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Minister for Planning and Land Management
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Member for Brindabella

Mr Peter Cain
Chair
Standing Committee on Justice and Community Safety
Via email: scrutiny@parliament.act.gov.au

Dear Mr Cain *Peter*

I write in response to comments made by the Standing Committee on Justice and Community Safety, contained in Scrutiny Report 25 relating to the Long Service Leave (Portable Schemes) Amendment Bill 2022 (the Bill).

As the Committee would be aware, the Bill seeks to expand the existing contract cleaning industry scheme under the *Long Service Leave (Portable Schemes) Act 2009* (PLSL Act) to become the services industry scheme that covers contract cleaning work, hairdressing and beauty services and accommodation and food services. In doing so, all registered workers and employers will be taken to be a registered worker/employer in the services industry scheme following commencement of the Bill.

This important Bill delivers on the Government's commitment to ensure more workers in the ACT are able to access fair and equitable working conditions, including access to long service leave entitlements.

When making amendments of this nature to an existing scheme, transitional provisions are an important and necessary mechanism to ensure an effective transition that retains the rights, obligations and entitlements of current registered workers and employers in the contract cleaning industry.


Transitional regulation making provisions of the kind in this Bill are an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating potential transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

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Relevantly, section 114 of part 12 (Henry VIII style provision) is limited in operation by only allowing part 12 of the Bill to be amended via regulation and only where part 12 doesn't adequately or appropriately deal with a transitional issue. In addition, its operation and any amendments utilising the provision will only operate up until the expiry of part 12, five years from commencement.

Effective transitional provisions are an alternative. Importantly, every effort has been made to ensure the Bill adequately deals with transitional matters to maintain:

- pre commencement entitlements to payment instead of leave for current registered employees (refer clauses 9 and 10);
- current registered employers and registered workers in the contract catering industry scheme, taken to be registered in the services industry scheme on commencement (new section 111 in part 12);
- ensuring made but not decided applications for registration transition to the services industry (new section 112 in part 12); and
- ensuring continuity of service credits for current registered employees (new section 113 in part 12).

A two-year transition period to commencement has also been provided to allow sufficient time for the registration of newly covered employers and employees.

In this way, the design of the Bill is considered to effectively mitigate against the risk of needing to utilise section 114 in clause 11 of the Bill.

Another alternative is to have no transitional regulation making power. However, should unforeseen circumstances arise this would provide the least effective, least responsive and most cumbersome mechanism to address any unforeseen technical transitional issues. Given the safeguards provided above limiting the use of the transitional regulation power, it is considered to be an appropriate mechanism in these circumstances, noting that regulations do also receive the scrutiny of the Legislative Assembly and Committee when made.

A five-year expiry period for the transitional part 12 of the Bill was considered appropriate to ensure all registered workers in the contract cleaning scheme are carried over to the services industry scheme, including those who may not have worked for up to, but less than, four consecutive years as allowed for under section 65 (1) of the PLSL Act.

I intend to table a revised explanatory statement outlining an explanation of the transitional regulation making provision in the Bill.

Thank you for your interest and consideration of this important Bill.

Yours sincerely



Minister for Industrial Relations and Workplace Safety

16/8/2023