

Our reference: Justine_Moran_PLSLSubmission

21 January 2019

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

By email: eesbc@parliament.qld.gov.au

Dear Committee Secretary,

**Re: Community Services Industry (Portable Long Service Leave) Bill 2019 –
The Services Union, Supplementary Submission**

We are the Australian Municipal, Administrative, Clerical and Services Union Queensland (Services and Northern Administrative) Branch and the Queensland Services, Industrial Union of Employees trading as The Services Union.

Currently our members work in a wide variety of industries and occupations such as:

- Disability support
- Social and community services
- Local government
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally in North Queensland
- Electricity generation, transmission and distribution
- Water industry

Over 50% of The Services Union members are women, the exact percentage varies between industries, e.g. in social and community services 75% of our members are women.

Our Union is a branch of the Australian Services Union which is one of Australia's largest unions representing approximately 135 000 members.

In Queensland, The Services Union is the largest union of employees in the Social and Community Services (SACS) Industry representing employees and managers in non-government organisations across multiple sectors of the Industry such as:

- Aboriginal and Torres Strait Islander Community Services
- Child Protection, Youth and Family Services
- Community Legal Services
- Community and Neighbourhood Services
- Disability
- Employment Services
- Health, Alcohol and Other Drug Services
- Homelessness, Housing and Tenancy
- Mental Health
- Migrants and Settlement Services
- Policy, Advocacy Campaigning
- Women's Services

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TRADING AS
THE SERVICES UNION

SECRETARY:
Neil Henderson
EXECUTIVE PRESIDENT:
Jennifer Thomas

Our members in the Social and Community Services Industry (SACS) are always looking for ways to shape and improve their Industry, not just for themselves, their families and the communities they support, but to provide a better way of life for future generations.

Our union represents employees in the Social and Community Services (SACS) Industry who for many years have campaigned for portable long service leave and as such we have a significant interest in the Community Services Industry (Portable Long Service Leave) Bill 2019 currently before the Education, Employment and Small Business Committee.

On 19 December 2019 our union made a written submission to the committee in support of the Community Services Industry (Portable Long Service Leave) Bill 2019 and wishes to add to that submission by way of this supplementary submission, in addition to our appearance before the Committee today, Tuesday 21 January 2019.

SCOPE OF PORTABLE LONG SERVICE LEAVE SCHEME

Definition community services industry

There are many community service organisations which are single legal entities that provide multiple services to different sectors of our community. It is well known within the SACS Industry that terminology to describe or label the work performed is inconsistent and broad. For example, once there was a clear distinction between the work required by roles titled “Personal Care Workers” and “Support Workers”, today these titles may be used to describe the same work. Once the use of these titles provided a clear distinction between work performed in the home as opposed to in a residential care facility, such distinction today is not always so clear.

The Bill does well to bring clarity to this situation by listing the types of community services to be covered by the proposed scheme, in Schedule 1 of the Bill. The explanatory notes provide further clarity by referring to the sector profile in the Deloitte report, Forecasting the future: Community Services in Queensland 2025 as a way of identifying community services and utilising the scope set out in the Social, Community, Home Care and Disability Services Industry Award 2010.

It is not uncommon for our members to be employed as Support Workers by one entity that provides multiple types of community services and undertakes support work in supporting disability clients and aged care clients, and for that work to be undertaken in the clients home and/or a residential facility.

It is also not uncommon for our members working in community neighbourhood services to be delivering services to all age groups of the community and to also provide family daycare services.

Our union is of the view that the Bill provides some clarity for the determination of which community services and their workers are captured by the scheme and therefore does not support the submissions for the removal of: family day care services; home and community care services or senior community support services from schedule 1 of the Bill.

Our union supported the inclusion of Aged Care in its entirety, at the taskforce, but accepted the broader view of the Taskforce that further consultation with the Age Care Industry, in its own right, was needed to determine its inclusion in the scheme.

Community Services, meaning of Employer

Our union is of the view that the Bill is clear and all community services employers and those workers, falling within the provisions set out in clauses 6; 7; 8 and 9 are covered by the Bill.

Our union contends that when determining who are community services employers the focus needs to be on what is the legal “Entity” and the purpose for which it was established. The Bill is clear in that the legal “Entity” regardless of multiple service delivery streams is the employer and the workers engaged by the “Entity” are to be registered within the scheme.

Therefore, when identifying which workers of community services employers are to be registered within the scheme the question to be asked is whether the delivery of the service is under one entity which may have multiple service delivery streams, or under separate and distinct legal entities.

For example, when looking at a community service employer that provides disability support; aged care residential support and/or child care services, the question needs to be what is the legal entity established to provide these services. It could be either:

- 1) The legal entity is one company with the purpose of providing community services with 3 separate delivery service streams (allowing the employer flexibility, depending on the engagement terms of the employees to deploy the employees across the service streams of their business) in which case per the Bill all workers engaged by the entity would need to be declared in the employers return for the scheme regardless of which service stream they work in, or
- 2) There are two or even more legal separate and distinct entities where each entity engages their own employees to deliver the service under their established purpose.

In case number 2, we are of the view that the separate legal entity established for the purposes of providing community services ie the disability services would meet the meaning of community services and community services work and workers engaged by that separate legal entity would need to be declared in the employer's return for the scheme.

Those separate legal entities that have as their established purpose aged care residential support and/or child care services would not meet the meaning of community services and community services work in the Bill and so are not an employer to be considered by the scheme and therefore the employer would not need to complete a return for the scheme.

Our union believes that education and clear examples are the key to assisting employers to determine whether they will be required to complete a return for the scheme. We strongly suggest that in providing advice and examples that the terminology of legal "entity" be used when identifying how employers determine if their legal entity needs to remit, along with the purpose upon which the legal entity was established, as opposed to words such as "service" or "business stream" given that there are many legal entities with multiple business streams and it is this which is likely to create confusion.

Definition of 'supporting' community services work

Our union is of the view that 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. It is nonsense to suggest that only part of a Chief Executive Officer position; Executive Service Manager position; IT position or any number of corporate service positions, supports the provision of community services work. All positions within the legal entity established to provided community services are in the support of the provision of community services work as without those positions operating in their entirety the service could not perform or operate to undertake the service it is established to deliver.

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.

Our union believes that education is key to the success of the scheme. Such education should have clear unequivocal statements that all positions of an employer identified as eligible under the scheme are to be registered for the scheme and included on employers' remittances.

CONCERNS OVER DISINCENTIVE FOR WORKERS TO REMAIN WITH THE SAME EMPLOYER

This scheme is a strategy to attract and retain employees in the Industry. We believe the scheme will reduce the risk of loss of employees from the Industry and see a retention of skills, knowledge and experience. This in turn this should assist employers in the recruitment and induction of a more experienced and knowledgeable employee.

WORKERS COMMENCING WITH AN EMPLOYER ALREADY WITH AN ENTITLEMENT TO TAKE LEAVE

The notion that an employer would not employ the worker on merit purely based on an existing entitlement under the proposed scheme is disappointing. It is understandable that the employer may have concern as to a cost incurred in back filling the position if the leave was accessed but the employer can negotiate with the employee as to when the leave is taken reducing the impact operationally to the employer.

Education may be needed to make clear to all employers and employees within the Industry that the taking of leave is subject to agreement between the employer and employee and the employer may refuse leave it is not suitable to the businesses operational needs. The Industrial Relations Act 2016 (IR Act) already deals with any disputes over the timing of the taking of leave.

THE LEVY WILL LIMIT ORGANISATIONS ACCESS TO THEIR FUNDS (LEVY PAID EACH QUARTER RATHER THAN PROVISIONS FOR LONG SERVICE LEAVE BUT ABLE TO USE /INVEST FUNDS UNTIL REQUIRED)

While our union understands the points being made in some of the submissions to the Committee about increased costs in having to provision immediately for long service leave with the introduction of the scheme, we do not support the return of levies paid for entitlements not realised. Based on the need to keep the levy as low as possible these contributions will over time assist in reducing the costs of the scheme and in turn should see a reduction in the levy which will turn be of benefit to the employers within the Industry.

FLEXIBILITY IN THE TAKING OF LEAVE

The Bill provides that long service leave must be taken in blocks of five days yet under the Industrial Relations Act 2016 (IR Act) there is no such restriction. Our union supports the points raised in the Community Legal Centres Queensland submission that the ability to take single non-consecutive days of long service leave on a more regular basis with agreement from the employer (e.g. one day per week) would provide greater flexibility for the employee to allow them to transition to retirement and/or where they have caring and family responsibilities and raised this point through the Taskforce. However, while we support the position, we also accept the advice provided to the Taskforce that the administrative cost to support the taking of single days would be too high and may ultimately outweigh the benefit being sought.

Further clarification is needed though on the situation where the employer and employee enter into an arrangement for the taking of single days and the employer then seeks reimbursement from the fund, would it be a case of the employer needing to make a claim for the single days as one block of five or would the fund not reimburse?

PAYMENT FOR LONG SERVICE LEAVE

Part 6, Division 3 of the Bill provides for calculations and payment of long service leave. Our union supports the points raised in the submission of The Queensland Law Society, that clear and real-world examples should be inserted into the legislation.

These will then assist in the education of employers and workers as to how long service leave payments are calculated.

Long Service Leave accrual subsequent to initial entitlement

It would be better for all concerned for the Bill to set out when leave accrued after the accrual of the initial entitlement can be accessed.

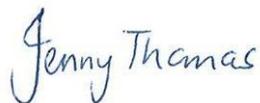
CONCLUSION

Members of The Services Union want to see the establishment of a portable long service leave scheme as provided for in the Community Services Industry (Portable Long Service Leave) Bill 2019.

Our union agrees there should be an education process for employees and employers in the Industry and is prepared to take an active part. Education and assistance to all those involved to prepare for the introduction of the proposed portable long service leave scheme are key and we strongly urge the consistency of language and terms to limit confusion for participants.

Our union welcomes the opportunity to provide further information or clarification on the contents of our submission please contact Justine Moran, Development Coordinator, via telephone on 3010 4448 or by email: Justine.moran@theservicesunion.com.au

Yours sincerely,

A handwritten signature in blue ink that reads "Jenny Thomas". The signature is written in a cursive, flowing style.

Jennifer Thomas
Executive President