the employer and the employees, once the employee has achieved at least 10 years of service.

Recognition of comparable schemes across jurisdictions

Question 3.7

How should interstate recognition operate under a portable long service leave scheme for the security industry? How should interstate recognition operate under a portable long service leave scheme for the contract cleaning industry?

Answer

Interstate recognition of portable long service leave should operate in a manner which does not pose a significant regulatory burden on employers, or enable any "double-dipping" of entitlements.