



**Government
of South Australia**

SafeWork SA

Portable Long Service Leave for the Community Services Sector

Discussion Paper

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Introduction

At the 2022 State Election, the Government committed to consult with workers, unions and businesses to expand access to portable long service leave in South Australia – modelled on the existing *Construction Industry Long Service Leave Act 1987*.

The Government identified the community services sector as a priority area for portable long service leave, noting the sector employs a high proportion of women, involves work that is emotionally and physically challenging, and which is subject to high staff turnover and short-term employment arrangements.

Following a period of initial stakeholder engagement, the Government has now released a consultation draft of the *Portable Long Service Leave Bill 2024 (the Bill)*. This discussion paper is released alongside the Bill to explain its key terms and how the new community services scheme will operate in practice, including a number of example scenarios.

How can I provide feedback?

SafeWork SA are seeking the views of stakeholders and the public in relation to the Bill. This feedback will be used to shape the final Bill prior to introduction into Parliament in 2024.

Any feedback received during the consultation period and how this has contributed to any changes to either Bill will be made publicly available after the consultation has concluded.

In preparing a submission, it is recommended that you consider the Bill and this discussion paper. The questions posed in the paper are a guide only, you do not need to respond to these questions when providing a submission. If you are responding to a specific question or section of a Bill, please include the reference to enable easy identification of responses. Where possible, your submission should provide reasoning for the position that is advocated and examples or evidence that supports the position.

Submissions can be emailed to SWSAPolicy@sa.gov.au or sent to:

Portable Long Service Leave Discussion
SafeWork SA
GPO Box 465
Adelaide, SA 5001

The closing date for submissions is Friday, 9 February 2024.

Please be aware that any submissions or feedback provided will be subject to the *Freedom of Information Act 1991*. While efforts will be made to keep material confidential where this is requested, in some circumstances submissions be required to be disclosed under that Act. Where disclosure of information may identify you, attempts will be made to consult with you before any documents are disclosed.

Frequently Asked Questions

What is long service leave?

Long service leave is a period of paid leave a worker can take after 10 years' service with the same employer. This allows the worker to take a meaningful break during their working life.

A worker's long service leave entitlement forms part of the [National Employment Standards](#), which apply to all employees covered by the national workplace relations system (which includes private sector employees in SA), regardless of any award, agreement or contract.

In South Australia, full-time, part-time, and casual workers are entitled to long service leave under the *Long Service Leave Act 1987*. This provides:

- an entitlement of 13 calendar weeks' leave following 10 years of continuous service with the same employer;
- a further 1.3 weeks leave for each further year of continuous service;
- a pro-rata payment if to a worker leaves employment after 7 years continuous service.

SafeWork SA is the regulator for long service leave provisions in relation to workers covered under the *Long Service Leave Act 1987*. Further information on long service leave entitlements under this Act is available on [SafeWork SA's website](#).

What is portable long service leave?

In recent decades it has become more common for workers to move between different employers or be employed on a casual basis. This means fewer workers get the chance to access long service leave because they cannot accrue a sufficient period of continuous service with one employer.

Portable long service leave means that a worker's long service leave entitlement follows them between different employers, rather than starting from zero every time a new employment relationship is entered. This means workers qualify for long service leave based on their service in an industry, rather than service with just one employer.

This gives workers an incentive to stay in the industry, boost their skills, extend their careers while providing better rewards for their work.

All Australian states and territories, including SA, have a portable long service leave scheme in operation for the construction industry.

Victoria, New South Wales, Queensland, and the Australian Capital Territory, have all expanded their portable long service leave schemes beyond the construction industry, with all now providing, or committing to, coverage of the community services sector.

What changes are proposed in South Australia?

The Bill proposes to establish a portable long service leave scheme for the community services sector in South Australia. In summary, the Bill:

- Creates a legislative framework to govern portable long service leave;
- Establishes a portable long service leave scheme for the community services sector;
- Establishes the Community Services Sector Long Services Leave Board (**Community Sector Board**) to govern and administer the new scheme;
- Provides for the funding of the new scheme through an employer contribution levy;
- Provides workers in the community services sector with an entitlement to 13 weeks of paid long service leave after they have accrued the equivalent to 10 years full time employment;
- Enables the Community Sector Board to monitor compliance with the legislation.

The Bill has been developed following extensive research into the portable leave schemes operating in other jurisdictions such as Queensland and Victoria, to identify the best model for South Australia. The Bill provides the potential that the legislation could be expanded by Parliament to include other industry sectors in the future.

Why the community services sector?

The community services sector is a priority area for portable long service leave. Many workers in the sector do not get access to long service leave because they experience short periods of service with different employers.

The community services sector employs a high proportion of women (around 83% of employees), involves work that is emotionally and physically challenging, and which is subject to high staff turnover and short-term employment arrangements.

Establishing a portable long service leave scheme will provide community services workers access to an entitlement that recognises their hard work in caring for our community and allow them to take a meaningful break from work.

This will also help employers by creating an incentive for workers to keep their skills within the sector, reducing staff turnover, improving employee satisfaction, and minimising costs associated with training replacement staff and funding staff shortages over time.

Other jurisdictions have already expanded portable long service leave to the community services sector. Victoria, Queensland, and the Australian Capital Territory have community sector schemes, and New South Wales has committed to do so in 2024.

Which community services employers and workers are covered?

For the purpose of the Bill it is necessary to define the community services sector, and those employers and workers who will fall within the scope of the new scheme.

The scope of the new scheme is defined in Schedule 2 of the Bill, and outlined at [Appendix 1](#) of this paper. This scope mirrors the Queensland *Community Services Industry (Portable Long Service Leave) Act 2020*, which is based on the coverage of the Federal *Social, Community, Home Care & Disability Services Industry Award (SCHADS Award)*.

Adopting the coverage of the *SCHADS Award* promotes clarity and consistency, as both employers and workers in the sector will be familiar with the award coverage and payroll systems will already be configured based on that award.

Workers within scope of the new scheme are defined as a person:

- employed in the community services sector to perform community services; or
- employed to support the provision of community services (such as administrative or clerical staff at a community services firm).

The scheme will cover workers who:

- are engaged as a full-time, part-time or casual employee
- are engaged under a contract for service, including labour hire workers
- work for both for-profit and not-for-profit organisations

Employers within scope of the scheme are those who engage one or more workers to perform community services work. If an employer has employees working in sectors outside community services, they will only be required to register with respect to those workers employed in the community services sector.

In addition to private sector employees, the Minister may prescribe that workers within a specific public sector agency will also be included within the scope of the scheme.

Example 1 – Employer engaging workers in multiple industries

ABC Pty Ltd is a multidisciplinary health group which provides both social services, and private medical consulting. It employs 70 workers in social services, and 30 workers in medical consulting.

Social services form part of the community services sector and are within the scope of the new scheme. Private medical consulting is outside the scope of the new scheme.

ABC Pty Ltd is only required to register (and pay contribution levies) with respect to its 70 workers employed to deliver social services. It is not required to register its 30 employees delivering private medical consulting services.

What will workers be entitled to?

Long service leave entitlement

Once a worker has accrued 2,600 service days (equivalent to 10 years full time employment) they will be eligible to take 13 weeks long service leave.

If a worker has accrued more than 1,820 service days (equivalent to 7 years full time employment) and will not be performing community services work for a minimum period of 12 months (as an employee) they will be eligible to claim a pro-rata payment. This means a worker will be able to be paid the monetary equivalent of the weeks of long service leave they have accrued at the time they cease employment.

While workers will be encouraged to take a decent break, it will be possible to take long service leave in minimum periods of 1 week.

How is payment for long service leave calculated?

Payment for long service leave will be calculated from a worker's average ordinary weekly earnings over the last 12 months service as recorded by the Community Sector Board at the time they take their long service leave.

If a worker does not have service recorded in the previous 12 months, they will be paid an average industry rate (calculated from the average weekly pay of workers in your classification of work, who took long service leave in the previous financial year).

Long service leave payments will be taxed in accordance with the Australian Taxation Office PAYG withholding weekly tax table. If a payment is made upon leaving the community services industry, this will be taxed in accordance with the Australian Taxation Office tax table for unused leave payments on termination of employment.

Who makes the payment?

A worker's long service leave will be paid to them by the Community Sector Board.

The worker's employer is not required to pay long service leave directly to the worker. Instead, they must pay a contribution levy to the Community Sector Board which is then invested to fund the portable long service leave scheme.

Workers will be paid in advance for the whole period of leave taken. This will be subject to any processing time, which under the existing construction industry scheme is approximately two weeks; and also subject to the worker's application being completed in full, with any required information being provided promptly.

How will a worker apply for long service leave?

When a worker is ready to take long service leave, they will be able to complete an online claim form requesting payment of leave from the Community Sector Board. The worker's employer will be required to approve the period of leave, subject to the rules and exceptions outlined on page 13 below.

What happens if a worker claims a pro-rata payment?

By claiming a pro-rata payment, a worker will break their period of service for long service leave purposes. This means that a worker will need to accrue a further 1,820 service days (equivalent to 7 years full time employment) before they will qualify for further leave.

A claim for pro-rata payment will be taxed in accordance with the Australian Taxation Office tax table for unused leave payments on termination of employment.

What will employers be required to do?

Register

If you're an employer in South Australia and engage one or more workers to perform community services work, you will be required by law to register with the new community services long service leave scheme.

The legislation will allow the Community Sector Board to extend the time for employer to register; for example, to allow the employer to align their transition into the scheme with the commencement of a new funding agreement.

Lodge Employer Returns

Employers will also be required to provide details to the Community Sector Board about your workers, by way of an Employer Return, within 21 days after the end of each return period prescribed by the regulations). It is proposed that return periods will be bi-monthly as occurs in the current construction industry scheme.

Pay Levies

Employers will be required to pay an annual levy to the Community Sector Board based on a percentage of their worker's ordinary wages. The payment of the levy replaces current requirements to budget for, accrue and pay long service leave to employees directly.

The levy will be set by the Community Sector Board and capped to a maximum of 3% of employee ordinary time earnings.

The same levy system currently applies in the construction industry scheme. By way of comparison, although the maximum levy is 3.0% the construction industry levy is currently 2.0% . Historically, the construction industry levy was 2.25%, reducing to 2.15% in 2017 and to the current rate of 2.0% in 2019.

The levy cannot be deducted from an employee's wage, however levies paid by employers will be tax deductible in the financial year they are paid.

Levies collected will be invested by the Board to fund the scheme. An actuarial review of the state and sufficiency of the Community Sector Board's funds will be conducted annually to review the financial position of the scheme and to predict whether income (levy and investment) will be able to meet the future long service leave liabilities, while maintaining the levy at the lowest possible rate.

Keep Records

Employers will be required to keep records to substantiate the details declared on Employer Returns. Records must be kept in South Australia for at least five years after completion of the period they relate to. Employers may be requested to provide these records to the Community Sector Board, particularly if a query arises from a present or past employee.

The Community Sector Board will keep a record of each registered worker's service and will pay workers directly when they become entitled to long service leave at no further cost to employers. Penalties will apply for keeping records known to be false or misleading.

How will employers and workers transition into the new scheme?

The legislation provides a period of six months after commencement for community services employers to register with the new scheme. This provides a grace period for employers to register themselves and their employees without incurring penalties for delays.

A number of example scenarios are provided throughout this paper to demonstrate how the transition to the community services portable long service leave scheme will operate.

Registration as an employer

If you're an employer in the community services industry in South Australia and engage one or more designated workers to perform community services work, you will be required by law to register with the new community services long service leave scheme.

The legislation will allow the Community Sector Board to extend the time for employer to register; for example, to allow the employer to align their transition into the scheme with the commencement of a new funding agreement.

Current community service workers

The Bill includes transitional provisions for current workers ensuring their period of continuous service is preserved following commencement of the new scheme.

For workers who change employers prior to reaching an entitlement under the *Long Service Leave Act 1987*, only the work performed following commencement of the new scheme will count towards the worker's portable long service leave entitlement.

Example 2 – Service with *same employer* before and after commencement

Jane has worked for ABC Pty Ltd in the community services sector for 5 years before the commencement of the community services scheme.

She continues to work for ABC Pty Ltd for a further 5 years after the commencement of the scheme.

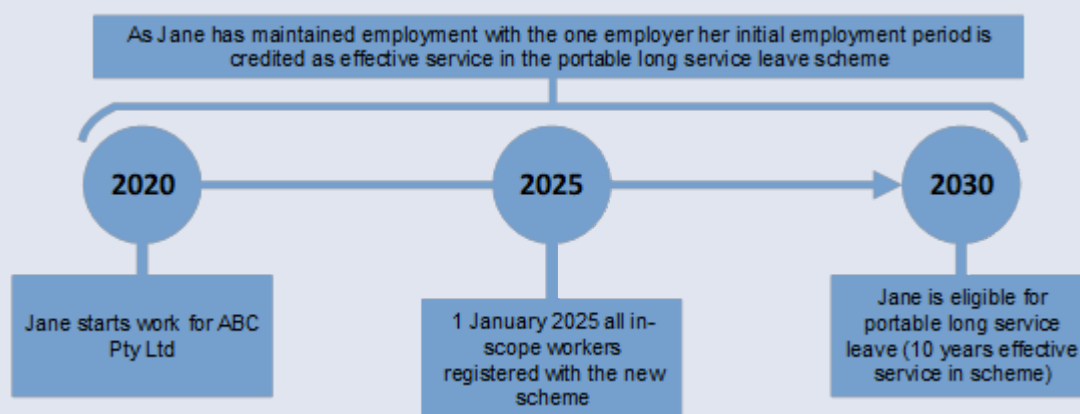
When Jane makes a claim for long service leave with the Community Sector Board, her initial 5 years' service *before* the scheme are credited as effective service, as well as her further 5 years' service *after* the commencement of the scheme.

This brings Jane's total period of service to 10 years, entitling her to 13 weeks long service leave.

The Community Sector Board pays Jane out of its funds for 13 weeks of long service leave, based on her average weekly earnings over the preceding 12 months before taking the leave.

Because the scheme has only been in operation and receiving contribution levies for 5 years, the Community Sector Board issues an invoice to ABC Pty Ltd for the value of the long service leave accrued in the 5 years *before* the scheme commenced.

ABC Pty Ltd would have been required to pay this entire period of leave directly under the *Long Service Leave Act 1987*, prior to the commencement of the community services scheme.



Example 3 – Service with *different employers* before and after commencement

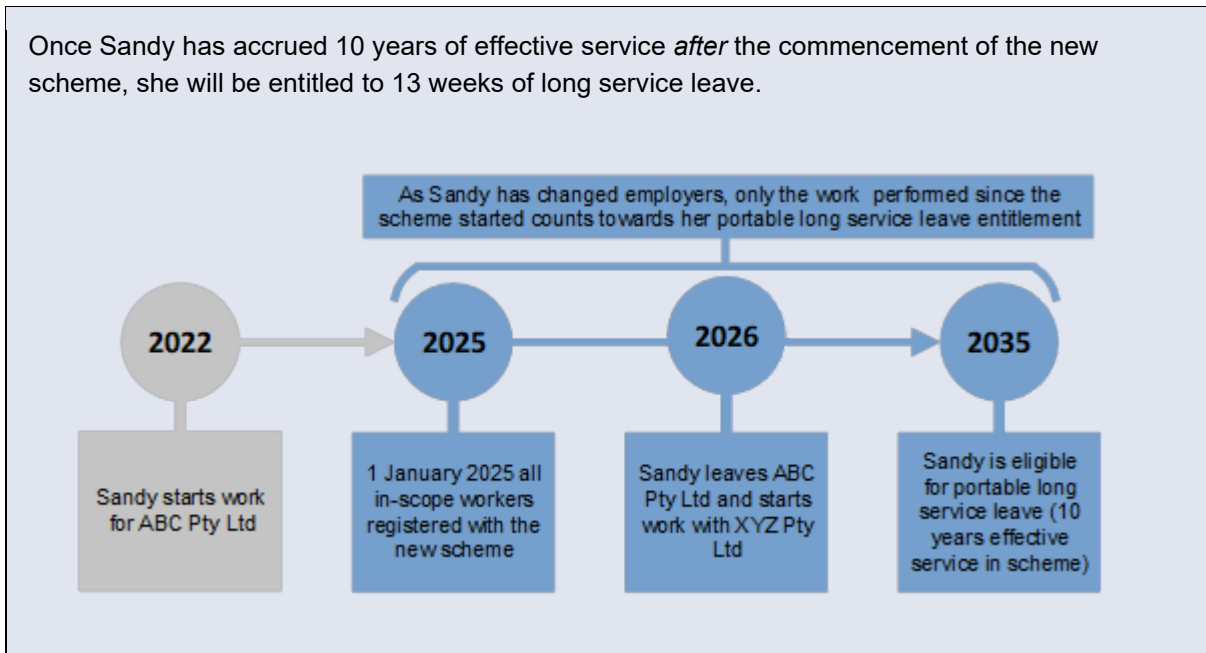
Sandy has worked for ABC Pty Ltd in the community services sector for 3 years before the commencement of the community services scheme.

1 year after the commencement of the community services scheme, Sandy resigns from ABC Pty Ltd to accept a new job with XYZ Pty Ltd, also in the community services sector.

ABC Pty Ltd would not have been required to pay long service leave to Sandy under the *Long Service Leave Act 1987* prior to the commencement of the community services scheme.

As Sandy has changed employers before reaching 10 years of continuous service (or 7 years for a pro-rata payment) with the same employer, only her 1 year of service *after* the commencement of the scheme counts towards her portable long service leave entitlement.

Once Sandy has accrued 10 years of effective service *after* the commencement of the new scheme, she will be entitled to 13 weeks of long service leave.



Example 4 – Worker entitled to long service leave *before* commencement

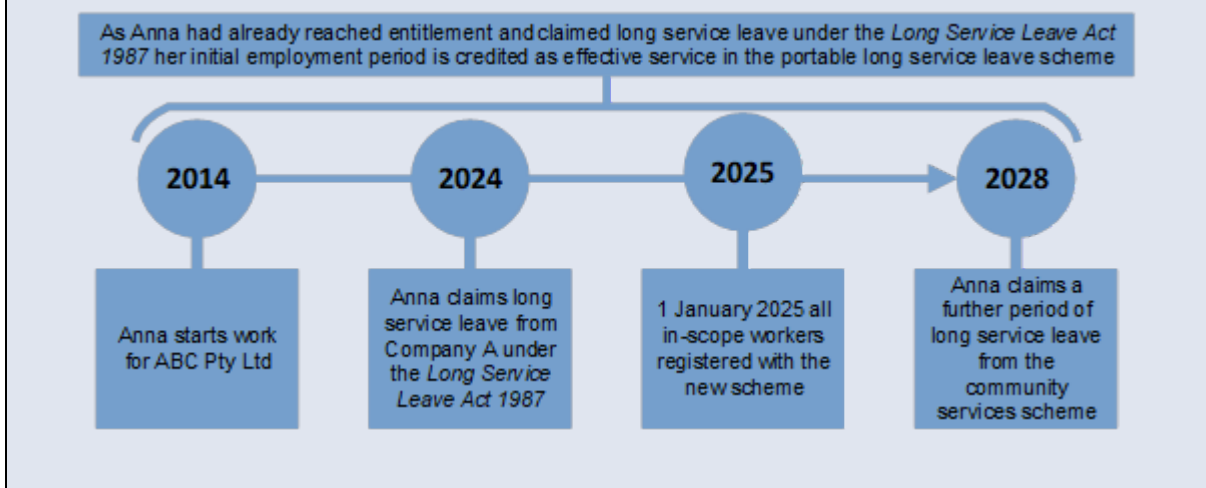
Anna has worked for ABC Pty Ltd in the community services sector for 11 years before the commencement of the community services scheme.

Prior to the commencement of the scheme, ABC Pty Ltd had already paid Anna for 13 weeks of long service leave in respect of her first 10 years of continuous service.

Anna continues to work for ABC Pty Ltd for another 3 years following the commencement of the community service scheme, before applying for another period of long service leave.

Anna’s initial period of 11 years’ continuous service is credited as effective service under the community services scheme. Her 3 years of service *after* the commencement of the scheme bring her total service to 14 years.

As Anna has already received 13 weeks of long service leave, she is entitled to claim a further 3.9 weeks of leave from the Community Sector Board in respect of service after her initial period of long service leave.



What happens if a worker takes an extended break?

Workers will be able to take an extended break from the community services sector (for example, taking parental leave or working outside the community services sector) without losing their long service leave entitlement, as long as their break fits in the timeframes below.

If a worker does not return to work in the community services sector within these timeframes, and then returns to work the sector at a later date, their period of continuous service will recommence from zero.

Number of service days accrued	Timeframe
Less than 1,300 (equivalent to 5 years full time employment)	2 years
More than 1,300 but less than 1,820 (equivalent to 7 years full time employment)	3 years
More than 1,820 (equivalent to 7 years full time employment)	No time limit (if a worker has accrued 1,820 service days they are eligible to claim a pro-rata payment)

Are there rules on when workers can take their leave?

An employer must grant a worker long service leave as soon as practicable after the worker becomes entitled to the leave and the worker applies to take the leave.

However, there are some waiting periods that apply, including:

- if a worker becomes entitled to long service leave within the first 60 days after commencing work with a new employer, the worker will not be is not entitled to commence the leave until after that 60-day period has expired; and
- a worker needs to apply for long service leave at least 60 days in advance of when they would like the leave to commence.

In addition to this, the timing of a worker's period of long service leave must take into account the reasonable needs of the employer.

Despite the above, and to ensure a level of flexibility, allows workers and employees to agree when the worker will take long service leave, including an agreement that the worker take the leave with less than 60 days' notice.

Will interstate service be counted toward a worker's entitlement?

After the community services scheme is established, the Community Sector Board may enter into reciprocal agreements with portable long service leave schemes in other States or Territories to recognise service in those jurisdictions.

If a reciprocal agreement is in place, then South Australian workers who have a period of service interstate may be able to have that service recognised under the new scheme.

Currently, Victoria, Queensland and the Australian Capital Territory have portable long service leave schemes for the community services sector.

Example 5 – Crediting interstate service

Tom has been working in the community services sector for 8 years in another state or territory with a community services portable long service leave scheme, such as Queensland or Victoria.

Tom moves to South Australia following the commencement of the South Australian community services scheme, and begins working for a community services employer.

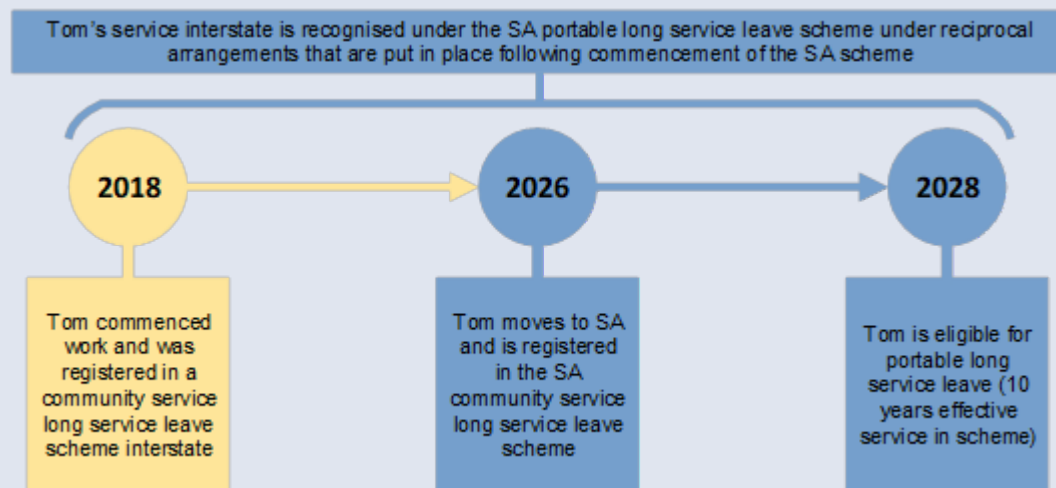
Following the commencement of the community services scheme, the Community Sector Board enters into a reciprocal arrangement with other jurisdictions to recognise service.

After 2 years in South Australia, Tom applies for long service leave.

The Community Sector Board recognises Tom’s 8 years of service interstate plus his 2 years of service in South Australia, bringing his total to 10 years of service.

The Community Sector Board will calculate the amount payable to Tom for his 2 years of service in South Australia. The Board will then contact the interstate scheme to determine Tom’s entitlements accrued under their legislation.

The Community Sector Board will then pay Tom the sum of both amounts, and issue an invoice to the interstate scheme for the amounts accrued in that jurisdiction.



How will the new scheme be governed?

The Bill will establish the Community Sector Board to govern the scheme.

It is important that the new scheme is industry led. The Community Sector Board will be made up of people who represent the interests of employers for the community services sector, and people who represent the interests of workers in the community services sector.

In appointing board members, the Minister must seek to ensure that members of the Community Sector Board collectively have the necessary skills, knowledge and experience to enable the board to carry out its functions efficiently and effectively.

The Community Sector Board will be responsible for the administration of the portable long service leave scheme for the community services sector, including determining the employer contribution levy that will fund the scheme.

The role of the CEO of the construction industry scheme under the *Construction Industry Long Service Leave Act 1987* will be expanded to be responsible to the Community Sector Board for the administration and compliance of the community sector scheme. This will deliver economies of scale for both schemes and build on the existing knowledge and expertise of portable long service leave staff.

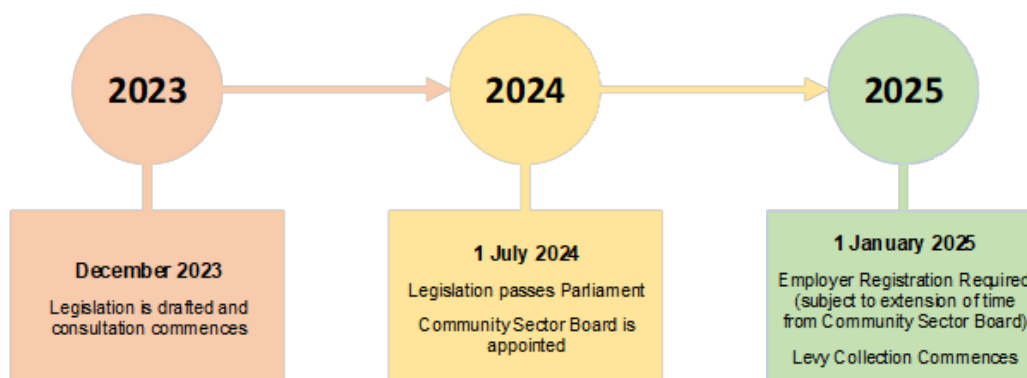
The Community Sector Board, through their staff, will provide educational and awareness programs to members of the community services sector to encourage compliance and will ensure that workers receive their entitlements once they become eligible.

When will these changes come into effect?

Timeframes will be subject to the successful passage of a Bill through Parliament.

Following public consultation, the Government's preliminary intention is that the Bill will be introduced to Parliament early in 2024, with the Community Services Board to commence operation from July 2024 and for employers to commence registration with the scheme from January 2025.

The Bill will be followed by a further consultation process on the supporting regulations. These regulations will be drafted once the Bill has successfully passed through Parliament.



Appendix 1

Community Services

- Aboriginal and Torres Strait Islander community services
- Accommodation support services
- Advocacy services
- Alcohol and other drug services
- Child safety and support services
- Community development services
- Community education services
- Community legal services
- Counselling services
- Disability emergency response services
- Disability support services
- Employment services
- Family and domestic violence services
- Family day care services
- Financial counselling services
- Foster care and out-of-home care services
- Home and community care services
- Homelessness support services
- Lesbian, gay, bisexual, transgender and intersex services
- Mental health services
- Migrant and multicultural support services
- Offenders transitioning services
- Respite services
- Seniors community support services
- Social housing services
- Violence prevention services
- Women's services
- Youth justice services
- Youth support services