



Portable Long Service Leave for the Community Services Sector

June 2024 Update

This update provides an overview of key feedback received from stakeholders during the public consultation process on the *Portable Long Service Leave Bill 2024*, and amendments the government intends to make in response to that feedback.

Coverage

The Bill was drafted to define the scope of the community services sector by closely following the range of community services covered by the *Social, Community, Home Care & Disability Services Industry Award (SCHADS Award)*, similar to the Queensland portable leave scheme.

Stakeholders raised concerns that this left uncertainty about which workers within an organisation were covered. For example, if an employer provides a range of different services which include community services, and employs fundraisers to raise money for the organisation as a whole, are those fundraisers covered by the portable leave scheme?

We will address this issue by refining the coverage of the Bill as follows:

- A worker is covered by the portable leave scheme if the employer is in the **community services sector** and the worker is covered by an **eligible award**.
- An employer is only required to register a worker with the scheme if they meet both of these requirements. If an employer engages workers to perform work *outside* the community services sector, they are not required to register or pay a levy for those workers.
- The **Community Services Sector** is work that involves the provision of the following 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

- A worker is covered by an **eligible award** if the work they perform has a rate of pay prescribed under one of the following industrial awards (even if the worker is paid a different rate under an enterprise agreement or individual contract):

- *Social, Community, Home Care & Disability Services Industry Award*
- *Aboriginal Legal Rights Movement Award*

- Additional services and awards can be prescribed by regulation. This will assist in ensuring coverage of the scheme remains up-to-date, for example if there are changes to relevant industrial awards.

- A **worker who supports the provision of community services** (such as a fundraiser or administrative staff member) will also be covered if:

- the person works in supporting the provision of community services at least half the time when they work for an employer in the community services sector during a return period; or
- an employer in the community services sector may elect to register an employee as a designated worker even if the worker doesn't spend at least half of their time supporting the provision of community services, and once the person is registered, they will be covered within the scheme while they remain employed by that employer. This will give employers the option of ensuring their entire workforce is covered by the scheme, which may be more administratively convenient.

Requesting to take long service leave

Stakeholders raised questions about the rules for when a worker can request to take long service leave from their employer, requesting leave when person has multiple employers, and who the application for long service leave payment will be made to.

The Bill provides the following:

- Once a worker has accrued 120 months (10 years) effective service they will be entitled to 13 weeks long service leave, and an additional 1.3 weeks leave for each subsequent 12 months of effective service in the sector.

- Applications for long service leave will be lodged with the Community Services Sector Long Services Leave Board (**Community Sector Board**). It is anticipated that this will occur electronically via an online claim form as occurs with the existing construction industry scheme. The person's employer, or employers if the person is registered with more than one employer, will be required to approve the period of leave online.
- Employers must grant long service leave to their workers when the leave entitlement arises, subject to some conditions:
 - A person cannot take long service leave within 3 months of commencing work with a new employer, unless this is agreed between the employer and the worker.
 - A person must apply for long service leave at least two months before they seek to commence the leave, unless a shorter period is agreed between the employer and worker.
 - The person must take the leave in whole weeks, with a minimum period of at least one week duration at a time.
 - If the employer and person agree, the person may elect to receive a payment in lieu of taking long service leave, or part of long service leave.
- Payment for the leave will be made to the worker by the Community Sector Board.

Calculation of continuous service

Stakeholders raised questions about how a worker's continuous service in the community services sector would be calculated if they were working for multiple employers on a part-time or casual basis.

Stakeholders also identified that the initial drafting of the Bill resulted in an unintended issue where part-time workers would need to work far longer in the sector to accrue a portable long service leave entitlement compared to the existing *Long Service Leave Act 1987*.

We will address this issue by amending the way effective service is calculated to more closely reflect rules for accrual under the existing *Long Service Leave Act 1987*:

- A worker can be credited with a maximum of 12 months effective service under the scheme for each year they have worked in the sector, regardless of whether they work full-time, part-time or casually.
- A worker's effective service will be calculated based on a quarterly reporting period. A worker will be credited with three months of effective service in a reporting period if they:
 - have worked in the sector for one or more days during the reporting period; or
 - if they have one or more days of allowable absence from work in the sector during the period (such as annual leave, sick leave, or parental leave).
- If a worker works for multiple community services employers during a reporting period, they can only be credited once for that period. There will be no double dipping.

- This system is consistent with the method of calculating effective service under both the Queensland and Victorian portable leave schemes.

Breaks from community sector

Stakeholders raised questions about what happens to a worker's long service leave entitlement if the worker temporarily takes a break from the community services sector. This is particularly important for workers who choose to access parental leave.

The legislation will allow a worker to take a break from the sector for a period of time without losing their long service leave entitlement:

- The period the worker can leave will depend on their length of service:
 - for workers with less than 5 years effective service, the worker can take a break for up to 2 years;
 - for workers with more than 5 years effective service, the worker can take a break for up to 3 years.
 - for workers with more than 7 years effective service, the worker has reached their pro-rata period and can leave the sector indefinitely without losing their entitlement.
- If the worker returns to the community services sector within this preservation period, they will pick up where they left off and continue to accrue their long service leave.

Rate of pay for long service leave

In amending the way workers accrue effective service, amendments will also be made to how a long service leave payment is calculated:

- A worker's long service leave payment will be calculated using their **ordinary weekly pay**, and will be taxed in accordance with the Australian Taxation Office PAYG withholding weekly tax table.
- A worker's ordinary weekly pay will be calculated by averaging their **weekly earnings** as a worker in the sector over the three years immediately preceding the end of the last completed reporting period prior to applying for long service leave.
- A worker's weekly earnings is their "total earnings before tax" which may include amounts paid for overtime, or penalty rates. Ordinary weekly pay will also include any amounts that have been deducted from the workers wages for salary sacrifice arrangements.
- Any week in which a worker did not work in the sector will not be included when calculating their ordinary weekly pay.
- Any worker who has not worked in the sector in the 12 months prior to taking long service leave will have their payment calculated averaging their ordinary weekly pay during the three years they last worked in the sector.

Salary sacrifice

Stakeholders identified that many workers in the community services industry employed by Public Benevolent Institutions have access to beneficial salary sacrifice arrangements. Questions were raised about how the legislation allows for such arrangements to be dealt with:

We will address this issue by including new provisions in the Bill to ensure these workers and their employers are not negatively impacted by the scheme by:

- Providing a mechanism so that an employer can apply to the Community Services Sector Long Services Leave Board (**Community Sector Board**) for an advance payment of a worker's entitlement, so that any necessary salary sacrifice disbursements can be made prior to the worker being paid.
- There will be a requirement for employers to demonstrate to the Community Sector Board that the worker has been paid the entitlement.

Enterprise agreements with more generous long service leave entitlements

Stakeholders identified that some workers in the community services sector have their entitlement to long service leave regulated by an enterprise agreement providing more generous long service leave entitlements than provided under the *Long Service Leave Act 1987*.

Stakeholders wanted to ensure these arrangements were not disadvantaged under the Bill.

The Bill will be amended to address this issue to provide:

- Where an enterprise agreement provides a person with a more generous long service leave entitlement, that entitlement will prevail over the entitlement provided under the portable long service leave scheme.
- Where an enterprise agreement provides that a worker may take long service leave in anticipation of an entitlement accruing, then a worker can take long service, and the person's long service leave entitlement under the portable long service leave scheme will be reduced accordingly.

Example 1 – Enterprise agreement providing earlier entitlement to long service leave

- Sarah has been employed by ABC Pty Ltd as a disability support worker in the community services sector for 60 months (5 years).
- Sarah's employment with ABC Pty Ltd is covered by an enterprise agreement that provides that ABC Pty Ltd staff who have five or more years' continuous service with ABC Pty Ltd are entitled to take 1.3 weeks long service leave for each completed year of service.
- Sarah makes an application for long service leave with the Community Sector Board with respect to her long service leave entitlement of 6.5 weeks (1.3 weeks each year for 5 years) with ABC Pty Ltd.

- The Community Sector Board will be required to pay Sarah for 6 weeks of long service leave, with the amount paid determined on her average weekly earnings over the preceding 3 years (or in line with transitional provisions if Sarah's entitlement includes an amount of pre-scheme service).
- The Community Sector Board will update Sarah's records to reflect that 6 weeks leave was taken by Sarah, and she will continue to accrue 1.3 weeks of long service leave in respect of each subsequent 12 months of effective service that she remains working in the community services sector.

Calculation and payment of employer levy

Stakeholders raised a variety of questions about the calculation of the employer levy, and what happens to any funds the scheme holds which are not paid out to workers (for example, if a worker leaves the sector before they become entitled to long service leave).

The Bill will provide:

- Employers will be required to provide a quarterly Employer Return and pay a levy within 21 days after the end of each return period:
- The levy will be calculated as a percentage of the gross remuneration paid by the employer to each of their workers covered by the community services scheme during each return period.
- Employers will not pay any levy for any person employed by them who:
 - is not working in the community services sector,
 - works for the employer for less than three days in a month, or
 - is an apprentice.
- Employers will be able to apply to the Community Sector Board to extend the time for the employer to register in the scheme (for example, to allow the employer to align their transition into the scheme with the commencement of a new funding agreement).
- The Bill will cap the maximum levy rate at 3% - however, in practice, other jurisdictions have set their portable long service leave levy for the community services sector significantly lower than the maximum. For example, the levy is currently:
 - 1.35% in Queensland,
 - 1.65% in Victoria, and
 - 1.60% in the Australian Capital Territory.
- The levy will be determined by the Community Services Board (which includes both business and worker representatives) based on expert actuarial advice about the funding needed to meet long-term liabilities under the scheme.
- It is expected that the levy will be kept as low as possible for employers while securing the financial viability of the scheme.

- Levy contributions will be invested by the Community Services Board, and investment returns will be used to help fund the scheme. Any funds which are not paid out to workers will be re-invested into the scheme to put downward pressure on employer levy rates.

Transitioning to the portable scheme

Stakeholders raised a variety of questions about the process of transitioning workers onto the new scheme once it comes into effect, and how it will work for people who work multiple jobs with multiple employers.

We will amend the Bill to better clarify transitional issues. The below information and examples are provided to clarify how these transitional provisions will apply in a variety of different employment situations:

- The Bill will make it clear that existing long service leave entitlements are preserved, whether this be an entitlement under the *Long Service Leave Act 1987* or a more beneficial entitlement under an enterprise agreement (ie. if a worker has reached the required period of service with the one employer, they can still take their long service leave after the scheme comes into effect).
- Employers remain responsible for any portion of long service leave accrued prior to commencement of the portable scheme, for workers employed immediately prior to and upon registration in the scheme, who:
 - Already have an entitlement under the *Long Service Leave Act 1987* having completed at least 7 years of service prior to commencement of the new scheme, or
 - Accrue 7 years of continuous service with the employer, with service undertaken prior to and after the commencement of the new scheme.
- Employers will need to maintain their existing long service leave provisioning in relation these workers to ensure that they have sufficient funds on hand to meet these obligations.
- If a worker becomes entitled to long service leave based on a period of service with the same employer both before and after the portable scheme commences, the worker's long service leave will be paid by the Community Sector Board. The payment will include two amounts:
 - an amount paid by the Community Sector Board to reflect the worker's period of service after the scheme commenced;
 - an amount paid by the employer (to the Community Sector Board) to reflect the worker's period of service before the scheme commenced, calculated in accordance with the existing *Long Service Leave Act 1987*.
- If a worker who was yet not entitled to long service leave (i.e. they have not accrued 7 years' service with the employer) changes employer after the commencement of the portable scheme, only the period of service in the community services sector since the commencement of the scheme will be preserved.

Example 2 – Service with same employer before and after commencement

- Laura has worked for ABC Pty Ltd in the community services sector for 60 months (5 years) before the commencement of the community services scheme and continues to work for ABC Pty Ltd for a further 60 months (5 years) after commencement of the scheme.
- When Laura makes a claim for long service leave with the Community Sector Board, her initial 5 years' service before the scheme is credited, as well as her further 5 years' service after the commencement of the scheme.
- This brings Laura's total period of service to 10 years, entitling her to 13 weeks long service leave.
- Because Laura's effective service includes a period of pre- and post-scheme service, her long service leave payment will be paid by the Community Sector Board with the total made up of two amounts:
 1. ABC Pty Ltd will be required to pay an amount to the Board with respect to Laura's 5 years' service with ABC Pty Ltd before the scheme commenced, calculated in accordance with the *Long Service Leave Act 1987* for the proportion of long service leave entitlement accrued in the 5 years *before* the scheme commenced, being 6.5 weeks of long service leave.
 2. The Community Sector Board will then pay Laura the sum of the amount paid by ABC Pty Ltd, together with an amount out of its fund for the remaining 6.5 weeks of long service leave, calculated on an average of her ordinary weekly earnings in the sector over the 3 years before taking the leave.
- ABC Pty Ltd would have been required to pay the entire period of leave directly under the *Long Service Leave Act 1987* prior to the commencement of the portable scheme – however their liability is reduced as they instead been paying a levy for the 5 years after the scheme commenced.

Example 3 – Service with same employer before and after commencement, with a period of long service leave taken before commencement

- Anna has worked for ABC Pty Ltd in the community services sector for 132 months (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 120 months (10 years) of continuous service in line with the *Long Service Leave Act 1987*.
- Anna continues to work for ABC Pty Ltd for another 36 months (3 years) following the commencement of community services scheme bringing her total effective service to 168 months (14 years).
- As Anna has already received 13 weeks of long service leave in respect to her first 120 months (10 years) of service, she is entitled to a further 1.3 weeks long service leave for each additional 12 month (1 year) period of effective service in the scheme.
- As Anna has worked an additional 48 months (4 years) she has accrued a further 5.2 weeks long service leave.
- Anna applies for this 5 weeks long service leave.

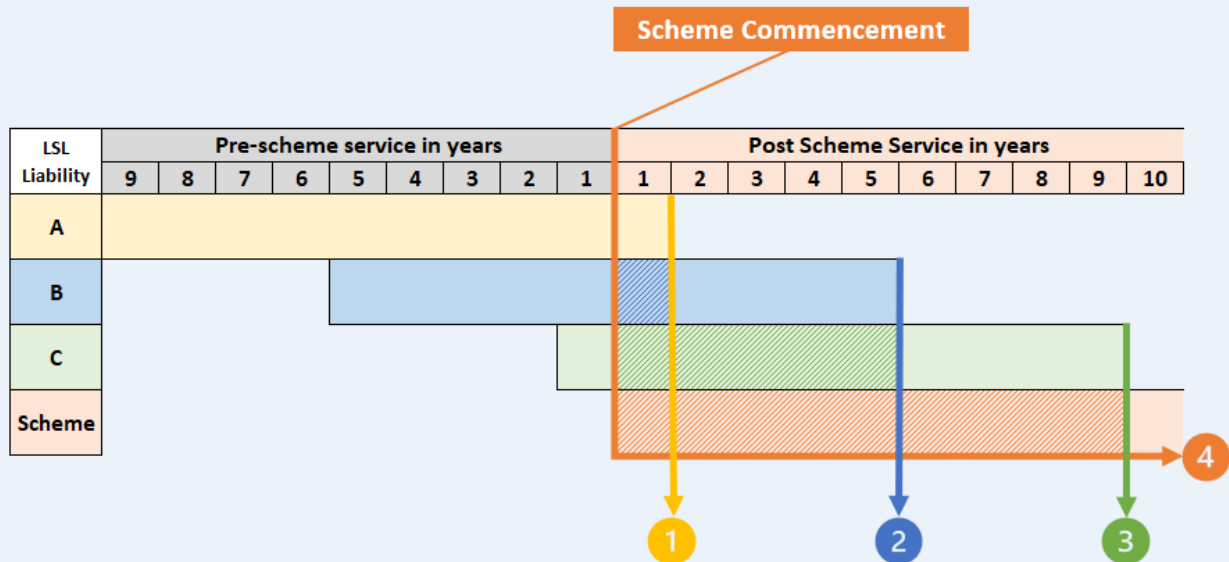
- The Community Sector Board pays Laura an amount for 5 weeks of long service leave, based on her average weekly earnings as a designated worker over the preceding 3 years' before taking the leave.
- As the scheme has only been receiving contribution levies from ABC Pty Ltd for 36 months, the Community Sector Board issues an invoice to ABC Pty Ltd for the value of the long service leave Laura accrued in the 12 months she was employed by them before the scheme commenced.

Example 4 – Service with multiple employers after registration, where pro-rata entitlement to long service leave is reached but not taken with original employer

- Sandy has worked for ABC Pty Ltd in the community services sector for 60 months (5 years) before the commencement of the community services scheme.
- 24 months (2 years) 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.
- As Sandy has reached 84 months (7 years) continuous service with ABC Pty Ltd she is entitled to 9.1 weeks pro-rata long service leave payment upon ceasing employment with ABC Pty Ltd.
- As Sandy's effective service includes a period of pre- and post-scheme service, her long service leave payment will be paid by the Community Sector Board in line with the transitional provisions, with the total made up of two amounts:
 1. ABC Pty Ltd will be required to pay an amount to the Board with respect to Sandy's 5 years' service with ABC Pty Ltd before the scheme commenced, calculated in accordance with the *Long Service Leave Act 1987* for the proportion of long service leave entitlement accrued in the 5 years *before* the scheme commenced, being 6.5 weeks of long service leave.
 2. The Community Sector Board will then pay Sandy the sum of the amount paid by ABC Pty Ltd, together with an amount out of its fund for the remaining 2.6 weeks of long service leave with respect to Sandy's 2 years of service in the scheme since commencement, calculated on an average of her ordinary weekly earnings in the sector over the 3 years before taking the leave.
- ABC Pty Ltd would have been required to pay the entire period of leave directly under *the Long Service Leave Act 1987* prior to the commencement of the portable scheme – however their liability is reduced as they instead been paying a levy for the 5 years after the scheme commenced.
- As Sandy is no longer working for her original employer, only her service since the scheme commenced will be carried forward and counted toward her portable long service leave entitlement.
- Once Sandy has accrued 120 months (10 years) effective service within the new scheme, Sandy will be entitled to take 10.4 weeks long service leave (13 weeks minus the 2.6 weeks already paid) of long service leave.

Example 5 – multiple employers before and after scheme commencement

- Before the commencement of the community services scheme Jo has been working for three separate employers in the community services sector:
 - 1 day per week for A Pty Ltd, where she has worked for 9 years,
 - 2 days for B Pty Ltd, where she has worked for 5 years, and
 - 2 days for C Pty Ltd, where she has worked for 1 year.
- When the scheme commences, each employer must apply to register in the scheme and pay a quarterly levy to the Community Sector Board based on Jo's ordinary weekly pay.
- **Under the transitional provisions, each of Jo's pre-scheme employers remain liable for any long service leave Jo may become entitled if Jo remains employed by them for 7 years or more – whether this occurs before or after the scheme commences, as illustrated below:**



1 A Pty Ltd

- 12 months (1 year) after the commencement of the scheme Jo's total period of service with A Pty Ltd reaches 10 years.
- Jo makes an application for long service leave with the Community Sector Board with respect to her transitional service entitlement with A Pty Ltd.
- Each of Jo's employers will be required to approve the period of long service leave when Jo applies.
- Jo's initial 9 years' service with A Pty Ltd before the scheme are credited as effective service, as well as her 1 year effective service after the commencement of the scheme, entitling her to 13 weeks long service leave (1.3 weeks leave for each completed year of service with A Pty Ltd).
- Because Jo's effective service includes a period of pre- and post-scheme service, the payment for her 13 weeks long service leave will be paid by the Community Sector Board in line with the transitional provisions, with the total made up of two amounts:
 1. A Pty Ltd will be required to pay an amount with respect to Jo's 9 years' service before the scheme commenced. The amount will be calculated in accordance with the provisions of the *Long Service Leave Act 1987* and in Jo's case would be an amount

equal to 11.7 weeks with Jo's ordinary weekly pay calculated under the *Long Service Leave Act 1987*.

2. The Community Sector Board will be required to pay an amount from the scheme fund with respect to Jo's 1 year of service in the scheme since commencement. This amount will be calculated in accordance with the transitional provisions set out in the Bill and in Jo's case would be an amount equal to 1.3 weeks x Jo's ordinary weekly pay for all three employers (as each employer is paying into the scheme).
- The Community Sector Board will calculate the amount A Pty Ltd is liable for and issue an invoice to A Pty Ltd for the amount of Jo's long service leave entitlement they are liable for.
 - As Jo has not reached an entitlement with B Pty Ltd or C Pty Ltd, they are not required to make a payment in respect to pre-scheme long service leave accrual.
 - A Pty Ltd would have been required to pay the entire period of leave directly under the *Long Service Leave Act 1987* prior to the commencement of the portable scheme – however their liability is reduced as they instead been paying a levy for the 1 year after the scheme commenced.

2 B Pty Ltd

- 60 months (5 years) after the commencement of the scheme Jo's total period of service with B Pty Ltd reaches 10 years.
- Jo makes an application for long service leave with the Community Sector Board with respect to her transitional service entitlement with B Pty Ltd.
- Each of Jo's employers will be required to approve the period of long service leave when Jo applies.
- Jo's initial 5 years service with B Pty Ltd before the scheme are credited as effective service, as well as her 5 years service after the commencement of the scheme, entitling her to 13 weeks long service leave (1.3 weeks leave for each completed year of service with B Pty Ltd).
- However, as Jo has already taken 1.3 weeks of her portable long service leave entitlement after the commencement of the scheme this is marked as claimed and therefore the scheme component of her long service leave is reduced, leaving her with a total of 11.7 weeks accrued leave.
- As leave must be taken in full weeks, Jo can apply to take a total of 11 weeks long service leave.
- Because Jo's effective service includes pre- and post-scheme service, the payment for her 11 weeks leave will be made up of two amounts, paid in line with the transitional provisions:
 1. B Pty Ltd will be required to pay an amount with respect to Jo's 5 years' service before the scheme commenced. The amount will be calculated in accordance with the provisions of the *Long Service Leave Act 1987* and in Jo's case would be an amount equal to 6.5 weeks paid at Jo's ordinary weekly pay as calculated under the *Long Service Leave Act 1987*.
 2. The Community Sector Board will be required to pay an amount from the scheme fund with respect to Jo's 5 years of service in the scheme since commencement, minus the leave she has already taken since being in the scheme. This amount will be calculated in accordance with the provisions of the transitional provisions set out in the Bill and in Jo's case would be an amount equal to 4.5 weeks x Jo's ordinary weekly pay.
- The Community Sector Board will calculate the amount B Pty Ltd is liable for and issue an invoice to B Pty Ltd for the proportion of long service leave entitlement they are liable for.

- B Pty Ltd would have been required to pay the entire period of leave directly under the *Long Service Leave Act 1987* prior to the commencement of the portable scheme – however their liability is reduced as they instead been paying a levy for the 5 years after the scheme commenced.
- Jo has not reached entitlement with C Pty Ltd, they are not required to make a payment in respect to pre-scheme long service leave accrual. A Pty Ltd has already paid a transitional amount and is not liable for any further pre-scheme long service leave payments with respect to Jo.

3 C Pty Ltd

- 108 months (9 years) after the commencement of the scheme Jo's total period of service with C Pty Ltd reaches 10 years.
- Jo makes an application for long service leave with the Community Sector Board with respect to her transitional service entitlement with C Pty Ltd.
- Each of Jo's employers will be required to approve the period of long service leave when Jo applies.
- Jo's initial 1 year service with C Pty Ltd before the scheme are credited as effective service, as well as her 9 years' service after the commencement of the scheme, entitling her to 13 weeks long service leave (1.3 weeks leave for each completed year of service with C Pty Ltd).
- However, as Jo has already taken 5.8 weeks (1.3 + 4.5) of her portable long service leave entitlement since the commencement of the scheme this is marked as claimed and therefore the scheme component of her long service leave is reduced, leaving her with a total of 7.2 weeks leave.
- As leave must be taken in full weeks, Jo can apply to take a total of 7 weeks long service leave.
- Because Jo's effective service includes a period of pre- and post-scheme service, her long service leave payment will be made up of two amounts, paid in line with the transitional provisions:
 1. C Pty Ltd will be required to pay an amount with respect to Jo's 1 years service before the scheme commenced. The amount will be calculated in accordance with the provisions of the *Long Service Leave Act 1987* and in Jo's case would be an amount equal to 1.3 weeks x Jo's ordinary weekly pay as calculated under the *Long Service Leave Act 1987*.
 2. The Community Sector Board will be required to pay an amount from the scheme fund with respect to Jo's 9 years of service in the scheme since commencement, minus the leave she has already taken since being in the scheme. This amount will be calculated in accordance with the provisions of the transitional provisions set out in the Bill and in Jo's case would be an amount equal to 5.9 weeks x Jo's ordinary weekly pay.
- The Community Sector Board will calculate the amount C Pty Ltd is liable for and issue an invoice to C Pty Ltd for the proportion of long service leave entitlement they are liable for.
- Both A Pty Ltd and B Pty Ltd have already paid a transitional amount and are not required to make any further pre-scheme long service leave payments with respect to Jo.

4 Scheme

- Once Jo has accrued 120 months (10 years) effective service in the new scheme she makes an application for long service leave with the Community Sector Board.

- As Jo has been in the scheme for 120 months, she is entitled to 13 weeks long service leave (1.3 weeks leave for each 12 months of service in the scheme).
- Because Jo has already taken 11.6 weeks (1.3 + 4.5 + 5.8) of her portable long service leave entitlement since the scheme commenced, this has been marked as claimed, leaving her with an entitlement of 1.4 weeks long service leave.
- As leave must be taken in full weeks, Jo can apply to take a total of 1 week of long service leave.
- As Jo is still working for A Pty Ltd, B Pty Ltd and C Pty Ltd, each employer will be required to approve the period of long service leave when Jo applies.
- The Community Sector Board pays Jo an amount for 1 week of long service leave, based on her average weekly earnings as a designated worker over the preceding 3 years' before taking the leave.
- Jo retains a balance of 0.4 weeks leave and continues to accrue 1.3 weeks leave for each subsequent 12 months of service in the scheme.

Example 6 – Service with *different employers* before and after commencement

- Tony has worked for ABC Pty Ltd in the community services sector for 36 months (3 years) before the commencement of the community services scheme.
- 12 months (1 year) after the commencement of the community services scheme, Tony resigns from ABC Pty Ltd to accept a new job with XYZ Pty Ltd, also in the community services sector.
- As Tony has changed employers before reaching 120 months (10 years) of continuous service (or 84 months (7 years) for a pro-rata payment) only his 12 months of service since the commencement of the scheme counts towards his portable long service leave entitlement.
- ABC Pty Ltd has no future liability to pay any amount of long service leave to Tony.
- Once Tony has accrued 120 months (10 years) effective service within the new scheme, he will be entitled to take 13 weeks of long service leave.

Enforcement provisions

Some stakeholders raised concerns about whether it was appropriate to use criminal penalties as a means of enforcing obligations under the new portable long service leave scheme, particularly when this is inconsistent with other industrial laws.

The Bill will be amended to address this issue to provide:

- Criminal offences will be replaced with a pecuniary penalty system, similar to enforcement processes for other worker entitlements under the *Fair Work Act 2009*.
- The Community Sector Board will have standing to bring proceedings for a pecuniary penalty to be imposed by the South Australian Employment Tribunal if there is a breach of the legislation.
- If a person breaches the legislation this may result in a pecuniary penalty but will not result in a criminal conviction or criminal proceedings.

Commencement timeframes

Timeframes for the commencement of the portable long service leave scheme are subject to the successful passage of the Bill through Parliament, and to further consultation with the Community Sector Board after its appointment.

However it is currently anticipated that:

From Late 2024

- The **Community Sector Board** will be appointed and will commence work.
- The Board will **appoint an Actuary** who will advise on the Levy for the scheme to enable the Board to set the initial levy.
- Supporting **Regulations will be drafted and consulted on** with both the Board and with community sector stakeholders.

1 July 2025

- **From 1 July 2025**, Employers will be required to apply for registration in the new scheme.
- Applications for registration must be made **by 28 July 2025**, *unless* the Board has approved an application by the employer for delayed participation in the scheme or for exemption as an interstate employer.

1 July 2025 to 30 September 2025

- The **first return period** will be the quarter commencing 1 July 2025 and ending 30 September 2025.

21 October 2025

- Employer's will be required to **lodge their first Employer Return** and **make their first Levy Payment** by 21 October 2025.