

**Submission to Portable Long Service Leave Design Study for the
Victorian Contract Cleaning and Security Industries**



RE: SUBMISSION REGARDING PORTABLE LONG SERVICE LEAVE DESIGN STUDY

Victorian Trades Hall Council (VTHC) welcomes the opportunity to make a submission to the design study into portable long service leave in the Victorian security and contract cleaning industries.

VTHC was founded in 1856 and is the peak body for unions in Victoria. VTHC represents 41 unions and over 430,000 workers in Victoria. These workers are members of unions that reach into every industry in the state, both in the public and private sectors.

Approximately 40% of workers in Australia today are locked in insecure work as casuals; in short term contracts, independent and sham contracts as well as through labour hire arrangements. These workers have little financial security; irregular hours; limited access to any paid leave arrangements and little control over their work organisation. Through no fault of their own, workers are unable to accrue 10 years' service to a single employer.

Long service leave is an entitlement in the same vein as sick leave or superannuation. It has been fought for, negotiated and won through union agreements with employers and legislation from governments. Any attempts today by employers to avoid their obligations to workers through casualization of the workforce or sham contracting arrangements should be taken very seriously.

VTHC believes a portable long service leave scheme should be introduced for all Victorian workers. This would go some way to reducing the impact and severity of insecure work.

In the broadest possible terms it is the opinion of VTHC that the preferred model for the contract cleaning and security industry portable long service leave schemes should:

- Be fair and easy to understand
- Provide easy systems to access entitlements for workers
- Have a broad scope to ensure no workers are unfairly excluded
- Guarantee that workers will not lose any entitlements already accrued under their current long service leave schemes.

Further, affiliate unions in their own submissions will provide comment on their own preferred design of the contract cleaning and security industry portable leave schemes. This submission should not be taken to supersede the submissions of those unions.

This submission will provide comment on a number of issues including:

- The definition of the industries
- Appropriate governance arrangements
- Initial establishment costs
- Employer levy
- Funding options for portable long service leave schemes
- The nature of an entitlement
- Recognition of comparable schemes across jurisdictions

3.1 – Definition of the industries

Workers across these industries are locked in insecure work through short term contracting, casualisation and labour hire arrangements. These workers suffer from financial insecurity; changing hours and limited or no access to paid leave. When designing the portable long service leave schemes for the contract cleaning and security industries in Victoria, the scope of who is covered should be as broad as possible to alleviate some of these pressures and ensure that no workers are unfairly excluded from the scheme.

This is of particular concern for workers, such as patient services assistants working in hospitals, who have a multi-dimensional role in which cleaning or security is a significant but not the only component. VTHC fears that should any definition refer to the majority or main component of work, employers could alter a workers role so that they are excluded from the scope.

In the contract cleaning industry schemes in Queensland, NSW and the ACT coverage is defined in the establishing legislation by defining both the contract cleaning industry and cleaning work. In the ACT these definitions are as follows

“The contract cleaning industry is—...the industry in which employers provide cleaning work to other people through the provision of workers’ services.”

Cleaning work is defined as

“work that has, as its only or main component, bringing premises into, or maintaining premises in, a clean condition.”

VTHC supports this definition of the contract cleaning industry. However, the definition of cleaning work has significant scope, especially in the health services industry to exclude workers who should be included in this scheme. The Health Workers Union holds significant concerns especially regarding patient services assistants, food and domestic services assistants and orderlies whose work includes substantial cleaning duties. As such, the VTHC supports a definition that would ensure employers cannot exclude workers from the scope of the scheme by manipulating their role. To achieve this end VTHC suggests a definition of cleaning work such as the following:

“A contract cleaner is somebody who is employed by an employer which provides cleaning work to other people through the provision of workers’ services and whose work includes as a component, bringing premises (including but not limited to, internal areas, offices, toilets, kitchens and all other common/public areas) into, or maintaining premises in, a clean condition.”

The security industry can be considered more varied in its scope than the contract cleaning industry. The Security Services Award 2010 defines its coverage in clause 4.2 of the award as follows

“the security services industry includes: (a) patrolling, protecting, screening, watching or guarding any people and/or property, including cash or other valuables, by physical means (which may involve the use of patrol dogs or the possession or use of a firearm) or by electronic means; (b) crowd, event or venue control whether through physical or electronic means; (c) body guarding or close personal protection; (d) the operation of a security control room or monitoring centre; (e) loss prevention; and (f) traffic control when it is incidental to, or associated with, the activities referred to in clauses 4.2(a), (b) or (c).”

This is a specific definition of the security industry but does exclude some workers who could be considered to be working in the security industry.

VTHC believes that in determining the scope of the security industry for the purposes of the scheme it should include employees of companies whose primary function is providing security services and/or all workers whose work is primarily related to one or more of the definitions set out in the Security Services Award 2010. It should also be made clear for the avoidance of doubt that work in

the security industry also includes cash-in-transit, armoured car drivers and emergency services workers whose role includes perimeter checks.

As in other portable long service leave schemes in Australia, such as ACT Leave, VTHC believes independent contractors should be covered by the scope of the schemes. The inclusion of independent contractors in these schemes is appropriate due to the increasing practice of large businesses shedding their own employees and sourcing workers through a network of independent contractors and labour hire companies. The failure to include independent contractors in the scope of the schemes would fail the goals and purpose of introducing portable long service leave in the Victorian contract cleaning and security industries.

The legislation establishing ACT Leave also provides for additional coverage through the use of Ministerial Declarations in cases where the relevant Minister is satisfied on reasonable grounds that the portable long service schemes should apply to a person or work or an activity to which the Act does not specifically apply. In this instance the relevant Minister may declare a person to be an employer for a covered industry; or a person to be an employee, or an employee of a stated employer, for a covered industry; or a person to be a contractor for a covered industry; or work, or an activity, to be work in a covered industry. VTHC believes that the scope of the schemes should cover as many workers as possible and should never be reduced. As such VTHC supports a similar clause existing in Victorian legislation to ensure that any workers erroneously excluded from the scope of the schemes as a result of the definitions included in the legislation will not miss out on accessing portable long service leave entitlements.

3.2 – Appropriate governance arrangements

In order for workers, employers, government and the broader public to have confidence in portable long service leave schemes good governance arrangements are vital. VTHC believes that the contract cleaning and security industry portable long service leave schemes should be established as a single statutory authority. Creating a single statutory authority responsible for the administration of the schemes will provide for significant savings in administration costs. This has been shown to work successfully in both NSW and the ACT.

In the establishment of the fund/s there are two options. VTHC supports both equally. The options are:

- separate industry based funds governed by separate boards but administered by one administration, or;
- one fund combining the levies from the contract cleaning and security services industries governed by one board containing representatives from each industry and administered by one administration

When establishing the governing board/s it is critical that legislation provides that the composition must consist of a fair and equal number of worker representatives as well as at least one but possibly more independent members. Appointments to the board could either be made by the relevant Minister or the Governor-in-Council on the advice of the relevant Minister.

3.3 – Initial establishment costs

VTHC recognises that there will be initial costs associated with the establishment of these schemes. For VTHC the most important consideration in regards to these costs is that they must not be borne by workers. In order for the schemes to adequately cover their liabilities it is likely that the Government will have to provide seed funding through a grant or loan. If this takes the form of a loan it should be paid back once the schemes are self-funding by allocating an additional small percentage of the employer levy.

The establishment costs seen in the ACT, Queensland and NSW portable long service leave schemes can provide an example of the robust challenges experienced during establishment and an accurate estimation of costs that might be applicable to any Victorian scheme.

3.4 – Employer levy

VTHC acknowledges that determining the appropriate level of the establishing levy will be of critical importance in the success of these schemes. When calculating the basis of the levy it will be important to accurately reflect a workers normal weekly pay. United Voice estimates that in the industries of cleaning and security normal weekly pay can often be 20% to 30% above their base salary. This additional percentage is as a result of shift and weekend penalties and other allowances that a worker would usually earn. This topic will be touched upon in greater depth in subsequent sections.

In determining the employer levy examples including CoINVEST, the ACT and Queensland can be examined. In these examples the levy was originally set at a higher percentage during the establishment phase. Once the schemes were deemed to be able to adequately meet their liabilities the levies were appropriately lowered. This level of variability in which the employer levy is from time to time reviewed and if necessary adjusted is one that has the support of the VTHC. In the ACT the Minister receives recommendations from the governing board and then makes a determination on any necessary changes to the levy. VTHC views this as an appropriate model.

The successful establishment and operation of portable long service leave schemes around Australia suggest that the levies used can provide a reliable benchmark for a Victorian scheme. This is especially true of the ACT model, as the only State or Territory to cover both contract cleaners and the security industry.

3.5 – Funding options for portable long service leave schemes

In its comprehensive report “The Case for a National Portable Long Service Leave Scheme in Australia” the McKell Institute identified three possible models for a scheme. As examples across the country show, industry-based defined benefit funds have proven to be a very effective method of funding portable long service leave schemes. Defined benefit schemes have been shown to successfully complete their primary purpose, providing a replacement of normal income while workers are on long service leave. Another substantial benefit of industry-based defined benefit schemes is that they are simple and easy to understand for workers as well as providing minimal administrative difficulties for employers. Establishing the fund in the same manner as those that exist in other states should also provide for easier reciprocity and portability across schemes in various states.

3.6 – The nature of an entitlement

Determining the nature of the entitlement to long service leave takes into account a number of different factors including the rate of pay, how previous long service leave accruals are treated, allowable breaks in service, pro-rata access and cashing out.

In the contract cleaning and security industries applying the standard ordinary rate of pay calculation, as defined by the Victorian Long Service Leave Act, would fail to adequately compensate workers during their long service leave. United Voice estimates that in the contract cleaning and security industries between 20% and 30% of a workers regular pay is made up of shift allowances including night shift, and weekend work. Given the substantial proportion of take home pay that comes from penalties it is clear that in order not to disadvantage workers who access their portable long service leave these penalties must be included in the calculation of an ordinary rate of pay. The ACT defines the ordinary rate of pay as

“the amount paid or payable to the person for work, other than any amounts for – (a) overtime; or (b) expenses incurred by the person; or (c) the use of materials, equipment or a motor vehicle provided by the person.”

VTHC believes the ACT legislation provides a good example of how the Contract Cleaning and Security Industry portable long service leave schemes could define ordinary rate of pay in Victoria.

Another key component of the relevant industries is the transient and varying nature of work. In the ACT the rate of pay entitlement is determined by taking the highest average weekly pay from the most recent 2, 4, 20 or 40 quarters. This system combats the disadvantage that might otherwise be felt by workers. VTHC supports this as a fair and balanced measure that could be used in Victoria.

In the establishment of the schemes it is important to examine how previous long service leave accruals are treated. In the course of the inquiry into portable long service leave schemes for the contract cleaning and security industries, various unions have submitted many examples of workers who have been in these industries for more than ten years without ever receiving long service leave. Given these examples and the recognised need of a portable long service leave scheme, VTHC advocates for any new scheme to recognise the prior service of workers.

The ACT Leave scheme recognises prior service for the purposes of qualifying for long service leave, however only leave that corresponds with the length of service following the scheme’s commencement is paid for. This system unfairly punishes those workers who have already been in the relevant industries for a long period of time. VTHC believes that the Victorian schemes should go further. The Victorian schemes should look back and provide payment for the seven years prior to commencement of the schemes, enabling workers who have seven years’ service to immediately access their leave. The case for portability of long service in these industries has already been made. Doing anything other than recognising at least seven years’ service, would continue to unfairly disadvantage their workers.

A further key issue to examine is what shall be allowable breaks in service to remain eligible for long service leave in the portable schemes. In most schemes across Australia, and in all security and contract cleaning schemes the allowable break in service is four years. VTHC believes this is a minimum length for an allowable break in service. Women are often disproportionately impacted by breaks in service. A worker should be considered to be in continuous service in the industry if they are taking any form of paid or unpaid parental leave up to 52 weeks at a time, if they are not working as a result of incapacity for an injury for which the worker is receiving workers compensation or if the worker or contractor has been dismissed to ensure that they do not take long service leave while in that employer’s employment.

The Victorian Long Service Leave Act establishes access to pro-rata payments on leaving employment after 7 years. VTHC believes this is an appropriate point at which an employee should receive their long service leave paid out pro-rata if they leave the industry. VTHC also believes that the seven year qualification period should be used to determine when workers may begin taking their entitlement to long service leave as leave. This position exists in a number of CFMEU Mining and Energy Division enterprise bargaining agreements. In industries that take as heavy a toll on a worker as security and cleaning it is appropriate that if they choose workers should be able to take a short employment break as a period of rest and rejuvenation. This proposition should be viewed favourably by employers as it will result in more productive staff as well as being more cost effective due to the fact that a worker is often being paid less after seven years of service than they are after ten years.

In line with the Victorian Long Service Leave Act, the VTHC strongly believes that long service leave should not be cashed out. Long service leave is designed to provide a paid break from work in which workers can spend time with family, travel, pursue further education or just relax. This break leads to a more productive worker when they return to employment and may facilitate a longer and more successful working career. These benefits are felt by workers, employers and the economy as a whole.

3.7 – Recognition of comparable schemes across jurisdictions

The contract cleaning and security industries face the same challenges posed by insecure work across Australia and as a result a number of portable long service leave schemes exist around the country. In the contract cleaning industry reciprocal agreements currently exist between the ACT, Queensland and NSW to recognise service across jurisdictions. VTHC supports the expansion of this reciprocity to the Victorian contract cleaning scheme. VTHC also supports the establishment of a reciprocal scheme for the security industry between Victoria and the ACT.

In a situation where a worker is sent by their employer to work in another state, such as South Australia or Western Australia, where a portable long service leave scheme does not exist, their work should continue to be recognised in Victoria. This system will ensure that workers who are forced to relocate by their employer are not disadvantaged.

Conclusion

VTHC supports portable long service leave being introduced for all Victorian workers. This is a necessary response to help reduce the impact and severity of insecure work. This submission has sought to address some of the key challenges faced in the introduction of portable long service leave in the contract cleaning and security industries. VTHC wishes to reiterate the broad issues that must be addressed in this process. Portable long service leave schemes must; be fair and easy to understand, provide easy systems to access entitlements for workers, have a broad scope to ensure no workers are unfairly excluded and guarantee that workers will not lose any entitlements already accrued under their current long service leave schemes.

Portable long service leave schemes for the Victorian contract cleaning and security services industries face considerable design challenges before their implementation. However, on the questions raised by the issues papers there are helpful examples to draw on from interstate portable long service leave schemes. VTHC is encouraged by the broad agreement on many of these issues and looks forward to continue to work collaboratively on the design of these schemes.