

Portable long service leave for community services

Regulatory impact statement

March 2024

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Policy, NSW Fair Trading and Regulatory Services

NSW Department of Customer Service

PortableLSL@customerservice.nsw.gov.au

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Minister's message

Community service workers and providers play an essential role, promoting social inclusion and wellbeing for individuals and communities across NSW.

From disability or domestic violence support through to neighbourhood outreach, the sector spans diverse services delivered by not-for-profit and for-profit providers. Community service work is often emotionally and physically taxing, with workers reporting stress and burnout. Rapid growth in demand, such as for government funded disability services, and a tendency for short-term funding contracts, can compound strain on the sector.

Workers are highly mobile and many face insecure work, which can prevent access to long service leave entitlements. Despite dedicating years of service to the sector, it is not uncommon for a worker to lose their accrued leave overnight due to circumstances beyond their control such as a change in employment contract.

To address these challenges, the NSW Government has committed to expanding access to long service leave. Our proposed Bill will create a new portable scheme for community services to recognise workers for their dedication and help attract workers to the sector.

Portable long service leave will mean that workers can access paid time off based on their tenure in the sector, rather than the time they work for a single employer. Portability means that entitlements continue to accrue regardless of how many times a worker changes employment in the sector. To fund entitlements, a levy will apply to employers with contributions pooled in a central sector fund for investment.

The NSW Long Service Corporation will administer the scheme, which will build on the success of two existing schemes for the building and construction industry and the contract cleaning industry in NSW. The Bill also draws on the lessons from portable schemes in other states and territories that already exist for the community service sector.

I am excited to lead this work and to hear from you. Whether you're a worker, employer, or someone interested in the scheme, I encourage you to have your say on how we can build a fair and robust scheme that better supports our community service sector in NSW.

The Hon. Sophie Cotsis MP
Minister for Industrial Relations

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Introduction

1.1 Purpose of this paper

This paper, and the draft Bill, set out a model for a new scheme for community and disability services. It is the first step to fulfill the NSW Government's election commitment.

On 25 August 2023, the Hon. Sophie Cotsis MP, Minister for Industrial Relations, announced the NSW Government is taking the first step to fulfill its election commitment to establish portable long service leave for community and disability service workers.

This consultation paper outlines the proposed elements for portable long service leave in the sector. A draft Bill is available for comment that, if introduced to Parliament, would establish the new scheme in NSW. The purpose of this paper is to:

- identify the objectives, benefits and impacts of a portable entitlement scheme
- explore and assess potential options to address issues and challenges
- understand the impact on workers, employers and community
- inform and refine draft legislation for the scheme.

1.2 Have your say

1.2.1 Make a submission by 30 April 2024

You can complete an online survey, share your story, email us, or post your submission using the details below. Please provide your input by the closing date of Tuesday 30 April 2024.

We are seeking your thoughts on the issues and discussion questions in this paper, and on the draft legislation for the scheme. Your feedback may specifically address the issues raised in this paper or put forward other relevant information and ideas.

We will use your feedback to make recommendations to the NSW Government and finalise the legislation for the new scheme. Changes to the existing NSW schemes, or expansion to industries other than community services, are not in scope for this consultation.

Survey and online submission

Have Your Say website
(www.haveyoursay.nsw.gov.au/community-long-service)

Email

PortableLSL@customerservice.nsw.gov.au

Mail

Portable long service leave
NSW Fair Trading Policy & Delivery
Level 23, 12 Darcy Street
PARRAMATTA NSW 2150

1.2.2 Submissions will be published and may be disclosed

If you do not want your personal details or part of your submission published, please say this clearly in your submission. Automatic confidentiality statements are not enough.

Even if you say that you do not want us to publish your information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009* or to provide it to the Legislation Review Committee of NSW Parliament.

Please use an accessible format so your submission is available to staff and members of the public with a disability. For more information visit the WebAIM website at www.webaim.org/

1.3 Next steps

We will carefully consider each submission. If needed, we will amend the proposed Bill to address your feedback and consult with key stakeholders before finalising the new Bill.

Once the Bill is finalised, the Minister for Industrial Relations will present it to NSW Parliament to consider in mid-2024, depending on the feedback from this consultation.

Once passed by both Houses, the Bill will be sent to the Governor for assent and published on the official NSW Government website at www.legislation.nsw.gov.au.

At this stage, we expect that the Bill will begin one year after the Bill is introduced to NSW Parliament. This is likely to be around July 2025 if the Bill is introduced before July 2024.

The scheme will also need supporting regulations that we will develop and consult on in the second half of 2024, once the Bill has been finalised.

1.4 Key terms

Employee means a worker who is employed or engaged to provide community services, under a contract of employment.

Contractor means a person, other than an employee, who does work for another person for a fee or other reward on their own account.

Worker includes an employee, contractor or other person declared to be a worker by the Minister for Industrial Relations. A worker is eligible to receive benefits.

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Case for change

3.1 State of play

3.1.1 Demand will grow and there is already unmet need

Demand for services likely to continue to grow, adding to the strain on the sector. There is unmet need in NSW and providers already face difficulty attracting and retaining workers.

The community services sector in NSW is large, diverse and growing rapidly which contributes significantly to the economy and employment landscape. In NSW, there may be as many as 230,000 people employed by 7,800 providers, both for-profit and not-for-profit.¹ The sector is set to grow with the need for care and support professionals predicted to double by 2049-50, including in regional areas and markets that are already thin.²

Rapid growth, skill shortages, and the tendency for short-term funding and service arrangements pose key challenges. For example, insecurity can adversely impact staff retention, skill development and productivity while increasing recruitment and training costs. Workforce challenges may be particularly acute in regional and remote communities and in supporting individuals with complex needs, as providers face talent drain to metro locations, lower supply of workers, and difficult working conditions.

3.1.2 Workers often cannot access long service leave

Despite their extended tenure in the sector, many community service workers cannot access long service leave because they do not reach 10 years with a single employer.

Long service leave is a workplace benefit where employees receive paid time off to recognise their extended tenure with their employer. In NSW, full-time, part-time and casual employees can access 8.6667 weeks of paid leave but only after 10 years of continuous service with the same employer under the *Long Service Leave Act 1955*.

However, in sectors like community services, workers face stress, burnout and fatigue and yet are often unable to access long service leave. This problem is prevalent as workers switch employers, move between parts of the sector, leave the sector, or work across providers. In one NSW survey, over half of women cited insecure work as a career obstacle and 1 in 2 were planning to leave or unsure about if they would be in the sector in five years.³

¹ [NCOSS & Equity Economics \(2023\), *The social sector in NSW: capitalising on the potential for growth*](#)

² [National Skills Commission \(2021\), *Care workforce labour market study: final report*](#)

³ [NCOSS & Impact Economics and Policy \(2022\), *A long way to the top: career opportunities and obstacles for women in the social services sector in NSW*](#)

3.2 Portable long service leave

3.2.1 Recognition for community service workers

Portable long service leave will offer flexibility and fairness, enabling workers to carry across their entitlements when changing jobs within the sector.

A key aim is to better support thousands of workers who are unable to access leave. It will mean that workers no longer effectively forfeit the time they have served in the sector through no fault of their own. By basing long service on time employed in the sector, workers will be able to continue to accrue long service leave no matter how often they change jobs, providing for rest and an added incentive to choose and remain in the sector.

Better flexibility will help all workers. But it may also help support workers who want to remain in the sector but need time off for reasons like pregnancy, adoption, caring or health reasons. This is important as the workforce is diverse and highly feminised with women accounting for as many as 4 out of 5 workers.⁴ Additionally, improving representation is a key priority, for example workers with lived experience in their field as well as culturally and linguistically diverse workers and Aboriginal and Torres Strait Islander workers.⁵

3.2.2 Building on the success of two NSW schemes

NSW already has two portable long service leave schemes that have been in place for over 38 and 12 years respectively. The new scheme will build on these models.

The NSW Long Service Corporation (LSC), a separate statutory authority established under the *Long Service Corporation Act 2010*, administers the two existing schemes in NSW. The schemes provide an entitlement of 8.667 weeks of leave after 10 years of service.

A levy applies for each scheme to fund and pay workers' benefits. In the building scheme, the levy applies to developers for projects of \$250,000 or more at a rate of 0.25% of the value of the work. In contrast, the cleaning scheme has a quarterly levy on employers at 1% of the ordinary wages of cleaning employees, with capacity for contractors to opt-in. The LSC holds levy payments in statutory special purpose funds and invests contributions.

⁴ NCOSS & Impact Economics and Policy (2022), A long way to the top: career opportunities and obstacles for women in the social services sector in NSW

⁵ Australian Department of Social Services (2021), NDIS national workforce plan: 2021-2025

3.2.3 Improved national consistency

East-coast jurisdictions already have, or are implementing, portable leave or benefit schemes for community services. A new scheme may support recognition across borders.

We considered the distinct characteristics, scope, and supporting provisions of each interstate scheme when developing the proposed NSW scheme. Key elements are outlined below and throughout this paper in the discussion of the model and options.

Figure 1 Key elements of interstate portable leave or benefit schemes

Australian Capital Territory

Leave:	4.33 weeks after 5 years, and 0.867 weeks for each extra year
Levy:	Employers pay 1.6% of ordinary wages of eligible workers
Covers:	Community services work including early childhood education and care, residential and community aged care, residential care for disadvantaged people and young offenders, welfare, employment, and advocacy services.
Excludes:	No specific exceptions beyond services not listed above.

Victoria

Benefit:	6.1 weeks after 7 years of service, and pro rata for each extra day
Levy:	Employers pay 1.65% of ordinary wages of eligible worker
Covers:	Private community services under specific industry awards or agreements for community, educational, labour market and supported employment services. NDIS funded disability services. Includes support, supervision and management work.
Excludes:	Specific exclusion for health, residential aged care, for-profit childcare services. Additionally, industry awards and services that are not listed above.

Queensland

Leave:	6.1 weeks after 7 years of service, and pro rata for each extra day
Levy:	Employers pay 1.35% of ordinary wages of workers
Covers:	Private sector community services in both the for-profit and not-for-profit sectors. Includes community services work and work to support, supervise or manage provision of services by a community service provider.
Excludes:	Workers engaged to perform work unrelated to community services as well as standalone childcare, early childhood education centres, kindergartens, school-based childcare services, nursing homes, retirement villages.

Draft legislation has been released in South Australia but not yet finalised. The consultation draft provides for 13 weeks of leave after 10 years of service and caps the levy at 3.0% of ordinary wages. The scope is broadly consistent with Queensland but enables the Minister to prescribe public sector workers that will be included, as well as private sector.

4

A new scheme

4.1 Objectives and design principles

The new scheme will aim to expand access to long service leave and help to attract and retain workers in the sector. The design should be user-focused and sustainable.

The purpose of creating a new scheme for the community services sector is to expand access to long service leave for workers, including those facing insecure work. In doing this, the scheme also aims to help attract, retain, and support the progression of workers in the sector. For example, by recognising workers and providing for an extended break.

The main beneficiary will be workers who are covered by the scheme. However, the sector may also benefit by incentivising workers to remain in the sector. The community may indirectly benefit from better worker wellbeing, productivity, and support for workers with lived experience in their fields. For example, peer support workers.

The following outcomes and success measures have been used to evaluate options:

Figure 2 Objectives and design principles



For workers

- Improve access to long service leave for community service workers
- Improve the options available to workers to manage stress, burnout and caring responsibilities, supporting worker's health and wellbeing



For providers and the sector

- Help attract, retain, and build the workforce



For the community

- Support efforts to improve quality, choice, and continuity in service provision



For all stakeholders

- The scheme is financially sustainable
- The scheme is simple and user-focused
- The scheme is easy to understand and implement
- The scheme has integrity, transparency and successfully manages risk

4.2 Options

This paper outlines a preferred model for the scheme that the Bill would give effect to, but also the key alternatives considered. The options relate to the scheme elements most likely to impact the overall benefits (e.g. greater access to leave) as well as the costs for the sector (e.g. the amount of the periodic levy on employers and ongoing administrative costs).

4.2.1 Model in the draft Bill

The model in the Bill may be most likely to achieve the objectives to expand access and increase flexibility, while balancing the overall cost to the sector. Key elements include:

Figure 3 Key elements of the proposed framework

Eligibility and scope

The scheme will apply to prescribed community services including workers who provide this work directly, and employees who support service provision in a community service provider. It will apply to the for-profit and not-for-profit sectors.

Long service leave

Workers will be entitled to 6.1 weeks of long service leave after 7 years of service, and a pro rata amount of leave after each extra year. Leave will need to be taken, except in limited cases where a worker can receive a pro rata payment after accruing 5 years.

Long service levy

Employers and contractors who opt-in will pay a periodic levy, likely to be 1.7% of workers' ordinary wages depending on the scheme's final design. Levies will be held in a statutory fund and invested to pay entitlements and operating expenses.

Registration, records and returns

The Bill will establish a registration scheme. The LSC will maintain a central register of employers and workers including information about wages and hours worked, which employers and contractors will need to report periodically to the LSC.

Governance and compliance

An appeals process will apply, with a sector committee to serve as the key appeals body. The LSC will have compliance and enforcement powers to manage the scheme.

4.2.2 Alternatives considered

Alternative options are discussed in more detail throughout the body of this paper and in section 6 Impact analysis. Key options include taking a different approach to:

- the work, workers, and employers that are covered, by narrowing or expanding the scope of the scheme such as by linking it to industry awards or not covering support work
- the vesting period for the initial entitlement, which could be increased from the proposed 7 years to 10 years with a proportionate increase in the leave
- whether a gift of service should be provided to foundation workers and the amount of the gift, which could be reduced from the proposed 12 months to 6 months
- what happens once a worker has reached and passes their initial entitlement, such as by either removing special arrangements or considering a daily accrual
- what counts as continuous service and what may trigger cancellation or suspension of a worker's registration, such as by reducing the 4-year break period to 2 years
- ongoing obligations such as record-keeping and reporting, such as whether a tiered reporting structure should form part of the model in the Bill.

The alternative options are not proposed because they may be less likely to achieve the scheme's objectives, may not significantly reduce the overall cost to the sector, and in cases where it would expand the scheme's scope may delay the timeline for delivery. The Bill does include regulation making powers that would allow the regulations to implement changes to reporting arrangements, for example a tiered structure, if appropriate.

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Proposed model

5.1 Eligibility and scope

5.1.1 Community services

The Bill includes prescribed community and social services and will only include other services if they are delivered incidentally to a covered service.

The proposed scope is a starting point. The list below is in the Bill and aims to cover at a minimum the services delivered by employers and workers under Schedules B and C of the Social, Community, Home Care and Disability Services Industry Award (SCHADS Award).

However, the intent is that it is to be as inclusive as possible. The proposed services are:

- Aboriginal and Torres Strait Islander community services
- Accommodation support services
- Advocacy services, including services provided by peak bodies
- Alcohol and other drug services
- Child safety and support services
- Community care services
- Community development services
- Community education services
- Community legal services
- Community mental health support services
- Disability supports and services
- Employment services
- Family and domestic violence services
- Family support services
- Financial counselling services
- Foster care services
- Homelessness support services
- Lesbian, gay, bisexual, transgender and queer (LGBTQ+) services
- Migrant and multicultural support services
- Neighbourhood and local community services
- Out-of-home care services
- Respite care services
- Settlement and refugee services
- Social housing services
- Social work
- Women's health support services
- Youth justice services
- Youth support services.

Services that are not listed will not fall in the definition of a community service for the purpose of the scheme and will generally not be covered. For example, the Bill does not list aged care, early childhood education and care, or health care services which means that standalone services in these areas will not be in scope of the scheme. However, there may be limited coverage depending on a provider's model (see 5.12 Community services work).

We considered but have not included alternative options in the Bill. For example, different approaches to the types of services covered and what they are based on.

One option relates to the role of industry awards, and whether the scope of the scheme should be limited or linked expressly to the SCHADS Award or any other industrial arrangements. The Bill most closely aligns with the approach in Queensland, and the draft legislation in South Australia, which do not reference any specific awards. We are proposing this approach because providers perform a mix of services and workers are engaged under different industrial arrangements. As such, tying eligibility to an award may create gaps in coverage. In contrast, in Victoria the scope is limited to prescribed services delivered under prescribed awards or related enterprise agreements. This approach may be simpler to implement, due to sector recognition, but may mean that fewer workers are covered.

Another key option is to adjust the types of services included and excluded. For example, interstate schemes vary in coverage for aged care and early childhood services as well as for-profits. The Bill will cover both for-profits and not-for-profits as restricting eligibility to only one sector will negatively impact workers, who would lose accrued service credits when switching provider even when performing the same work. However, the Bill does not propose to cover aged care or early childhood services. As a result, these workers will not have access to portable leave. The initial exclusion will allow more time to consider the costs and benefits. Initial research highlights that these sectors are very large and have distinct characteristics. If there is a need for portable long service leave, a phased approach may allow for adjustments before expanding and could consider a standalone scheme.

There are also other options, such as relying on charity subtypes established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). For example, some charities may have a purpose of ‘Advancing social or public welfare’ with services such as ‘relieving the poverty, distress or disadvantage of individuals or families’. This approach may be easy for charities but may not be as clear for some providers in the for-profit sector.

Consultation question

1. Tell us what you think about the types of services we have proposed covering. Do you think that the services are clear, comprehensive, and appropriate?

5.1.2 Community services work

Community services work will include work to deliver a listed service and all types of work for an employer whose main purpose is to provide community services.

The Bill takes an inclusive approach that aims to support career progression and recognise diversity in work, as employers and workers perform a mix of roles and services.

It will cover all workers who provide community services, even if they work within a provider that does not mainly deliver these services.

Additionally, there is a predominant purpose test that will cover all workers in a provider that mainly delivers covered services. For example, workers such as in administration, maintenance, accounts payable or even property management if their employer has the predominant purpose of delivering a prescribed community service.

Figure 4 Examples of services and work that are covered

Community services work

Sarah has been a senior social worker for six years at MNO Pty Ltd, a provider that offers both disability and aged care services. It has over 150 disability employees and 400 aged care employees. Although MNO Pty Ltd does not predominantly provide a covered service, it will need to register and pay levies for Sarah and the other 150 disability employees but not aged care and other staff.

Support work in a community service provider

John is an accounts payable clerk but works for a provider whose main purpose is to deliver a covered service, disability services. Despite not directly providing a frontline service, John's role helps ensure the provider's smooth operation and he is captured under the predominant purpose test in the Bill. This means he qualifies for a benefit.

Services and work that are not covered

Sonya, an experienced aged care worker, has dedicated the past four years at a residential aged care provider. The Bill does not list aged care as a community service, so her role is not covered and her long service benefits are not transferable under the new scheme. However, if she stays with her current employer, she can still access long service benefits after another 6 years of service under the *Long Service Leave Act 1955*.

Employers will need to self-assess coverage both as an employer and for their workers. As there is no set legislative test about what predominant purpose means, the Bill would apply the ordinary meaning. For example, the type of service that is most frequently or commonly provided may be considered the main purpose of the employer. While a self-assessment model may risk some inconsistency in the way the scheme is applied, the Bill mitigates this risk by allowing the Minister or delegate to make a contrary determination. This could take the form of an order about coverage (see 5.1.4 Declarations and regulations).

Alternative options include limiting the scope of covered work to frontline work or basing it solely on the employer's purpose. While these options may reduce the amount of the levy payable by some employers, they will significantly narrow the scheme's scope. A smaller scheme will have less benefits to workers and may impact the ability to reach economies of scale, with some employers paying a greater share. As many workers are flexible and perform a mix of roles, recognising both frontline and support work may be a simpler approach that supports career progression. For example, the progression from customer-facing to more project-based and leadership roles. Additionally, it may be simpler for employers if all workers are covered such as by streamlining records and reporting.

Consultation question

- 2.** The Bill covers all workers who deliver community services and all employees if the employer's main purpose is to deliver covered services. Do you support this model?

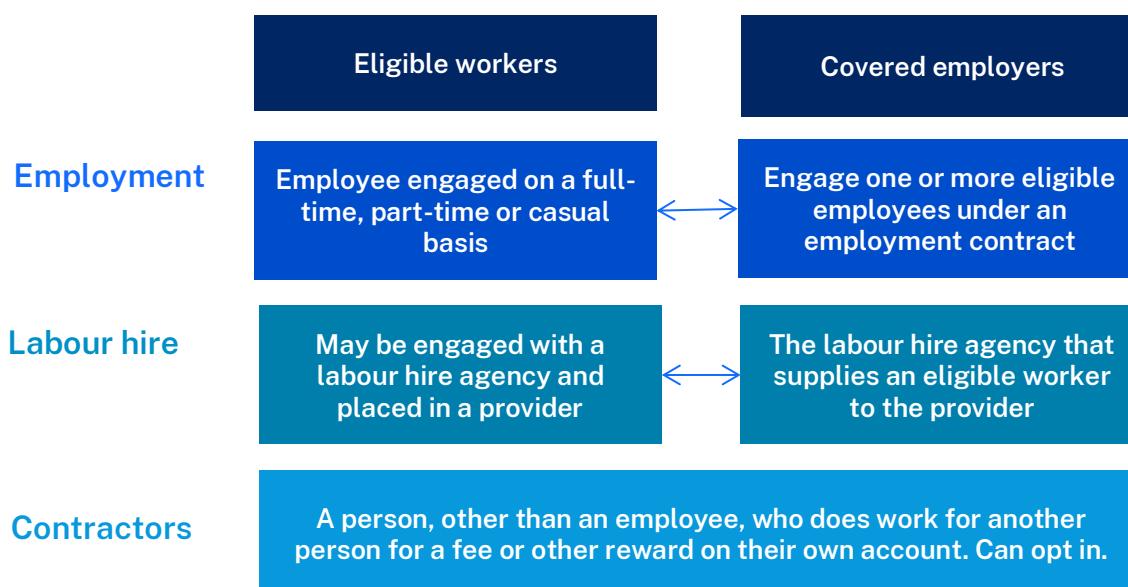
5.1.3 Workers, employers and contractors

Workers will include full-time, part-time, and casual employees as well as contractors who opt-in. An employer will include a person or body that has one or more eligible employees, including labour hire companies that supply eligible workers to a provider.

With each eligible employee there will be an employer who is covered by the scheme in relation to that employee. For example, they will pay a levy for each covered employee (see 5.3 Levy and funding). In the case of labour hire arrangements, the employer is the person who supplies the worker to an organisation.

Contractors who do community services work can opt in to participate by registering with the LSC, reporting their own records, and paying the levy with special provisions detailed later in this paper. A contractor means a person, other than an employee, who does work for another person for a fee or other reward on their own account.

Figure 5 Types of covered workers, employers and contractors



The Bill will not apply to workers or employers at any Commonwealth, state, or local government agency. Public agencies already have portable leave and there is a risk of cross-subsidisation if workers are covered. This exclusion may, however, impact portability if a worker switches from the private to public sector. There are options to mitigate the impact, such as by using regulations to ensure that a worker's registration is not cancelled if they simply switch to the public sector (see 5.2.3 Recognised service and breaks).

Additionally, people are automatically excluded in certain cases where they are a partner (that shares profits), director or trustee for the partnership, corporation or trust the work is performed for. This is consistent with the model in NSW for contract cleaning, however, other jurisdictions take different approaches. For example, in the ACT, directors who are also workers can opt in to participate similar to a contractor. This approach could be considered if some directors or partners would like the ability to opt-in to the scheme.

Consultation questions

3. Do you think the definitions for workers, employees and employers are appropriate?
4. Contractors will be able to opt-in to the scheme, with special provisions that apply around leave and payments. Do you agree with this approach?
5. Some directors, partners, and trustees will be excluded from the scheme, along with public sector employers and workers. Do you agree with this approach?

5.1.4 Declarations and regulations

To support the scheme to evolve over time, the Bill provides regulation making powers to add to the scope and also gives the Minister for Industrial Relations the ability to make determinations about the scope of the scheme. A declaration may specify that:

- work or an activity is or is not community services work
- a person is a worker, employee or contractor
- a person is an employer, or an employer of a particular worker or employee
- the predominant purpose of an employer is to provide community services.

The power to make a declaration ensures that the LSC or Minister can respond quickly where there is uncertainty to provide guidance on the application of the scheme. Flexibility will be particularly important considering the diversity of services and work. Similar powers are in place in the existing scheme for cleaning in NSW and in interstate schemes.

5.2 Long service leave

5.2.1 Initial entitlement to long service leave

Workers will receive 6.1 weeks of paid leave after 7 years of employment (2,555 days of service), with a 12-month gift of service for workers registered in the first 6 months.

Workers will have the same weekly accumulation as under the *Long Service Leave Act 1955*, which provides for 8.667 weeks of leave after 10 years, but with a shorter vesting period. For foundation workers who register in the first six months after the scheme first begins, an added one-off gift of service will further reduce the wait-time to access leave from 7 to 6 years. This gift will aim to incentivise registration and recognise workers for their tenure, as there will be no recognition of service completed before the scheme begins.

The Bill aims to strike a balance between keeping the initial levy rate low and improving access to leave. Based on actuarial advice, a 7-year vesting period with a 12-month gift of service is likely to require a levy set at around 1.7% of workers' ordinary wages.

Table 1 Estimated initial levy rate based on entitlement and gift options

Entitlement	6 month gift	12 month gift
6.1 weeks after 7 years	1.64%	1.7%
8.67 weeks after 10 years	1.58%	1.64%

A 10-year vesting period and/or a 6-month gift of service have been modelled but are not proposed as fewer workers are likely to qualify. As access and flexibility are key to achieve sector-wide benefits, there may be opportunity through a lesser incentive to choose and remain in the sector. See 5.3 Levy and funding and 6 Impacts.

Consultation questions

6. The Bill proposes that workers will receive 6.1 weeks of paid leave after 7 years of employment. Do you support this?
7. Should a gift of service be provided, and should it be 12 or 6 months?

5.2.2 Entitlement beyond 7 years of service

If a worker reaches and passes the equivalent of 7 years, under the draft Bill they will be entitled to a pro rata amount of leave after each extra year (365 days) of service.

The Bill will recognise workers for their continued dedication to the sector by providing an additional entitlement for each extra year of service. The weekly accumulation rate will be the same as the *Long Service Leave Act 1955* with 0.8667 weeks of leave for each 365 days.

Rather than an annual entitlement, alternative options could include a longer period like 5 years (similar to the existing schemes in NSW) or there could be no special arrangements with workers accruing leave in 7-year blocks. These options are not proposed as fewer workers may eventually qualify and they would be less customer friendly.

Another option is a daily accrual with a minimum week's claim, similar to the approach in Victoria and Queensland. This would help expand access but require a number of months or years before a worker can claim and may be administratively complex to manage, with flow-on impacts for other elements of the scheme such as the scheduling of leave.

Consultation question

8. Do you agree that workers who reach and pass the 7-year threshold should accrue a pro rata entitlement for each extra year of service? If not, what should apply?

5.2.3 Recognised service and breaks

For employees, the time they are employed will count towards an entitlement and not hours or days worked. Contractors will accrue service while they do community services work. Workers will be able to take a break of up to 4 years without a negative impact.

Eligible workers will need to be registered with the LSC and accrue one ‘service credit’ for each day employed, recorded in the register of workers. Recognising days employed, not hours or days worked, means part-time and casual employees are not unfairly prevented from accessing leave. For contractors, it will be based on when they start and finish work.

When an employee does not work on a given day, the worker will still accrue one service credit. However, the day off will be reflected in their average remuneration for the period because it will be lower compared to a period where they work every day. In some cases, the LSC may need to administratively adjust records if there a worker has an extended time off where no work is completed. For example, if an employer does not off-board the worker.

All workers, including contractors, will also be able to take a break for up to 4 years without losing service credits or entitlements. Because the Bill ties service to time employed, for workers who are employees any authorised leave will not count as a break. This is consistent with existing schemes in NSW and equivalent schemes in other jurisdictions. The break period aims to accommodate work and life changes, for example to support women and parents. This is important in a sector where over 75% of workers may be women.⁶

The 4-year break period will also apply in addition to special provisions that can help preserve a worker’s registration by suspending it instead of cancelling it. A suspension will only apply in special cases like pregnancy, serious illness, or caring responsibilities with allowances. The definition of these ‘non-service days’ will form part of later consultation on supporting regulations and could include if a worker switches to the public sector.

An alternative option could be to reduce the break, such as to 2 or 3 years, aiming to encourage workers to return to the sector. However, there is limited data available to assess this approach including how much time a worker may need. For example, for workers with responsibilities, an extended break of longer than 2 or 3 years may be needed. As such there is a risk of unintended consequences with a shorter break period.

⁶ Australian Bureau of Statistics (2021), *Characteristics of Employment – August 2021*: <https://www.abs.gov.au/>

Consultation questions

9. What do you think should count as recognised service? Do you agree that the model should be based on time employed, and not hours or days worked?
10. How long should workers be allowed to work outside the sector or take a break without losing their registration and service credits?

5.2.4 Payment without leave in limited cases

Generally, the leave entitlement will be provided by way of a payment to the worker or employer with the expectation that the worker will take leave. A pro-rata payment without needing to take leave will be available in limited cases only under the Bill.

The intent of requiring leave is to ensure that workers are able to take time off to rest and improve wellbeing. Most workers will need to take leave, but a pro-rata payment without needing to take leave will be available for some workers.

An early payment will be limited to where a worker has already reached 5 years and either intend to permanently leave the sector, or in relation to deceased estates. The Bill will require a 10 week 'holding period' where no service is credited before the payment is made, however the regulations will be able to reduce the time and expand the circumstances.

Alternative options could be considered, such as whether leave should be required or expansion the circumstances where a worker can receive payment without leave. For example, in the ACT scheme a contractor can receive a payment without needing to take leave. This may be appropriate as contractors are self-employed and to incentivise participation. A 10-week holding period may not be appropriate following a worker's death.

Where the LSC makes a pro-rata payment, the LSC will cancel that worker's registration and service credits (see 5.4 Registration).

Consultation question

11. Do you agree that employees and contractors should generally need to take leave in order to receive their entitlement? If not, in what other circumstances should they be able to receive a payment without taking leave?

5.2.5 Scheduling and taking leave

Eligible workers with accrued long service leave must take paid leave, either as a single block or staggered into blocks of at least two weeks.

Under the Bill, employees will generally need to take leave within 6 months of reaching an entitlement. This period can be extended by mutual agreement with their employer for up to 5 years, or if longer is needed either party may apply to the LSC for an extension.

The model aims to balance access to leave with employer resourcing needs. Initial consultation raised a concern about potential requests, such as that workers may request leave simultaneously after becoming eligible at 7 years. However, experiences in other jurisdictions suggest this risk may not materialise immediately. Another concern was the prospect of employees taking leave immediately upon starting a new role.

Initial consultation also highlighted a potential risk for employees if they are close to their entitlement and a provider does not view this favourably and, for example, considers this as part of recruitment. Some interstate schemes have a specific offence for adverse action.

Consultation question

12. What protections, if any, do you think are needed for workers or employers in relation to scheduling and taking leave? Do you think the Bill adequately achieves this?

5.2.6 Making a claim on the scheme

Employees and employers

The LSC will calculate payments for employees and reimbursements to employers based on a worker's average weekly wages and days of accrued service credits.

An employee may choose to receive the payment as soon as their leave begins or at a later date during their leave period. The amount payable for leave will be based on the employee's highest weekly average wage in the most recent 2, 4, 20, or 40 quarters of service. The specific formula is listed in legislation and summarised below:

$$0.8667 \times \frac{D}{365} \times R$$

D is the number of days of service credited to the registered worker in the workers register to which the amount payable relates

R is the highest of the weekly averages of the worker's ordinary pay during the most recent 2, 4, 20 or 40 quarters before the designated day.

Other options were considered but are not recommended as they may disadvantage some workers. For example, an average across the whole period of service may not reflect career progression or penalise workers who worked for some time casually.

Consultation question

13. Payment for leave will be based on an employee's highest weekly average wage in the most recent 2, 4, 20, or 40 quarters. Do you think the formula is appropriate?

Contractors

The amount of the payment to a participating contractor will include the amount of the levy payments they make to the fund, plus interest on their contributions.

The Bill proposes that the LSC will determine and apply a rate of interest each financial year, at least 75 per cent of the rate earned on the amount in the fund. If a worker has worked both as an employee and a contractor, for example initially as an employee before contracting for work, the payment will be proportionate to the time spent in each role.

Consultation question

14. The formula for payments to contractors is based on levy contributions and interest. Do you think this will incentivise contractors to opt-in to the scheme?

5.3 Levy and funding

5.3.1 The levy rate will depend on the design of the scheme

The scheme will be funded by a levy on employers, and contractors who opt-in, as a set percentage of ordinary wages. For employers this will be the ordinary wages of their eligible workers and for contractors their own wage.

As discussed above, to achieve the model in the draft Bill the initial rate will need to be approximately 1.7% of the ordinary wages of covered workers. For contractors the levy will apply to their own wages. The Bill requires the levy to be paid at the same time the employer or contractor makes its return to the LSC, which is proposed to be quarterly.

Scheme design and other market factors like wage growth and rate of investment return impact the levy rate. We engaged an actuary to provide advice on the required asset reserves and recommend an initial rate, including modelling alternatives and sensitivity testing for key variables. The recommendation of 1.7% will be needed to build asset reserve

levels during setup. Over time, the levy rate may reduce. In NSW, the levy for the cleaning scheme was initially 1.7% but recently reduced to 1% of the ordinary wages of workers.

Levies that are not paid in time may attract interest, if a rate is set in the regulations. This is consistent with the existing schemes in NSW and interstate schemes.

Consultation question

15. Do you think that a levy rate of 1.7% will be a fair cost for the benefits that the scheme will provide for workers and the sector?

5.3.2 How the levy will be set and adjusted

The Minister will set and adjust, where needed, the levy rate through a Ministerial order published on the NSW Legislation website.

The Bill provides that the order is disallowable, meaning that while NSW Parliament does not need to approve an adjustment it does have opportunity to object to the change and disallow the instrument. This approach gives flexibility to adjust the levy rate where needed, such as to reduce the rate once the fund matures, but also ensures that there remains an appropriate level of parliamentary and public oversight of the levy.

To decide if a change is needed, the LSC will instruct an actuary to assess the health of the scheme's fund and the adequacy of the levy rate. Under the Bill, actuarial valuations must occur at least every two years. The actuary's report will recommend whether the levy rate should be maintained, reduced or increased. Before issuing any order, the Minister will need to review any written recommendation from the scheme's actuary and from the LSC.

5.3.3 Contributions will be held in a central fund and invested

The Bill establishes discrete sector fund to pool contributions to the scheme, including not only levies but also initial seed funding and investment earnings on the fund.

The LSC will establish, administer, and control a discrete 'statutory special purpose fund' for the scheme. Payments from the fund will be limited, mainly to make long service payments for registered workers but also to cover reasonable expenses for scheme and fund administration. Any other payments from the fund must be authorised by law.

The fund will hold all contributions, including levy payments but also other contributions. The main types of other contributions include, for example:

- Investment earnings on contributions are a key supplement the fund, particularly once the scheme matures. The NSW Government's state-owned provider TCorp will manage investment under its sustainable investment strategy, see www.tcorp.nsw.gov.au.
 - Initial seed funding from the NSW Government, such as by way of a Crown advance negotiated prior to the scheme's roll-out. This is necessary to establish the scheme including hiring and training staff and making ICT upgrades before the scheme first begins. It may be repaid over the first 5 years at a long-term loan rate of around 6%.
-

5.4 Registration

5.4.1 The LSC's role and powers

The LSC will keep registers and have appropriate powers to make decisions on registration and to suspend, cancel, restore, or reinstate registration in specific circumstances.

The LSC will have powers to register workers and employers, and keep registers including information like participants, service, remuneration, and entitlements. The Bill provides the LSC with powers such as the ability to register workers on its own initiative, the authority to request additional information, and to refuse registration if criteria are not met.

The LSC will give written notice of each registration decision within 14 days of the decision, as well as electronic certificates of an employer's registration. Decisions to refuse, cancel or suspend registration must include the reasons and relevant appeal rights.

5.4.2 Employer registration

Employers will need to apply to the LSC to register as an employer within one month of the scheme's commencement, or becoming eligible, and keep details up to date.

An employer's registration will remain current while they engage eligible workers. However, the LSC will be able to cancel an employer's registration in cases where the employer was never entitled to registration and on request if they no longer intend to work in the sector.

5.4.3 Worker registration

While a worker can choose to register in the scheme, primary responsibility for the application and any updates to a worker's registration will rest with the employer. Contractors who opt in will apply for their own registration.

A worker must be registered to record their service and accrue entitlements under the scheme, as service credits are recorded in the register. In case registration does not happen in time, the LSC will be able to backdate a worker's registration to record service credits.

If a worker does not register within 3 months of becoming eligible, their employer will need to apply within 14 days of the end of the 3 months. The employer will also have ongoing obligations to promptly update the LSC about any changes within one month of the change.

A worker's registration will remain current and active while they are employed in the sector. The LSC will assess whether a worker remains active based in the information that their employer keeps and reports periodically (see 5.5 Records and returns).

In cases where a worker has an extended break in service, reflected in reporting to the LSC, their registration may be cancelled or suspended. A cancellation will have a greater impact because it will also cancel the service credits and entitlements of the worker. A suspension can help preserve access to credits and entitlements but under the proposed Bill will only apply in special circumstances prescribed by regulations, like serious illness.

Table 2 Suspension, cancellation and restoration of a worker's registration

Action	What triggers the action
Cancellation of registration	<p>The LSC must cancel a worker's registration if the worker has:</p> <ul style="list-style-type: none">• Experienced 4 consecutive years with no service; OR• Taken a pro-rata payment; OR• At the request of the worker. <p>The LSC may also cancel a registration if satisfied the worker is not eligible for registration.</p>
Suspension of registration	<p>A worker's registration may be suspended, instead of cancelled, if:</p> <ul style="list-style-type: none">• The worker has accrued 5 or more years of credited service; AND• Experiences a gap of 4 years with no service due to a special circumstance prescribed by regulations (e.g. serious illness).

Action	What triggers the action
	A worker can access any entitlements accrued while suspended, however time limits may apply in relation to deceased estates.
Restoring or reinstating a registration	The LSC may only restore a cancelled registration in special circumstances, or when a worker records service within 4 years of the cancellation in another jurisdiction with a reciprocal arrangement. The LSC may reinstate a suspended registration at any time.

Consultation question

16. Do you think the proposed thresholds for suspension and cancellation of registration are appropriate? If not, what should be different?

5.5 Records and returns

5.5.1 Record-keeping by employers and contractors

Employers will need to keep and retain records including information about each eligible worker's days of employment and wage. Contractors must keep equivalent records.

This information will need to be retained for at least 7 years after a worker's employment ends, or for contractors 7 years after the record is made. The information is needed to calculate entitlements and levies and provided in periodic returns, and broadly includes:

- employment or engagement details including start date, end date and where relevant the employment contract
- employee identifying details such as name, date of birth and registration number
- work details such as the type and number of days
- remuneration or wage details for each return period
- any long service leave and payment details.

Consultation question

17. Do employers already keep this information? If not, what would be new?

5.5.2 Returns to the LSC

Employers will need to make a periodic return to the LSC for each registered worker including the days employed and wages. Contractors must report similar information.

The Bill will require returns quarterly, similar to Queensland, Victoria and the ACT. Unless an exemption applies, each covered employer will need to submit a return within 14 days after the end of each quarter using an approved form. The return will need to include contact details and work-related information such as total ordinary pay, worker engagement dates, and other prescribed details. Employers will also need to make sure that the information they hold, and report to the LSC, are accurate and up to date. Penalties will apply for late submissions and submissions that do not include all the information needed.

Exemptions from record keeping and return obligations will apply in limited circumstances. For example, an employer does not need to record information where a worker:

- is not a registered worker, and
- was not a recorded worker in the employer's previous return, and
- worked for the employer for less than 5 days in the current return period.

An employer can apply to the LSC for an exemption from giving a return for a worker if the workers are no longer engaged or are covered by another long service leave scheme. Once granted, the LSC may revoke an exemption through written notice with the reason.

Quarterly reporting will offer timely data but will have an administrative cost. One option may be to consider more flexible reporting obligations, such as a tiered structure where smaller entities report and pay levies annually and upon request if a worker makes a claim. However, reducing reporting frequency may result in gaps in service records. Additionally, while medium and large organisations may have more resources the complexity of their reporting and records may also be greater. The Bill includes a regulation making power to modify or provide more information on reporting obligations.

Consultation question

18. How do you think the administrative obligations will affect employers, and will the impact vary? How could the design of the scheme help address these impacts?

5.5.3 Annual statements of service

Workers can monitor their progress with an annual statement of service available on the LSC's online portal at the end of each financial year, or upon request.

The annual statement of service will clearly outline each worker's service records which will include details such as the:

- total number of days of service from the registration day until the end of the previous financial year
- number of days service in the previous financial year
- total remuneration paid to the worker by a registered employer during the previous financial year
- total levy amount paid by a self-employed contractor for the previous financial year (for self-employed contractors only).

Workers may make an objection to the LSC if the worker believes they should have been credited with more days of service, within 2 years of receiving the notice.

5.6 Relationship with other laws

5.6.1 Interstate recognition and claims

The Minister will have the power to enter into reciprocal agreements with the Minister of another jurisdiction that has an equivalent scheme.

Reciprocal agreements under the Bill will facilitate the recognition of eligible work and the portability of entitlements, supporting workforce attraction, retention, and development across participating jurisdictions. Provisions in the Bill explicitly permit agreements to:

- cover payments for or in lieu of long service leave
- exchange service credit and entitlement information across borders
- do anything else in relation to the benefits that the Minister considers appropriate.

Having the ability to enter into administrative arrangements, rather than embedding recognition provisions in the Bill, is important as the community service schemes are not uniform. For example, the Queensland scheme covers disability services work by non-profit and for-profit entities, while the Victorian scheme only covers supports that are funded by the NDIS.

Reciprocal agreements accommodate differences and give flexibility to adapt to changes. The specific recognition arrangements will need to be considered and discussed with interstate scheme administrators as part of the implementation of the scheme. For example, whether work completed in NSW will be recognised under their respective schemes.

Consultation question

19. Are there any examples or complexities linked to work delivered in border communities or across jurisdictions that you think the scheme should account for?

5.6.2 Interaction with other leave entitlements

The portable scheme will complement long service laws and will not impact eligibility for any existing scheme. A worker will be able to choose which scheme applies.

The Bill will operate alongside existing long service leave entitlements, as well as the NSW cleaning and building schemes. The roll-out of the new portable scheme will not impact eligibility under another scheme, but there will be no double dipping.

Continued eligibility is important so that workers do not effectively forfeit the time that they have already spent at their employer. In some cases, it will be more beneficial for workers to continue to reach an entitlement under the *Long Service Leave Act 1955*. In this case, the worker can still register in the scheme but must notify the LSC of their intent. The Bill includes reimbursement provisions for employers. Reimbursements do have limitations, for example, a payment will not be made for service completed before the new scheme starts.

The proposed gift of service will only be able to be claimed under the portable scheme, and will not count towards an entitlement under existing long service laws.

Figure 6 Example of transition to the portable scheme

Olivia has already worked for 8 years with a single provider. When the portable scheme rolls out, her employer registers her as a worker and begins paying the levy on her wages. Registration in the new scheme does not impact her eligibility under the *Long Service Leave Act 1955*, meaning that if she stays with her employer for another 2 years, they can pay her leave as they would normally. Olivia's employer can then seek reimbursement from the LSC to cover the 2 years she was part of the portable scheme.

5.7 Scheme governance

5.7.1 The LSC will administer the scheme

The LSC will administer all aspects of the scheme and have any reasonably necessary powers including for fund management, registration, levy payments, and claims.

The LSC will administer the scheme including fund management, worker and employer registration, levy payments, benefit accrual, and processing claims, among other responsibilities. Its audit and risk committee will be expanded to include the new scheme with functions including management and monitoring of risks and internal controls.

The LSC is best placed to administer the new scheme as it has established resources, and administrative systems and processes, which will reduce the initial start-up costs associated with the new scheme. For example, sharing ICT systems across three schemes will help reduce the cost to each sector through economies of scale.

5.7.2 Community services sector committee

A dedicated sector committee will be established for the new scheme and serve as a key appeals body, as well as providing advice on the scheme.

Functions

The new committee's primary role will be to adjudicate appeals on LSC decisions such as on registrations, service credits, and levy assessments. The committee will also advise on administration, investments, and customer service standards, and serve as a 'Customer Council' to ensure service quality. This will help ensure procedural fairness and give the sector a formal, ongoing role in the administration of the scheme.

Appeals

The regulations will include details on the appeal process and timeframes, but under the proposed Bill appeal rights will apply for all key administrative decision, such as:

- refusing or cancelling a registration
- refusing recognition and recording of service
- refusal or removal of service credits
- the amount of a levy payable
- a direction to pay interest on levies
- refusing to grant an exemption, or revoke an exemption from lodging a return
- any limitations to the minimum and maximum rates of pay used to pay claims.

Under the model in the Bill, appeals can only be made to the committee. An alternative approach is to authorise the LSC to handle minor appeals, expediting their resolution and enabling the committee to focus on more complex matters. For example, cases where a decision could be reversed once more information is provided by the relevant party.

Constitution

The committee's constitution will consist of diverse expertise, including nominees from prescribed entities. The Bill will set out these entities including sector, worker and employer representatives. Gender diversity may also be considered to ensure representation. Currently, the Bill proposes that the committee is made up of 9 members including the Secretary (as the Chair) with members appointed by the Minister for Industrial Relations:

- 2 persons on the nomination of a relevant peak employee body
- 2 persons on the nomination of a relevant employee body
- 2 persons on the nomination of a relevant employer body
- 2 persons on the nomination of another relevant employer body.

Consultation questions

- 20.** Do you support the functions and role of the committee? Do you support adding an initial LSC review process, or are there any other adjustments you think are needed?
- 21.** Do you think the proposed constitution of the committee is balanced and appropriate to administer its functions and role?

5.8 Compliance and enforcement

The Bill aims to provide a strong framework and includes enforcement powers. When deciding on the appropriate course of action, the LSC considers a range of compliance options. The intent is to enable the most suitable response to instances of non-compliance, prioritising outcomes for the scheme, participants, stakeholders, and the public.

Table 3 Compliance and enforcement options and outcomes

Level 1	Level 2	Level 3	Level 4
Education Guidance and advice on self-regulation	Warning Removal of service Registration cancellation	Penalty Infringement Notices Internal and external debt collection	Prosecution

5.8.1 Offences and penalties

Offences and penalties will apply for non-compliance with key obligations, proportionate to the severity of the offence and consistent with similar offences in other schemes.

For example, failure to pay the levy, to register workers, or providing false or misleading information. The maximum penalties are the maximum fine that a court may impose for serious and repeated instances of non-compliance. The offences and penalties align with the NSW contract cleaning scheme and similar offences in interstate schemes.

Table 4 Summary of offences and maximum penalties in the Bill

Maximum penalty	Summary of offences
\$5,500 (50 penalty units)	<ul style="list-style-type: none">• Providing false or misleading information• Obstructing authorised officers in an investigation or performing duties, or not complying with inspection powers• Employer fails to apply for registration as an employer in time• Employer fails to grant long service leave in time• Unlawful disclosure or use of information
\$4,400 (40 penalty units)	<ul style="list-style-type: none">• Employer does not provide return for registered worker in time, does not provide required information in the return• Employer does not give notice of a change in return• Person fails to verify information on request by regulator, or give information reasonably requested
\$2,200 (20 penalty units)	<ul style="list-style-type: none">• Employer does not apply for registration of a worker in time• Contractor does not give return with required information• Employer/contractor does not keep records and documents, or does not meet the record retention period• Employer does not pay levy, or does not pay any extra levy due to a change in the return
\$550 (5 penalty units)	<ul style="list-style-type: none">• Employer does not provide notice of change in details in time

5.8.2 Compliance and enforcement options

The LSC and inspectors will have investigation and enforcement powers to assess compliance including the ability to issue penalty infringement notices and recover debts.

Education

Education is the least formal and most common approach to resolve isolated incidents, minor, or technical issues. It will be a key focus, especially when the scheme starts.

Audits and investigations

The LSC will be able to appoint inspectors and determine their functions including to conduct regular audits, reviewing records and on-site inspections if needed. For example, the LSC and inspectors will have statutory powers to confirm details of employers and workers, request additional information, and validate levy payments and worker claims. The Bill aims to integrate best practice for procedural fairness and transparency, such as by requiring inspectors to produce identification on request.

Unpaid fees, levies, and charges

The LSC will be able to begin internal debt collection, or engage an external agency, when an investigation discovers that there is a significant amount due to the scheme. This may be where a person has not paid a levy in full, or the scheme made an overpayment. This debt may include any charge, fee, levy, penalties, and interest where applicable. If unsuccessful, the LSC will have the option to commence proceedings in a court of competent jurisdiction to recover the money. If a person is convicted, a court can impose a penalty but also order the person to pay a levy equivalent to what they would have paid as an employer.

Penalty infringement notices

Inspectors will be able to issue penalty infringement notices to for a limited set of offences to take immediate corrective action for easily substantiated and less serious offences. The supporting regulation will prescribe the offences that a penalty infringement notice may be issued for, as well as the corresponding fine (known as a penalty amount).

Prosecution and court proceedings

For more serious or repeated non-compliance, the LSC will be able to commence proceedings in court generally within 6 years of the alleged offence.

Consultation question

22. Are there any other compliance and enforcement options that you think the Bill should include, or gaps that have not been identified?

5.8.3 Information sharing and reporting

The Bill includes provisions to protect information against disclosure, in addition to general privacy law, but also limited disclosure and information sharing provisions.

Confidentiality of information

Under the Bill, a person must not disclose information that was obtained in the administration of the scheme without a clear statutory power. A general offence applies under the Bill for a contravention of this provision. Privacy laws and principles also apply to protect personal and any health information.

Referral, disclosure, and information sharing

Initial consultation highlighted there may be a need for third parties or registered industrial organisations to refer issues to the LSC to investigate or audit, either on behalf of an individual or a group. The Bill does not prevent scheme participants, or their representatives, from reporting of grievances or suspected non-compliance to the LSC. However, an alternative is to include an express provision that does not require a particular response.

The Bill authorises the disclosure of information in defined cases such as with consent, for scheme administration, and for legal proceedings, or with other lawful excuse. It also allows the LSC to report serious, repeated instances of non-compliance to government funding agencies. The information could then be considered in decisions about grant eligibility and funding. This approach is similar to other jurisdictions like Victoria and the ACT.

The LSC will also be able to enter into an information sharing arrangement with a relevant government agency in Australia to fulfill its statutory functions or the functions of the other agency. This aims to allow for the two-way exchange of information with NSW Government agencies and disclosure to interstate agencies. It will provide a limited exception from NSW privacy principles, but only where reasonably necessary and with an approved agreement.

Consultation questions

23. Do you support the confidentiality and information sharing provisions in the Bill?

24. Should third parties be able to report non-compliance to the LSC?

5.9 Transition and implementation

The Bill will commence on proclamation after it has passed parliament. For example, if the Bill were to pass in mid-2024 the scheme could start from mid-2025. An added one-year grace period will apply that focuses on education and encouraging self-regulation.

Subject this consultation, we propose a one-year implementation phase and subsequent one-year enforcement action grace period to help ensure a smooth transition.

Commencing the Bill on proclamation will aim to support a smooth transition. For example, to allow time for the design of supporting regulations (including public consultation) and for employers and the LSC to prepare for the scheme's commencement.

Once the scheme commences, the added one-year grace period could focus on education, guidance and encouraging self-regulation. For example, the LSC generally would not take enforcement action in this time unless needed to address more significant and repeated non-compliance. This can be done administratively and will not be set in legislation.

The Bill will also require statutory review to be tabled in NSW Parliament within 8 years of the scheme first commencing. This will aim to assess the ongoing validity of the Bill's policy objectives and whether the provisions of the Bill remain appropriate to achieve them. A period of at least 8 years will allow a full review once the first workers have made claims.

Consultation question

25. Do you think the suggested one-year transitional period is sufficient for the sector to understand and prepare for the commencement of the scheme?

6

Impacts

6.1 Benefits

6.1.1 Workers

Workers are the main beneficiary of the scheme, which will increase the value of long service leave payments as more workers eventually qualify. Expanded access may help manage workplace stress, burnout, and fatigue and as a result help improve wellbeing. A scheme may also help support government and sector efforts to improve gender outcomes, with a primarily female workforce, and economic outcomes for cross-border communities.

The proposed model in the Bill aims to maximise the realisation of these benefits by adopting a broad definition of the sector. Covering community service and support work is likely to increase the number of workers who register and support career progression from frontline to leadership roles, without the risk of the loss of service accrued. A vesting period of 7 years, rather than 10 years, and the added 12-month gift of service will increase the number of workers who eventually qualify for a benefit. Providing for breaks in service may support workers to remain in employment and help attract and retain key worker groups, for example insecure workers, women, parents, carers, peer support and other workers.

Several alternative options, as discussed, may mean that less workers can register or mean that fewer workers eventually qualify. For example, in the ACT community services scheme the median time that registered workers spent in the sector was 34 months⁷ while data from sectors like disability services suggests that while demand is growing turnover is as well. As such a longer vesting period, reduced service, and limitations may reduce total benefits paid. Options that would expand the scheme's scope like including additional services would result in a higher amount of benefit for workers, but not in the short-term.

6.1.2 Employers

In practice, the realisation of benefits for employers and the community are dependent on increasing the proportion of workers who qualify for leave. A scheme that is more beneficial for workers will provide a better incentive to remain in the sector, meaning maximising the number of workers who make a claim may be able to support better value for money.

Employers and the sector will also benefit if these benefits are realised. For example, improved wellbeing and productivity may have savings due to the retention of knowledge,

⁷ Insight Consulting Australia (2023), *Industry workforce analysis: community sector January 2017 – December 2022*

expertise, and improved morale. For each staff member retained, there may be savings for recruitment, onboarding, and upskilling such as on advertisement costs, time savings for leadership in hiring. High turnover also has consequences for workers, for example in increasing workers' workload during recruitment and onboarding. By helping retain workers, the Bill may also have time savings if handovers, onboarding, and training are not required.

6.1.3 Community

Similarly, better health and wellbeing can support quality service provision for the benefit of both employers and the broader community. For example, helping to attract and retain workers may improve the quality of services while improved productivity may support increased choice, access to and continuity in care for individuals and the community.

Consultation question

26. Are there any additional benefits that you think the scheme will provide?

6.2 Costs

6.2.1 Employees

The Bill is unlikely to create any significant, direct costs for employees as while they may apply for registration, primary responsibility for administration rests with the employer.

However, there may be opportunity cost depending on the final design of the scheme. If alternative options narrow the scope of the scheme, compared to the proposed Bill, fewer workers may be able to register in the scheme and/or eventually qualify for an entitlement. In contrast, options like the inclusion of more sectors from the outset will in the long-term expand benefits to more workers. However, in the short-term it is likely to require additional time to design, consult and implement which may delay delivery and benefit realisation. Because the scheme will not include retrospective recognition of service, benefits may be redistributed with an opportunity cost for workers covered by the proposed Bill.

6.2.2 Employers and contractors

Overview

The levy will be the main cost for employers, and there will also be one-off and ongoing administration costs for employers and contractors who opt in. Both large and small providers may be impacted in different ways. For example, some small providers may be

more reliant on a single funding source with more limited cash flow however the total cost of the levy may also be less. In contrast, a large provider may have more diversified revenue, however the total value of the levy may be much greater.

Long service levy

As discussed, an initial levy of around 1.7% will be needed to implement the model in the Bill. However, variations in the final design of the scheme may reduce or increase this cost. The impact of the initial levy will depend on how an employer currently provisions for long service leave, and other factors like cash flow. There are two main components:

- Total cost of the levy for the provider compared to the cost of long service leave currently. It will not be an entirely new cost as employers have long service obligations. However, the amount may increase particularly initially as the scheme is set up.
- Reduced interest earnings and ability to reallocate funds as the levy will be an upfront cost paid to the LSC. Currently, under existing long service laws, provisioning is done in an employer's accounts with no specific requirements for how it must be done.

The total amount of the levy will depend on the number of workers each employer engages and their wages, for example assuming a levy of 1.7% and average weekly wage of \$1,700⁸ the cost for a full-time worker may be around \$29 each week or \$377 each quarter. Workers who are engaged on a part-time or casual basis will still reach the entitlement in the same time but both the payment and levy will be lower, reflecting hours worked.

Table 1 Estimate of weekly amount of the levy based on average weekly wage for full-time worker

Workers	1.70%	1.64%	1.58%
1	\$29	\$28	\$27
15	\$434	\$418	\$403
100	\$4,335	\$4,182	\$4,029
250	\$7,225	\$4,335	\$6,715

However, the cost of existing long service leave entitlements is difficult to quantify. Some organisations may set aside funds from the start of an employee's tenure, others beginning later, and some not provisioning at all. Based on the experience in Queensland⁹, provisioning

⁸ Wage of \$1,700 based on SCHADS Award – community services worker level 4 pay point 4

⁹ [Queensland Government](#), August 2018, *Investigation of the introduction of a portable long service leave scheme for the social and community services sector in Queensland Consultation Regulatory Impact Statement*

rates are likely to vary. For example, some may employers provision early but at a lower rate of around 1.3% to 1.6% and assume fewer workers will qualify, while others may provision at around 1.67% from a later point and assume all remaining workers qualify.

Employers that do not currently set aside any funds are likely to be more impacted, particularly if only a small proportion of their workers currently claim long service leave. The impact is likely to be less for employers who comprehensively provision, particularly if a relatively high number of workers tend to reach 10 years.

In the medium to long term there is potential for the fund to reach economies of scale, particularly as investment earnings supplement the fund. For example, in NSW scheme investment earnings can reach up to 40% of total annual revenue received to the fund.

Consultation questions

27. Do you, or employers, currently set aside funds for long service leave? If so, how?

28. What effect will the proposed levy have on you, or on employers generally?

Administration costs

Initial implementation costs may include the time spent understanding the scheme, developing new systems and processes, and training costs. Employers will also need to meet ongoing administrative requirements such as making periodic returns, paying the levy, applying for registration and reimbursements, and keeping records.

Most employers already keep comprehensive records to pay workers, track other entitlements (including existing long service leave benefits) and comply with other regulatory schemes. Assuming that employers have an administration cost of between 5 to 10 minutes per employee each quarter, the new scheme may mean employers need to spend an additional 5 to 10 minutes for each covered employee. If administration workers receive around \$35 per hour¹⁰, this cost of up to \$6 to \$12 per employee each quarter.

However, as with the levy payment, the actual impact will vary based on an organisation's size, structure and capabilities along with the final design of the scheme.

There are existing systems that can be used to reduce the time burden and cost for employers. For example, the LSC has an established online portal, currently used for the

¹⁰ Wage of \$35 per hour aligns with the SCHADS Award level 2 pay point 4 and submissions to Queensland consultation on the design of its portable long service scheme for community services

existing NSW schemes, where employers handle levy payments and submit returns. This portal will be updated to incorporate the new scheme.

6.3 Other feedback

Consultation question

29. Do you have any other feedback on the proposed scheme? If so, what is the issue and how do you think it could be addressed in the Bill?

6.4 Consultation questions

Eligibility & scope – page 13

1. Tell us what you think about the types of services we have proposed covering. Do you think that the services are clear, comprehensive and appropriate?
2. The Bill covers all workers who deliver community services and all employees if the employer's main purpose is to deliver covered services. Do you support this model?
3. Do you think the definitions for workers, employees and employers are appropriate?
4. Contractors will be able to opt-in to the scheme, with special provisions that apply around leave and payments. Do you agree with this approach?
5. Some directors, partners, and trustees will be excluded from the scheme, along with public sector employers and workers. Do you agree with this approach?

Long service leave – page 18

6. The Bill proposes that workers will receive 6.1 weeks of paid leave after 7 years of employment. Do you support this?
7. Should a gift of service be provided, and should it be 12 or 6 months?
8. Do you agree that workers who reach and pass the 7-year threshold should accrue a pro rata entitlement for each extra year of service? If not, what should apply?
9. What do you think should count as recognised service? Do you agree that the model should be based on time employed, and not hours or days worked?
10. How long should workers be allowed to work outside the sector or take a break without losing their registration and service credits?
11. Do you agree that employees and contractors should generally need to take leave in order to receive their entitlement? If not, in what other circumstances should they be able to receive a payment without taking leave?
12. What protections, if any, do you think are needed for workers or employers in relation to scheduling and taking leave?
13. Payment for leave will be based on an employee's highest weekly average wage in the most recent 2, 4, 20, or 40 quarters. Do you think the formula is appropriate?
14. The formula for payments to contractors is based on levy contributions and interest. Do you think this will incentivise contractors to opt-in to the scheme?

Levy and funding – page 23

15. Do you think that a levy rate of 1.7% will be a fair cost for the benefits that the scheme will provide for workers and the sector?

Registration, records and returns– page 25

- 16. Do you think the proposed thresholds for suspension and cancellation of registration are appropriate? If not, what should be different?
- 17. Do employers already keep this information? If not, what types would be new?
- 18. How do you think the administrative obligations will affect employers, and will the impact vary? How could the design of the scheme help address these impacts?

Relationship with other laws – page 29

- 19. Are there any examples or complexities linked to work delivered in border communities or across jurisdictions that you think the scheme should account for?

Scheme governance, compliance and enforcement – page 31

- 20. Do you support the functions and role of the committee? Do you support adding an initial LSC review process, or are there any other adjustments you think are needed?
- 21. Do you think the proposed constitution of the committee is balanced and appropriate to administer its functions and role?
- 22. Are there any other compliance and enforcement options that you think the Bill should include, or gaps that have not been identified?
- 23. Do you support the confidentiality and disclosure provisions in the Bill?
- 24. Should third parties be able to report non-compliance to the LSC?

Transition & implementation – page 36

- 25. Do you think the suggested one-year transitional period is sufficient for the sector to understand and prepare for the commencement of the scheme?

Impacts– page 37

- 26. Are there any additional benefits that you think the scheme will provide?
- 27. Do you, or employers, currently set aside funds for long service leave? If so, how?
- 28. What effect will the proposed levy have on you, or employers generally?

Other feedback – page 42

- 29. Do you have any other feedback on the proposed scheme? If so, what is the issue and how do you think it could be addressed in the Bill?

Department of Customer Service

12 Darcy Street
Parramatta NSW 2150

GPO Box 7057
Sydney NSW 2001

Office hours:
Monday to Friday
8.30am – 5.00pm

T: 02 13 77 88
E: PortableLSL@customerservice.nsw.gov.au
W: nsw.gov.au

