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VICTORIAN SECURE WORK PILOT

SUBMISSION

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Chamber of Commerce
and Industry

WORKING FOR BUSINESS.

WORKING FOR AUSTRALIA

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CONTENTS

1. INTRODUCTION	1
2. UNDERSTANDING JOB SECURITY	15
3. CASUAL EMPLOYMENT	18
4. CONTRACTORS.....	23
5. OTHER QUESTIONS	27
CONSULTATION PAPER QUESTIONS.....	31
6. WHICH INDUSTRIES? (SECTION 1).....	32
7. WORKER ELIGIBILITY (SECTION 2).....	37
8. RECEIVING AND DRAWING DOWN PAYMENT (SECTION 3).....	41
9. TYPES OF LEAVE IN THE PILOT (SECTION 4)	44
10. REGISTERING AND MAKING A CLAIM (SECTION 5)	46
11. DOCUMENTATION (SECTION 6).....	53
12. PROTECTIONS FOR WORKERS IN THE PILOT (SECTION 7)	57
ABOUT THE AUSTRALIAN CHAMBER.....	58

1. INTRODUCTION

1. The Australian Chamber of Commerce and Industry (ACCI) thanks the Victorian Government for the opportunity to respond to the Consultation Paper on a possible Secure Work Pilot Scheme.
2. As Australia's largest and most representative business organisation, **ACCI and its members do not support embarking on the pilot scheme as outlined in the Consultation Paper**, nor any ongoing approach that would increase the costs of employing in the state of Victoria by way of a levy on employers, on jobs and on recovery.
3. As outlined below, ACCI does not agree with the concerns said to give rise to this consultation, the fundamental premises behind claims of insecure work, indications of Victorian Government policy and priorities to date, or with the suggested benefits said to arise from the course proposed, even at the pilot stage. We also have massive concerns about any measures that will complicate and place at risk job creation and enterprise recovery as Victoria faces our greatest peacetime adversity and recovery challenges since the depressions of the 1930s and 1890s.
4. However, with the benefit of the Consultation Paper, and working through the issues raised, ACCI can see real opportunities for the Victorian Government to pursue clearly superior policies and actions based on these concerns:
 - a. Employers strongly support government payments continuing to encourage and underpin testing, isolation and vaccination in Victoria.
 - b. This submission advances practical alternatives to the schema in the Consultation Paper which would be superior mechanisms to address the concerns identified.
 - c. Regardless of the approach pursued, we have endeavoured to canvas practical matters relevant to design considerations at the pilot stage or potentially afterwards.
 - d. ACCI and or its members in Victoria will be keen to contribute to the practical design and operation of any new pilot that was to proceed, if this does go ahead contrary to our firm primary recommendations.

A Better Approach - Continue Victorian Government Income Support

5. Governments state and federal have gone to extraordinary efforts to provide income support during COVID, as well managing health both preventatively and acutely and preparing for worst case scenarios. This has saved jobs, helped businesses stay open, helped minimise the spread of COVID, and supported families, communities and mental health.
6. The business community is acutely aware that the only way Victoria can get back to business and embark on recovery is testing, isolation and vaccination. Regardless of the course of COVID, variants and vaccinations, **incomes should continue to be supported by governments when required to support testing, isolation and vaccination.**

7. There is however no justification to seek to try speculatively change how Victorians work at a time when clarity, stability and keeping avenues into work open and accessible is desperately needed. This submission questions the assumptions and thinking in the Consultation Paper and strongly urges the Victorian Government not to proceed with the proposed pilot scheme.
8. However, **ACCI also puts forward constructive, practical, superior alternatives** as more effective means to meet concerns, a number of which the business community share.
9. Experience to date indicates:
 - a. Government payments need to be immediate and direct, both to individuals and businesses.
 - b. COVID is complex, challenges are complex, and key health messages are complex and changeable. It is absolutely imperative governments keep processes, paperwork and eligibility for payments as simple as possible. We strongly urge the government to not make pandemic payments to support testing, isolation and vaccination yet another source of complexity and confusion.
 - c. This is not the time to seek to pursue policy with multiple aims or indirect intent, if ever.
 - d. If the goal is to get payments to Victorians to ensure they test isolate and vaccinate, Government should pursue that outcome through the most straightforward, direct, clear and easily communicated means possible:
 - i. Don't experiment with something as long standing, fundamental to jobs and widely used as a century-old mode of employment, which is proven to be capable of offering the flexibility and adaptability policy employers and employees need in uncertain times.
 - ii. Don't compromise clear, shared health goals by trying to change industrial relations and employment, contracting etc.
10. We urge Government to be mindful that trying to pursue multiple policy outcomes through a single measure or scheme, almost always serves to delay, complicate or detract from the effectiveness in addressing the original motivating concern or problem. From ACCI's various objections to this to being framed around job security, one of the key concerns must be that in trying to serve two masters or two policy purposes the scheme will not deliver on the critical concern – supporting testing, isolation and vaccination.
11. This is the very worst time to complicate outcomes as fundamental, imperative and urgent as:
 - a. Ensuring Victorians do what the community needs them to do to move on from this stage of the pandemic, and to capitalise on the massive sacrifices our nation and community have made in seeking to eliminate the virus, and the massive investments we've made in business support, job support and vaccination.

- b. Ensuring Victorians have multiple avenues into work and pursue economic recovery and to navigate the inevitable uncertainty that will continue to confront us for some time to come – the known unknowns of where we find ourselves.
 - i. With jobs and businesses at risk and with a sustained recovery in front of us, this would be the worst possible time to seek to narrow options for Victorians to work.
 - ii. This would be the worst possible time to discourage or seek to make less economic avenues into work such as casual employment and others that are lumped into the amorphous insecure work slogan, when Victorians desperately need a range of pathways into work.
 - iii. Even for those who adopt the insecure work concept / critique, this is simply not the time to attempt to ‘do something about it’ when we remain in the middle of a genuine crisis and need to get back to business and back to work.
 - iv. We are particularly mindful of young Victorians most at risk of decades of labour market scarring, reduced opportunity and reduced incomes through compromised or delayed labour market entry. We urge government to not further reduce their opportunities to make a start on their working lives by stifling casual employment in particular. Now is not the time to make it harder for young Victorians to get their start at work.

Victoria Lacks Constitutional Power to Change Casual Employment

- 12. Victoria has not had a state industrial relations tribunal or state awards for almost 30 years. We have a clear and long-standing delineation of state responsibility for limited and specific areas such as long service leave and public holidays from wider terms and conditions of employment, and employment rights, which are clearly federal legislative matters, confirmed by the High Court.
- 13. States need to render to Caesar what is Caesar’s, and to accept that Australia has a federal industrial relations system, regulated by the Commonwealth not the States. Outside of long standing and clearly delineated areas such as public holidays and long service leave, industrial relations is about as much the legitimate business of any state government as Australia Post, the ADF or Border Force.
- 14. ACCI strongly opposes any attempt at contested or combative federalism in industrial relations and any attempt by any state to subvert or to detract from what is unambiguously national law. That is not in the interests of employers, employees or the wider Victorian community.
- 15. In regard casual employment, the current Federal Award and National Employment Standards arrangements have been:
 - a. Legislated by the Australian Parliament under (a) High Court validated interpretations of its scope to legislate, and (b) a clear referral of legislative powers from the State of Victoria.

- b. Legislated by the Australian Parliament as recently as March this year.
 - c. Independently arbitrated by the Fair Work Commission (FWC), again as recently as this year, again under laws of the Australian Parliament.
16. ACCI strongly supported proposals in the recent Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021 to ensure the integrity of, and monopoly role of, federal enforcement of the Fair Work Act 2009 and modern awards.
 17. This review raises comparable concerns. The scope of employment and types of employment both available to Victorians and prescribed in law for Victorian employers are and should remain the exclusive preserve of the Fair Work Act 2009 (Cth).
 18. To attempt to do otherwise seems to be doing no more than making employment more complicated than it needs to be in Victoria precisely when clarity and reliability are most needed.
 19. We urge the Government to seek proper threshold legal advice prior to proceeding.
 20. **The Victorian Government should request and release legal advice from the Victorian Solicitor General on the constitutional implications of any scheme which sought to compel employers to make payment by way of a levy or otherwise in regard to matters covered expressly by the National Employment standards, modern awards and the Fair Work Act 2009(Cth).**
 21. **The Victorian Solicitor General should advise on risks of / grounds for a legal challenge to any scheme or levy prior any pilot commencing.**
 22. **Employers will also take legal advice on whether this may be challengeable on a constitutional basis at any stage.**

Five (5) Superior Alternatives to the Secure Work Pilot Scheme

23. We note the Government's concern at any Victorian choosing between working and "their health, and the health of every Victorian". To the extent such choices are being made they are not the exclusive preserve of any particular mode of employment, or any particular earnings cohort. Both high remuneration and lower remuneration Victorians beyond health and essential services settings have presented in their workplaces throughout the pandemic for various reasons.
24. If the goal is to ensure testing, isolation, and vaccination for multiple job workers, particularly from lower income households, and some of those who may be part of particular migrant communities, there are far better options for the Victorian Government to consider in place of the proposed pilot / scheme. These include:

Alternative One: Direct public payments to those in need

25. We recall the following from the introduction to the Consultation Paper:

The public health costs of insecure work, and the choices workers faced, were recognised by the Victorian Government during the COVID-19 pandemic. In response to the pandemic, the Victorian Government provided a one-off \$450 payment to individuals not eligible for sick leave, so that they could isolate while waiting for a test.

The Victorian Government also implemented the COVID-19 Worker Support payment last year that has since been replaced by the Australian Government's Pandemic Leave Disaster Payment.

This payment – a \$1,500 lump sum payment – is intended to help Victorians who are unable to earn an income due to quarantine, self-isolation or caring for someone with COVID-19.

26. **If Government, like the business community, unions and all credible interests wants Victorians to get tested and stay at home, then the State of Victoria should continue to pay them to do so.** This is surely the most rapid, simple, and effective approach and the inescapable responsibility of the state as we continue to confront COVID, and this is surely the answer to the problem being targeted in the Consultation Paper.
27. Look again at the Minister's message introducing the Consultation Paper. If Government wants to stop Victorians having to choose between pay and health, and wants them to stop choosing between putting food on the table and caring for others, then that is the responsibility of Government to step in provide payments to make this happen, without in any way shape or form involving employers, or seeking to distort or alter such fundamental and essential tools for successful recovery, navigating uncertainty and rapidly creating jobs as casual employment.

Alternative Two: Make payments conditional on vaccination

28. What's missing from the paper is an acknowledgement that hopefully the motivating concern is a limited one. With a sufficient level of vaccination such as that identified recently by National Cabinet for opening up our nation, it should not matter if a someone works multiple jobs, or at multiple locations.
29. ACCI uses the phrase 'test, isolate and vaccinate' throughout this submission. That third element seems critical; encouraging and supporting vaccination.
30. It would not just be odd, it would risk a moral hazard to give people money to encourage a particular behaviour (testing and isolation) without any compulsion or expectation that they themselves take the action (vaccination) that would remove or minimise such a need in future.
31. Specifically, how could the Victorian Government hand money over for people to isolate, potentially repeatedly without seeking some agreement or assurance they would vaccinate making them far less likely to need to isolate again, and reducing the likelihood of lockdowns impacting all Victorians?
32. This may need to be considered against human rights and other legal considerations.

Alternative Three: Ensure vaccination is available for more hours

33. We may all just be making this far harder than it needs to be. If the concern is people not taking time off to test and isolate, it is only is vaccination that can end such risks.
34. **There is no need to try to re-engineer employment or work to secure this outcome.** Government(s) just need to ensure that people working multiple jobs, or unpredictable hours have an opportunity to get vaccinated.
35. Rather than seeking to re-engineer work, the Victorian Government should spend the pilot scheme money on ensuring vaccination clinics are, where the supply of vaccines is in place, open from 8:00 AM to midnight during a final push over the top on vaccination. Regardless someone's form of employment or multiple job holding 16 hours of vaccination per day, every day, must give an opportunity for all Victorians to vaccinated.
36. This could be reinforced by further investing in sensible and effective measures to promote vaccination in for example target CALD communities, by working with those communities.
37. Looking at the likely timing, this investment can be made and start to make a real difference rapidly, before any Pilot could even start to get off the ground.

Alternative Four: Educate, inform and encourage

38. Instead of spending money on the proposed pilot, the Government should further invest in targeted education and health promotion to multiple jobholders, including in CALD communities where merited.
39. Government should additionally promote vaccination to those whose work sees them move between multiple workplaces such as couriers, sales representatives, repairers, tradespeople, and persons working multiple jobs in aged care.
40. This can be explored and further invested in without attempting to intervene in so speculative and partial a manner in something as fundamental as how Victorians work.

Alternative Five: Empower the casuals

41. There is another way to think about this, and to conduct a proper pilot that would genuinely test the fundamental propositions raised.
42. The Victorian Government should consider piloting a scheme in which a casual employee can request their employer deduct monies from their earnings equivalent to that proportion of the casual loading which is attributable to personal or carers leave, which would then be remitted into a government fund and be able to be drawn down upon where the employee is sick or has caring responsibilities.
43. This would be a scheme based on choice, the employee could choose whether to receive the full 25% loading, or to have the assistance of the Victorian government to hold some of that loading aside to then be able to be used for personal leave.

44. This is the thinking behind superannuation, employees' money as wages which the government holds aside for us to provide for our retirement.
45. If the Victorian government is genuinely committed to ensuring that casually employed Victorians have access to money at the time they become ill or need to care for others:
 - a. Our primary position remains that such a payment should come direct from government and be funded by government as a community good to ensure testing isolation and vaccination.
 - b. If this approach were not pursued, a secondary option is to provide a free banking or payment service for interested casual employees, in which the government would assist them by holding in trust for them the money they are being paid for personal leave.
46. Employees have been given new options through casual conversion. This would simply give Victorian employees a further round of options facilitated by their government.

Don't distort and discourage casual employment when it's needed most

47. To advance the aims set out in the Minister's message on p.3 of the Consultation Paper.
 - a. The Pilot should be discontinued in favour of direct clear and immediate payments designed to directly secure the stated health outcomes.
 - i. We stand on the threshold of a massive acceleration in vaccination. With vaccination the need to isolate no matter what one's income or the number of jobs you hold or locations you visit, falls away as a concern.
 - ii. We urge the Victorian Government to consider the extent to which the motivating circumstances for the pilot will remain a concern in coming months
 - b. Why would Victoria seek to permanently re engineer or alter any form of employment as fundamental to jobs and recovery as casual work, or any other form of working which some choose to pejoratively and opportunistically label as insecure?
 - c. **This is a critical question.**
 - i. **How can a transitional / short run problem justify a permanent and fundamental change to how 700,000 Victorians work, and how could a time limited problem which is set to be largely fixed through vaccination before the next AFL season justify making it harder for Victorians to get a job or to get paid work when jobs remain at serious risk?**
 - ii. **How could any state choose to make casual employment more expensive and more inaccessible at a time when jobs for young people are at the greatest level of risk in decades?**

48. We have now experienced multiple waves of COVID and lockdowns here and internationally, multiple iterations of Commonwealth and State business assistance, as well as examples from other OECD economies. Governments have the opportunity to draw from an increasingly rich pool of experience to design effective payment programmes to support particular cohorts of the community and secure the behaviours we want (test, isolate and vaccinate).
49. None of these successful approaches, we understand, attempted to kill two birds with one stone, nor did they compromise or detract from efforts to address clear and pressing challenges such as citizens not testing by seeking to graft on highly contentious and politicised concepts such as re-engineering working relationships, contractual relationships or narrowing avenues into work
50. We urge the Victorian Government to run straight at the target and pursue courses of action directly rather than indirectly targeted at securing desired outcomes and behaviours. There is little doubt in our minds that direct, simple, immediate measures are needed in our ongoing battle with COVID, and that these need to be focussed squarely on COVID not on forms of work unions don't like.
51. **The Victorian Government should concentrate squarely on the stated concerns of supporting more Victorians in not working when ill or facing caring responsibilities by way of Victorian Government payments direct to individual Victorians declaring that they qualify for such payments.**
52. **Any address of this issue should focus only incomes and the desired behaviours without reference to any particular mode of employment or other form of working arrangement, including in particular without any consideration of creating a levy on Victorian businesses (effectively a new tax on job creation during recovery)..**

Be Cautious in Changing Fundamentals Based on COVID Challenges

53. Significant caution is always needed in considering any policy or structural change based on experiences in the eye of a storm, or perspectives from the stormfront.
54. There has never been a time in which it has been more important to Victorians and the Victorian business community that casual work be accessible, practical and reliable, as it is both in 2021 and for the foreseeable period of recovery (i.e. for years). Respectfully, there could not be a worse time to seek to hostilely re-engineer casual employment, which delivers 22% of Victorian jobs.

Don't Cost Shift to Business

55. Imposing a levy on business is not only to impose a levy on jobs, it looks like nothing more than cost shifting what are fundamentally government responsibilities when businesses can least afford it, and when our smallest businesses are most vulnerable and lacking in confidence.
56. Respectfully the purported link to work and any form of employment seems a red herring, if the Government wants Victorians to test and isolate when required government needs to continue to invest in ensuring this happens.

Making a contingent liability absolute

57. Implicit in the scheme or pilot seems to be taking a naturally contingent liability (contingent on employees getting sick or having caring responsibilities) and making payment an inescapable certainty by way of a levy, payable in all cases, in relation to all hours, and all employees.
58. It's actually somewhat worse than that. The existing option the casual employment allows an employer to elect to make the contingent liability of personal and carers leave somewhat absolute through the payment of an hourly loading. The course proposed by the Victorian Government seems to add a further absolute liability by way of a levy on top of a loading.
59. Putting to one side the fundamental objections of employers to such a course this would simply be an additional cost of doing business and employing in the State of Victoria, and it would be imposed precisely as leases come up and employers have new options for relocation to competing Australian jurisdictions. Employers will recognise any effective new tax on jobs in any jurisdiction.

Implications for Businesses Drawn into the Pilot

60. ACCI was disappointed with question 7.2 on page 11 of the Consultation Paper.
 - 7.2 *What issues might businesses who have casual and insecure workers face if their workers access the Pilot? What aspects of the scheme design could address these issues?*
61. We were not disappointed that input has been sought on the impacts on businesses. We were disappointed that is the last question, on the last page and even then, it appears under the heading of protections for workers.
62. This risks being seen as contemptuous of the business community and the mutuality of concerns for both employers and employees which is not only fundamental to our employment law, but also to the tripartism which Australia as a whole has committed to as a member of the International Labour Organisation (ILO).
63. We have throughout this submission sought to bring forward practical, cost and HR problems that employers foresee, and we would be pleased either as ACCI or through our members in Victoria to have an opportunity to discuss directly with government the concerns of employers regarding the issues and consequences raised by the pilot or any ongoing levy.
64. The best approach to avoid negative impacts on employers would be to frame this as a government payment that eligible Victorians can apply direct to government to access. We have suggested restricting this at the pilot stage ideally to persons working on a casual basis, for 12 months or more, who are unwell or caring and unable to undertake a scheduled shift, and who do not have access to paid leave.
65. Going forward employers need government to continue to pay for such support and to continue to actively promote and support vaccination.

66. The last thing the Victorian business community needs after the decimation of COVID would be cost shifting of what are fundamentally government responsibilities onto the private sector – particularly for many of the most vulnerable sectors in which casual employment is often used.
67. We reject outright any assumption, explicit or implicit, that those who offer jobs to Victorians on a casual basis or seek services on an unemployment basis are somehow getting away with something and now need to pay. Respectfully, such thinking could not be more wrong or more damaging.
68. This is the type of thinking which raises concerns of sovereign risk, in which sees any country, state province or canton downrated as a place to invest and do business.
69. Finally, a word on sentence construction in Question 7.2. If Government is acknowledging that casual workers are not insecure workers, that is welcome and overdue - not that we know who insecure workers are, or what insecure work is. (See Section 2)
70. The other way to read Question 7.2 is that any scheme or payments should apply both to casual employees and to some other group of supposedly 'insecure workers', perhaps such as contractors, but we are guessing given this is never properly clarified.
71. At most payments should be limited to employed casuals, and attempting to address amorphous, imprecise concerns around the 'gig economy' or independent contracting can do no more than create further problems, disputes and costs for employers and the Victorian community were they to be included in such a scheme at any stage.

Implications for Relations in Victorian Workplaces

7.1 What issues might insecure and casual workers face in maintaining a positive working relationship with the business they work for?

72. Why did the Consultation Paper not also ask for employer concerns about working relationships given that employees may trigger actions which could increase the level of levies against us, employee actions might impose additional administrative requirements or costs, and we face the challenge a being left short at short notice when we need workers? This seems analogous to offering marriage counselling solely to one spouse then expecting it to work.
73. The biggest challenge employers see for working relationships is to be frank administrative pressures and costs focusing employer time and energy on part of their workforce (casual employees not working regularly) at the expense of the full and part time employees, who often form the productive heart and dynamism of the business.
74. We fear that implicit in the proposals in the Consultation Paper is that casual employment becomes the squeaky wheel without merit and frankly without demand from casuals due to the political priorities of the government and unions, not priorities for either employers or employees.
75. ACCI is also highly concerned that the proposed levy will be very divisive, particularly if it needs to be set at a high rate for government to successfully cost shift its responsibilities to business, something we reject outright particularly in the current economic and labour market context.

76. The risks include:
- a. Employers of full and part time employees, paying personal and carers leave, resenting having to subsidise the casual employment of their competitors, and pay for the same conditions a second time for those they don't employ.
 - b. Businesses that directly employ resenting having to subsidise the misapplied provision of some form of leave adjacent payments to competing businesses using contractors.
 - c. Businesses that employ and incur all the costs and risks of doing so having to subsidise leave adjacent or leave approximate type payments for the self-employed, where perhaps they might like to spend that money on pay increases to their staff, or on improving both enterprise security and job security.
 - d. Adding fuel to workplace tensions between employees and contractors where they work side by side.
 - e. Adding fuel to workplace tensions between full time employees and casual employees, particularly where there was any trend towards casual employees gaining the benefits of ongoing work but at markedly higher rates of pay.
 - i. We foresee this tension in workplaces where the full time employed core is older and more heavily unionised than the casual cohort, which may be younger and have very different priorities.
 - ii. Tensions may also emerge where casuals may be resented by others for receiving 25% higher for what may increasingly be perceived as the same conditions of employment.
 - f. Any trends towards additional costs becoming attached to casual employment, or its flexibility and utility to both employers and employer is decreasing, such that employers may increasingly make a rational decision to cease offering casual work in favour of full and part time employment. Some unions might cheer that, but employers are going to face the ire of employees facing a 25% pay cut and placing no value on having access to leave.

Implications for Women, Young People and Migrants

77. We urge government to consider carefully the extent to which actions perhaps designed to support and protect women, young people and migrants, would actually risk harming them.
78. Would Government really do anything positive for Victorian women if its narrows one of their key avenues into work? Would government do something positive for parents and carers by replacing flexible and adaptable work with work subject to fixed hours? Is it really in the interests of women to discourage or compromise casual work options and force them into part time or full-time work with the inflexibility that brings?

79. Would Government do anything positive for young people needing to juggle work and study by effectively encouraging employers to only take on those offering full time or part time availability? Would government do anything positive for a young person by ensuring their only work option would see them work more hours to secure the same income, giving them less time for study and their non-working lives?
80. Would government be helping or harming young Victorians by reducing options for employers to take a risk and give them a go through casual work, in the hardest labour market for new job entrants in decades? What will the implications be of fewer young Victorians having referees and employers who can speak to a job readiness than comparable young people in other states?
81. Would Government really doing anything positive for new migrants prioritising income above all other considerations, perhaps allowing a spouse to take care of children or run a family business, by telling them the work option that pays 25% more should be less available to them?

Fatal Logical Inconsistency – I

82. There is also another quite fundamental problem arising from the approach outlined in the Consultation Paper, at page 9.
83. If someone is paid \$20.33 per hour by the scheme, this is always going to be less than their rate of pay including a casual loading. Even simply adding 25% to the minimum wage gives a minimum casual rate of \$25.41.
84. In reality the minimum casual rate and modern awards is almost always higher, for example:
 - a. The minimum rate of pay for a Retail Employee Level 1 is not \$20.33 per hour but is rather \$21.78 per hour.
 - b. The ordinary time rate of pay for a Retail Employee Level 1 working as a casual is \$27.23 per hour.
 - c. That means a retail employee accessing the scheme as proposed would still be losing \$6.90 per hour were they to be ill or need to care.
85. If the core argument here is that people cannot afford to take time off work to test or isolate because they will lose money, the scheme or pilot is not going to fix that. A casual employee is always going to lose 25% of their income, often more. That would seem a quite sufficient proportion to discourage the intended behaviour and destroy the behavioural incentive upon which this whole scheme conceptually relies.
86. We challenge the Government to tell us how we are wrong in this analysis?
87. We maintain strongly throughout this submission that the flaws in the concept being canvassed should lead to it being ruled out, and neither the pilot nor any ongoing scheme being considered. When this fundamental point is taken into consideration the case against the scheme outlined in the Consultation Paper becomes overwhelming.

88. Far better the Victorian Government continue to look to the spending of Victorian taxpayer money directly to target the minority of persons whose behaviour it is seeking to change, backed by redoubled promotional and information efforts, more precisely targeted, and doing as much as possible to facilitate vaccination. This is simply a far more pressing and effective direction in which to spend \$5 million.

Fatal Logical (and Moral) Inconsistency – II

89. The Consultation Paper claims that:

Workers face pressure to attend work when sick due to financial stress or job insecurity. For example, a single individual in a supermarket, aged care, or hospitality business or setting (among the most casualised of industries) who works while ill, could spread it through the community to dozens of members of the public.

This puts the health and wellbeing of the Victorian community at risk and incurs additional costs to the health system.

90. An employee who knowingly comes to work with a communicable illness and infects another person in their workplace would commit an offence under Victorian Occupational Health and Safety legislation, and breach their duty of care to others in their workplace.
91. The financial pressures on that individual are irrelevant, just as they would be for an employer who cuts corners on safety due to financial stress, and as a result an employee suffers an illness or injury. Financial stress does not cut it as an excuse for employers in WHS law and it should not cut it as an excuse for any employee.
92. Is the fundamental premise behind the pilot / scheme the Victorian government accepts known risks to the work health and safety of Victorians and a failure by Victorians to discharge or observe their legislative duties of care to their work mates, unless and until the person concerned has a financial incentive to obey their legal obligations?
93. This seems a simply extraordinary and shocking proposition – a government accepting financial excuses from individuals for their failures to observe their fundamental work health and safety duties such that those they work with could become ill or die.
94. And we can only hope given the delta strain that presenteeism of the extreme type posited for the design of this scheme or pilot does not see anyone choosing to come to work for financial reasons when they know or reasonably suspect they may have COVID-19, give it to somebody else in their workplace, and that person then die.

95. That would clearly raise the industrial manslaughter regime which the Victorian government has imposed in this state.
96. On a moral as well as governmental basis, given the fundamental problems outlined throughout this submission, the \$5 million should clearly be spent on promoting testing, isolation and vaccination for those at risk of working when they should not, and direct payments from government to back this up if required. No delay, no pilot - the government must act on this known risk urgently and directly having acknowledged it in the Consultation Paper.

2. UNDERSTANDING JOB SECURITY

97. It is not sensible to talk about any job being secure unless the employing business can stay in business. The greatest threat to jobs during the Victorian lockdown, which was directly addressed by both JobKeeper and Victorian Government payments, was business people and particularly small business people not being able to remain in business when they could not trade, and money was not coming in the door.
98. That's real insecure work. Victorians lived through it during 2020, and it continues to stalk us in 2021. The employers of Victoria, particularly small business people in some of the industries targeted in the Consultation Paper don't need any lesson on job security and insecurity. They sacrificed and stood with their employees to keep them in work in 2020 and continue to do so. This often came at the expense of their own families, their own financial security, their own assets and retirement incomes.
99. JobKeeper and Government support at the state level were only part of the mix of keeping Victorians in work during COVID, complementing the massive investments being made by businesses of all sizes including small business families. Government measures were only successful in retaining jobs and businesses and in delivering the steep and rapid V shaped recovery in jobs because the private sector was also investing so heavily in supporting jobs and those who relied upon businesses for employment.
100. With fresh outbreaks and new variants, existential risks to Victorian businesses and jobs have intensified or re-emerged. The jobs of hundreds of thousands of Victorians will be genuinely insecure and at risk (as opposed to focus group tested union rhetoric) if we do not continue to make sensible and effective responses to COVID, get on top of this virus, and get the balance right to keep businesses in business and Victorians in jobs. This means:
 - a. Government continuing to step up and provide payments to incentivise Victorians to test and isolate, and to keep them in work and in business.
 - b. Governments not complicating or seeking to re-engineer the avenues that Victorians are relying on to retain and re-enter jobs during times of crisis and recovery.
101. The choices are going to remain hard and the path in front of us is going to remain unclear, but the one thing which is as patently obvious as any stark COVID reality is that **this would be the very worst time to seek to tinker with the mix of work options that are keeping Victorians in work, and that will help them get back into work and back in business.**
102. This is simply not the time to speculatively experiment with the Victorian labour market and with the jobs and livelihoods of hundreds of thousands of Victorians. **The pilot should be discontinued in favour of the alternative of maintaining government provided payments to Victorians who need them**, and working to ensure our State has efficient, responsive, rapid supports in place to roll out when needed. If there is money on hand at this stage it should be spent on a further push over the top on vaccination, not on this proposed pilot scheme.

103. If the Victorian Government wants to make jobs in this state more secure, it should be squarely focused on working with Victorian employers on what they need to keep the doors open, keep Victorians in work, and to embark upon a successful and sustainable recovery.
104. Could there be a worse response to the travails faced by Victoria's restaurants, pubs, tourism sector, and arts and recreation sector after 18 months of unparalleled adversity than increasing the costs of maintaining jobs, imposing a levy on them akin to an increase in payroll tax, or rendering the form of employment they need more desperately than ever to navigate uncertainty more contested, more complicated and more costly?
105. The other key thing all governments must do to bolster job security is work relentlessly to deliver a growing economy that is actively generating jobs. As spare capacity in the labour market falls, employees gain more power to seek forms of work that best suit them.
106. If we get the economy and labour market right more Victorians will gain scope to make their own decisions about whether they prioritise pay, or leave. How do you make jobs more secure? You give employees workers and job seekers options and you put pressure on employers through the labour market to meet their demands. That's also how wages growth is going to return to longer term trend levels.
107. Restricting casual work, or making it more costly, complicated or risky is a particular concern in Victoria given the particular areas of excellence and dynamism in its economy and labour market. Victoria prides itself on its hospitality, events, and arts and recreation industries, and for shopping.
108. These industries rely on discretionary spending and consumer confidence, perhaps more so than any others. That means that Victorian small and family businesses, and medium sized enterprises need scope for sustainable, cost-effective, flexible employment:
 - a. Perhaps more than any other state or territory.
 - b. Given uncertainty and potential risks to consumer confidence, more than ever.
109. We urge Government to reflect on whether:
 - a. There is any other state in Australia in which it would be more short-sighted and damaging to seek to restrict casual working as businesses and working people seek to restart, recover and steer through potentially years of uncertainty.
 - b. There has ever been a time in Victoria's history when access to casual employment on a straightforward, agreed, simple, and reliable basis has been more important.

What Do You Mean By Insecure Work?

110. "Insecure work" is a slick union campaign slogan, but does it have any value, legitimacy, veracity or reliably beyond political rhetoric?

111. The Consultation Paper and the design of the pilot scheme has employers at rather a disadvantage. We genuinely don't know what insecure work is.
112. "Insecure work" is not an accepted term, it is not a term of art, there is not an accepted academic definition, and there is not an ILO definition internationally. Rather this is a highly contested, politicised and weaponised slogan, which has no shared meaning, that is not commonly accepted. There is simply no consistent, shared understanding of insecure work, and it remains entirely in the eye of the beholder.
113. We are reminded of former US Supreme Justice Stewart's famous observation on pornography in *Jacobellis v. Ohio*, 1964, to the effect that he didn't know what it was but he knew it when he saw it.
114. This is not to say that job security is not a very genuine concern for all Victorians including those running small businesses such as restaurateurs, licensees, retailers, venue owners, arts and recreation employers.
115. But are unionists, academics, the media and politicians talking about the same things when they talk about 'insecure work'? Would they all nominate as insecure a consistent set of forms of work? If the people who used the term cannot agree on what it is and is not, how could it offer any reliable basis for public policy? Even the sentence construction in the Consultation Paper could be read as acknowledging that casual employment is not insecure work, which employers would agree with but we doubt was the intention.
116. The imprecision of the insecure work slogan, not to mention the highly contestable assumptions wrapped up in it render it fundamentally unsuited to play any policy role in the future regulation of work in this state, doubly so at such a critical time of so pervasive a level of risk to jobs and enterprises.
117. We are particularly concerned at any attempt to use union campaign rhetoric to design policy and regulation – that would be a very untenable and damaging course.
118. Ultimately, 'insecure work' seems more than a little Humpty Dumpty:
- "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."*
- "The question is," said Alice, "whether you can make words mean so many different things."*
- "The question is," said Humpty Dumpty, "which is to be master—that's all."*
119. What ACCI can contribute to this consultation is to consider a few key forms of work which we hear vilified as insecure, and for example those which have been raised in the current Senate Select Committee Inquiry into Job Security. See Sections 3 and 4.
120. We wish to be absolutely clear that doing so cannot be taken as any concession from ACCI that any form of work is 'insecure', nor that there is any problem with the status quo in relation to any of these forms of work, nor that any change of policy, law or practice is required or merited.

3. CASUAL EMPLOYMENT

121. It is abundantly to ACCI having read the Consultation Paper that the real target is casual employment. The Consultation Paper Seems deliberately vague on whether the insecure work concept extends to other forms of work.

There Is No Casualisation – It Is Just Not Happening

122. One of the ‘false truths’ of contemporary public debate on industrial relations is the (mis)use of the active, present tense verb ‘casualisation’. As with “insecure work”, this is a union authored term that a number of people, including journalists treat as accurate along with all that is packed into it, which in reality is simply not borne out in the data.

123. The following Graph is from the ABS Working arrangements series of August 2020.¹



Sources: 1. Employment Benefits, Australia (1988-1995), 2. Trade Union Members, Australia (1996) 3. Employee E
 Notes: 1. pre-2004 series: includes Owner Managers of Incorporated Enterprises (OMIEs), 2. 2004+ series: excludes OMIEs, 3. From August 2014, casual employment is collected quarterly in the Labour Force Survey. 4. The ABS plans to produce historically comparable estimates for the pre-2004 period, excluding OMIEs, in the future.

Source: Australian Bureau of Statistics, Working arrangements August 2020

¹ <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/working-arrangements/aug-2020>

124. It clearly shows, as has been repeatedly pointed out that the incidence of casual employment in Australia is dead flat at somewhere around 22 to 25% and has been at this level for virtually two decades. There is no casualisation, casual employment is not out of control or increasingly the norm – such claims, no matter how often repeated, simply don't hold water.
125. This was validated by no less a source than the ABC Fact Check unit in 2018² (and the only possible change in the intervening three years would be an even lower incidence of casual employment as casual jobs were lost in the pandemic). The point made above that casual employment has been stable rather than growing for two decades was said to have “checked out” and been backed by facts and data according to the ABC.
126. ACCI cannot put this any more clearly - whatever the Victorian Government chooses to do, however it frames or targets policy in this area we implore you not to present this as being on the basis of casualisation or any out of control growth in casual employment. That is simply not borne out by the facts, despite the passion with which many believe it to be the case.
127. All of us have a right to advance our own interpretations and advocate for the best way forward, but none of us have any right to our own facts.

Has anyone asked the casuals?

128. We've heard from unions, we've heard from academics, and we've heard sections of the media that have uncritically swallowed the insecure work slogan. We've heard proposals to make casual employment harder, less reliable and less accessible. We hear concerns expressed in particular regarding forms of work in which individuals make their own decisions, are less likely to join trade unions, and less likely to pay union dues.
129. Have anyone asked the casuals? Is this what they want? Do we sufficiently understand the consequences of attaching extra costs to casual employment or making it harder for employers to offer?
130. Do we understand how employers will react to double dipping, paying for leave once through a loading then again through a levy? Do we understand the consequences of a future in which operational imperatives favour greater reliance on casual work to navigate uncertainty, but a state government would be going in the opposite direction to make it harder, more expensive and less reliable? Has the Victorian Government modelled the implications of reducing casual work when it is needed most? This should include any risks of labour market substitution of older workers for young.

Casual conversion

131. The Consultation Paper fails to make any reference to the most significant change in casual employment in at least 20 years; the March 2021 amendments to the Fair Work Act 2009 (Cth) that created new rights to casual conversion, and clearly and reliably defined casual work.

² <https://www.abc.net.au/news/2018-04-17/fact-check-casualisation/9654334>

132. In particular there appears to be a failure to address the obvious question of whether the assumptions behind the proposed scheme still stand given casual employees in Victoria will have universal rights to seek to convert to full or part time work.
133. Victorians working casually for any sustained period such that they could realistically expect to enjoy leave rights, will have important and significant new rights to seek ongoing employment and the paid leave it provides where they chose to prioritise access to such leave. And it would be 10 days paid personal leave at the full rate of pay, not five days at a 'community standard' lesser amount, subject to a potentially punitive paperwork requirement.
134. Under casual conversion, employee choices and preferences completely remove the justification to embark on the course outlined in the Consultation Paper. Any Victorian casual within a clearly established relationship with an employer will have access to personal leave as a full time or part time employee if they want it.
135. **To reiterate:**
 - a. **Casual conversion removes any need for the pilot or any ongoing scheme.**
 - b. Without the casuals, the pilot and scheme concepts should be abandoned.

The pilot is not testing what will actually happen

136. Employers will not accept paying casual employees twice for personal leave, once in some kind of levy, and then again as a component of a 25% casual loading. Business paying twice, and employees being paid once for the same benefit is not anyone's idea of a fair go, or sustainable for a state trying to ensure its citizens have jobs during such a difficult time.
137. If the end result of the pilot were a compulsory levy on employers to pay personal leave through some form of defacto payment:
 - a. **Employers will apply to correspondingly reduce the casual loading.**
 - b. **The take home pay of Victorians, including young people, will be reduced.**
138. This is not a threat, it is a consequence. Employers will not accept paying a loading in lieu of something that is no longer forgone, or for flexibilities that are no longer available.
139. If the pilot is not going to see casual employees and potential casual employees face a pay reduction, and as such is not testing the scenario in which any ongoing levy scheme would operate, then it cannot test the veracity of the policy or levy arrangement.
140. Nor can the proposed pilot test the impact on Victorian employers, many of them Victoria's smallest businesses that have done it hardest in recession and restrictions, incurring higher labour costs and the administrative burden of paying into some sort of contributory scheme - costs that comparable employers in other states will not have.

141. It is welcome that the Government will fund payments during the pilot, and this should remain the basis for the whole exercise.
142. However this ensures the pilot is not actually a pilot, and can offer no evidence of how a final or ongoing scheme would operate, nor of its impact on employers. The pilot scheme risks not testing in any way an ongoing scheme if it is funded by government initially, but not on any ongoing basis.
143. There is a very serious risk of the cost of dining out, holding events, attending plays or concerts becoming greater in Victoria than they are in other states of Australia, or for events Melbourne losing a competitive edge against competing states. This would exacerbate their already high cost of doing business and employing in Australia and concentrate that cost in a state that will face at least as steep and sustained a COVID recovery as any other.
144. Feedback on this pilot risks being meaningless and not any valid indicator of what will happen unless the pilot actually sees:
 - a. Workers incur a reduction in take home pay through a proportionate reduction in the casual loading.
 - b. An accompanying reduction in casual work opportunities.

Understand the importance and fragility of casual employment

145. Our labour market is like an ecosystem, the complexity and interrelationships are often very difficult to observe and appreciate. Employer experience is of the critical flexibility and adaptability that casual work provides not only for business staying in business, and not only casual jobs, but also to support and sustain full and part time employment.
146. Building on the ecosystem analogy, Government needs to take care not to act on partial information or pursue supposed goals without a proper understanding of the wider consequences of particular measures. Is Government genuinely confident that distorting casual employment as canvassed in the Consultation Paper would not be the Victorian labour market equivalent of introducing myxomatosis, rabbits or cane toads?
147. Is Government confident it sufficiently understands the fundamental role casual employment plays in the Victorian labour market? Is there a sufficient understanding of how many Victorian enterprises and jobs rely on casual employment and how many are going to rely on casual employment to an even greater degree as they navigate years of uncertainty and recovery?
148. Is Government willing to put at risk the single most effective avenue for young Victorians to enter work and commence their careers, at a time when the youngest in our community are most clearly at risk of decades of labour market and income harm as a result of COVID, restrictions and recession?
149. When Government doesn't know, or cannot know, and the only thing it can reliably foresee is uncertainty, **Government must err on the side of caution.**

150. Whether you call it the precautionary principle or responsible government, we urge the Victorian Government to be measured and act on the best information. That means not progressing the proposed pilot.
151. As we are pains to point out, ACCI is not urging the Victorian Government to do nothing, and we're not urging the Victorian Government to simply accept that some vulnerable people, or people at particular risk of spreading the virus are going to do so. Rather we urge the Victorian Government to continue to provide payments directly to ensure Victorians test, isolate and vaccinate, and to target information and promotion to those most at risk.
152. If however Government is committed to progressing contrary to our recommendations, hopefully having considered the rest of our constructive analysis and ideas, then we suggest that any pilot be restricted to casuals only.

4. CONTRACTORS

Is There any Evidence this is Needed / Justified?

153. What evidence is there that independent contractors are choosing to work to put food on the table rather than taking necessary actions to protect their health and the health of other Victorians? Which species of contractors, in which industries?
154. It's easy to assume that everything about the gig economy or independent contracting is undesirable or exploitative if that's where one is coming from, and it's very clear that trade unions lump all forms of work they don't like together under convenient pejorative label.
155. But is there evidence of any inherent problem with independent contracting, testing, isolation and vaccination in Victoria to justify attempting to change it?
156. There has to be something more than some claiming concerns with allegedly insecure work (sic) based on some casuals working multiple engagements in multiple workplaces at the height of a pandemic, pre-vaccination, and pre-effective contract tracing.
157. A number of COVID specific settings from 2020 did their work and were rapidly removed. Unique and highly contested concerns from the peak of infection in this state in 2020 would be an odd basis for enduring policy when the motivating circumstances have changed, and in particular as more are vaccinated.
158. There has to be something more to justify the inclusion of contractors in any payment scheme other than the fact that unions, academics and some others choose to lump contracting and platform work in with casual work under the label of 'insecurity'. A collection forms of work unions don't like, and find hardest to organise is not any defensible basis to frame policy and public spending, or any job endangering levy on employers.
159. Which independent contractors would get 'leave'? Is it the tradies? Is it the political consultants or management consultants? Is it the rideshare or delivery drivers? What proof is there that testing and isolation behaviours need to change in these cohorts and could be changed through additional income?
160. Has the Victorian Government prior to considering the pilot approach, reached out to independent contractors and those they do business with to discuss the best ways to encourage testing isolation and vaccination, rather than imposing on them from above as set out in the Consultation Paper? Has Government made contact with the key industry associations representing the trades, as well as for example the rideshare providers or delivery services on what can be done cooperatively prior to considering imposing additional costs and regulatory imposts?
161. What proof or basis is there to repudiate or override the contractual decisions Victorians make?

Take The Direct Option

162. Whether you're a tradie, an rideshare driver, a political consultant, or a management consultant, if the Victorian Government wants you to stay at home its best options are:
- a. Continue to regularise and make more predictable the Worker Support style government payments outlined on page 4 to ensure more Victorians are able to stay at home when they need to.
 - b. Make payment conditional on the behaviours Government wants to encourage. So the Government should make any claimant for money declare that they will stay at home and follow medical directions, at risk of the dual penalties for making a false declaration, and any sanctions for breaching health orders.
 - c. For tradies and professional contracting, if these are areas of concern, work with industry and professional bodies that are already promoting good practises in COVID control.
 - d. For platform work, work with the key platform providers, don't send them a signal that the Government wants to distort the contractual foundations of their businesses or turn them into something they are not. For clarity we understand the rideshare industry has gone to significant lengths to ensure infection control, and that the well-publicised transmission early in current Sydney outbreak was not in a rideshare vehicle.
 - e. Properly enforce community obligations, rather than seeking to turn them into imposts on employers. If Victorians need to test and isolate, government should either persuade them or compel them, it cannot become an employer responsibility to pay for individuals to do what our society needs them to do.
163. Assumptions about independent contractors being low paid and vulnerable need to be questioned. Many tradies for example wouldn't get out of bed for \$1500, but the answer to this is to work with their associations and networks on how best to encourage the behaviours the government seeks to encourage. Our understanding is that considerable thought has been given to safely entering family homes for example to conduct repair work.
164. If the Victorian Government takes this approach, then there is no need to:
- a. Distort or pervert independent contracting, directly or indirectly, or trample over contractual relationships agreed between Victorians.
 - b. Create a nightmare collision between the sham contracting provisions of the Fair Work Act 2009 (Cth), wider application of contracting under federal law and any scheme in Victoria.
165. We come back to the central question of what's really going on here, and clarifying goals and priorities. If the aim is as stated in the paper, there should be no inclusion of contracting, gig work, platform work or whatever one wants to call it, in any employment-based pilot or scheme. Alternatively if Government is going to draw in any independent contracting, frame this as a government support payment not as leave and not designed around employment.

166. If instead the desire is to destroy, delegitimise, discourage or complicate forms of work which the union movement don't like and cannot organise, then be frank about that and have the conversation more directly, and do not cloak non-health outcomes in health-based concerns.

How This Would Work

2.2 *How should the eligibility of independent contractors be determined?*

167. It shouldn't be – they should be excluded.
168. If this is to be pursued, then a contractor would simply need to make a statutory declaration that they will not / did not perform work outside their homes for a given period due to illness or caring and that their income for work during that period would have been a particular amount, below a prescribed threshold.
169. A claimant focused simple approach framed as a government payment made available to independent Victorians does not require any nexus to any form of employment, or any distortion or perversion of contracts for the provision of services, which risks damaging imprecision and unforeseen consequences and harms for Victorians.

Who Should Pay A Levy?

170. There should be no levy on job creation as Victoria attempts to navigate what will be our greatest re employment challenge since the Second World War.
171. ACCI strongly questions the design of both the pilot scheme and any final scheme and the fundamental assumptions behind it. Amongst our myriad concerns is that the pilot scheme provides no form of test for what we understand to be envisaged going forward after two years.
172. In particular, two years of the government picking up the tab can provide zero evidence of the impact of imposing a levy, or any actions to reduce scope to contract for services in the state of Victoria on an ongoing basis.
173. So we put the question to Government quite directly, who would pay a levy for any application of paid personal or carers leave to independent contractors? Is it the contractors themselves, or those they contract with? Would it only be independent contractors doing business with a business?
174. Would individual Victorians who catch rides or have meals delivered, or families getting toilets unblocked or the house rewired be required to pay a levy to make this work?
175. If the contractors themselves would need to make a contribution to pay themselves personal or carers leave, will they have a choice? Won't this all just be passed on to make the costs of doing business and making a home in Victoria even more expensive?

176. One risk that the government must rule out immediately and unambiguously is any suggestion that the employer community already subject to the direct and indirect costs of employing and payroll taxes, should pay what would effectively be at a further payroll tax to subsidise casual employees they do not employ, and contractors they do not do business with.
177. It would seem more than unfair to ask the directly employing businesses of Victoria to pay a levy to subsidise leave for an Uber driver driving people out to party on the weekend. It would be unfair to ask the employers of full and part time employees to subsidise the use of casuals by other businesses, if a levy were imposed.
178. The further thinking extends into this being a public good and wider responsibility of Victorian the community the stronger the case becomes to continue to fund any payments directly from government, without any consideration of levies on the private sector.

The Self Employed / Small Businesses

179. ACCI's position is in essence that:
 - a. The pilot should not proceed, there should not be a levy, and government should instead continue to make payments to individuals in need to encourage the behaviours we need them to demonstrate on testing isolation and vaccination.
 - b. If anything were to be attempted in this area as foreshadowed in the Consultation Paper, it is hard to see how it could extend beyond casual employment. This is a point made without any acknowledgement that there is any merit practicality or sustainability in attempting to address casuals in the manner canvassed.
180. Consistent with the preceding analysis on contractors and contracting often lumped in with casual employment by some adopting the insecure work slogan, ACCI does not call for any such scheme or pilot to extend to the self-employed or small business people.

5. OTHER QUESTIONS

181. The Consultation Paper ends with a request for other matters that need to be considered. We will do so by way of posing some illustrative questions. We could have raised further issues, and we look forward to engaging with the input and proposals of others.
182. **Is there any evidence or data to support pursuing any scheme?** Is there any evidence supporting for the central premise for the pilot scheme? How widely or commonly are Victorians choosing between work and complying with public health directions? What evidence most there for the causal link posited by Government at the height of pandemic and deaths in 2020 between particular forms of working in Victoria and the spread of COVID-19, And how is this set to be inherent or linked to the particular form of engagement or contractual relations? For which Victorians, doing which work, employed or working on which basis? How else could Government help them?
183. **Where is the money going to come from via a levy?** Who is going to pay any levy? In relation to which employees or other persons performing work?
184. Is it going to only be employers of casuals, in relation to those casuals? This seems logical and equitable if any scheme were piloted, and to do otherwise risks persons who do not employ casuals being forced to pay not only for the personal and carers leave of their full and part time staff but to also subsidise leave for casuals they've never met working for competitors.
185. This would also mean in practice employers of full timers and part timers would need to pay overtime to meet customer demands for flexibility, or incur additional costs by altering rosters, and it would at the same time be subsidising by way of a levy the capacity of their competitors to be more flexible and nimble at lower costs through casual employment.
186. To the extent some interests think casual employment is 'wrong' or undesirable wouldn't this be punishing those who choose to structure their employment around the full and part time model which unions claimed to prefer?
187. None of this fundamentally unnecessary complexity and divisiveness arises if payments to encourage testing isolation and vaccination are framed solely as direct transactions between Victorians and their government, without any attempt to shoehorn in a nexus to employment or employers.
188. **Should there be access from day one?** Would there need to be any minimum period of service prior to being able to trigger this? Specifically could a casual employee make a claim in relation to their first or only scheduled shift? And then not work that shift?
189. It would be vastly inequitable and damaging to create a situation in which Victorians seeking money or advantage from Government could do something analogous to a job seeker scheduling interviews for jobs they have no intention of taking solely to meet activity testing requirements.

190. Care needs to be taken to avoid any perverse incentives for individual Victorians to agree to the working of casual shifts they have no intention to work, creating operational, staffing and customer service problems for vulnerable Victorian businesses.
191. ACCI's position is that there should be no link to employment or work. If contrary to this position there is a link to employment, such as for casuals, there should be some minimum period of service before there is any access to "leave" and before there is any obligation to make any contribution or pay any levy on their behalf. This should be 12 months service, identical to the National Employment Standard on casual conversion.
192. **Will payments be taxed?** Will any payments be taxed or taxable, and how? Recalling that personal leave, including carers leave is taxable income. We foresee the ATO wanting to consider whether any payments under the pilot or ongoing scheme should be taxable earnings.
193. Prior to proceeding the Victorian Government should seek ATO advice on any pilot or scheme clarifying its obligations to deduct tax (and issue the equivalent of a group certificate), or whether those making a claim against such a scheme need to be warned that they will need to pay tax at tax time on any payments from the scheme (i.e. set money aside)?
194. Furthermore, if somebody could withhold their own money against a clearly foreseeable tax debt surely that would be proof that a casual employee worried about personal or caring obligations could put money aside from their additional casual loading to meet those circumstances? Doesn't the rationale for any pilot or scheme disappear altogether?
195. None of these ATO concerns appear to arise in emergency style payments directly from government to individual members of the community, as we recommend as an alternative. Again the simpler, clearer alternatives we outline seem superior.
196. **Will superannuation be payable?** Personal leave payments are clearly treated as ordinary time earnings for SGA superannuation and have been for almost three decades. Super is payable on personal leave.
197. What are the implications for the thinking behind this scheme, either at the pilot stage or thereafter? Will there be superannuation payable on monies paid by the Victorian Government to claimants that meet any scheme criteria? Is the Victorian Government willing and equipped to pay superannuation on such payments? If the superannuation is not paid, do the assumptions about changing the behaviours of lower income earners still stand?
198. This concern becomes even more unavoidable in light of the following policy change:

Removing the \$450 per month threshold for superannuation guarantee eligibility

Removing the \$450 per month threshold for super guarantee eligibility

On 11 May 2021, as part of the 2021–22 federal Budget, the Australian Government announced it will remove the \$450 per month threshold to expand coverage of super guarantee to eligible employees regardless of their monthly pay.

This measure is not yet law.

From 1 July 2022, eligible employees who earn less than \$450 per month will be paid super guarantee by their employer if they satisfy the other eligibility requirements.

199. **How will any scheme account for part day absences?** It's very common for someone to embark upon a day of work and then go home sick partway through a shift, or for a parent or carer to be called away partway through a shift. How would the envisaged approach account for this in practice?
200. To go to less legitimate situations, if we are correct in predicting that a small minority of users will proceed on the basis that they need to suck up every last government dollar they can (and there is the full range of behaviours and motivations in the Victorian employee community just as there is in the employer community) then part day absences are going to potentially raise a problem.
201. Any scheme will face claims to use up every last one of 38 hours of payment, regardless of actual illness, with all the complications that this creates.
202. ACCI's alternative approach not linked to employment but rather as a direct claim for government support can easily account for this through a mandatory question for statutory declaration, and being clearer on what a claimant can and cannot apply for. This is a further basis on which the central premise of the Consultation Paper should be re-examined in favour of something far more direct and simple.
203. The solution is quite straightforward, either under the ACCI alternative model or any other, no claimant on government money or any payment should be able to claim on more than five occasions or in relation to more than five shifts in any calendar year, and no claim can in any circumstance be for more than 7.6 hours in relation to any one shift.
204. Employers have for many years battled employees assuming personal leave is an entitlement or right to be used in full and not a protection, and if the Victorian Government is going to embark on anything labelled personal leave or linked to shifts of work, you will encounter the same problems and the same thinking. In contrast a flat payment to test and isolate doesn't naturally invite such misuse if well designed.

Labour Hire

205. Depending on the approach taken, any actions following this consultation could have a significant impact on the Victorian labour hire industry, the tens of thousands of Victorians who work in it, and businesses and communities who rely upon labour hire services, additionally so during the pandemic.

206. We stress the importance of engaging with the labour hire industry and those who represent it before embarking on any course of action that may negatively impact upon it and on Victorians who rely on the industry for jobs and services.
207. To go to our wider point, some may ideologically oppose labour hiring or ignore the stark differences between the sector proper and business models based on calculated underpayment. Unions may view labour hire as eroding areas of historic power, influence and revenue. However, the Victorian labour market is going to need the flexibility and agility that labour hire provides to successfully navigate uncertainty and both contribute to and benefit from recovery.

CONSULTATION PAPER QUESTIONS

6. WHICH INDUSTRIES? (Section 1)

208. Question 2 under Section 2 is as follows on p.8 of the Consultation Paper:

2.2 Which (...) industries should be prioritised over others?

209. ACCI members will provide detailed and specific feedback for specific industries.

210. The superior alternatives we outline in the introduction, which would see individual Victorians make claims directly on Government, do not need to be differentiated by industry. This question does not arise if the pilot becomes a government payment scheme, which Victorians can access regardless of the industry in which they work, or the legal basis for that work, where their work obligations collide with testing isolation and vaccination. Our alternative proposals can provide more Victorians with more options in more circumstances, more sustainably.

Don't Target Those Doing It Hardest

211. Many of the industries with the highest incidence of casual employment are those most impacted by COVID, restrictions, uncertainty, and in which small businesses and jobs are most at risk.

212. This is no more clearly illustrated than the inclusion of accommodation and food services, arts and recreation, and retail in the pilot proposal. Victoria's restaurants, small shops, pubs, tourism operations, events, concerts, productions have been decimated by multiple lockdowns and ongoing restrictions.

213. This is the worst possible time to countenance imposing a speculative additional obligation or levy upon small businesses or jobs in Victoria's hardest hit industries.

Accommodation and Food Services

214. Few have done it harder than Victoria's restaurants, pubs, and the wider tourism sector. Lockdowns, restrictions, ordering in food and rostering staff only to be shut down with hours' notice, more than once; these are the realities Victorian hospitality faces.

215. It seems inconceivable to impose additional costs, or reduce operational flexibility, adaptability and resilience for such an industry, unless a Government wanted to drive restaurants, pubs and tourism out of the state, and along with first jobs for young Victorians.

216. A number of employers in this industry in particular would be very angered at being asked to pay a levy to provide personal leave to employees they already pay personal leave for by way of a substantial additional loading, and in particular to pay more to employ Victorians after what is set to be at least 18 or 24 months of making repeated personal sacrifices to retain their staff and their businesses.

217. We urge the Minister to walk down any of the famous eating and drinking strips of inner-city Melbourne, or through the CBD and observe the stark reality of closed shops, closed bars and closed restaurants. She doesn't need to go any further than the top of Bourke Street opposite Parliament House to see the confronting reality of closed restaurants.
218. We urge the Minister to listen again to the distress of Victorian restaurateurs in February when just as they thought they would get on their feet through Valentine's Day, they had to dispose of thousands of dollars' worth of food. We urge the minister to listen to the tales of small business people who made it through lockdowns one two or three, but just could not make it through those of 2021.
219. The Victorian Government prides itself being a force for good, and for equity and fairness. Any sense of justice, equity and fairness would not seek to increase the costs of employment, or of running a hospitality business at this time.

Arts and Recreation

220. This arts sector would love to be in a situation in which they could actually hold events such that casual work would create a problem for them.
221. Governments state and federal have recognised the particular adversity facing the sector and we ask the Victorian Government as one that prides itself on understanding and supporting the arts to step back and reconsider the implications of attempting to include it in such a scheme at this time.
222. Again the government needs to engage with and listen to industry representatives directly before even countenancing what seems an extraordinarily misdirected and wrongly timed application of a questionable concept.

Supermarkets Can Tell You Nothing About Wider Retail

223. Respectfully, including supermarket work in the pilot can tell Government nothing about the capacities of other retail employers or the impact of including them in any scheme. It cannot be assumed that the pilot would provide any basis for extrapolation beyond supermarkets.
224. This is as straightforward a point as pointing out the massive size and capacities of our largest supermarkets compared to Victoria's tens of thousands of small shops. In addition:
 - a. Is casual employment in supermarkets genuinely as intermittent and ad hoc as employment in the wider retail sector?
 - b. Given induction, training and uniforms etc, isn't there a greater relationship between a casual staff member of a major supermarket and many who work casually in smaller shops?
 - c. Supermarkets also remain open when the vast majority of the Victorian retail industry is closed, making financial realities and challenges markedly different.

- d. Supermarkets are leaders in COVID control for customers and employees. Fears of employees coming to work unwell or unfit to work seem far less applicable in such a context. We understand these are some of the most successfully COVID aware and COVID attuned operations in our nation outside the health sector.
- e. The SDA and major supermarket employers are fairly keen on promoting vaccination we understand, and it may soon be that casuals working for supermarkets will be rendered largely beyond the central purpose of the pilot.
 - i. If the supermarkets are leaders in promoting vaccination to their staff, then this part of the pilot scheme would test nothing.
 - ii. The supermarkets actually reinforce one of ACCI's key points in the introduction. The Victorian Government should be even more actively supporting vaccination, such as making sure vaccination hubs can operate for extended hours, rather than embarking on the proposed pilot scheme. That's a much better investment and it's going to help more multiple jobholders be able to vaccinate.
- f. Major supermarkets largely employ under enterprise agreements negotiated with the SDA, rather than the award safety net. If this were a priority for the industry, it could be negotiated through EBAs, without any highly questionable attempt to change law and practice as proposed.

Aged Care

- 225. Again we urge government to think again about this proposal. If ever there was a strong case to deliver instead rapid payments, direct to Victorians, it is in aged care. This is an industry in massive flux, seeking to implement unheralded changes following a major Royal Commission, and facing a work value case in the Fair Work Commission which may entirely change patterns of employment, and propensity to use casual employment. Properly assessed the known unknowns in the aged care industry should rule it out of consideration for any pilot or scheme.
- 226. There is also every prospect of every Victorian aged care worker who can be vaccinated being vaccinated before such a scheme could commence. In the week of drafting this submission the Victorian Chief Health Officer has expressed substantial optimism about successful vaccine rollout in Victoria during coming weeks and months.
- 227. This is also an industry in which on hire / labour hire employment plays an essential role, and a role which we understand is treated far less hostilely by unions than labour hiring in other sectors. We urge engagement with age care employers and representatives of on hire service providers before any decision to include aged care in the envisaged pilot process.
- 228. **ACCI's approach were this to proceed would not be to target particular industries, but to make payments available to any casual employee declaring that they could not work as rostered on the basis of illness or caring, did not have access to paid leave etc. So not specifically targeting aged care supermarkets etc but including them in a more universal approach, funded directly by Government.**

Occupations

229. Questions 1.3 and 1.4 (p.7) of the Consultation Paper are:

1.3 *Should the occupations identified above in the identified industries with high rates of casualisation and insecurity be considered for the Pilot?*

1.4 *What other specific occupations within the priority industries meet the criteria for potential inclusion?*

230. This seems to be a reference to the following:

Occupations already announced for possible inclusion in the Pilot such as commercial cleaning, hospitality, security, supermarket, and aged care workers are expected to meet these criteria.

231. Respectfully, these are not occupations, they are subindustries. The occupation is to be a butcher, the industry is retail and the sub industries are (a) butchers' shops, (b) supermarkets, etc.

232. We suggest the reviewing the distinction between the ABS ANZSCO and ANZSIC frameworks, and between award classifications and award scope³ for the distinction between industries and occupations.

233. Raising 'occupations' seems to be doing no more than making this more complicated than it needs to be. There is no need to consider occupations if an earnings threshold is applied, and in particular if the alternatives ACCI commends to government were pursued.

234. There is no need to get into whether chefs should be included, night managers in supermarkets, or the senior classifications in the age care industry award.

a. A requirement to not have a paid personal leave entitlement will remove the vast proportion of more senior, managerial or qualified staff.

b. Capping eligibility at an appropriate level of earnings will further remove any need for occupational differentiation.

235. For example, and without any concession regarding application to Aged Care, eligibility appears as simple as:

a. The employee works in the State of Victoria as a casual employee, and is not entitled to paid personal / carers leave.

b. Her or his employment is subject to the Aged Care Modern Award [MA000018].

c. She or he earns, or would have earned less than \$X per hour.

³ For industry based awards.

236. Alternatively there may be reliable statutory definitions of what constitutes the age care industry from other areas of health regulation that could be applied to determine the scope of the scheme.
237. If such approaches are taken Question 1.4 of the Consultation Paper also falls away.
238. The application of the simplest possible eligibility mechanisms seems likely to be clearest and most effective.

Alternatives

239. The Victorian Government may have options to pilot this closer to home, such as testing it in:
 - a. Victorian State Government employment, to the extent this includes casuals.
 - b. The funded sector, contracted by Government, such as social and community services.

7. WORKER ELIGIBILITY (Section 2)

Eligibility Criteria⁴

2.1 *Are the proposed eligibility criteria appropriate?
What other eligibility criteria should be considered?*

240. Work is performed in Victoria (B). Bearing in mind all ACCI's caveats and alternatives, this appears sound, but there will be questions raised as always for border communities.
241. Visa Eligibility (C). Bearing in mind all ACCI's caveats and alternatives, this appears sound, noting that proving this should be entirely a matter for a claimant and should require nothing of any employer.
242. Eligible Occupations (D). For the reasons set out above, this should be reconsidered. It seems unnecessary to delineate access to the scheme based on occupations. It seems far tidier and more practical to determine access to any scheme based on (in essence) award coverage, not being able to work or trade because of illness or caring (or COVID isolation), and the level of remuneration or income foregone (plus B and C from Section 2 of the Consultation Paper).

Means Testing / Hourly Wage Threshold

2.3 *Should the Pilot be means tested?
If yes, how much should a worker earn before they are no longer eligible?*

243. We presume 'means test' means an income test in this context.
244. This could be kept relatively simple. A claimant could be required to make a statutory declaration including a specific declaration of the income for a particular shift or day that they are foregoing due to illness or caring. An upper limit to this, and penalties for false declaration, would ensure an appropriate focus on those lower paid and in potential need.
245. Where to set this upper limit is a matter for further consideration and consultation. We note that average weekly earnings is a very long way from \$20.33 per hour / in fact less than half AWOTE.
246. This seems an exaggerated and impractical upper limit for the making of claims against the government or any scheme. It also seems at odds with the expectations of the Victorian community for equity and not spending taxpayers' money or employers' money to subsidise those at medium or higher earnings.
247. Government needs to return to its stated central premise, the concept of sufficient financial incentive to encourage somebody to stay home rather than go to work when required.

⁴ Consultation Paper, p.8

248. Offering someone 45% of their income is not going to encourage them to do anything, and the whole premise falls away, as would any legitimate expectation of the proper spending of Victorians money the higher up the income chain you go.
249. Again, there is a fundamental logical inconsistency here at the conceptual level. If the Victorian Government contends that casuals in particular are low paid and insecure, then any payments to those persons need to be capped at comparatively low levels, as does access to them. Government can't have this both ways; it's either one or the other.
250. The ABS would be capable of producing earnings data on a distributional basis for employees without additional paid leave entitlements (the technical ABS definition for casual employment).
251. It's hard to advance a firm recommendation or position without seeing this earnings distribution data for casuals. The distributional data would also tell you precisely how many casuals earn rates equivalent to AWOTE in Victoria, which we suggest is very very few. Even fewer are going to want to give up 25% of their actual rate to get \$20.23 per hour.
252. Also as a matter of equity and logic no claimant for Government money should be able to make a claim upon any such scheme where they earn above median hourly earnings for casually employed Australians (having filled out a statutory declaration of the amount they would have earned for the shift that is being foregone due to illness or caring responsibilities).
253. So the question or prompt upon a standard statutory declaration might be in the following form:
- I declare that my earnings for the shift or hours set out above would have been less than \$XX.XX per hour on ordinary time basis had I worked that shift.*
254. The \$XX.XX would be the median hourly earnings of casual employees, inclusive of the occasional loading (pending seeing the actual data, AWOTE seems far too high).
- a. Where an employee was to earn more than that, they would be ineligible to make any claim and their claim rejected.
 - b. Where a claimant lies to try to get money from Government and underreports their income, they should be investigated and charged for making a false statutory declaration.

Multiple Engagements

4. *Are there any additional considerations that need to be made for workers with multiple employers or working for multiple businesses?*
255. If the simple and straightforward approach we commend to Government were adopted there is no need to frame a scheme around multiple engagements. A claimant simply declares that they were scheduled or rostered to work particular hours on a particular day, declares that they were not able to work due to sickness or caring, and that claim is properly considered and paid out.

256. The claim and transaction are based squarely and solely on the shift for which someone formally declares they were ill or had caring responsibilities.
257. It seems irrelevant that on another day in the case of illness, or even at another time on the same day in the case of caring, the claimant may work for another employer, or in another capacity. If someone were required to care for a sick child and not able to do a shift of work as a casual during the day, we see no problem with the same person driving for a rideshare provider during the evening when their partner takes over the caring responsibility.

Fraud

258. We are concerned that for scheme integrity and suitable accountability for public spending there must be control against someone claiming to be sick for a scheduled casual shift but then pulling a casual shift elsewhere, driving a rideshare, or working cash in hand.
259. Employees claiming to be sick (less so caring) and performing work elsewhere is not common, but it does happen and ACCI members are asked by employers what they can do about it. Employers treat with the utmost seriousness instances in which we find employees claiming personal leave have worked elsewhere, and often seek to dismiss employees on this basis.
260. It would be no less serious to seek to defraud the state of Victoria or a body administering a levy-based approach, or in fact the entire levy paying community if a levy were applied (which it should not be). This could be guarded against by:
- a. Requiring a statutory declaration that somebody was genuinely sick or caring for the shift or time in which they are claiming payment, and that they were not performing any active work during that period for any form or remuneration or other payment.
 - b. This would need to be worded to not inadvertently pick up someone earning an income passively (e.g. trading shares from their couch with a broken ankle), but the wrong to be addressed seems fairly straightforward.
 - c. This can only work if the government is committed to taking action against individuals no matter how vulnerable and regardless of their income and socioeconomic status, where any Victorian seeks to deliberately or knowingly defraud the state by making a claim they know to be false.
 - d. We also caution that in this scenario neither the employer offering the work the employee did not do, nor the employer for whom the claimant ended up working at the time in question should incur any requirement, imposition or sanction for the employee's fraud, save in any circumstance in which they knowingly conspired to defraud the state.
 - e. If an employer was to employ an individual in good faith for a casual shift, they can have no knowledge of that person absenting themselves from another shift at the same time, nor making a claim on any scheme for that time.

- f. This would apply equally to a non-employing entity such as a ride share or delivery company for whom someone sought to work at the same time as purporting to be sick or caring, the rideshare provider can have no knowledge or control over someone seeking to defraud a third party.

Qualifying Service

- 261. If contrary to ACCI's multiple arguments, the scheme is embarked upon as set out in the Consultation Paper it should not apply to casual employees from their first day or shift of employment.
- 262. As the proposal appears to now stand someone who is offered or rostered for casual work would be able to make a claim for personal leave having never actually performed any work for the employer, never having met the employer, and potentially having never worked or pay tax in the state of Victoria. This may seem at first blush contrived, but we recall:
 - a. The mass hiring of casuals for events, concepts and by the labour hire industry.
 - b. The potential for a scam in which some people may accept a casual position which they never had any intention of working to be able to make a claim for up to \$770 / \$1500 etc. If this did occur the employer loses out because the shift of work is not performed and they are left in the lurch, and the government is being scammed. It's the type of integrity risk properly designed government schemes guard against.
- 263. We also think there may be legal uncertainty where no service is offered, no work undertaken, and no remuneration paid to someone who accepted a position but who then failed to turn up. Did they ever become an employee? All the more reason to not require any employer engagement in the mechanics of the proposed payments if this can be avoided, as we recommend in our various alternatives.
- 264. A more balanced approach would be that the only casual employees who should gain access to paid personal leave, or some proxy payment for it, should be those who have served a minimum of 12 months service and who have a reasonable expectation of further engagements.
- 265. In terms of mechanics a qualifying period would seem fairly simple to implement. Again the claimant seeking money from government would need to include in a pro forma statutory declaration a specific declaration that they had performed work on a continuous basis for the employer to whom service was to be rendered but for illness or caring for a period of not less than 12 months.
- 266. The person making the declaration might be reminded by way of standard wording not only of the jail and financial penalties for making a false declaration, but that information on job tenure can be easily confirmed with the ATO or the employer.

8. RECEIVING AND DRAWING DOWN PAYMENT (Section 3)

Use a 7.6 Hour Day

267. Modern Awards are based on a 38 not a 37.5 hour week and the National Employment standards are based on a maximum week of 38 hours not 37.5. 37.5 hours may standard in the public sector, but not in the private sector.

268. The following from the Consultation Paper is therefore somewhat perplexing:

The Pilot will provide sick and carer's payment to eligible workers at the national minimum wage (\$20.33 per hour, as at 1 July 2021) for up to five days per calendar year, in total.

*A "day" is defined as **7.5 hours** within a 24-hour period.*

The five days per calendar year is per worker and does not accumulate across multiple employers. The days available do not accrue if they are unused and they reset at the beginning of each calendar year.

*The Victorian Government is considering how up to five days should be made available to all eligible workers, and how they can be claimed. For example, should the allocation be pro-rated for workers who work less than **37.5 hours**, or should the payment be less for shifts less than **7.5 hours**.⁵*

269. This non-issue should be snuffed out to not create unnecessary confusion and frankly a complete waste of time for those seeking to design the pilot. **It needs to be 38 hours – not 37.5.**

270. We are also not clear that there is any need to define a day to make a pilot / scheme work.

271. Casual employees might for example be able to claim for projected or rostered shifts that they cannot work based on their rostered number of hours, not less than the minimum engagement and not more than 7.6 hours for any one shift up to a maximum of five claims per year or 38 hours.

272. Any scheme requires a cap on the number of claims to avoid any impression that employee somehow miss out if their particular patterns of illness or caring don't see them secure the full 38 hours pay. We don't want to see employers impacted by scam or contrived part days by employees wanting to secure every cent of any Government monies on offer.

273. We recommend a very hard and unambiguous cap, kept as simple as possible.

⁵ Consultation Paper, p.9, emphasis added.

274. No more should be able to be claimed than 7.6 hours for any shift, or 38 hours in any one year, and no more than 5 claims may be made per year / in relation to no more than 5 shifts.

Pro Rata

- 3.1** Should the number of days allocated be prorated relative to full-time employment? For example, if workers on average work 20 hours per week or less, should they only receive 2.5 days per calendar year?
- 3.2** How should payment applications be made? In full day, half day or other smaller increments? For example, if a worker was only rostered to work a minimum shift of three or four hours, how much should they be able to claim?
275. ACCI wishes to see specific industry input and the input of others. In advance of this, the pro rata concept appears generally or often unnecessary in this context.
276. Casuals have their hours vary from week to week, roster to roster, shift to shift. And if their hours don't vary, they could at any time and the employee is paid an additional amount to account for variability at any time.
277. The sensible seems to be that any casual employee who is eligible for such a scheme can claim up to 38 hours of payment per year / can claim up to 5 times in relation to shifts that they declare they were to work. The entitlement would be based on the shifts someone is rostered for, not pro rata. If someone is rostered for a 4-hour shift on a specific day they should be able to make a 4-hour claim if unable to work that day based on illness or caring, no more. If 7.6 hours, that would be the claim.
278. To do otherwise risks misunderstanding casual employment. The fact that someone has worked 15.2 days for 40 weeks in no way precludes them being rostered for 38 hours in the 41st week, or for 7.6 hours.

Seasonal Workers

- 3.3** *Should seasonal workers be eligible for the same number of days, or how should the allocation be calculated for these workers?*
279. Seasonal workers should be discussed with Victorian interests to whom they are relevant, including the Victorian Chamber and other ACCI member organisations in relation to seasonal work in hospitality and tourism (potentially the ski fields), and with the VFF.
280. It should be recalled that seasonality meets situations of reduced demand and reduced use of casuals, and for employers, periods of reduced cashflow and custom. Consideration may need to be given to whether, for example, any levy should be payable during either winter or summer months when there are no customers / tourists and the hiring of no casual staff, or close to it for seasonal operations.

281. How would such a levy be structured, around the 100 casuals that might be hired in a peak which might only last a month, or around the more like the 20 casuals that would be hired on average across a year for many operations? As we have said repeatedly in this submission some might see these as design issues to be addressed, but ACCI sees them as ever mounting evidence that such a scheme should not be pursued, on either a pilot or on an ongoing basis. Or if this is pursued, this should be a government payment.
282. We also wonder:
- a. Is there actually any point beyond that which needs to be considered? Are casual employees subject to seasonal rates, or are such rates the exclusive preserve of full and part time and employment, to which paid personal leave is clearly already applicable?
 - b. Is there actually a concern with seasonal employees taking time off, or failing to, in practice? This is a matter for industry input, but it may be that incentive payments or piece rates or Even simply working cultures and practises in some seasonal contexts render this largely theoretical.

Daily or Shift Limits

3.4 Should there be limits on the number of hours eligible workers can apply for each time they access a payment?

283. Yes, and the limits seem straightforward:
- a. Minimum = The minimum engagement under the applicable modern award.
 - b. Maximum = 7.6 hours per day (38 hours divided by 5 days).
284. There should be no consideration of overtime, any additional payments, such as shift allowances or any other allowances, which do not apply to personal leave.
- a. An employee incurs no disadvantage or adversity when they don't work, so a number of award allowances are inherently not payable.
 - b. It is clear from the approach outlined in Section 3 of the Consultation Paper that this is intended to be a zero rated, safety net proposal, not actual rate replacement.

9. TYPES OF LEAVE IN THE PILOT (Section 4)

285. We thank the government for the analysis in numbered Section 4 of the Consultation Paper. Whilst ACCI does not support the Pilot or any ongoing scheme as outlined, the intended approach to which leave and how it is accessed seems appropriate, if our primary recommendations are not accepted.
286. **For both the pilot and any ongoing scheme which may be under consideration the definition of the Personal Leave National Employment Standard in Part 2-2 of the Fair Work Act 2009(Cth) should be applied by way of legislative or administrative reference.**
287. **This should include applying without alteration (other than any minor consequential or contextual matters) the definitions in s 102 of the Fair Work Act 2009(Cth).**

Which Definition?

4.1 Are the definitions of leave types under the National Employment Standards appropriate? If not, what alternatives could be considered?⁶

288. The definitions in the NES / Fair Work Act 2009(Cth) must be applied if this is to proceed. It would be very damaging and impractical to seek to apply any definition of personal / carers leave in either a pilot or ongoing scheme that differs from the equivalent National Employment Standard.⁷
289. To do otherwise would require Victorian employers to maintain approaches to accessing, administering and managing personal leave, which:
- Differ from those in other states and territories, cutting right across one of the stated benefits under both the Coalition and Labor for moving to a national system. The implications for those running a national payroll across states, and for the application of standard payroll technologies need to be considered.
 - Differ between full and part time employees and others, in regard to access and proof.
 - Would create quite unnecessary damage confusion should costs with absolutely no benefit to either employers or employees.

A Clarification

290. ACCI has no idea what the following underlined text from p.9 of the Consultation Paper means:

Payments may be claimed so that a worker is able to take time off from work to care for or support a member of their immediate family or household who is sick, injured or has an unexpected emergency.

⁶ Secure Work Pilot Scheme, [Consultation Paper](#), p.11

⁷ Fair Work Act 2009 (Cth), Part 2-2, Div 7.

However, access to payments is not equivalent to a right to take leave.

291. We are at a loss to know what is being communicated or the input sought in the underlined text.
292. We refer in the final section of this submission to whether such a pilot or scheme would be a workplace right for the purposes of General Protections / Adverse Action under the Fair Work Act 2009(Cth) as an important point to be clarified.

An Obvious Question – Compassionate Leave

293. ACCI does not support the scheme, and does not support extending personal and carers leave beyond ongoing employment.
294. However the question is clearly going to be asked by others why compassionate and bereavement leave payments are not also included.

10. REGISTERING AND MAKING A CLAIM (Section 5)

There Seems No Need For Employee / Claimant Registration

295. There seems no inherent need for any Victorian to need to register in advance for either the pilot scheme or any ongoing scheme, or to maintain a register. This would represent no more than making claimants jump through hoops and fill out paperwork with the effect of discouraging usage at the pilot stage and under representing and under testing the true impact of imposing this on all casual employment in Victoria, and underestimating the eventual level of levies that would be required to fund a scheme.
296. ACCI and its members oppose in the strongest possible terms being required to pay a levy which would in fact amount to no more than an additional payroll tax, particularly on the basis that proportion of such a levy would go into creating an unnecessary bureaucracy to administer a scheme of registration which is simply not required. Creating such a bureaucracy to support preregistration would be a gross misuse of public funds in the current economic, jobs and budgetary environment.
297. ACCI understands there is a very rigorous and properly enforceable process for the making of Statutory Declarations under the *Oaths and Affirmations Act 2018(Vic)*. The VicGov website on statutory declarations indicates that:
- By signing it, you agree that the information in it is true. You can be charged with a criminal offence if the information is false. You can receive a fine of up to 600 penalty units, imprisonment for up to 5 years or both.*
298. That is a potential fine of \$109,044 or 5 years jail.
299. The envisaged scheme needs rely on no more than the making of a statutory declaration on a series of prescribed matters (using a standard form) by any eligible Victorian declaring that:
- a. They were scheduled to work a casual shift, and the date, starting and finishing times of that shift.
 - b. That they were unable to work this shift due to personal illness or caring responsibilities that they self-declare fall within the appropriate scope of the National Employment Standards / and any additional modern award prescription for personal and carers leave applicable to such employment.
 - c. In relation to carers leave that they must provide the care and that it could not be provided by another household member, or that that member is not otherwise working in paid employment that day (or jury service or any other necessary commitments that need to be listed).
 - d. They are not in receipt of the forms of government or workers compensation assistance set out in A or B of Section 5.

- e. They are not in receipt of, or eligible for paid personal leave for the period in question from any other Victorian business.
 - f. They did not work in any other capacity or earn any other income from active work during the hours or day in question.
300. A standard or prescribed series of matters for statutory declaration could ensure this information is provided.
301. If such declarations lay at the heart of making claims upon a government funded scheme, the scheme could be a passive one providing a safety net of protections to potential claimants, but not relying on them preregistering. We recall in advancing this proposition that no one foresaw COVID, and neither the Victorian Government payments nor federal payments required preregistration, rather they were a reactive approach in which claims were made by those asserting they required support and met the criteria.
302. The Victorian Government has proved it can administer such payments on a claimant rather than preregistration model. It should continue such an approach if this proposal is to progress.
303. We urge the Government to genuinely consider whether active and advance registration is required to do what it is inclined to do, if directly contrary to we say the overwhelming weight of evidence, either the pilot or an ongoing scheme is embarked upon. It seems to ACCI quite possible to create instead a passive or responsive scheme which is there to be accessed when and if required by any eligible Victorian by way of a statutory declaration.
304. And how does the Government enforce the law in such a situation and ensure integrity and accountability? How do you prevent this becoming a free for all and being widely misused?
- a. Government makes very clear the potential fines and gaol terms for making a false statutory declaration.
 - b. It follows through on its threats when misuse occurs.
305. If necessary, Government should take advice and work with the Auditor General on a sample-based audit / assurance scheme, in which for example X% of claims are automatically subject to investigation and validation to confirm the facts. As set out elsewhere employers don't want to play any part in making this flawed proposal work, or in having to provide evidence to support claims against Government from people who have not provided contractually agreed service to us. That said if a small percentage sample approach were taken on a statistically valid basis employers would be more likely to participate and provide information to Government on request.
306. We ask Government to consider who would pre-register, before sickness or before caring responsibilities arise. Someone with a sustained caring responsibility may do so, but perhaps equally there may be some tendency for those seeking an additional benefit or income to also register, and perversely some of those most likely to rot or scam such a scheme may be those more likely to pre-register for it. Our proposal to genuinely enforce the requirements for statutory declaration would seem to minimise such risks.

307. Of course if the Government refocused its considerations towards direct emergency payments, as set out in Part A, as has been proven to work in response to COVID, these concerns do not arise.

There is No Justification For Mandatory Employer Registration

5.1 *Should the employer or business be involved in the Pilot (which could include being registered, confirmation of employment status or confirmation of unpaid sick or carer's leave)?*

308. For the reasons set out above employer registration is as unnecessary and unmerited as employee registration. Added to this you would simply be putting an additional regulatory and administrative burden on some of the worst hit Victorian businesses at the worst possible time for no gain or benefit to them or to employees.
309. Employers will react very poorly to being asked to absorb an additional compliance burden for the benefit solely of persons to whom they may have little relationship with, or commitment to or who have created a headache for the business by not turning up to a rostered shift. Government just does not need to impose registration on any Victorian employer.
310. We understand that some employers may wish to be aware of the participation of their employees in any pilot or scheme. This may be part of wider efforts to track and support employees' health and wellness. It may be possible to create some form of 'opt in' arrangement in which interested employers were offered the opportunity for some awareness and engagement with the illness and caring of those who work with them via the scheme. Any opting would need to be voluntary.

Streamlining

5.2 *Are there any additional considerations that would streamline the operation of the Pilot, including ensuring timely access to payment and minimising paperwork that Pilot participants must provide?*

311. As set out in Part A, the Government should focus on delivering responsive payments to support Victorians being able to test isolate and vaccinate, as it has successfully done in relation to COVID to date without attempting to force any nexus to any form of employment, any form of work, or any form of leave.
312. The best thing the Victorian Government can do to streamline payments, get money into bank accounts and get Victorians to act as we want them to, is to make this simple, direct and entirely divorced from contentious concepts of insecure work.

313. Alternatively as set out in this section, drop all notions of registration and make this a passive or responsive scheme against which eligible Victorians may make a claim. Ensure the integrity and rigour of such a scheme by properly enforcing the legal consequences of making a false declaration, and if strictly necessary establish an audit and assurance process based on sampling a proportion of all claims, based on independent advice from the Auditor General (as the ATO does with tax audits).

Timeframe for Making Claims

5.3 *What timeframes would be reasonable to require workers to submit a claim after a period of being unable to work?*

Submitting Claims

314. Two weeks / 14 calendar days / 10 working days from the day in relation to which a shift was rostered, not worked or worked in part and a claim is being made, or from the completion of any series or block of days for which someone was unable to work, whichever is the latter.
315. Unless genuinely exceptional circumstances exist that preclude this. Examples of such genuinely exceptional circumstances might include, for example:
- a. Someone being too sick for too long to have reasonably been able to get their claim in on time, or the person who they are caring for Requiring such care and support that making a claim was not possible.
 - b. Where caring responsibilities are to someone who is seriously or terminally ill and the consequences of the illness genuinely preclude the making of a claim within the prescribed time frame.
316. We remind the Government of its stated aim in this exercise, providing incomes to Victorians rapidly support testing isolation and vaccination, and ensuring “Victorians aren’t being forced to choose between the safety of their co-workers – and putting food on the table for their family or caring for others. To the extent that Victorians are living in such a hand to mouth manner as the Consultation Paper, pilot etc are predicated upon, the answer to question 5.3 is surely as rapidly as possible.
317. If that's right, then claims need to come in and money needs to be paid out at lightning speed. If there is any delay or waiting the central premise behind this whole proposal falls down. This cannot proceed under any approach to scheme design on a bureaucratic timeframe, if this is to be done government will just have to get money out the door rapidly, as governments have been being challenged to do throughout COVID-19.
318. In addition if contrary to our firm submission there is any administrative obligation on employers, the employer is going to want to discharge that obligation as rapidly as possible.

Paying Out

319. Respectfully the Consultation Paper only asks half the question. Having established the need the claims to be made rapidly the Victorian community is entitled to demand assurances that claims will be paid out rapidly.
320. Again go back to the purpose which has been identified for the pilot / any ongoing scheme. If as claimed this is genuinely a case of Victorians choosing to take time off from work or to eat and feed their family, it would be simply derelict for the Victorian Government to do anything other than pay any claims against it as rapidly as possible.
321. Again we need to apply the lessons of the disaster payments recalled on page 4 of the Consultation Paper. The Victorian Government should be quite capable of getting money into Victorians hands within 5 working days of a claim being received, or exceptionally 10 working days. Remember we are said to be talking about people choosing between food and health, or not caring for their children because they need income.
322. If this is not the case the Victorian Government should commit to a firm, transparent performance deadline against which its performance in paying out such claims should be assessed. It is very hard to see how this could possibly be any more than 10 working days or two calendar weeks.
323. If the answer is that the payment time frame cannot be reduced below a month then frankly the whole idea of urgency and the need to put food into the mouths of Victorians would ring very hollow. That would reinforce our wider recommendation that this whole thing be called off.
324. Again if this were treated as a disaster payment remote from work or any form of employment this would be solicitous of a properly designed and properly functioning scheme that would meet Victorians expectations of getting money into their hands rapidly.

Scams, Rorts or Questionable Claims?

325. There should be capacity to pause or delay payment where there is a realistic basis to do so, subject to administrative law and public sector standards of appeal etc.
326. More generally the integrity of such a scheme should be protected through audit and assurance and picking up problems and addressing them post claim or post payout, rather than building damaging delays into the claim or payment process

Audit and Assurance

5.5 *Are there any additional considerations that would help ensure the integrity of the Pilot, including any assurance or audit processes that should be established?*

327. We thank the authors of the Consultation Paper for raising assurance and audit. This is exactly the approach that should be employed were, contrary to our overall recommendations, any pilot or scheme to be progressed.

328. We have elsewhere proposed that the Auditor General be requested to provide advice on an assurance-based process based not on imposing obligations on all employers or auditing all claims but by employing the mathematical tool of representative sampling, ensuring there would be an assurance or audit follow up with a minimum necessary percentage of applications from claimants to ensure integrity. Participation and demands upon employers should be minimised, and where an audit reveals misuse by individual Victorians, they should be prosecuted for making a false declaration.

Online Resources

5.5 *If an online platform were to be established, what information should be made available to insecure workers (e.g. referrals to other relevant agencies or organisations including Wage Inspectorate Victoria, Fair Work Ombudsman etc.)*

329. A standard website providing information on any scheme can provide appropriate links to other government services, as can any government website.
330. However, some important cautions:
- a. Any online portal for making claims would need to comply with the requirements for the making of a statutory declaration under the Oaths and Affirmations Act 2018 (Vic), including both exposure to the full extent of fines and imprisonment, and using the option that an online declaration might provide to remind a claimant of the serious legal responsibility they are taking on in making a claim and lodging a declaration.
 - b. On what basis would you associate employers who may be drawn into any pilot or scheme with risks of underpayment? Is there any evidence that employment that may be drawn into such a scheme requires any association with wage inspection or underpayment?
 - c. Any employee who has previously been employed in any capacity by any employer will have received the Fair Work Information Statement that goes entirely and directly to these matters. For someone who has worked casually they will also have received the new Casual Information Statement. There is absolutely no basis to seek to provide any further information, or complicating information.
 - d. We also note that to the extent that someone fails to deliver service on a scheduled or rostered casual shift an employer has no pay, Fair Work Act or employment obligation to them.⁸ Indeed if someone does not present for their first casual shift, whether for reasons of illness caring or otherwise, arguably an intended employment contract has never been triggered.
 - e. We make this point to emphasise that if someone doesn't work then there is no prospect of underpayment and the presumptions behind Question 5.5 do not stand.

⁸ Technically discrimination or adverse action obligations may potentially be created for those who have not yet commenced work, however this would be exceptional and doesn't detract from the wider point being made

- f. ACCI does not in any way support the Wage Inspectorate Victoria, nor its constitutionally untested powers. It would seriously mislead and misdirect working Victorians to refer them to any organisation other than the Fair Work Ombudsman, which has clear and sole jurisdiction for labour inspection as it pertains to the *Fair Work Act 2009* and instruments made under that Act in all states and territories.

11. DOCUMENTATION (Section 6)

Proof of Identity

331. We accept that proof of identity may be a matter that a scheme run independently of employers needs to engage with. However, this does not arise in the ordinary course of employment as employers require tax file numbers and often other proof of identity and eligibility to work documentation which remove the concerns that arise from divorcing this entitlement from ongoing employment.
332. This is an issue that Government should consider for its interactions with individual claimants, which we strongly maintain should have nothing to do with any Victorian employer and no require registration.
333. Our recommendation to impose a requirement for 12 months prior service as a casual with a single employer before being able to make a claim upon Government may help minimise misrepresentation of identity.

Evidence of personal illness or injury, or of caring responsibility

334. Question 1 under Section 6 of the Consultation Paper is as follows:

6.1 Is this the right level of evidence workers should be required to provide?

335. Section 5 of the Consultation Paper also indicates that:

Workers may also be asked to submit supporting documentation each time they make an application.

336. For the pilot or any ongoing scheme to have any hope of integrity and doing anything other than creating confusion on casual employment and personal leave the proof of claim required under any such scheme must be identical to, and specifically rely upon s 107 of the Fair Work Act 2009.
337. The level and form of evidence required and the circumstances in which this is applicable should be those set out in the National Employment standards for personal leave for full and part time employees. Ideally any scheme or legislation would do no more than call up the Fair Work Act 2009(Cth) and the NES in this regard.
338. **Practicality:** It would be inequitable and damaging for both employers and employees to impose any documentation or evidentiary requirements which differ from those under the NES for carers and personal leave.
339. Any differential application or requirements to access anything termed personal or carers leave would create major HR problems in workplaces and would create entirely avoidable administrative problems and even greater additional imposts for employers.

Integrity and fraud: Employers would be concerned were Auditor General or public sector financial accountability requirements to demand a level of evidence and rigour for accessing personal leave payments from Government that employers are not able to apply in private employment.

340. Misuse of personal leave, particularly for fraudulent claims personal illness does happen, and any scheme, pilot or otherwise, should engage with rather than ignore this.
341. Proper public administration and avoidance of fraud should not demand one standard, but the community accept the making of fraudulent claims against private sector employers.
342. To adopt the vernacular, it seems that the State of Victoria should pay for sickies, hangover and doona days if it is to get into providing personal leave. If employers are subject to personal leave claims without being able to demand evidence on many occasions, why wouldn't the Victorian taxpayer have to adopt the same approach were Government to go down this route.
343. Furthermore, unless the scheme incurs discretionary / fraudulent claims at the pilot stage, it will not be testing the actual circumstances that will confront any ongoing scheme, and it will not provide reliable information for modelling and actuarial consideration in scheme design.

Evidence of being on the roster

344. Question 2 in Part 6 is as follows:

6.2 *Should some workers demonstrate that they would otherwise have been working for the period in which the application is made?*

345. This should be addressed by a claimant making a statutory declaration that they were rostered for work on a specific period on a specific day, which they also declare they were unable to work based on illness or caring responsibilities. Demonstrate?, no...Make a Statutory Declaration with all the obligations and liabilities that entails?, yes.
346. Employers having already incurred cost and inconvenience don't want to be put to extra delay and expense to facilitate payments to those who have, due to their personal circumstances however merited, created stresses and extra demands upon our businesses and our time.
347. As set out above, the balanced approach would rely on audit and assurance in which only a selected representative sample of claims see employers asked to validate particular assertions from employees, such as that they were rostered to work particular hours on a particular day.
348. At most:
 - a. Information should only be sought from employers in exceptional circumstances, or only where any fund or scheme has concerns about a claim being made or reason to doubt a claim being made upon it.

- b. Employers might be asked for audit or confirmation type information on a sampling basis. So for example an appropriately selected and sized sample of instances might be subject to validation with the employer, if there were genuinely a case to do so. However:
 - i. This should be considered based on advice from the Auditor General on sampling and confirmation, and only if she advises it is strictly necessary.
 - ii. The Victorian Government should be aware in advance that an employer or employers may refuse any request to provide validation information and contest any attempt to compel them to do so, or any state government attempt to sanction them for not providing information.
 - iii. Subject to legal advice, Victorian employers may well contend that the record keeping and paperwork requirements of the Fair Work Act 2009(Cth) are an exclusive code at the federal level and there is no constitutional basis for any state government to seek to compel information on employment under federal legislation which regulates such matters. ACCI and its members would need to give due consideration to supporting such a contested approach and any litigation which may arise.
349. This remains a fundamentally flawed proposal, at odds with fundamentals of our labour law and a century of practice in the employment of casual employees. It is not surprising that it raises serious practical implementation and integrity issues.

When evidence is required

6.3 *Should workers have to submit forms of evidence to support every individual application or have the information available if requested through regular auditing processes?*

- 350. Any pilot or ongoing scheme should be subject to the same reasonable person based evidence requirements in relation to personal leave claims that employers are entitled to apply under the Fair Work Act 2009 / National Employment standards, and not to any greater controls or record keeping obligations.
- 351. Where a private sector employer is not entitled to demand a doctor's certificate or statutory declaration from a full or part time employee claiming personal leave, there should be no such additional requirement on a casual employee making such a claim against government or a scheme.
- 352. This issue needs to be clarified by the Auditor General of Victoria in advance of the pilot, and the design of any ongoing scheme, and subject to suitable Victorian parliamentary accountability in relation to the making of financial claims against the state of Victoria.

Additional Questions For Government

353. When there inevitably is misuse, rorts, scams etc as there has been of sick leave for generations, will Government commit to pursuing prosecutions against any and all Victorians who knowingly make claims against any scheme in the knowledge that the facts they attest are wrong, including in relation to their work expectations, illness, or caring responsibilities?
354. Will any fraudulent claim or for example making a claim then working a shift elsewhere or for cash in hand, where proven see individual Victorians excluded from the scheme and unable to make further claims?
- a. Consideration should be given to excluding any person from the scheme proven to have sought to misuse it, for a period of not less than two years.
 - b. Anyone who misuses the pilot should be removed outright for remainder of the pilot.
 - c. Their name should be flagged for the operation of any ongoing scheme (were it pursued), however designed, for automatic audit and assurance of all claims for a period of not less than five years.

12. PROTECTIONS FOR WORKERS IN THE PILOT (Section 7)

7.1 Should there be any additional protections for workers to access the scheme and what form could they take?

355. There are more than adequate protections in the Fair Work Act 2009(Cth) for those dismissed or who incur other detriment in their employment on a range of prohibited grounds, including through the general protections / adverse actions regime.
356. There are also protections against sham contracting under the Fair Work Act.
357. **The Victorian Government should request and release legal advice from the Victorian Solicitor General on whether employee participation in the pilot scheme and any ongoing scheme would constitute a workplace right for the purpose of the general protections / adverse action protections under the Fair Work Act 2009(Cth).**
358. If this is answered in the affirmative, then pilot design should proceed (if it is to proceed) on the basis that employees using the scheme will be adequately protected.

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Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

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