



Community Services Industry (Portable Long Service Leave) Bill 2019

**Report No. 28, 56th Parliament
Education, Employment and Small
Business Committee
February 2020**

Education, Employment and Small Business Committee¹

Chair	Ms Leanne Linard MP, Member for Nudgee
Members	Mr Bruce Saunders MP, Member for Maryborough
	Mrs Simone Wilson MP, Member for Pumicestone
	Mr Michael Healy MP, Member for Cairns
	Mr Nick Dametto MP, Member for Hinchinbrook

Committee Secretariat

Telephone	+61 7 3553 6656
Fax	+61 7 3553 6699
Email	EESBC@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/eesbc

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¹ NB: The former Member for Currumbin and Deputy Chair, Mrs Jann Stuckey, resigned from Parliament as at 1 February 2020.

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Abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
Bill	Community Services Industry (Portable Long Service Leave) Bill 2019
Building and Construction PLSL Act	<i>Building and Construction (Portable Long Service Leave) Act 1991</i>
CLCQ	Community Legal Centres Queensland
Community Services Authority	Community Services Industry Portable Long Service Leave Authority
Consultation RIS	Queensland Government, Office of Industrial Relations (OIR), <i>Investigation of the introduction of a portable long service leave scheme for the social and community services sector in Queensland: Consultation Regulatory Impact Statement</i>
Contract Cleaning Industry PLSL Act	<i>Contract Cleaning Industry (Portable Long Service Leave) Act 2005</i>
CSIA	Community Services Industry Alliance
DCCSDS	Department of Communities, Child Safety and Disability Services
Deloitte Report	<i>Forecasting the future: Community Services in Queensland 2025</i>
Department	Department of Education
DISCO	Downs Industry Schools Co-Operation Inc.
ICQ	Industrial Court of Queensland
IR Act	<i>Industrial Relations Act 2016</i>
LASA	Leading Age Services Australia Ltd
LHL Act	<i>Labour Hire Licensing Act 2017</i>
LSA	<i>Legislative Standards Act 1992</i>
LSL	long service leave
OIR	Office of Industrial Relations
PeakCare Queensland Inc.	PeakCare
PLSL	portable long service leave
QCOSS	Queensland Council of Social Service

QCU	Queensland Council of Unions
QLS	Queensland Law Society
RIS	Regulatory Impact Statement
SCHADS Award	Social, Community, Home Care and Disability Services Industry Award 2010
Stakeholder Taskforce	<i>Portable Long Service Leave for the Community Services Sector Stakeholder Taskforce</i>
TransitCare	TransitCare Limited
TSU	The Services Union
VPG	Vocational Partnerships Group Inc.

All Acts are Queensland Acts unless otherwise specified.

Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Community Services Industry (Portable Long Service Leave) Bill 2019.

The Bill establishes a portable long service leave scheme (PLSL scheme) for the community services industry. It also amends the *Building and Construction (Portable Long Service Leave) Act 1991*, the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, and the *Industrial Relations Act 2016*.

The PLSL scheme will cover workers performing community services work, including contract workers, engaged by an employer that is established for, or with the purpose including, providing community services; and, apply to both for-profit and no-for-profit organisations in the community services industry.

2016 data from the ABS indicated employees in the healthcare and social assistance industry experienced a high prevalence of insecure work with almost one-in-four workers not receiving any paid leave entitlements. Further, ABS data from the 2017 *Participation, Job Search and Mobility Survey* found only 18 per cent of Queensland community sector workers had been engaged with the same employer for over 10 years, below the Queensland average of 26 per cent. As stated in the explanatory notes 'taken together, the data reveals high levels of structural labour mobility, which impacts on workers accessing a long service leave entitlement' in this sector.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill, and those stakeholders who appeared before the Committee. I also thank our Parliamentary Service staff and officials from the Office of Industrial Relations in the Department of Education.

The committee made one recommendation, that the Bill be passed.

I commend the report to the House.



Leanne Linard MP

Chair

Recommendations

Recommendation 1

4

The committee recommends the Community Services Industry (Portable Long Service Leave) Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.²

The committee's primary areas of responsibility include:

- education
- industrial relations
- employment and small business, and
- training and skills development.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Community Services Industry (Portable Long Service Leave) Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 27 November 2019. The committee is to report to the Legislative Assembly by 14 February 2020.

1.2 Inquiry process

On 3 December 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Twenty-three submissions were received (see Appendix A for list of submitters). Submissions 3 and 7 were form submissions, with 42 and 15 submitters, respectively.

The committee received a written briefing about the Bill from the Office of Industrial Relations (OIR) within the Department of Education (department) on 9 December 2019. A copy is published on the committee's web page.

On 9 January 2020, the committee received written advice from the department in response to matters raised in submissions.

The committee held a public hearing and departmental briefing on 21 January 2020 (see Appendix B for list of witnesses and Appendix C for departmental officials).

The submissions, correspondence from the department and transcripts of the hearing and briefing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill is to establish a portable long service leave (PLSL) scheme for the Community Services Industry in Queensland.³ The proposed PLSL scheme would:

- cover workers (listed in Schedule 1 of the Bill) performing community services work, and other workers engaged to support the provision of community services work, engaged by an employer that is established for, or with purpose including, providing community services

² *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

³ Explanatory notes, p 1.

- apply to both for-profit and not-for-profit organisations in the community services industry
- provide workers with a PLSL entitlement after seven years' service with accrual at the rate of the existing statutory entitlement of 8.67 weeks after 10 years' service as prescribed in the *Industrial Relations Act 2016* (IR Act)
- require an employer to pay a levy calculated on an employee's ordinary wages and report on an employee's service
- be administered by the existing PLSL Authority, QLeave, with oversight by a governing board consisting of a chair, deputy chair with financial/investment expertise, and an equal number of employer and employee representatives, and
- amend the IR Act to make clear that an employee whose employment is terminated through an illness-related incapacity will be entitled to pro rata long service leave (LSL) in accordance with that Act.⁴

1.4 Government consultation on the Bill

Community services industry stakeholders, including employer organisations, peak industry bodies and service providers, were initially consulted on the introduction of a PLSL scheme for the community services sector, via a Consultation Regulatory Impact Statement (Consultation RIS) released by the OIR on 7 September 2018.⁵

The Queensland Government subsequently published a Decision Regulatory Impact Statement (Decision RIS) in October 2019, before the Bill was introduced into the Legislative Assembly. Both documents are attached to the written departmental briefing which has been published on the committee's inquiry webpage:

- *Investigation of a portable long service leave scheme for the social and community services sector in Queensland: Consultation Regulatory Impact Statement*, and
- *Portable Long Service Leave for the Social and Community Services Sector: Decision Regulatory Impact Statement*.⁶

Twenty-nine written submissions were received in response to the Consultation RIS from a range of stakeholders, including industry peak bodies, employers and service providers, and individual workers. A further 320 letters were received from workers in the community services industry and members of The Services Union supporting the introduction of a PLSL scheme.⁷

The consultation process indicated broad in-principle support for a PLSL scheme in the community services sector. Peak bodies also supported a mandatory scheme that included both for-profit and not-for-profit community service sectors. However, further information was sought by peak bodies to 'better understand how the scheme would work in practice', in particular the funding implications for employers.⁸ Larger providers raised that while PLSL would be beneficial to the industry generally, it would have few benefits for their own organisations which have lower staff turnover and better employee benefits.⁹

⁴ Explanatory notes, pp 2-3.

⁵ Explanatory notes, p 6; Queensland Government, Office of Industrial Relations (OIR), *Investigation of the introduction of a portable long service leave scheme for the social and community services sector in Queensland: Consultation Regulatory Impact Statement* (Consultation RIS).

⁶ Department of Education, (DoE), correspondence dated 9 December 2019, Attachments 1 and 2.

⁷ Explanatory notes, p 6.

⁸ Explanatory notes, p 6.

⁹ Explanatory notes, p 6.

Following this consultation process, the Minister for Education and Minister for Industrial Relations, the Hon. Grace Grace MP, established the *Portable Long Service Leave for the Community Services Sector Stakeholder Taskforce* (the Stakeholder Taskforce) to further advise on the development of the PLSL scheme. The Taskforce comprised the following key peak bodies and relevant unions for the community service sector:

- *Queensland Council of Social Services;*
- *Community Services Industry Alliance;*
- *National Disability Services;*
- *Community Legal Centres Queensland;*
- *Queensland Council of Unions (QCU);*
- *The Services Union;*
- *Australian Workers' Union (AWU); and*
- *United Workers Union.*¹⁰

The Stakeholder Taskforce held 10 meetings with stakeholders to discuss the introduction of a proposed PLSL scheme. The Stakeholder Taskforce sought advice from stakeholders in the Australian Capital Territory (ACT) and Victoria on their experience of existing PLSL schemes for the community services sector in their jurisdictions, including:

*... ACTLeave, the administering PLSL authority in that jurisdiction; ACT Council of Social Service, a major stakeholder for the ACT's community sector scheme; Industrial Relations ACT, which has responsibility for the PLSL legislation in the ACT; BDO Partners, which provides accounting and audit services to a range of local community services organisations and advised on existing long service leave provisioning practices; a former employer representative of the ACT's PLSL Board and former CEO of Woden Community Service; Industrial Relations Victoria, the government agency responsible for the recently commenced PLSL legislation in Victoria; and the Victorian Council of Social Service, a major stakeholder in the Victorian community services scheme.*¹¹

The department advised the Stakeholder Taskforce's deliberations have informed key elements of the design of the proposed PLSL scheme, in particular its scope, the PLSL entitlement, and the governance arrangements. The operational elements of the PLSL scheme have also been directly informed by the experience of QLeave – the proposed governing authority for the scheme.¹²

The following government agencies were also consulted on the proposed PLSL scheme and the Bill:

*... Department of the Premier and Cabinet; Queensland Treasury; Department of Justice and Attorney-General; Department of Communities, Disability Services and Seniors; Department of Child Safety, Youth and Women; Department of Youth Justice; Department of Housing and Public Works; Department of Employment, Small Business and Training; and QLeave.*¹³

1.5 Estimated cost of the Bill

The explanatory notes state the PLSL scheme will be funded by employer contributions (a levy) paid on the ordinary wages of their workers. Independent actuarial assessment has calculated the levy to be 1.35 percent. This contribution, alongside a return on investment, will allow the scheme to be

¹⁰ Explanatory notes, p 6.

¹¹ Explanatory notes, p 7.

¹² Explanatory notes, p 7.

¹³ Explanatory notes, p 7.

administratively self-supporting, while meeting its commitment to pay LSL to community services industry workers.¹⁴

QLeave has estimated the cost of establishing and administering a new PLSL scheme is approximately \$1 million in the first year and annual administrative costs of approximately \$800,000 thereafter. As set out in the explanatory notes, it is proposed the initial establishment costs of the scheme are met by a loan from the contract cleaning PLSL fund.¹⁵ Given the proposed PLSL scheme does not include state government services or employees it will not have a direct impact on Government.¹⁶

The department advised the amendment to the IR Act to clarify the pro rata LSL entitlement provisions for an employee whose employment is ended due to illness, is not anticipated to have a cost impact.¹⁷

1.6 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Community Services Industry (Portable Long Service Leave) Bill 2019 be passed.

¹⁴ Explanatory notes, p 3.

¹⁵ Explanatory notes, p 3.

¹⁶ Explanatory notes, p 3.

¹⁷ Explanatory notes, pp 2-3.

2 Policy context

This section provides an overview of the policy context to the system of PLSL proposed in the Bill. Existing LSL entitlements are discussed before findings of the Deloitte Access Economics report, *Forecasting the future: Community Services in Queensland 2025*, are outlined.

Australian Bureau of Statistics (ABS) data, provided by the department in the explanatory notes, is used to illustrate the characteristics of Queensland's community services sector, in particular the high job mobility experienced by workers in the industry.

2.1 Queensland's Community Services Sector

The Consultation RIS on the PLSL scheme outlined that the community services industry 'provides communities with critical support services for vulnerable Queenslanders, including support, education, information and activities to foster community inclusion and well-being, harm-prevention strategies and crisis management'.¹⁸ The Decision RIS noted the sector is constituted by a mix of for-profit and not-for-profit organisations that vary widely in size and turnover; and operate using a diverse range of funding models, governance structures, mission and purpose statements, tax status and experience.¹⁹

2.1.1 Long service leave in Queensland's community services sector

As explained in the Consultation RIS, the Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award) is the national award covering many employees in Queensland's community services sector. The SCHADS Award covers employers in the following sectors: crisis assistance and supported housing, social and community services, home care, and family day care. Outlined in the Decision RIS, the SCHADS Award does not include provision for LSL.²⁰

In Queensland, LSL for the community services sector is provided by the IR Act. The Decision RIS explained that under the IR Act, community services employees are:

*... entitled to the standard accrual of LSL (e.g. 8.6667 weeks of paid LSL after a period of 10 years' continuous service with the same employer). They are also entitled to take an additional 4.3333 weeks' paid long service leave once they have completed a further five years' continuous service with that employer. For continuous service beyond this point, access to further leave accrued is not subject to a qualifying period.*²¹

Under the IR Act, employees may be entitled to receive proportionate payment (pro rata) of LSL on termination of employment after completing seven years continuous service. This is calculated using a prescribed formula for employees who have undertaken a mixture of full-time, casual or part-time employment during continuous service.²² Employees who have completed seven but less than 10 years' continuous service are entitled to pro-rata LSL only if the primary reason for termination falls within the following criteria:

- *the employee's service is terminated by their death*
- *the employee terminates their service because of their illness or incapacity or because of a domestic or other pressing necessity*

¹⁸ Consultation RIS, p 11.

¹⁹ *Portable Long Service Leave for the Social and Community Services Sector: Decision Regulatory Impact Statement* (Decision RIS), p 5.

²⁰ Decision RIS, p 9.

²¹ Decision RIS, p 9.

²² Queensland Government, Business Queensland, *Long service leave entitlements and continuous service*, <https://www.business.qld.gov.au/running-business/employing/employee-rights/long-service-leave/entitlements>.

- *the employer dismisses the employee for a reason other than the employee's conduct, capacity or performance*
- *the employer unfairly dismisses the employee.*²³

Generally, the entitlement to LSL is not portable between employers.²⁴ The explanatory notes provide a PLSL scheme would allow workers to accumulate LSL by recognising service with multiple employers within an industry.²⁵ The explanatory notes outline that typically:

*... the employer contributes their long service leave liabilities to a centralised fund. These contributions are reinvested and are used to pay long service leave entitlements to employees who achieve sufficient service credit within the industry and also to administer the scheme. A PLSL scheme benefits the industry by encouraging attraction and retention of skilled and experienced employees and reduces long service leave administrative costs upon individual employers.*²⁶

Legislated PLSL schemes have been operating in Queensland in the building and construction and contract cleaning industries since 1991 and 2005, respectively. These schemes are both administered by QLeave, a statutory authority. PLSL schemes for community service workers have been established in the ACT in 2010, and Victoria in July 2019. Both jurisdictions were consulted on the Bill and have informed key aspects of the proposed PLSL scheme for Queensland (see section 1.4 of this report).²⁷

2.1.2 The Deloitte report

In April 2016, the then Department of Communities, Child Safety and Disability Services (DCCSDS) (now the Department of Communities, Disability Services and Seniors) published a Deloitte Access Economics study of future workforce requirements in the Queensland community services sector, *Forecasting the future: Community Services in Queensland 2025* (Deloitte Report).²⁸ The Deloitte Report was commissioned by the then DCCSDS and the Community Services Industry Alliance (CSIA) to inform the reform agenda for the community services sector by examining the current and predicted future state of the industry.²⁹

To guide the Deloitte report the DCCSDS and CSIA provided the following list of core community service programs and providers:

- *Aboriginal and Torres Strait Islander community services;*
- *Accommodation support;*
- *Aged care assistance;*
- *Alcohol and other drug services;*
- *Child safety and support;*

²³ Queensland Government, Business Queensland, *Long service leave entitlements and continuous service*, <https://www.business.qld.gov.au/running-business/employing/employee-rights/long-service-leave/entitlements>.

²⁴ Explanatory notes, p 2.

²⁵ Explanatory notes, p 2.

²⁶ Explanatory notes, p 2.

²⁷ Explanatory notes, p 2.

²⁸ Queensland Government and Community Services Partnership Forum, Deloitte Report.

²⁹ Queensland Government, Department of Communities, Disability Services and Seniors, *Forecasting the future: Community Services in Queensland 2025*, <https://www.communities.qld.gov.au/industry-partners/forecasting-future-community-services-queensland-2025>.

- *Community development;*
- *Community education;*
- *Community legal services;*
- *Disability emergency response;*
- *Disability support;*
- *Employment services;*
- *Family and domestic violence services;*
- *Financial counselling;*
- *Foster care and out-of-home care;*
- *Home and community care;*
- *Homelessness support;*
- *Lesbian, gay, bisexual, transgender and intersex services;*
- *Mental health services;*
- *Migrant and multicultural support services;*
- *Respite;*
- *Social housing;*
- *Youth justice services; and*
- *Youth support services.*³⁰

The scope of a community services industry employer which is proposed in Schedule 1 of the Bill builds upon this list (see section 3.1.1. of this report).

2.1.2.1 Job mobility in the community services industry

The Deloitte report found that analysis of available industry data estimated that in 2015 there were 44,495 community services sector employees – approximately 2.3 percent of the Queensland workforce.³¹ The Deloitte report predicted strong jobs growth in the industry, with forecasts calculating an average growth rate of 3.8 percent, per year for the period 2015-25; and significant changes to the sector, in part due to the introduction of the National Disability Insurance Scheme.³²

As the ageing population grows disproportionately to the overall population, it is anticipated there will be increased service demand for the community sector and pressure on funding for services. The Deloitte report stated the industry will need to attract and retain a strong workforce to meet this demand and the industry's future skill needs.³³

The explanatory notes state high mobility between industry employers and insecure work means workers in the community services industry are less likely to accrue a LSL entitlement.³⁴ The Consultation RIS acknowledged high job mobility is also related to the high rates of stress, 'burnout' (emotional exhaustion and depersonalisation), and compassion fatigue experienced by industry

³⁰ Queensland Government and Community Services Partnership Forum, Deloitte Report, p 89.

³¹ Queensland Government and Community Services Partnership Forum, Deloitte Report, p 33.

³² Explanatory notes, p 1.

³³ Queensland Government and Community Services Partnership Forum, Deloitte Report.

³⁴ Explanatory notes, p 1.

workers. Additionally the Consultation RIS noted, burnout impacts the quality of services for clients and functioning of organisations.³⁵

2.1.3 Illness-related incapacity

In addition to legislating a PLSL scheme for the community services industry in Queensland, the Bill proposes to amend the IR Act to clarify pro rata LSL entitlement provisions for employees whose employment is ended due to illness.³⁶ The explanatory notes set out that this amendment responds to a recent decision of the Industrial Court of Queensland³⁷ which found existing legislation:

*... did not recognise an employee's entitlement to pro rata long service leave where the employee has been dismissed by the employer due to an illness-related incapacity. An employee who has terminated their own employment due to illness-related incapacity is however entitled to pro rata long service leave.*³⁸

This distinction between entitlement based on the act of termination by either the employer or the employee is considered 'inconsistent with the intent of the provision and common practice'.³⁹

³⁵ Consultation RIS, p 14.

³⁶ Clauses 133-135.

³⁷ *Schipp & Anor v The Star Entertainment Qld Limited* [2019] ICQ 009.

³⁸ Explanatory notes, p 2.

³⁹ Explanatory notes, p 2.

3 Examination of the Bill

This section summarises the main policies proposed to be implemented, and discusses issues raised during the committee’s examination of the Bill. There is broad support for the establishment of a PLSL scheme for the community services industry, although some submitters have raised issues about particular aspects of the Bill and four submissions oppose it. The key issues raised in submissions are: the scope of the community services PLSL scheme; and its financial and administrative operation, in particular the implications of the levy imposed on community services employers.

The main objective of the Bill is to provide access to PLSL entitlements for workers in the community services industry engaged by non-government organisations which are established for, or whose purpose includes, providing community services.⁴⁰

The impact of high levels of job mobility on community services workers accessing a long service leave (LSL) entitlement, is a key driver of the proposed PLSL scheme.⁴¹

Outlined in section 2 of this report, the Decision RIS and Consultation RIS acknowledged high job mobility within the sector is related to the diverse funding arrangements of community services organisations⁴²; and the ‘burnout’ and compassion fatigue experienced by employees due to the nature of their work.⁴³

The explanatory notes for the Bill highlight the changing and expanding nature of the CSI, and refer to ‘a high prevalence of insecure work with nearly one-in-four workers not receiving any paid leave entitlements’.⁴⁴ It further states:

*ABS data from the Participation, Job Search and Mobility Survey in 2017 indicate that only 18 per cent of Queensland community sector workers were engaged with the same employer for over 10 years. This is below the Queensland average of 26 per cent of workers having been employed by the same employer for over 10 years. ABS data also shows that community and personal services workers have higher than average levels of mobility. Unpublished data from the Participation, Job Search and Mobility Survey indicates that 25 per cent of Queensland health care and social assistance workers have been engaged with their employer for less than 12 months. This is significantly above the Queensland average of 18 per cent.*⁴⁵

In 2017, The Services Union (TSU) undertook a survey of 1,021 community services employees and found:

- 80% identified as having worked for up to 5 different employers within 10 years of service in the Industry.
- 72% of respondents who had over 10 years of service in the Industry had never achieved long service to access the leave entitlement.
- Respondents who had over 10 years of service, on average, worked approximately 6.7 years per employer.
- Taking all respondents answers, the average period of employment per employer was 3.25 years.⁴⁶

⁴⁰ DoE, correspondence dated 9 January 2020, Paper 1, p 1.

⁴¹ Explanatory notes, p 2.

⁴² Decision RIS, p 5.

⁴³ Consultation RIS, p 14.

⁴⁴ Explanatory notes, p 1.

⁴⁵ Explanatory notes, p 1.

⁴⁶ Submission 4, p 3.

The department advised the scheme responds to concerns over the insecurity of work in the community services industry,⁴⁷ and that a system of PLSL is expected to:

*... encourage skilled and experienced workers to remain in the industry, and it is anticipated this will lead to reduced recruitment and training costs for employers across the industry in the long-term and help reward and retain highly skilled and experienced workers who are caring for some of the most vulnerable people in our society.*⁴⁸

3.1 Scope of the PLSL scheme

The Bill establishes the scope of the scheme by proposing the meaning of key terms including: **community services industry**, **community services** and **community services work, worker and employer**.⁴⁹ While the majority of submitters supported the proposed PLSL scheme in principle, stakeholders both in support and opposition have commented on the scope of the services and the workers it intends to cover.⁵⁰

3.1.1 Meaning of community services industry, community services and community services work, worker and employer

The Bill defines the **community services industry** as ‘the industry in which entities provide community services in Queensland’.⁵¹

Building on the definition provided in the Deloitte Report and stakeholder consultation, **community services** is also defined by the Bill, and includes the types of services stated in Schedule 1, or prescribed by regulation.⁵² Schedule 1 proposes the following types of services are a community service:

- *Aboriginal and Torres Strait Islander community services*
- *accommodation support services*
- *advocacy services*
- *alcohol and other drug services*
- *child safety and support services*
- *community development services*
- *community education services*
- *community legal services*
- *counselling services*
- *disability emergency response services*
- *disability support services*
- *employment services*
- *family and domestic violence services*
- *family day care services*

⁴⁷ DoE, correspondence dated 9 January 2020, Paper 1, p 1.

⁴⁸ DoE, correspondence dated 9 January 2020, Paper 1, p 1.

⁴⁹ Clauses 6 and 7.

⁵⁰ DoE, correspondence dated 9 January 2020, Paper 1, p 2.

⁵¹ Clause 6.

⁵² DoE, correspondence dated 9 January 2020, Paper 1, p 3.

- *financial counselling services*
- *foster care and out-of-home care services*
- *home and community care services*
- *homelessness support services*
- *lesbian, gay, bisexual, transgender and intersex services*
- *mental health services*
- *migrant and multicultural support services*
- *offenders transitioning services*
- *respite services*
- *seniors community support services*
- *social housing services*
- *violence prevention services*
- *women’s services*
- *youth justice services, and*
- *youth support services.*

The explanatory notes provide further clarity, and state community services are those ‘providing support and assistance to facilitate community participation, enable independence, and protect and provide accommodation and respite for vulnerable populations groups and those in crises’.⁵³

The explanatory notes highlight that for the purposes of the Bill, the community services industry is intended to be ‘distinct from the aged care industry and the child care of early childhood education industry’.⁵⁴

The Bill proposes that **community services work** is to provide community services, or support the provision of community services.⁵⁵ The explanatory notes state this is intended to include individuals employed by an employer in the community services industry undertaking ‘community services work’; and, those whose work supports the employer’s provision of ‘community services work’.⁵⁶ The Bill provides ‘administrative support’ as an example of work that supports the provision of community service.⁵⁷

As proposed in clause 8 of the Bill, a **worker** is an individual who is employed by a community services employer to perform community services work; or, is self-employed and performs community services work. The explanatory notes explain this provision is intended to apply to full-time, part-time and casual workers, as well as workers engaged under a contract for service, including labour hire workers and workers who operate as a sole trader.⁵⁸

⁵³ Explanatory notes, p 8.

⁵⁴ Explanatory notes, p 8.

⁵⁵ Clause 7.

⁵⁶ Explanatory notes, p 8.

⁵⁷ Clause 7(2)(b).

⁵⁸ Explanatory notes, p 9.

The Bill also provides for a regulation making power to prescribe members of a class of individuals who are not considered a worker under the PLSL scheme.⁵⁹ The explanatory notes outline this is to ensure the scheme remains focused on workers in the community services industry.⁶⁰

As proposed by clause 9, each of the following entities is an **employer** for the purposes of the Bill:

- a) *an entity established for, or with purposes including, the provision of community services that engages an individual;*
- b) *an individual who is self-employed and provides community services;*
- c) *a provider of labour hire services that supplies an entity mentioned in paragraph (a) or (b) with an individual to perform community services work for the entity;*
- d) *an entity prescribed by regulation to be an employer.*⁶¹

A provider of labour hire services is defined in accordance with the *Labour Hire Licensing Act 2017* (LHL Act), and as outlined in the explanatory notes, is only intended to be an employer in relation to the workers it supplies for community services work.⁶²

The explanatory notes state that the sustainability of the PLSL scheme relies on ‘employers registering, reporting on their workers’ service and paying the resulting levy’.⁶³ The Bill proposes that ‘other ‘employers’ or classes of employers can be prescribed by regulation, to ensure the scope of the scheme remains flexible and responsive to the evolution of the community services industry’.⁶⁴

The Bill also proposes to exclude as employers, the Commonwealth, state and local governments and any entity prescribed by regulation not to be an employer.⁶⁵ The explanatory notes suggest this will ensure clarity for employers that are not intended to be included in the scheme.⁶⁶

3.1.2 Submitters’ views and department’s response: community services & community services work

The majority of submitters were generally supportive of the scheme. A number of submitters however, commented on the clarity of the scheme’s scope, based on the meaning of the following key terms proposed in the Bill: *community services* and *community services work*, *worker* and *employer*.⁶⁷

PeakCare Queensland Inc. (PeakCare), the CSIA and Queensland Council of Social Service (QCOSS) requested further clarification about the scope of the proposed PLSL scheme.⁶⁸

According to the explanatory notes, Schedule 1 of the Bill sets out ‘an indicative list of the types of community service intended to be covered by the scheme’.⁶⁹ In a joint submission, CSIA and QCOSS acknowledged the intent to exclude aged-care, child care and early childhood services from the

⁵⁹ Clause 8.

⁶⁰ Explanatory notes, p 9.

⁶¹ Clause 9.

⁶² Explanatory notes, p 9; Clause 9.

⁶³ Explanatory notes, p 9.

⁶⁴ Explanatory notes, p 9.

⁶⁵ Clause 9.

⁶⁶ Explanatory notes, p 9.

⁶⁷ See, for example, submissions 16, 18, 21, 23.

⁶⁸ DoE, correspondence dated 9 January 2020, Paper 1, p 2.

⁶⁹ Explanatory notes, p 24.

scheme, but raised concern about the inclusion of the following services listed in Schedule 1: 'home and community care services, seniors community support services and family day cares services'.⁷⁰

The joint submission stated, 'without greater clarity in either the Bill or the explanatory notes ... there is a strong potential for complexity in implementation or unintended consequences'.⁷¹ CSIA and QCOSS questioned how the scheme would be implemented in practice, for an organisation that provides both residential aged care and community aged care, where workers could move in and out of the scope of the scheme while in the same organisation and doing similar work.⁷²

In response, the department clarified that 'stand-alone residential aged care, primary health care and child care are not within the scope of this proposed scheme'.⁷³

During the explanatory speech for the Bill, the Hon Grace Grace, Minister for Education and Minister for Industrial Relations explained:

*[The Bill] includes aged-care or childcare workers if their work supports the employer to provide community services. For example, childcare workers who work in a domestic and family violence service or neighbourhood community centre would be covered, but those working in stand-alone kindergartens or long day care centres would not, so it is the provision of the service.*⁷⁴

While generally supportive of the PLSL scheme, the Queensland Law Society (QLS) submitted that Schedule 1 is a significant and broad list of services which includes groups such as advocacy services, employment services, mental health services and women's services, which could include various types of organisations.⁷⁵ The QLS also noted Schedule 1 lists services that 'could form part of the aged care, child care or early childhood industries',⁷⁶ and if the intention is that these sectors be excluded, then this should be expressed in the Bill.⁷⁷

PeakCare also submitted:

*... there may potentially still be some concern and confusion to clarify around the scope and inclusion/exclusion of aged care, health care, and potentially other disciplines who may be employed by social and community services organisations, to ensure staff who should benefit from the portable long services leave scheme are not excluded.*⁷⁸

In response, the department advised scope was a key consideration for the *Portable Long Service Leave for the Community Services Sector Stakeholder Taskforce* (the Stakeholder Taskforce) (see report section 1.4). The Stakeholder Taskforce agreed the scheme be informed by the profile of the community services sector used in the Deloitte report, and the coverage of the SCHADS Award.⁷⁹ The department explained further:

The scope of the scheme is determined in the first instance by the employer's purpose. If an employer does not have as a purpose the provision of community services (in Queensland) then the employer is not subject to the proposed scheme and does not need to register.

⁷⁰ Submission 16, p 1.

⁷¹ Submission 16, p 1.

⁷² Submission 16, p 2.

⁷³ DoE, correspondence dated 9 January 2020, Paper 1, p 3.

⁷⁴ Queensland Parliament, Record of Proceedings, 27 November 2019, p 3880.

⁷⁵ Submission 23, p 2.

⁷⁶ Submission 23, p 2.

⁷⁷ Submission 23, p 2.

⁷⁸ Submission 18, p 3.

⁷⁹ DoE, correspondence dated 9 January 2020, Paper 1, p 3.

*If the employer has been established for, or with a purpose that includes, providing a community service in Queensland, then the employer must register with the scheme.*⁸⁰

The department clarified that stand-alone residential aged care, primary health care and child care are not within the scope of the proposed scheme. While the Bill intends to exclude aged care, in response to the reference to home and community care services in Schedule 1, the department advised the approach taken in the Bill is to:

*... avoid a situation where some workers in a community services organisation would be captured while others would not, or a situation where part of a worker's hours may be caught while another part of their hours would not (e.g. if an employee provided both disability support and aged-care services for the employer).*⁸¹

Regarding workers moving 'in and out of scope' within the same organisation, the department noted that the holistic service delivery model of some organisations was raised during consultation and that the scheme is:

*... designed to broadly cover 'community services' workers and the profile of the community services sector. Therefore, the scheme can include in its scope some aged care, child care and health care workers who work for holistic or multi-service organisations (e.g. emergency care or drug health workers employed in a neighbourhood community centre or holistic community organisation).*⁸²

Ms Del Brook, Member of the Social Welfare and Community Services Industry Divisional Committee, TSU stated:

I have worked in the sector for about 15 years in a variety of roles around direct support work in mental health, disability and occasionally helping out with aged care which is within my organisation. I have been in my current role with my company, which is a medium to large organisation, for the last nine years. Within that company alone I have been a support worker and a manager. I am currently doing scheduling because as it restructures the industry changes. It is very important to me that I am covered by the portable long service leave provisions. With my skills I am able to take on different roles within my company.

*The only reason I am probably with my company is that there is career progression for me. I can have a break from direct work because otherwise you burn out. I think everyone has to be covered. I have been there for nine years. It would be unfair not to cover everybody within that company for the same reasons. Most support workers start off as support workers and then become managers if they want that career progression.*⁸³

Some submitters⁸⁴ sought clarification on the meaning of work that 'supports' the provision of community services⁸⁵ and raised the example of 'administrative support' proposed in the Bill.⁸⁶ Anglicare Southern Queensland (ASQ) suggested it would be difficult to determine which staff are covered in organisations where administrative and management staff 'undertake a proportional amount of their work time connected to the community service industry and the balance of their work

⁸⁰ DoE, correspondence dated 9 January 2020, Paper 1, p 3.

⁸¹ DoE, correspondence dated 9 January 2020, Paper 1, p 4.

⁸² DoE, correspondence dated 9 January 2020, Paper 1, pp 5-6.

⁸³ Public hearing transcript, Brisbane, 21 January 2020, pp 22-23.

⁸⁴ Community Services Industry Alliance and Queensland Council of Social Service, submission 16; Anglicare Southern Queensland, submission 21.

⁸⁵ Clause 7.

⁸⁶ Clause 7.

time connected to the community service industry'.⁸⁷ ASQ recommended that ancillary and/or management employees not be included in the scheme.⁸⁸

CSIA and QCROSS raised similar concerns regarding work that 'supports' community services work, and stated:

*... it remains unclear how this would apply to corporate services workers, who arguably support the work of the entire community services organisation and can be subject to the same loss of long service leave entitlements as service delivery workers due to limited-term contracting, insecure work and high mobility leading.*⁸⁹

To clarify the meaning of work that 'supports' the provision of community services work, the department advised:

*While the Bill identifies administrative support as an example, the intent is to recognise the importance of support work to the delivery of community services. Those providing this support are also affected by those conditions such as short-term funding that prevent workers in the industry more generally from being able to accrue a long service leave entitlement with a single employer ... work that supports the provision of community services does not include work unrelated to the employer's purpose of providing community services work.*⁹⁰

In a supplementary submission, the TSU stated:

... the Bill makes clear that all employees of the entity established for the purposes of provisioning community services be covered by the scheme.

The Bill does not differentiate between what is direct frontline client contact work versus non client contact work. All positions within the entity are affected by the same issues created by short-term funding which ultimately prevents individuals from being able to accrue a long service leave entitlement with a single employer.

The Bill makes clear the meaning of community services work includes that which supports the provision of community services work. ...

*All employees who work in the Industry experience the same problems, for example being forced to move to other services due to the cessation of contract funding or for skill and/or career advancement as the opportunities within community services organisations are limited, due to flat structures of many small to medium sized organisations.*⁹¹

The department considered the drafting of the Bill to 'suitably provide flexibility to deal with the broad range of types and sizes of organisations and the varied services' that community service organisations deliver.⁹² Importantly, the department advised that employers and workers will be able to seek information and advice from QLeave with respect to their individual circumstances.⁹³

⁸⁷ Submission 21, p 5.

⁸⁸ Submission 21, p 5.

⁸⁹ Submission 16, p 2.

⁹⁰ DoE, correspondence dated 9 January 2020, Paper 1, p 5.

⁹¹ The Services Union, tabled paper dated 21 January 2020, p 3.

⁹² DoE, correspondence dated 24 January 2020, p 2.

⁹³ DoE, correspondence dated 9 January 2020, Paper 1, p 5.

Further, Mr Tony James, Executive Director, OIR advised the committee:

QLeave will drive and support the implementation of the scheme given their experience with two other schemes. QLeave has been meeting closely with the community services industry stakeholder task force, unions and peak bodies in preparation for the commencement of the scheme should the bill be passed.

... QLeave is preparing for direct, targeted communication with community service industry audiences through face-to-face information sessions ... digital and traditional media channels; and partnering opportunities with other agencies, unions and peak bodies. Newspaper advertising as well as the online and printed materials are also being prepared.

... I cannot stress enough that QLeave and the Office of Industrial Relations will provide detailed supporting materials particularly including examples of scope and coverage as this scheme comes to fruition.⁹⁴

3.1.3 Submitters' views and department's response: workers and employers

The QLS highlighted clause 8(2) of the Bill which proposes that a regulation may prescribe a class of individuals who will not be considered workers under the scheme.⁹⁵ The QLS stated that the explanatory notes and the department's written briefing do not provide 'appropriate guidance as to the possible classes of workers who might be excluded'.⁹⁶

In response, the department stated that the regulation power is provided to ensure the flexibility of the PLSL scheme. Further, the department noted that no classes of workers have yet been identified for exclusion from the scheme. The regulation power was considered to allow for the 'policy intent of the scheme and its intended scope to continue operating without unintended effects, if a class of worker is identified as coming within the scope of the scheme or to provide clarification'.⁹⁷

To clarify which employers are covered by the scheme, the department stated:

Where an organisation has provision of community services as a purpose, it will be in the scheme if it engages community services workers, even if these are only a small part of the organisation's workforce, but only for those community services workers. Where an organisation engages a community services worker but does not have a purpose of community services provision, it will not be in the scheme.⁹⁸

The QLS submitted that it was not clear within the Bill which employers would need to register for the scheme. The Bill proposes an employer is an entity established for, or with purposes including, the provision of community services that engages an individual.⁹⁹ The QLS commented that the clause 'does not state that the provision of community services needs to [be] the entity's sole or even dominant purpose'.¹⁰⁰

The QLS noted the scope of the scheme provides that 'an employer can have two separate and distinct businesses, where workers in one business are covered but the workers in the other business [are

⁹⁴ Public briefing transcript, Brisbane, 21 January 2020, p 2.

⁹⁵ DoE, correspondence dated 17 January 2020, p 2.

⁹⁶ Submission 23, p 2.

⁹⁷ DoE, correspondence dated 17 January 2020, p 2.

⁹⁸ DoE, correspondence dated 17 January 2020, p 2.

⁹⁹ Clause 9.

¹⁰⁰ Submission 23, p 2.

not]’.¹⁰¹ While the scheme is intended to be broad, the QLS suggested it is not clear whether an organisation that is only peripherally involved in the industry would be covered.¹⁰²

To clarify how the scheme would operate in practice, the department provided different organisational scenarios. For example, if the only service provided by the employer is a community service, then:

- *all workers engaged by an employer to perform community services work are required to be declared in the employer’s return; and*
- *all other workers engaged by the employer whose work supports the delivery of community services, such as administrative employees, should be registered and declared in the employer’s return.*

*If the employer has workers who do not perform or support community services work (e.g. after hours cleaners) these workers need not be registered for the scheme.*¹⁰³

Where an employer provides a community service and also provides another service, the department advised the first consideration will be whether the other service provided is for the purpose of supporting the employer’s provision of community services. If the other service supports the employer’s provision of community services, then:

- *all workers engaged by an employer to perform community services work would be declared in the employer’s return; and*
- *all other employees engaged by the employer are required to be declared in the employer’s return.*¹⁰⁴

However, the department explained that when an organisation provides a ‘separate and distinct business services stream’ that does not support the provision of a community service then:

- *all workers engaged by an employer to perform community services work are required to be declared in the employer’s return; and*
- *all employees engaged to support the provision of the community services work, such as administrative employees, are required to be declared in the employer’s return; and*
- *all other employees engaged by the employer are not required to be declared in the employer’s return; that is the employees engaged in the other service are not required to be registered.*¹⁰⁵

In relation to determining who is a ‘worker’, the QLS requested an amendment to clause 9(3) and its reference to section 7 of the LHL Act. The QLS submitted:

*The Labour Hire Licensing Regulation 2018, in section 4, sets out those individuals who are not “workers” under that scheme and includes, as an example, a “person employed by a community service organisation...”. This is because community care workers are generally classed as in-house employees under this scheme and not persons ‘provided’ for labour hire purposes. This is a clear inconsistency that needs to be addressed.*¹⁰⁶

¹⁰¹ Submission 23, p 2.

¹⁰² Submission 23, p 2.

¹⁰³ DoE, correspondence dated 9 January 2020, Paper 1, p 3.

¹⁰⁴ DoE, correspondence dated 9 January 2020, Paper 1, pp 3-4.

¹⁰⁵ DoE, correspondence dated 9 January 2020, Paper 1, p 4.

¹⁰⁶ Submission 23, p 3.

The department advised labour hire providers, who are not community services organisations, are one exception to the broad scope of the scheme. The department further advised it considered the drafting of the Bill to be sufficient in ensuring labour hire providers (who are not community services organisations) be required to pay the levy for community services workers. The department stated:

This will also ensure that an unfair benefit is not created for labour hire providers or community services organisations who engage their workers (regularly or from time to time) over community services employers that directly engage their workers and are therefore responsible for the levy themselves. This approach also ensures that community services workers have their service credited and levy paid for periods of work with a labour hire provider.¹⁰⁷

The QLS submission also noted that when the Labour Hire Licensing scheme commenced, businesses were able to seek advice from the Labour Hire Licensing Compliance unit to determine whether they were a labour hire provider in accordance with the LHL Act. QLS proposed a similar process be available for the community services PLSL scheme.¹⁰⁸ The department advised ‘this will occur in practice, and the department, and QLeave in particular, will provide information and education to the sector, employers and workers’ before commencement and on an ongoing basis.¹⁰⁹

In regards to the general drafting of the Bill, the department emphasised that:

The Bill provides flexibility for the range of different roles and structures of employers in the industry, as well as administrative ease for employers and QLeave. It also ensures an equitable outcome for employees within organisations who identify as community services workers despite not working in a direct frontline capacity and for those that perform multiple community services roles.¹¹⁰

Committee comment

The committee notes some stakeholders raised concern that the scope of the Bill’s proposed PLSL scheme for the community services industry was not sufficiently clear.

The committee considered however, the further advice provided by the department, including practical examples of which organisations and workers may be captured by the scheme and the intention that the scheme apply to employees beyond those who work in a frontline capacity.

The department assured the committee that the scheme’s implementation will be supported by a range of guiding material and QLeave (as administrator of the scheme) will provide advice and guidance to employers and employees to determine whether they will be captured by the scheme.

The committee therefore considers the scope of the scheme as drafted in the Bill, is appropriate to allow for flexibility in the community services industry, and to provide benefit to a wide range of roles and organisations within the industry.

¹⁰⁷ DoE, correspondence dated 17 January 2020, p 2.

¹⁰⁸ Submission 23, p 3.

¹⁰⁹ DoE, correspondence dated 17 January 2020, p 2.

¹¹⁰ DoE, correspondence dated 9 January 2020, Paper 1, p 5.

3.2 Operation of the PLSL scheme

3.2.1 Payments, initial funding, returns and levy

The Bill proposes eligible workers under the scheme will be able to access LSL after seven years' service in the community services industry.¹¹¹ The scheme proposes a registered worker is entitled to access 6.1 weeks PLSL (0.867 weeks leave for each year of service) when they have accrued 2555 days of service (365 days per year for seven years).¹¹² The proposed scheme also allows for mutual recognition of workers' entitlements between Queensland and the ACT and Victoria which also have PLSL schemes for the community services industry.¹¹³

TSU suggested that a system of, 'portable long service leave should provide retrospectivity upon commencement to ensure that employees could access long service leave sooner and receive the benefits of such access'.¹¹⁴ TSU's submission then clarified however:

*... having participated in the Taskforce and understanding the challenges faced by the Industry our union accepted that the levy should be kept as low as possible acknowledging that the inclusion of retrospectivity would have a direct impact on the quantum of the levy.*¹¹⁵

The department advised adopting earlier access to the entitlement instead of retrospectivity is mutually beneficial because excluding retrospective service reduces the cost for community service organisations, while workers have the benefit of early access to LSL entitlement.¹¹⁶ The department also noted the Stakeholder Taskforce, had 'reached consensus' on key aspects of the scheme including exclusion of retrospective recognition of service,¹¹⁷ as noted by TSU's submission.

To support the commencement of the PLSL scheme, the Bill proposes to amend both the *Building and Construction (Portable Long Service Leave) Act 1991* (Building and Construction PLSL Act) and the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* (Contract Cleaning Industry PLSL Act), so that funds from these existing schemes can be utilised where the community services authority does not have sufficient funds.¹¹⁸ The department advised these amendments will enable the 'start-up funding' for the PLSL scheme.¹¹⁹

The Bill proposes to impose a levy on the ordinary wages paid to workers in the community services industry, by employers covered by the scheme. Employers will be required to submit a return each period and pay the levy within 14 days of the end of each return period.¹²⁰ The department noted the rate of the levy and the return period will be prescribed by regulation.¹²¹

¹¹¹ Clause 73.

¹¹² Clause 73; DoE, correspondence dated 9 December 2019, p 5.

¹¹³ DoE, correspondence dated 9 January 2020, Paper 1, p 10.

¹¹⁴ Submission 4, p 5.

¹¹⁵ Submission 4, pp 5-6.

¹¹⁶ DoE, correspondence dated 9 December 2019, p 5.

¹¹⁷ DoE, correspondence dated 9 January 2020, Paper 1, p 2.

¹¹⁸ Explanatory notes, pp 23-24; DoE, correspondence dated 9 January 2020, Paper 1, p 2; Clauses 129 to 132.

¹¹⁹ DoE, correspondence dated 9 December 2019, p 2.

¹²⁰ Clauses 84-90.

¹²¹ DoE, correspondence 9 December 2019, p 4.

The department advised the community services PLSL scheme had been modelled on the contract cleaning industry scheme¹²² and noted the return period under the Contract Cleaning Industry PLSL Act is:

- a) 1 January and 31 March;
- b) 1 April and 30 June;
- c) 1 July and 30 September;
- d) 1 October and 31 December.¹²³

The department provided that, based on actuarial modelling conducted by QLeave's actuary, a rate of 1.35 percent of a worker's ordinary wage had been recommended as the levy.¹²⁴ The explanatory notes provide that the levy, alongside a return on investment, will allow the scheme to be administratively self-supporting, while meeting its commitment to pay LSL to community services industry workers.¹²⁵

Further, the department stated the levy rate is designed to:

... achieve the lowest possible cost of the scheme for employers while securing the financial viability of the scheme. The levy is comparable to that of other community service industry PLSL schemes; Victoria's levy is set at 1.6% and the ACT levy commenced at 1.67% but is now 1.2%.¹²⁶

The department outlined that the levy amount payable by an employer each return period is calculated by 'applying the levy to the total amount of ordinary wages paid by the employer' in that period. The department advised that ordinary wages are:

... the amount of gross wages paid or payable to each worker engaged by the employer, including any applicable allowance or shift loadings or over-award payments. Ordinary wages also include any amounts that have been deducted from the worker's wages for salary sacrifice arrangements.¹²⁷

3.2.1.1 Submitters' views and department response

Submissions from Vocational Partnerships Group Inc. (VPG), Downs Industry Schools Co-Operation Inc. (DISCO), Leading Age Services Australia Ltd (LASA) and TransitCare Ltd (TransitCare) raised concerns about the cost implications associated with the introduction of the proposed scheme, particularly the 1.35 percent levy.

The department considered the levy, 'a necessary and appropriate way to fund the scheme' and that, 'there is no other fair and practical way' to fund it.¹²⁸ The proposed 1.35 percent levy rate is comparable with other jurisdiction schemes for this industry and would apply consistently across the industry to private sector employers, including profit and not-for-profit organisations.¹²⁹

Mr Tony James, Executive Director of the OIR also advised:

... portable long service leave is of enormous benefit to the industry and the employer because it actually reduces the amount to be put away, from what would have been 1.67 per cent for the duration of the employment. I recognise that not every person comes to the fruition of a long

¹²² DoE, correspondence 9 January 2020, Paper 1, p 8.

¹²³ DoE, correspondence 9 December 2019, p 4.

¹²⁴ DoE, correspondence 9 December 2019, p 4.

¹²⁵ Explanatory notes, p 3.

¹²⁶ DoE, correspondence 9 December 2019, p 4.

¹²⁷ DoE, correspondence 9 December 2019, p 5.

¹²⁸ DoE, correspondence dated 9 January 2020, Paper 1, p 7.

¹²⁹ DoE, correspondence dated 9 January 2020, Paper 1, pp 7-8.

*service leave entitlement in this industry, but that is very much the problem that this scheme is seeking to address. It is an industry whose workers do not reach a community norm for accessing long service leave.*¹³⁰

Further, the department noted the Bill proposes regular review of the levy rate which requires the authority (QLeave) investigate the adequacy of the levy percentage, at least every two years, but otherwise as required.¹³¹ The department added, the 'levy rate is intended to reflect the lowest possible cost of the scheme for employers while securing the most beneficial entitlement for workers'.¹³²

A number of submitters expressed the view that Government funding is warranted to support the scheme, including TSU, two individual submitters¹³³, and organisations including TransitCare, ASQ and Community Legal Centres Queensland (CLCQ).

ASQ submitted that without Government funding, the introduction of the scheme, 'will result in reduce[d] service hours being provided to the people who need the service'.¹³⁴ PeakCare raised similar concerns about 'additional unfunded costs', adding that it is anticipated 'there will be an initial financial impact for organisations during the transition from existing long service leave provisioning practices to the payment of the proposed portable long service leave levy'.¹³⁵

TransitCare also outlined concerns of the resource impact on the community transport and support services sector, suggesting it would need to cut services as a result and instead recommended 'any financial burden in setting up the scheme and ongoing costs incurred by the organisation should be excluded from the levy'.¹³⁶

In seeking further advice about funding arrangements for the community services sector, the committee is advised by the department that while the department is not a significant funder of community services organisations:

*It is generally the case that, for community services funding, workers' wages and entitlements would be a substantial, if not the largest, element of these costs and therefore a significant part of the funding provided to these organisations is to cover those costs, including provision for long service leave entitlements for their employees.*¹³⁷

With respect to existing LSL practices in the industry, VPG submitted that LSL entitlement liabilities are:

*...often invested by community agencies in savings accounts, where the financial return assists in the financial administration of entitlements, until such time as the provision becomes payable. A portable LSL scheme would significantly disadvantage community agencies from receiving a financial return on their investment.*¹³⁸

Similarly, DISCO submitted a PLSL scheme would 'significantly disadvantage community agencies from receiving a financial return on their investment and funds like this add critical additional core funding and enable the organisation to meet many of its charter obligations'.¹³⁹

¹³⁰ Public briefing transcript, Brisbane, 21 January 2020, p 5.

¹³¹ DoE, correspondence dated 9 January 2020, Paper 1, p 8; Clause 43.

¹³² DoE, correspondence dated 9 January 2020, Paper 1, p 8.

¹³³ Maria Leebeek, submission 11; David Laurence Kearney, submission 19.

¹³⁴ Submission 21, p 1.

¹³⁵ Submission 18, p 3.

¹³⁶ Public hearing transcript, Brisbane, 21 January 2020, p 8.

¹³⁷ DoE, correspondence dated 24 January 2020, p 3.

¹³⁸ Submission 8, p 1.

¹³⁹ Submission 10, pp 1-2.

The department highlighted that under existing legislation, organisations are already required to provision for LSL for employees, although how and when provision should be made is not specified.¹⁴⁰ Ms Kate Spiers, Acting Director, Industrial Relations Strategic Policy provided:

*...—it is in the task force report—and in some of the submissions is that even if they make provision for it from day one, the money remains within the organisation until they have to pay it out. That can be invested, if it is invested in such a way that it can be easily accessed. That is the difference between provisioning versus a levy.*¹⁴¹

Mr James noted however, ‘if the money set aside for long service leave ... is reinvested into other matters, it is being spread; it is not actually being put aside for long service leave’.¹⁴²

ASQ’s submission stated its organisation offers ‘more beneficial long service leave entitlements compared to the long leave entitlements under the Act’ and therefore, the Bill.¹⁴³ ASQ questioned who would be responsible for payment of the difference between what ASQ provide their employees and the legislated PLSL entitlement; particularly if a worker joins ASQ with leave accrued at the less generous legislative standard and then seeks to take leave through ASQ.¹⁴⁴ VPG raised a similar issue with respect to different accrual arrangements across Australian jurisdictions with portability schemes.¹⁴⁵

In response, the department highlighted the Bill does not seek to override more generous PLSL arrangements.¹⁴⁶ The department noted that some practical difficulties may arise for employers that offer more generous entitlements however, the Bill proposes a scheme based on the entitlement in the Queensland Employment Standards of the IR Act. The department advised where an organisation has more favourable LSL entitlements than under the Act, it is a matter for the parties involved to manage differences in LSL entitlements.¹⁴⁷

Some submitters raised the potential for the scheme to increase administrative burden on employers.¹⁴⁸ For example, LASA submitted that a PLSL scheme would create ‘new administration obligations with regards to record keeping, submitting information to a central administrative function and other administrative responsibilities’.¹⁴⁹ LASA added, ‘this will put undue pressure on facilities to maintain compliance in an already intensely regulated industry’.¹⁵⁰

In response, the department advised QLeave, the administrator of Queensland’s existing PLSL schemes, will be responsible for its administration. Additionally, ‘QLeave staff are experienced and able to assist employers and workers and respond to implementation queries’.¹⁵¹

¹⁴⁰ Mr Tony James, Executive Director, Office of Industrial Relations, public briefing transcript, Brisbane, 21 January 2020, p 4.

¹⁴¹ Public briefing transcript, Brisbane, 21 January 2020, p 4.

¹⁴² Public briefing transcript, Brisbane, 21 January 2020, p 4.

¹⁴³ Submission 21, p 6.

¹⁴⁴ DoE, correspondence dated 9 January 2020, Paper 1, p 12.

¹⁴⁵ Submission 8, p 1.

¹⁴⁶ DoE, correspondence dated 9 January 2020, Paper 1, p 12.

¹⁴⁷ DoE, correspondence dated 9 January 2020, Paper 1, p 12.

¹⁴⁸ See, for example, submissions 8, 10, 14, 20.

¹⁴⁹ Submission 14, p 3.

¹⁵⁰ Submission 14, p 3.

¹⁵¹ DoE, correspondence dated 9 January 2020, Paper 1, p 8.

The department advised the department and QLeave would provide guidance materials, ‘including a streamlined online interface for employers to lodge returns, and:

*... deliver awareness and engagement assistance, including being available to provide information and advice to individual employers, as well as workshops, forums and educational material. This will help facilitate a smooth transition to the scheme and ensure compliance is achieved.*¹⁵²

TransitCare submitted the introduction of a PLSL scheme, ‘reduces barriers to exiting an organisation’ and therefore, ‘risks increasing staff turnover not only increasing opportunity costs to organisations but direct recruitment and training expenses’.¹⁵³

In response, the department noted the community services industry is ‘regularly attributed to the non-recurring funding nature of the industry’,¹⁵⁴ which creates high job mobility for workers. Further, the scheme is designed to assist workers:

... by providing an opportunity to take leave for the purpose of rest and respite, which is particularly valuable to workers that have physically and/or emotionally demanding work, as many in this industry do.

*... It is considered that job security will continue to be an attractive option for workers in this industry and that access to portable long service leave alone is unlikely to convince a worker to leave secure, decent, work.*¹⁵⁵

In relation to the calculation and payment of LSL, the QLS noted that the Bill provides the calculation and payment of LSL.¹⁵⁶ The QLS commented that while the explanatory notes and written briefing assist in understanding these provisions, it is unlikely workers, employers and advisers will refer to these documents once the legislation comes into effect. The QLS recommended real world examples of how the payments will be calculated be inserted into the legislation.¹⁵⁷

In response, the department stated practical examples of how payments are to be calculated would be developed and made publicly available. These materials would form part of the education and awareness materials upon the passage of the Bill. In addition, the department noted QLeave officers are experienced in providing advice on PLSL and ‘will engage community services industry stakeholders in the lead up to commencement through forums and on an individual basis as required’.¹⁵⁸

Committee comment

The committee notes the funding constraints of community services organisations and the existing practice of some organisations to invest an employee’s LSL provision for a number of years prior to the entitlement being accessible by the employee.

The committee also notes however, the above-average fluidity of the community services industry workforce and the Bill’s aims to assist the industry to recruit and retain staff.

¹⁵² DoE, correspondence dated 9 January 2020, Paper 1, p 8.

¹⁵³ Submission 20, p 1.

¹⁵⁴ DoE, correspondence dated 9 January 2020, Paper 1, p 9.

¹⁵⁵ DoE, correspondence dated 9 January 2020, Paper 1, p 9.

¹⁵⁶ Bill, Part 6, Division 3.

¹⁵⁷ Submission 23, p 3.

¹⁵⁸ DoE, correspondence dated 17 January 2020, p 3.

The committee notes the levy proposed to fund the PLSL scheme is less than the current rate required by employers to provision for LSL entitlements for their employees, and the department's advice that:

The benefits of the scheme, in light of the characteristics of the community services industry, are expected to assist in offsetting the impact of paying the levy over time. For instance, portable long service entitlements will help attract new entrants and retain skilled and experienced workers in the industry with anticipated flow on effects of reducing costs of recruitment and training.

It is also noted that the levy will apply equitably to all organisations across the industry, all of whom it should also be noted have an existing liability to make provision for long service leave for their employees.¹⁵⁹

3.2.2 Administration of the Community Services Industry Portable Long Service Leave Authority

Proposed Part 3 of the Bill establishes the Community Services Industry Portable Long Service Leave Authority (Community Services Authority). The department advised the proposed administrative, governance, and compliance provisions of the scheme (proposed Divisions 1 to 5) are modelled on the Contract Cleaning Industry PLSL Act.

Division 4 proposes that the scheme will be administered by Queensland's existing PLSL authority, QLeave. QLeave is empowered under the Building and Construction PLSL Act to provide a system of PLSL for workers in the building and construction industry in Queensland.¹⁶⁰ The department advised it currently administers the PLSL schemes for the building and construction and contract cleaning industries.

Clauses 15 and 16 propose the establishment of a new governing board to oversee QLeave's administration of the scheme. The Board must consist of no more than eight directors, including: a chairperson, deputy chairperson, and three worker and three employer representatives.¹⁶¹ The deputy chairperson must be qualified in at least one of the following areas: commerce, economics, finance and/or management.¹⁶²

Proposed Divisions 1 and 2 set out the registration requirements of workers and employers covered by the PLSL scheme. The Community Services Authority (administered by QLeave) must keep a register of all workers and employers in the industry.¹⁶³ The department advised the registration provisions in the Bill have been modelled on the Contract Cleaning Industry PLSL Act.¹⁶⁴

Clauses 91 to 99 provide for reviews and appeals in respect of decisions made by the Community Services Authority. The Bill sets out the types of decisions that can be reviewed and appealed,¹⁶⁵ the process for the internal review of original decisions¹⁶⁶ and appeals to the Industrial Magistrate¹⁶⁷ and the Industrial Court.¹⁶⁸

¹⁵⁹ DoE, correspondence dated 9 January 2020, Paper 1, p 7.

¹⁶⁰ Queensland Government, Department of the Premier and Cabinet, *Building and Construction Industry (Portable Long Service Leave) Board (Qleave)*, <https://governmentbodies.premiers.qld.gov.au/BodyDisplay.aspx?Parameter=235>

¹⁶¹ Clauses 18-19.

¹⁶² Clause 19.

¹⁶³ Clauses 44, 53.

¹⁶⁴ DoE, correspondence dated 9 December 2019, p 3.

¹⁶⁵ Clause 91.

¹⁶⁶ Clauses 92-93.

¹⁶⁷ Clauses 94-98.

¹⁶⁸ Clause 99.

Clause 91 provides the following decisions are subject to review and appeal:

- (a) a decision made by the authority in relation to—
 - (i) a matter for which this Act provides an application can be made; or
 - (ii) a levy or levy amount;
- (b) an entry in the register of workers made by the authority;
- (c) an entry in the register of employers made by the authority;
- (d) a notice or an information notice given by the authority.¹⁶⁹

Clauses 100 to 111 set out the appointment and powers of authorised officers to investigate, monitor and enforce compliance in relation to provisions in the Bill. In relation to the powers of authorised officers the explanatory notes set out that the Bill provides specified references to the Contract Cleaning Industry PLSL Act apply to an authorised officer performing functions for the purpose of the Bill.¹⁷⁰

3.2.2.1 Worker registration

The Bill proposes individuals will be able to apply to be a registered worker under the scheme.¹⁷¹ QLeave can also register a worker without application, for example if it has received information indicating that worker should be registered under the scheme.¹⁷² The department advised a worker's accrual of PLSL is linked to their registration date. While the Bill does not propose retrospectivity of service, it provides QLeave some ability to backdate a worker's registration date if it is satisfied the worker should have been a worker under the scheme at an earlier date.¹⁷³

Determining an individual's registration date is subject to conditions, including that the date decided must not be a day earlier than the start of the second last full financial year prior to the proposed registration day.¹⁷⁴ For example, if an individual applies to become a registered worker 1 February 2024, the registration date must not be earlier than 1 July 2021. In any event, the registration date for a worker must not commence before 1 July 2020 (the proposed commencement date of the scheme).¹⁷⁵

To allow workers a break from the community services industry while maintaining continuity of service for the purposes of LSL, the Bill proposes to preserve a worker's service credits in the Queensland system for a period of up to four consecutive years from when the worker was last credited with service.¹⁷⁶ This is proposed in clause 52 of the Bill which sets out the provisions relating to the cancellation of a worker's registration.¹⁷⁷

¹⁶⁹ Clause 91.

¹⁷⁰ Explanatory notes, p 21.

¹⁷¹ Clause 45.

¹⁷² Clause 47.

¹⁷³ Clause 49.

¹⁷⁴ Clause 49.

¹⁷⁵ DoE, correspondence dated 9 December 2019, p 4.

¹⁷⁶ DoE, correspondence dated 9 January 2020, Paper 1, p 10.

¹⁷⁷ DoE, correspondence dated 9 January 2020, Paper 1, p 10.

3.2.2.2 Employer registration

The Bill proposes entities must apply to register with QLeave within 28 days of becoming an employer.¹⁷⁸ Transitional provisions propose to extend the registration timeframe for employers whereby if an entity is an employer on commencement, or within 28 days of commencement, the employer has 90 days after commencement to register.¹⁷⁹

Self-employed individuals are not required to register however can opt-in to the scheme, and pay the levy on their own behalf to accrue PLSL entitlements.¹⁸⁰ The department advised this aspect of the scheme is beneficial for workers who might work for themselves and as a worker for other community services organisations during their career. If a self-employed individual opts into the scheme, they can access PLSL after the same time period as other workers in the industry who are not self-employed.¹⁸¹

3.2.2.3 Submitters' views and department's response

The QLS raised concern that the proposed administrator of the scheme, QLeave, is not specified in the Bill. The QLS noted that clause 10 of the Bill establishes the Community Services Authority and recommended the committee seek clarification on clause 38 which provides that staff from the Building and Construction Industry Authority will provide staff to the authority in the Bill.¹⁸²

The department advised that the Bill proposes to establish the Community Services Authority. The department added that:

*'QLeave is effectively the Building and Construction Industry (PLSL) Authority and operates as the 'Authority' for the Contract Cleaning PLSL scheme also. The Contract Cleaning Industry PLSL Act is similarly drafted. The work of the Authority for the community services industry PLSL scheme will be overseen by a newly established Board. Again, this is the structure of the other PLSL schemes in Queensland.'*¹⁸³

In relation to continuity of service, CLCQ supported the four-year break from service proposed by the Bill.¹⁸⁴ CLCQ submitted that it would be important to 'provide clear and detailed information about education the 4-year break from the industry without loss of service continuity for the purposes of LSL.'¹⁸⁵ The joint submission from CSIA and QCOSS suggested that the Bill 'is silent on continuity of service within Industry for the purposes of the PLSL scheme'.¹⁸⁶

The department responded that in accordance with clause 52, which deals with the cancellation of worker registration, that 'a registered worker may have a break from the community services industry for up to four years without affecting continuity of service; however, the person will not accrue service credits as they are not working'.¹⁸⁷

The QLS raised issues regarding the drafting of the provisions relating to reviews and appeals, submitting that clause 91(1)(a)(i) requires clarification because, 'the current drafting suggests a decision must have arisen from an application. This raises a concern that not all decisions will be

¹⁷⁸ Clause 54.

¹⁷⁹ Clause 126.

¹⁸⁰ DoE, correspondence dated 9 December 2019, p 4.

¹⁸¹ DoE, correspondence dated 9 December 2019, p 4.

¹⁸² Submission 23, p 1.

¹⁸³ DoE, correspondence dated 17 January 2020, p 1.

¹⁸⁴ Submission 13.

¹⁸⁵ DoE, correspondence dated 9 January 2020, Paper 1, p 9.

¹⁸⁶ Submission 16, pp 2-3.

¹⁸⁷ DoE, correspondence dated 9 January 2020, Paper 1, p 9.

capable of review.¹⁸⁸ The department responded that when the list of decisions under clause 91 is read in its entirety that reviewable decisions are not restricted to those arising from an application to QLeave.¹⁸⁹

CLCQ submitted that the Bill imposes 'relatively short timeframes for compliance with many administrative aspects of the scheme, and high penalties for non-compliance.'¹⁹⁰ While CLCQ acknowledged this is to encourage compliance, they supported 'an abatement/reduction of these penalty provisions, and longer timeframes', so organisations have sufficient time to comply, particularly in the first year or two after commencement.¹⁹¹

In response, the department advised if the Bill passes, the transitional provision (clause 126) provides employers 90 days from commencement to register with QLeave. As noted throughout this report, the department has also stated it intends, in conjunction with QLeave, to offer support to employers and workers to assist in achieving compliance with the requirements of the scheme.¹⁹²

The department also raised concerns about timeframes in relation to clause 93 and the review of internal decisions. Under clause 93(1), the authority is required to make a decision and notify the applicant within 45 days of receiving the application for review. Clause 93(2) proposes the authority is taken to have refused an application for review if within 45 days of receiving the application, the authority:

- (a) does not give the aggrieved person an information notice for the reviewed decision; and
- (b) has not asked the aggrieved person for further information about the application.¹⁹³

Clause 94 proposes a right of appeal to someone whose application has been refused under clause 93(2); and the appeal must be brought within 28 days of the refusal. In relation to these timeframes, the QLS submitted:

*Clause 93(2) should be amended to require the authority to provide a decision to the applicant, even if the 45 day timeframe has passed. This will provide certainty to the applicant...*¹⁹⁴

*... we do not consider that it is in the interests of natural justice and procedural fairness for the appeal period to end without the person having received a notice of the decision.*¹⁹⁵

The department responded that in practice, it would always be intended that QLeave would make a decision and would make it within the 45 day timeframe. Further:

*The 45 day timeframe trigger is to allow the applicant to start to take the next step and not have to wait any longer for a decision if they wish. ... This is consistent with the Contract Cleaning Industry (Portable Long Service Leave) Act 2005 and the department is not aware of any issues experienced with this provision.*¹⁹⁶

¹⁸⁸ Submission 23

¹⁸⁹ DoE, correspondence dated 17 January 2020, p 3.

¹⁹⁰ Submission 13, p 4.

¹⁹¹ Submission 13, p 4.

¹⁹² DoE, correspondence dated 9 January 2020, Paper 1, p 13.

¹⁹³ Clause 93(2).

¹⁹⁴ Submission 23, p 3.

¹⁹⁵ QLS, correspondence dated 24 January 2020, p 2.

¹⁹⁶ DoE, correspondence dated 17 January 2020, p 4.

Powers of entry and investigation

In relation to compliance with provisions of the Bill, the QLS raised concern with proposed clause 111 which adopts provisions of the Contract Cleaning Industry PLSL Act, with respect to powers of entry and investigation.¹⁹⁷ The QLS submitted the proposed powers of entry and investigation are ‘too broad and breach fundamental cornerstone principles of our legal system.’¹⁹⁸ The QLS accepted that ‘the Committee is not tasked with reviewing the Contract Cleaning legislation’, and stated the Bill ‘should not adopt the Contract Cleaning legislation provisions, but rather provide reasonable powers to the authorised officers under the scheme’.¹⁹⁹

The department advised the concerns raised by the QLS are noted, and that officers of the authority have the same powers across the three PLSL schemes which are ‘broadly consistent with core powers of inspectors across legislation generally including the ability to seize and inspect documents’.²⁰⁰ Further, the powers of officers may only be used as is appropriate and consistent with the purposes of the legislation.²⁰¹

Transition to the scheme

Some stakeholders questioned how the PLSL scheme would apply to workers who have already accrued entitlements under existing legislation.

CLCQ raised the following concerns:

*We have concerns that employees who are in the industry prior to 1 July 2020 would continue to be covered by the Industrial Relations Act, meaning they will have to wait 10 years to access their long service leave, whereas those starting fresh in the industry or with a new employer after the commencement date will be part of the new scheme and have pro rata access after seven years. In our view, it seems out of line with the policy reason behind providing earlier access, which was as a compromise for a lack of retrospective coverage. When improvements are made to employment provisions, it makes sense to move workers to those more favourable conditions as soon as possible.*²⁰²

In response, the department clarified:

*...it is important to understand that the scheme introduced recognises portability of service within the industry, commencing from 1 July 2020. It does not displace an employee who was working with a single employer. It does not displace their entitlement to accrue long service leave and then gain it if they last the full distance.*²⁰³

¹⁹⁷ Submission 23, p 4.

¹⁹⁸ Submission 23, p 4.

¹⁹⁹ Submission 23, p 4.

²⁰⁰ DoE, correspondence dated 17 January 2020, p 4.

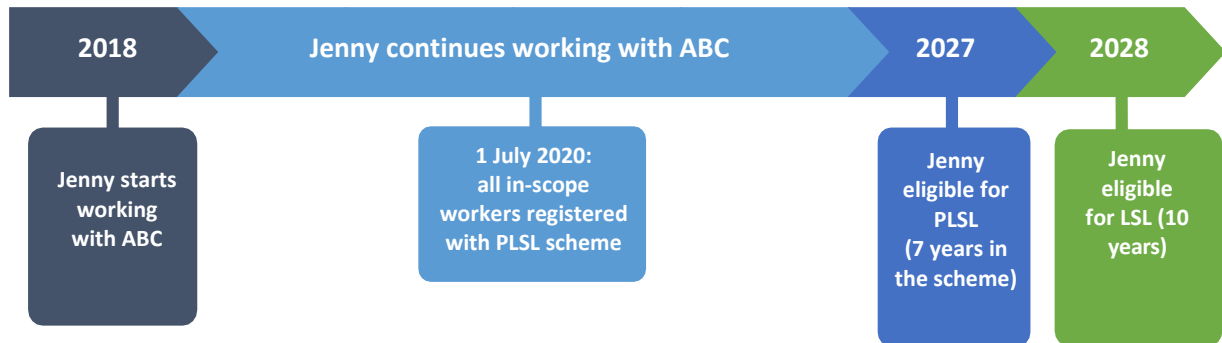
²⁰¹ DoE, correspondence dated 17 January 2020, p 4.

²⁰² Ms Carly Hanson, Sector Sustainability Coordinator, CLCQ, public hearing transcript, 21 January 2020, p 14.

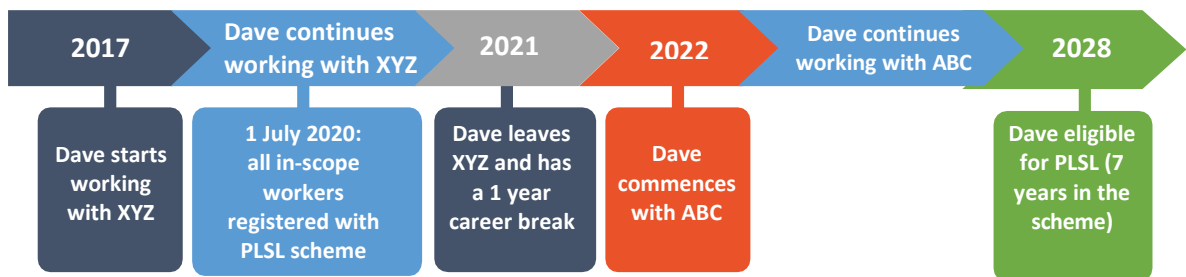
²⁰³ Mr Tony James, Executive Director, OIR, public briefing transcript, 21 January 2020, p 1.

Following the committee's public hearing, the department provided additional materials to illustrate the PLSL in practice. The examples below highlight how the transition to PLSL will operate for individuals who have been with one employer, or multiple employers following the schemes introduction:²⁰⁴

Example: Service with one employer pre-PLSL scheme introduction



Example: Service with multiple employers pre and post scheme introduction



3.3 Amendments to the *Industrial Relations Act 2016*: illness-related incapacity

The Bill proposes to amend the IR Act to clarify that an employee whose employment is ended due to an illness-related incapacity, and who has completed at least seven years of continuous service at that time, has an entitlement to pro rata LSL (see section 2.1.1. of this report). The explanatory notes state the amendment further clarifies that 'illness' includes injury, incapacity or any other medical condition and that the entitlement to long service applies regardless of whether the termination is by the employer or employee.²⁰⁵

This responds to a recent decision of the ICQ,²⁰⁶ where the court found an employee (Mr David Schipp) did not have an entitlement to pro rata LSL under the IR Act, as the legislation did not recognise the entitlement when an employer terminates employment due to an illness-related incapacity of the employee.²⁰⁷ It was noted that the legislation does provide pro rata entitlement where an employee terminates their employment due to illness-related incapacity.

²⁰⁴ DoE, correspondence dated 24 January 2020, p 4.

²⁰⁵ Explanatory notes, p 2.

²⁰⁶ *Schipp & Anor v The Star Entertainment Qld Limited* [2019] ICQ 009: <https://www.sclqld.org.au/caselaw/ICQ/2019/9>.

²⁰⁷ DoE, correspondence dated 9 January 2020, Paper 1, p 14.

The amendment proposed by the Bill would ensure an employee whose employment ends due to illness, is entitled to their pro rata LSL regardless of which party terminates the employment.²⁰⁸

3.3.1.1 Submitter views and department's response

Mr David Schipp outlined to the committee, the chronology of his personal legal case in which his entitlement to pro rata LSL was not recognised.²⁰⁹ Mr Schipp was employed by his employer for nine years, 11 months and three days before his employment was terminated by the employer, on the basis of an illness-related reason. Mr Schipp was unable to receive pro rata LSL which he believed he had been entitled to.²¹⁰ Mr Schipp told the committee:

I enjoyed the job that I had been employed to do for nine years, 11 months and three days and I fully intended to recover and return to work. I had no reason to resign. It turns out I became exempt from receiving my long service leave entitlement simply because I had elected not to resign. Because of the anomaly in the act regarding the pro rata long service leave entitlements and other separate matters in dispute regarding my employment termination, I have been on a very difficult and challenging journey.²¹¹

Mr Schipp requested, if the Bill's proposed amendment passes, it should have retrospective application, in part so he could receive a pro rata payment for LSL and because this 'may provide similar LSL payment entitlements to other Qld employees who may have found themselves in a similar situation'.²¹²

The QCU and QLS supported the proposed amendments to the IR Act without seeking retrospective application.²¹³

The department acknowledged that the decision of the ICQ represented 'an anomaly that needed to be addressed and is inconsistent with public expectations around long service leave entitlements'.²¹⁴ The department expressed that while the government had sympathy for Mr Schipp's circumstances, generally it does not support the retrospective application of legislative amendments as it is a breach of fundamental legislative principle.²¹⁵

Mr Tony James, Executive Director, OIR, further stated: 'In this case, it may be that some employers have relied on the provision as it has been interpreted by the commission and the courts'.²¹⁶

Committee comment

The committee recognises Mr Schipp's courage in sharing his personal experience with the committee. The committee thanks Mr Schipp for his lengthy advocacy on the matter and highlighting the need for legislative change.

The committee notes however, the concern of the department that retrospective application of the provisions of the Bill would be a significant breach of fundamental legislative principle.

²⁰⁸ DoE, correspondence dated 9 January 2020, Paper 1, p 10.

²⁰⁹ Submission 12.

²¹⁰ Mr David Schipp, public hearing transcript, Brisbane, 21 January 2020, p 1.

²¹¹ Mr David Schipp, public hearing transcript, Brisbane, 21 January 2020, p 1.

²¹² Submission 12, p 3.

²¹³ Submissions 9 and 23.

²¹⁴ DoE, correspondence dated 9 January 2020, Paper 1, p 15.

²¹⁵ DoE, correspondence dated 9 January 2020, Paper 1, p 15.

²¹⁶ Public hearing transcript, Brisbane, 21 January 2020, p 5.

4 Compliance with the Legislative Standards Act 1992

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

4.1.1.1 Quarterly returns to QLeave and levy payments for return period

Summary of provisions

Under **clauses 65 and 66**, an employer is required to give a return to QLeave every quarter and make payments of the levy.

An employer is defined in clause 9 and includes an individual who is self-employed and provides community services. This issue of fundamental legislative principle will only relate to an employer who is an individual.

Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

The concept of liberty requires that an activity (including a business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

Requiring an individual employer to lodge a return is an additional administrative burden, and a failure to comply is an offence. Further, an employer is also required to pay an additional levy. This will affect rights and liberties of individual employers.

Committee comment

The explanatory notes record that the scheme will be administratively self-supporting. The administrative costs will be \$1 million in the first year and approximately \$800,000 each year after.

The explanatory notes do not specifically address this issue of fundamental legislative principle directly. The explanatory notes do provide the following general justification for any such breach in the Bill:

Any provisions which could potentially breach FLP [sic] are considered justifiable to achieve the Government’s objective to establish an equitable and efficient system of portable long service leave for workers in Queensland’s community services industry.²¹⁷

²¹⁷ Explanatory notes, p 4.

Acknowledging the policy intent of the Bill to establish a PLSL scheme for the community services industry, the committee is satisfied that any breaches of fundamental legislative principle are justified in the circumstances.

4.1.1.2 Proportionality and relevance of penalties for employers

Summary of provisions

Clauses 66, 77 and 86 introduce penalties for contraventions by employers relating to:

- not paying or not complying with a notice or order to pay all or part of the levy
- not paying the worker's full and correct entitlement when the payment is advanced to the employer by QLeave,
- not reimbursing QLeave promptly with any amount not paid to the worker.

These offences attract a maximum penalty of 60 units (\$8007), the highest in the Bill.

Other penalties will apply for breaches of various obligations to comply with the administrative and enforcement functions of the scheme, with a maximum of 40 units (\$5338). These offences include a failure to apply for registration as a registered employer with the specified timeframes, and a failure to return an identity card within 21 days.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

*... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*²¹⁸

Committee comment

The explanatory notes state:

*The maximum penalties [of] 60 penalty units ... is consistent with similar offences and penalties applying under the Contract Cleaning Industry (Portable Long Service Leave) Act 2005 and the Building and Construction Industry (Portable Long Service Leave) Act 1991 (noting that the advance payments are not provided for under the two existing Queensland schemes).*²¹⁹

The committee considers the penalties are reasonable and proportionate and have sufficient regard to rights and liberties of individuals.

4.1.1.3 Power to enter premises

Summary of provisions

By virtue of **clause 111**, the Bill confers power for an authorised officer to have the same investigatory and information gathering powers as QLeave officers currently have, by 'importing' the relevant provisions of the Contract Cleaning Industry PLSL Act.

²¹⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

²¹⁹ Explanatory notes, p 4.

The effect of this provision is that certain powers available to inspectors under the contract cleaning Act will become available to inspectors under the *Community Services Industry (Portable Long Service Leave) Bill 2009* (Community Services Industry Act).

Section 107 of the Contract Cleaning Industry PLSL Act is the general power of entry provision. Entry can be exercised with the consent of the occupier or upon warrant but neither consent nor a warrant is required if:

- it is a public place, during times it is open to the public, or
- it is an employer's place of business and is open for carrying on the business or otherwise open for entry.

None of these listed situations authorise entry to premises used as a residence.

Inspectors have a range of powers which they can exercise after an entry which is made by consent, authorised under a warrant, or otherwise authorised by the legislation. These include powers to:

- search, inspect, measure, test, photograph, film, take a thing for analysis, measurement or testing, copy a document²²⁰
- make a help requirement, including producing a document²²¹
- seize a thing, including where the inspector has a reasonable belief that the thing is evidence of an offence against the Act and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for consent.²²²

Issue of fundamental legislative principle

Whether legislation has sufficient regard to the rights and liberties of the individual depends on whether, for example, it confers power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.²²³

The provisions allow entry without warrant in certain circumstances, and confer other investigatory powers. These affect an individual's rights and liberties generally.

Committee comment

Legislation should confer power to enter premises, and search for or seize documents or other property, with the occupier's consent or under a warrant issued by a judge or other judicial officer. This principle supports a long established rule of common law that protects the property of citizens.²²⁴

*FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.*²²⁵

Strict adherence to the principle might not be required if the premises are business premises operating under a licence or premises of a public authority.

²²⁰ Section 114 *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

²²¹ Section 115 *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

²²² Section 116 *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

²²³ *Legislative Standards Act 1992*, s 4(3)(e).

²²⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 44.

²²⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

As already noted, here any consent must be given and entry of premises used as a residence can only be by consent or upon warrant.

A possible additional concern in this context is the range of additional powers that can become exercisable after entry without a warrant or consent.²²⁶ Under the contract cleaners Act, once a power of entry is exercised, many other powers flow, including search and seizure powers and provisions for possible forfeiture of property to the State. In association with the grant of those powers, a number of offences are created, with penalties that are in some cases significant.

One must be even more mindful of ensuring there is due regard for rights and liberties in such circumstances:

*Fundamental legislative principles are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.*²²⁷

*Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.*²²⁸

In relation to the power to enter without a warrant, the explanatory notes state:

*While authorised officers may enter a place without a warrant, the circumstances they may do so are sufficiently limited. Additionally, the existing provisions provide appropriate safeguards by prescribing procedures that inspectors must follow when entering a place with consent and prescribing the procedure for entering a place under a warrant. The power to enter business premises without consent or a warrant is considered justified to ensure compliance with the scheme.*²²⁹

The explanatory notes further provide:

*A requirement for a warrant in all circumstances would not be practical for example when authorised officers are in regional or remote locations and an allegation or complaint is raised at the time which would necessitate urgent investigation and seizure of evidence.*²³⁰

The committee considers there is adequate justification for the power of entry and associated powers such that the breach of fundamental legislative principle is justified and, on balance, sufficient regard has been given to an individual's rights and liberties.

4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced in the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

²²⁶ See the discussion in the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

²²⁷ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

²²⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 46.

²²⁹ Explanatory notes, p 5.

²³⁰ Explanatory notes, p 5.

Appendix A – Submitters

Sub #	Submitter
001	Nick Collyer
002	Em Lee
003	Form Submission No. 1 (42 submissions received)
004	The Services Union
005	Jeanette Darveniza
006	Carly Hanson
007	Form Submission No. 2 (15 submissions received)
008	Vocational Partnerships Group Inc
009	Queensland Council of Unions
010	Downs Industry Schools Co-Operation Inc. (DISCO)
011	Maria Leebeek
012	David Schipp
013	Community Legal Centres Queensland
014	Leading Age Service Australia Ltd
015	Gold Coast Youth Service
016	Community Services Industry Alliance and Queensland Council of Social Service
017	Children by Choice
018	PeakCare Queensland Inc.
019	David Laurence Kearney
020	TransitCare Limited
021	Anglicare Southern Queensland
022	Michelle Thompson
023	Queensland Law Society

Appendix B – Witnesses at public hearing

David Schipp

Anglicare Southern Queensland

- Stephen Nance, Manager Workplace Relations
- Anna Zilli, Director, Organisational Development

Queensland Law Society

- Kate Brodnik, Senior Policy Solicitor
- Luke Murphy, President
- Aaron Santelises, Industrial Law Committee

Community Legal Centres Queensland

- Carly Hanson, Sector Sustainability Coordinator
- Kerriann Dear, Sector Sustainability Coordinator
- Rosslyn Monro, Director

Community Services Industry Alliance (CSIA) and Queensland Council of Social Service (QCOSS)

- Matthew Gillett, A/CEO, CSIA
- Sarah Coles, Manager Industry & Influence, CSIA
- Mark Henley, CEO, QCOSS

The Services Union

- Justine Moran, Development Coordinator
- Jennifer Thomas, Executive President

Members of The Services Union Social Welfare and Community Services Industry Divisional Committee

- Del Brook, Member
- Michael McDonald, Member

Queensland Council of Unions

- Dr John Martin, Research & Policy Officer

Appendix C – Officials at public departmental briefing

Office of Industrial Relations (Department of Education)

- Tony James, Executive Director, Industrial Relations
- Kate Spiers, A/Director, Industrial Relations Strategic Policy
- Allison Kessey, Director Compliance & Client Service, QLeave