

# Portable Long Service Leave Scheme for the Social and Community Services Sector

## Decision Regulatory Impact Statement

October 2019



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## 1. Executive Summary

In the lead up to the 2017 State election, the Palaszczuk Government committed to investigating the establishment of a portable long service leave (PLSL) scheme for the Social and Community Services (SACS) sector.

A PLSL scheme allows workers in industries with high workforce mobility to accumulate a long service leave (LSL) entitlement based upon their continuous service in the industry, rather than with a single employer. Employers pay a wages-based levy into a central fund that accumulates over time to pay out the worker entitlements.

Queensland's SACS sector provides critical services to assist people experiencing vulnerability to improve their lives and participate as productive, empowered members of their communities. The sector is characterised by short-term funding and service arrangements which do not provide for long-term employment security with one employer. As such, it is difficult for the estimated 45,000 SACS workers in Queensland to access the sustained break that LSL provides, despite their dedication throughout their careers to what is often physically and emotionally demanding work. The sector is also experiencing rapid growth and skills shortages, driven in part by the new National Disability Insurance Scheme; as well as high rates of stress and burnout among industry workers.

In this context and in fulfillment of this election commitment, the Office of Industrial Relations (OIR) released a Consultation Regulatory Impact Statement (RIS) on 7 September 2018 to enable an open and consultative investigation of how a PLSL scheme could work for the SACS sector in Queensland. There was broad in-principle support for a scheme from the majority of stakeholders, but many requested ongoing consultation on how a scheme would operate and what the impact would be on the sector. On the basis of this feedback, the Honourable Grace Grace MP, Minister for Education and Minister for Industrial Relations, established a Stakeholder Taskforce (the Taskforce) of key peak bodies and unions to provide advice on how a scheme should be developed for the SACS sector in Queensland.

Following this ongoing consultation, the Government has decided to establish a PLSL for the SACS sector informed by the submissions from stakeholders and the advice of the Taskforce. As detailed in this Decision RIS, the Government proposes the PLSL scheme will:

- be administered by the existing PLSL authority QLeave;
- require employers to pay a levy on the ordinary wages of their employees and report their service to QLeave on a quarterly basis, noting that the levy will need to be kept as low as possible to minimise the impact on employers;
- provides workers with a meaningful PLSL entitlement, potentially through earlier access (e.g. 6.1 weeks PLSL after 7 years' service in the sector rather than the existing statutory entitlement to 8.67 weeks after 10 years);
- have a broad scope to include all workers engaged by a non-government SACS organisation that has a predominant purpose of delivering social and community services;
- be clear and simple for stakeholders to understand and administer; and
- commence from 1 July 2020.

This proposed scheme reflects Option 3 from the Consultation RIS. It is modelled in part on the operation of Queensland's existing PLSL scheme for the contract cleaning industry but is also informed by the experiences of PLSL schemes for the SACS sector in the Australian Capital Territory (ACT) and Victoria. It is noted that there will be an initial cashflow impact for SACS employers during the transition to the PLSL scheme, as the payment of a PLSL levy represents a different approach to the

current (and varied) LSL provisioning practices across the sector given a scheme will increase the likelihood that workers will access the PLSL entitlement. However, it is intended that the PLSL levy will be kept as low as possible for employers noting that there are potential administrative savings from a central scheme model administered by QLeave. Importantly, the proposed scheme will reward dedicated SACS workers with the sustained break that employees in other industries get through their LSL entitlements, while also providing considerable benefits for the sector in the attraction and retention of skilled and experienced employees which will be realised in reduced recruitment and training costs over time and a stronger more resilient workforce to support Queensland communities.

## 2. Background

### 2.1 Portable long service leave

LSL is a workplace entitlement that provides all employees with paid leave in recognition of long service with the same employer. Most employees' entitlement to LSL comes from laws in each state or territory, although in some cases the entitlement may be found in a federal pre-modern award or a registered workplace agreement. These laws or award provisions set out how long an employee must be working to get long service leave; and how much long service leave the employee gets.

In Queensland, the standard LSL entitlement is prescribed within section 95 of the *Industrial Relations Act 2016* (Qld) (IR Act). The IR Act provides a LSL entitlement, subject to certain conditions, for full time, part time, casual and seasonal employees. The leave entitlement is 8.6667 weeks' after 10 years continuous service with the same employer. Although in some limited cases workers may have a more beneficial entitlement under a federal industrial instrument like an enterprise bargaining agreement, or through their employment contract.

Since LSL requires continuous service with the same employer, employees in some industries qualify for LSL relatively infrequently due to the nature of employment arrangements in industries which see high rates of mobility between employers. As noted in the Consultation RIS, 'Portable' long service leave (PLSL) schemes have a number of benefits for workers in industries with high workforce mobility because they:

- a) allow workers to accumulate LSL entitlements through continuous service in an industry rather than with one employer;
- b) have been implemented in several industries around Australia, including the building and construction industry and the contract cleaning industry in Queensland; and
- c) typically operate by requiring employers to report to a regulator on their employees' service and to pay a levy into a centralised pool. The regulator keeps track of employees' total service in the industry, even when they switch employers. When an employee accumulates sufficient credits, the regulator can make a payment directly to the employee, which allows them to take LSL, irrespective of how long they have served with their current employer.

### 2.2 Portability of LSL in Queensland

The Consultation RIS described two PLSL schemes currently in operation in Queensland. The first PLSL scheme was introduced in 1991 for the building and construction industry and the second was introduced in 2005 for the contract cleaning industry. Both schemes are administered by QLeave, a statutory authority established under Queensland legislation<sup>1</sup>.

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<sup>1</sup> Further information about QLeave, its funding and functions can be found at <https://www.qleave.qld.gov.au/about-us>.

### *Building and Construction Industry PLSL scheme*

The PLSL scheme in the building and construction industry is established under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld). The scheme uses a service credit system where eligible workers who are registered with QLeave receive one service credit for every day they work, up to a maximum of 220 credits in any financial year. After 2,200 credits are recorded (i.e. equivalent to 10 years' service) workers are entitled to 8.6667 weeks of paid long service leave. Once a worker is eligible to take long service leave, they can take all their leave at once or take it in small portions but no less than five days, unless it is likely to be the last payment for long service leave. As long as the worker continues to work in that industry, they will continue to accrue an entitlement. For example, workers can allow their entitlement to keep accruing and take 13 weeks' paid long service leave after the equivalent of 15 years of full time work (3,300 service credits). The scheme is funded by a 0.25% levy on all building and construction projects in Queensland with a total cost of \$150,000 or more. As at 30 June 2018, there were 337,854 workers and 18,621 employers registered in the building and construction industry's PLSL scheme.

### *Contract Cleaning Industry PLSL scheme*

The PLSL scheme in the contract cleaning industry is established under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* (Qld). Similar to the building and construction industry, workers accrue service credits for their service with an employer in the contract cleaning industry in Queensland. An employer in the contract cleaning industry is a person who engages one or more workers to perform cleaning work for other people. The scheme is funded by a 0.75% levy on wages paid by registered employers and the investment of these collected funds. As at 30 June 2018, there were 44,589 workers and 730 employers registered in the contract cleaning industry's PLSL scheme.

## 2.3 The SACS Sector

The Queensland Government acknowledges the importance of the community services industry to the State's future, as it "supports individuals, families and communities to thrive and is a driving force in growing the state's social, cultural and economic wellbeing".<sup>2</sup>

The Consultation RIS noted that the SACS sector provides communities with critical support services for vulnerable Queenslanders, including support, education, information and activities to foster community inclusion and well-being, harm prevention strategies and crisis management. The sector comprises a mixture of for-profit and not-for-profit organisations with a wide range of size and turnover. These organisations operate through a diverse range of funding models, governance structures, mission and purpose statements, tax status and experience.

In its 2016 report, *Forecasting the Future: Community Services in Queensland 2025*, Deloitte Access Economics (Deloitte) estimated that there were 44,495 SACS employees in Queensland in 2015.<sup>3</sup> There are 641 businesses and 1,188 charities registered in Queensland, all of which have identified community services as their primary activity. Also, 469 charities are registered interstate but operate in Queensland.<sup>4</sup>

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<sup>2</sup> The *Partnering for the future: Advancing Queensland's community services industry 2017-25* strategy co-developed by the community services industry and the Queensland Government.

<sup>3</sup> Deloitte Access Economics, *Forecasting the future: Community Services in Queensland 2025*, 2016, 33.

<sup>4</sup> Deloitte Access Economics, *Forecasting the future: Community Services in Queensland 2025*, 2016, 32.

These SACS sector organisations are mostly not-for-profit organisations with a mix of government service providers, social enterprise organisations and a smaller number of for-profit organisations<sup>5</sup>. SACS sector organisations are also a mix of incorporated and unincorporated associations, companies and indigenous corporations. In 2014: 30.8% of SACS sector organisations had an annual turnover of under \$50,000; 34.8% had an annual turnover of between \$50,000 and \$200,000; 27.1% had an annual turnover of between \$200,000 and \$2 million; and 7.3% had a turnover of over \$2 million<sup>67</sup>. Annual turnover under \$50,000 is indicative of a non-employing entity.

As presented in the Consultation RIS, the specific services provided by the SACS sector include but are not limited to:

- Aboriginal and Torres Strait Islander community services;
- accommodation support;
- advocacy services;
- alcohol and other drug support services;
- child safety and support;
- community development;
- community education;
- community health services;
- community legal services;
- counselling services;
- disability emergency response;
- disability support;
- employment services;
- family and domestic violence services;
- financial counselling;
- foster care and out-of-home care;
- home and community care;
- homelessness support;
- lesbian, gay, bisexual, transgender, intersex or queer services;
- mental health services;
- migrant and multicultural support services;
- offenders transitioning services;
- respite;
- seniors community support services;
- social housing;
- violence prevention services;
- women's services;
- youth justice services; and
- youth support services.

The Consultation RIS also noted that the SACS sector is experiencing rapid growth and is likely to continue to grow. Deloitte Access Economics found that, "annual average employment growth in the Community Services Industry in Queensland over the next 10 years is forecast to be 3.8%; this is more

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<sup>5</sup>Deloitte Access Economics, *Forecasting the future: Community Services in Queensland 2025*, 2016, 31-32.

<sup>6</sup> *Partnering for the future: Advancing Queensland's community services industry 2017-25*, pp 5.

<sup>7</sup> Deloitte Access Economics, *Forecasting the future: Community Services in Queensland 2025*, 2016, 31-32.

than double the expected rate of employment growth for Queensland as a whole.”<sup>8</sup> According to Deloitte, this is being driven by an increase in Queensland population growth generally and an increase in the growth of the aged population specifically.

A major source of growth is also the implementation of the National Disability Insurance Scheme (NDIS). In Queensland the NDIS was implemented region by region during a transitional period from 1 July 2016 to 30 June 2019. With the rollout of the NDIS, the number of users of disability support services in Queensland was forecast to grow from 48,000 in 2016 to 91,000 in 2019.<sup>9</sup> An estimated growth in funding of \$2.5 billion will be required to meet this demand, and up to 16,000 additional full time equivalent positions, bringing the total workforce in Queensland’s disability support services (a subsector of the SACS sector) in 2019 to as many as 36,000 full time equivalent workers.<sup>10</sup>

### *Funding*

The Consultation RIS highlighted that the SACS sector is often reliant on Government sponsored support or funding. This support can come from a range of both Commonwealth and State government agencies through different programs. However, the Deloitte report identified that, “in 2014–15, the Department of Communities, Child Safety and Disability Services contracted services from 1,186 Government and non-Government organisations with investment of approximately \$1.4 billion”.<sup>11</sup> This agency is now split into the Department of Communities, Disability Services and Seniors and the Department of Child Safety, Youth and Women. However, the 2015-16 annual report for the then DCCSDS (which correlates with the timing of the Deloitte report) states that \$1.763 billion was invested in services delivered by the community services industry (including grants and subsidies, employee expenses, etc.).<sup>12</sup> However, Government funding agreements and contracts for the delivery of social and community services are usually:

- time-limited or provided over a fixed term and subject to government program priorities;
- awarded in competitive tender processes (i.e. grant funding); and
- affected by shifting government priorities.

These features make planning beyond the financial year or current funding arrangements difficult for many SACS organisations. It can also negatively impact long-term employment with a single employer in the industry.

SACS sector funding in general is also moving from a ‘block funding’ approach to an outcomes-based model. In some cases, this has resulted in a demand-driven, market-based model of service delivery like the NDIS. The move from the ‘block funding’ approach to an outcomes-based model is likely to exacerbate the problem of secure employment with a single employer. An outcome-based approach adopted in the NDIS means a person with a disability will receive funding appropriate to their needs. The requisite level of support will be ‘purchased’ from disability service providers. The introduction of fee-for-service invoicing, and consequent reduction in block funding arrangements, means some service providers will experience limited access to ongoing, long-term funding as clients potentially “shop around” for the best service. This will reduce their capacity to provide secure, ongoing employment to their employees.

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<sup>8</sup> Deloitte Access Economics, *Forecasting the future: Community Services in Queensland 2025*, 2016, 43.

<sup>9</sup> National Disability Insurance Agency, *Market Position Statement, Queensland*, 2016, 1.

<sup>10</sup> National Disability Insurance Agency, *Market Position Statement, Queensland*, 2016, 23.

<sup>11</sup> Deloitte Access Economics, *Forecasting the future: Community Services in Queensland 2025*, 2016, 41.

<sup>12</sup> Department of Communities, Child Safety and Disability Services, *Annual Report 2015-2016*, 2016, 32.

### *SACS sector workforce*

In 2016, Queensland's Department of Communities, Child Safety and Disability Services published a Deloitte Access Economics study of future workforce requirements in the Queensland SACS sector, entitled *Forecasting the future: Community Services in Queensland 2025*, which noted the absence of a single comprehensive data source for the SACS industry. In response the report uses information from a number of sources to measure and describe the characteristics of the sector. The following SACS sector profile draws primarily from information in that report.

The SACS sector employs approximately 44,495 Queenslanders. This accounts for approximately 2.3% of the Queensland workforce. The Deloitte report provides a profile of the paid SACS sector workforce that differs markedly to the Queensland workforce as a whole. The Report found:

- 75.4% of employees are female, compared to 47.1% of the overall Queensland workforce;
- 50.2% of employees work part-time, compared to 32.5% of the overall Queensland workforce; and
- the largest share of the paid workforce in the Community Services Industry in Queensland is between the age of 45 and 54 years, in contrast to the overall Queensland workforce having a much flatter workforce distribution of workers between the ages of 20 and 54 years<sup>13</sup>.

The workforce has a relatively high level of educational attainment with 66.9% of paid workers in Queensland holding a post-school qualification in 2011. Furthermore, 41% of Queensland SACS sector workers held a bachelor degree or higher qualification in 2011.

SACS sector organisations vary considerably in size and structure. These organisations are mostly not-for-profit organisations with a mix of government service providers, social enterprise organisations and a smaller number of for-profit organisations. SACS sector organisations are also a mix of incorporated and unincorporated associations, companies and indigenous corporations. In 2014: 30.8% of SACS sector organisations had an annual turnover of under \$50,000; 34.8% had an annual turnover of between \$50,000 and \$200,000; 27.1% had an annual turnover of between \$200,000 and \$2 million; and 7.3% had a turnover of over 2 million. Annual turnover under \$50,000 is indicative of a non-employing entity.

The sector is characterised by high labour intensity coupled with low capital intensity, meaning that payroll is a much larger cost for employers than capital expenditure. Deloitte Access Economics reports that 56.4% of revenue in the sector was spent on wages while 2% was spent on capital, a ratio approximately six times higher than the economy wide average. The industry also operates on narrow margins. Deloitte Access Economics reported an average 3.3% profit margin for the SACS sector, which is less than a third of the average margin for the whole economy.

The federal *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS award) covers many SACS sector workers in Queensland. The SCHADS award covers workers within the following sectors:

- Crisis assistance and supported housing sector;
- Social and community service sector;
- Home care sector; and
- Family day care scheme sector.

The SCHADS award does not cover workers covered under the *Aged Care Award 2010*, *Children's Services Award 2010*, *Health Professional and Support Services Award 2010* or *Nurses Award 2010*. As such, early considerations of the scope of a PLSL scheme, including the Consultation RIS, did not intend

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<sup>13</sup> Deloitte Access Economics, *Forecasting the future: Community Services in Queensland 2025*, 2016, 33.



to extend the scope to workers in the aged care, child care or health care industries as these are considered to be separate to the SACS sector.

## 2.4 Long service leave in the SACS sector in Queensland

As described in the Consultation RIS, the SCHADS award does not include provisions for LSL therefore the entitlements in the SACS sector in Queensland are provided under the IR Act. Under the IR Act, SACS employees are entitled to the standard accrual of LSL (e.g. 8.6667 weeks of paid LSL after a period of 10 years' continuous service with the same employer). They are also entitled to take an additional 4.3333 weeks' paid long service leave once they have completed a further five years' continuous service with that employer. For continuous service beyond this point, access to further leave accrued is not subject to a qualifying period.

An employee may also be entitled to a pro-rata long service leave payment on termination of employment which is calculated using a prescribed formula for employees who have had a mixture of full-time, casual or part-time employment during their continuous service.

'Continuous service' is defined as service with the same employer that is 'not broken' in certain circumstances. A period of unpaid leave (e.g. unpaid parental leave) may not break the continuity of service, but also does not count as service. Periods of absence on WorkCover may also count as continuous service. Additionally, an employee's continuity of service is not broken in the following circumstances:

- termination of the employee's service due to illness or injury, provided the employee is re-employed by the same employer (after any length of time) and the employee has not engaged in other work during the absence;
- termination of the employee's employment if the employee is re-employed by the same employer within three months; and
- interruption or termination of an employee's service by the employer due to an industrial dispute or slackness in business or trade if the employee is re-employed by the same employer (after any length of time).

### *Rates of mobility*

Precise data on the amount of LSL taken by SACS workers in Australia is not available. The Australian Bureau of Statistics (ABS) last published data on the amount of long service leave taken by Australians in the late 1980s. In the absence of recent data, the accrual of long service leave may be inferred by data on the length of an employee's service with their current employer.

The SACS sector has high levels of employee mobility. In 2012, an estimated 25% of workers in the health care and social assistance industry had been with their current employer for less than one year, compared to 19.5% for the workforce as a whole.<sup>14</sup> This is among the highest levels of employee mobility of any industry sector. Furthermore, unpublished data from the ABS *2015-2017 Participation, Job Search and Mobility Survey* indicated that 25% of Queensland health care and social assistance workers (excluding employees engaged in hospitals or in childcare or aged care) had been engaged with their employer for less than 12 months. This figure is above the Queensland average of 18%.<sup>15</sup> The same data set showed 18% of Queensland SACS sector workers were engaged with the same employer for over 10 years compared to an average of 26% for all Queensland workers.

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<sup>14</sup> McKell Institute, *The Case for a National Portable Long Service Leave Scheme in Australia*, 2013, 28.

<sup>15</sup> Australian Bureau of Statistics, *2015-2017 Job Mobility & Qualifications Data Customised Report* (unpublished data).

This high level of employee mobility in the SACS sector coupled with the unstable funding arrangements also outlined above results in workers in the sector being less likely to qualify for, and benefit from, LSL when compared to the wider workforce.

Individuals may be discouraged from pursuing a career in an industry or may be encouraged to leave an industry prematurely if they have reduced access to long service leave in that industry. Both eventualities negatively impact on skills formation and retention, discourage employment growth in the sector and add to training, retention and recruitment costs to employers. The wider community also bears the burden of unmet demand which can cause price competition among users for access to the limited services available. Given the vulnerable community segment often requiring access to these services, taxpayers may carry a heavier burden to meet the sector's delivery costs through Government subsidy.

A PLSL scheme may assist in alleviating pressure by making employment in the SACS sector more attractive to new entrants to the industry and promote the retention of skilled and experienced workers within the industry. Individual workers would benefit from accessing the additional leave after prolonged service in the industry through rest and rejuvenation. PLSL may also provide an incentive for greater attraction and retention of workers, thereby assisting employers through reduced recruitment and training costs. There may also be savings for business through reduced administrative burden, as has been the experience of employers in other PLSL schemes.

### 3. Objective of establishing a portable long service leave scheme for the social and community services industry in Queensland

The objective of establishing a PLSL scheme for the SACS sector in Queensland is to allow workers to enjoy the sustained break that is afforded by a long service leave entitlement and is accessible to workers in other industries, but which SACS workers are typically unable to access due to the insecure nature of their employment. In achieving this objective, it is further hoped that a PLSL scheme will:

- Reward and recognise the dedication of workers across the sector to what is often challenging and demanding work;
- Provide an avenue for workers to seek respite and recuperation from work that is often physical and emotionally demanding;
- Be a significant investment in the sector's workforce by providing a further incentive for highly skilled, experienced and qualified workers to remain within the sector rather than seek work in other better remunerated industries;
- Help build the capacity of the workforce by facilitating the transfer of applicable skills and experience as workers have more motivation to move between different sub-sectors;
- Provide a greater incentive and opportunity for skilled frontline workers to progress to positions of leadership within the sector; and
- Provide a greater understanding of the scope and demographics of the sector.

### 4. Issues and options considered during consultation process

The Consultation RIS set out three general options with regards to the government's objectives:

1. **Option One:** to retain the status quo and not introduce a PLSL scheme;
2. **Option Two:** to introduce legislation for a mandatory PLSL scheme with a new sector specific governing authority; or

3. **Option Three:** to introduce legislation for a mandatory PLSL scheme that would be administered by Queensland's existing PLSL Authority, QLeave.

#### 4.1 Option 1: The SACS industry continues without Government intervention (Status quo).

The first option is for the status quo to remain.

Under this option, workers in the Queensland SACS sector will continue to have an entitlement to LSL under the IR Act and other industrial instruments.

If the government were to retain the status quo, Queensland SACS sector stakeholders would also have the option to work together to establish LSL portability arrangements in the form of a cooperative. A cooperative might engage the services of a superannuation provider or other financial services provider to administer a PLSL scheme of behalf of the SACS industry. Employers could voluntarily participate in the scheme and pay a levy which could be managed to finance a LSL entitlement based on service in the industry, rather than service with one employer.

#### 4.2 Option 2: Legislate a mandatory PLSL scheme in the Queensland SACS sector with a new sector-specific governing authority to administer the scheme

This option would see the development of legislation to establish a PLSL scheme for the SACS sector administered by a separate (stand-alone) authority.

This option prefers a scheme providing arrangements and entitlements for the SACS sector modelled on the Contract Cleaning Industry under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*; however, a separate authority (not QLeave) would be dedicated to overseeing the scheme.

Funding for the scheme would be from a levy upon industry employers, with actuarial advice to determine the quantum to meet anticipated liabilities. While the building and construction sector in Queensland has a levy set as a percentage of the value of building and construction work undertaken over a certain value, it is considered that the nature of work and outputs in the SACS sector would make a levy set as a percentage of ordinary wages paid more feasible. It is also in line with approaches taken in other state PLSL schemes for the SACS sector.

#### 4.3 Option 3: Legislate a mandatory PLSL scheme for the Queensland SACS sector with the existing statutory authority QLeave, to administer the scheme.

This option would see the development of legislation to establish a PLSL scheme for the SACS sector administered by QLeave.

Like Option 2 this option prefers a scheme providing arrangements and entitlements for the SACS sector modelled on the Contract Cleaning Industry under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*. This option would authorise QLeave to administer the PLSL scheme for the SACS sector. While allocation of additional resources would be required to service an additional scheme, it is anticipated that start-up costs would be much lower than establishing a separate administration entity as proposed in Option 2.

Funding for the scheme would be from a levy upon industry employers, with actuarial advice to determine the quantum to meet anticipated liabilities.

## 4.4 Focus questions in Consultation RIS

To assist interested stakeholders in making written submissions or participating in a discussion about these options, the Consultation RIS also posed a number of general focus questions:

- i. Do you think a portable long service leave scheme in the social and community services sector in Queensland is desirable? Why/why not.
- ii. What do you see would be the key benefits of a portable long service leave scheme for the social and community services sector? For employers? For workers? For government? For the community?
- iii. What costs do you see would be involved in a portable long service leave scheme for the social and community services sector? For employers? For workers? For government? For the community?
- iv. Should a portable long service leave scheme introduced for the social and community services extend to both for-profit and not-for-profit organisations?
- v. If a portable long service leave scheme were to be introduced what would be the most appropriate operating model? Should the scheme be similar to that operating in Queensland's contract cleaning industry (under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*) and should it be administered by QLeave or an alternative administering authority?

## 5. Consultation process

### 5.1 Submissions to the Consultation RIS

The Consultation RIS entitled *Investigation of a portable long service leave scheme for employees in the social and community services industry* was published by OIR on 7 September 2018.

OIR received 349 written submissions in response to the Consultation RIS from a range of stakeholders, including sector peak bodies, employers/service providers and The Services Union. Of these submissions:

- 330 provided out-right support for the introduction of a PLSL scheme for the SACS sector;
- Four provided in-principle support for a scheme (noting that one of these submissions was supported by eight different peak bodies);
- Seven did not support the introduction of a PLSL scheme for the sector; and
- Eight did not give a position on the proposal.

Some submissions were provided in confidence so are referred to in this Decision RIS as being unidentified.

The Queensland Council of Social Services (QCOSS) made a written submission on behalf of seven other employer peak bodies in Queensland's SACS sector.<sup>16</sup> This position statement provided in-principle support for a mandatory PLSL scheme in Queensland's SACS sector noting it was "not only desirable, but necessary". However, these peak bodies also requested further consultation on a range of specific questions to clarify how a scheme would work in practice. These further questions focused on:

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<sup>16</sup> Community Legal Centres Queensland, Community Services Industry Alliance, Ethnic Communities Council of Queensland, PeakCare Queensland Inc., Queensland Network of Alcohol and Other Drug Agencies Ltd., Queenslanders with Disability Network and Volunteering Queensland.

- the initial and ongoing cost impact of a scheme on employers;
- how retrospective employee service would be recognised in a scheme;
- clarifying the scheme’s scope of coverage; and
- the continuation of existing employee entitlements and benefits that go beyond the standard LSL entitlement outlined in the IR Act.

In addition to providing this peak body position statement, QCOSS also highlighted in its covering letter the importance it placed on continued Consultation between the government and stakeholders across the sector on the details of this PLSL proposal.

Six other employer peak bodies provided separate written submissions in response to the Consultation RIS with a mixed range of support:

- Australian Community Workers Association (ACWA) provided in-principle support for a scheme, noting that while there will be challenges for the sector (e.g. difference to current LSL provisioning practices and the transition to the NDIS), these are not prohibitive.
- Chamber of Commerce and Industry Queensland (CCIQ) provided a brief submission that opposed in-principle the introduction of a PLSL scheme for the SACS sector.
- National Disability Services Queensland (NDS) did not support a PLSL scheme “with the inclusion of NDIS funded services” on the basis that it would only add another unfunded cost pressure to employers in the disability sector that are under significant financial pressure from the transition to the NDIS.
- Positive Employer Outcomes (PEO), formerly known as the Queensland Community Service Employers Association, did not oppose a PLSL scheme for Queensland’s SACS sector but questioned what the specific cost impact would be on employers in the sector, noting the majority rely on government funding. (PEO’s submission was provided by Employer Services, an IR and human resources specialist firm that provides consultancy services to some local employers in the sector.)
- Queensland Alliance for Mental Health (QAMH) did not oppose the proposal of a PLSL scheme but posed a number of questions from its members about the specific cost and operation of a scheme that would need to be addressed through further consultation with the government before it could fully comment on the proposal. (These questions aligned closely with those posed by QCOSS and the peak body statement.)
- Tenants Queensland wrote in support of a PLSL scheme, noting that there are “benefits to employers, workers and government in introducing a scheme”.

Even though the aged care sector was not explicitly included within the scope of the Consultation RIS proposal, a peak body for the aged care industry, Leading Aged Services Australia (LASA) provided a submission that was not supportive of including the aged care industry in a PLSL scheme for the SACS sector. LASA argued that the insecure funding/insecure employment issue and the resulting problem of SACS employees not being able to accrue a LSL entitlement does not exist for the aged care sector.

There was a mixed response to the PLSL scheme proposal from the 15 submissions received from SACS employers.

Seven employers in small to medium sized enterprises from across various parts of the sector (Children by Choice, MDA Ltd, the Richmond Fellowship Queensland and four employers that provided confidential submissions) wrote in support of a PLSL scheme agreeing with the staff attraction and retention benefits suggested in the proposal’s objective.

One employer (DV Connect) provided verbal in-principle support in discussions after the submission deadline had passed but also noted concerns about the cost impact a PLSL scheme would have on their current (LSL) provisioning practices.

Another three employers that provided confidential submissions were not supportive of a PLSL scheme, with each expressing a similar view that PLSL was not a desirable or meaningful policy initiative for the sector and that such a scheme would be ill-timed given the sector was already experiencing challenges with the transition to the NDIS.

Four employers provided a written submission but did not provide a position of support or opposition for a PLSL scheme. Three of these submissions (Open Minds, Churches of Christ in Queensland (COCQ) and an employer that provided a confidential submission) stated the Consultation RIS did not provide enough information on the specific scope, cost or operation of a scheme for them to be able to provide a substantive position on the proposal. These submissions also expressed the view that a PLSL scheme:

- would cause significant financial distress or represents a significant unfunded additional financial burden on SACS providers;
- may impose turnover and reduce employee loyalty and commitment to individual organisations; and
- does not reflect the potential change the NDIS will bring to the predominance of short-term government funding arrangements for the sector.

Like many of the peak bodies, these three employers expected there to be further consultation with the sector on these specific details. The submission provided on behalf of the Queensland Section of the Royal Flying Doctor Service (RFDS) also made no statements opposing or supporting a scheme.

The Services Union provided a submission in support of a PLSL scheme for the SACS sector. It is the union with the greatest coverage of workers in the SACS sector, representing frontline employees and managers across a broad cross-section of services. No other unions or employee organisations made a submission in response to the Consultation RIS.

However, a further 320 emails and letters were received from workers in the SACS sector and members of the Services Union supporting the introduction of a PLSL scheme. Of these, 311 were letters written in support of The Services Union submission and urging the government “to progress the introduction of a PLSL scheme for all employees working in or in connection with social and community services”. These letters were from a mix of SACS employees (including some management and executive staff) who expressed their support for a PLSL scheme for the sector on the basis that employees are often engaged on short term contracts which make it difficult to achieve the prerequisite continuous service a long service leave entitlement is predicated on. In many of these letters, the writer provided specific details of having worked in the industry for several years but never being able to access long service leave. The other nine submissions from workers that did not follow the same template still expressed the same difficulties in achieving long service leave with the one employer and noted the recognition that PLSL would give to workers who have dedicated their careers to assisting some of the most vulnerable or disadvantaged members of our community.

OIR also received five submissions from miscellaneous stakeholders:

- The Queensland Law Society (QLS) submission “does not proffer a view on whether PLSL should be extended to this sector” but it notes that if a scheme is established, “appropriate funding should be made available to ensure that employers are not worse off” along with an appropriate transitional period with education to help employers manage the change.

- A BDO tax consultant provided a submission by virtue of his position with the RFDS that provided no position on whether a scheme should be introduced or not but provided further comment on the tax and financial implications of a PLSL scheme for the sector.
- Mr John Homan, an independent consultant with many years of experience in the disability sector, provided a submission that suggested the NDIS was likely to result in evolving employment arrangements in the disability sector that he considered would make long service leave and PLSL redundant.
- Mr Robert Woodrow, the owner of a cleaning business in New South Wales, opposed PLSL based on his experiences with the contract cleaning PLSL scheme in his state but noted the inherent differences between the cleaning industry and SACS sector.
- An unidentified stakeholder email briefly writing in support of a PLSL scheme.

A full list of stakeholders who made submissions in response to the Consultation RIS is provided in Appendix 1. Most submissions are confidential for reasons of commercial or personal privacy but others have been published on the OIR website with the author's permission, at <https://www.oir.qld.gov.au/industrial-relations/portable-long-service-leave-social-and-community-services/submissions>.

## 5.2 Stakeholder Taskforce

Given the broad in-principle and outright support for the scheme from across the SACS sector, the Minister for Education and Minister for Industrial Relations, the Honourable Grace Grace MP, established a Stakeholder Taskforce (the Taskforce) in May 2019 to provide advice on the development, design and implementation of a PLSL scheme for the Queensland SACS sector. The Taskforce has met seven times since then.

The following stakeholder organisations from the SACS sector are represented on the Taskforce:

- Queensland Council of Social Services (Mr Mark Henley) – employer representative
- Community Services Industry Alliance (Ms Belinda Drew) – employer representative
- National Disability Services (Mr Ian Montague) – employer representative
- Community Legal Centres Queensland (Ms Carly Hanson) – employer representative
- The Services Union (Mr Neil Henderson and Ms Justine Moran) – worker representative
- Australian Workers Union (Ms Shannon Young) – worker representative
- United Voice (Mr Damien Davie) – worker representative
- Queensland Council of Unions (Mr Michael Clifford) – worker representative (observer).

The Taskforce set its own Terms of Reference that require it to consider and advise the Minister on the most appropriate design of a PLSL scheme for the sector as well as the development and implementation of legislation to support a scheme. In developing this advice for the Minister, members agreed to be guided by certain principles, namely that the scheme be mutually beneficial and simple to administer, but also sensitive to the fiscal constraints of the sector. It was expected that the key stakeholders represented on the Taskforce would liaise directly with their member organisations as required to inform their input for these deliberations.

The Taskforce has heard from a number of relevant stakeholders in the ACT and Victoria about their experiences establishing and operating a PLSL scheme for the SACS sector. This includes representatives from ACT Leave, the PLSL authority in that jurisdiction; the ACT's workplace safety and industrial relations department; ACT Council of Social Service (ACTCOSS); a former SACS employer representative on the ACTLeave board; Industrial Relations Victoria; and BDO Partners (who provide accounting and audit services to a range of local SACS employers). QLeave, Queensland's existing PLSL

authority, also provided a preliminary presentation to the Taskforce on how the existing PLSL schemes in Queensland operate.

The experiences of these stakeholders in other schemes has directly informed the Taskforce's advice to the Minister on how a PLSL scheme could be developed for the SACS sector. In turn, the proposed scheme that is being developed for the sector is founded largely on the Taskforce's advice. These positions and the government's response with regards to a proposed scheme is detailed further in the Impact Analysis section of this Decision RIS.

## 6. Impact Analysis

The following discussions addresses the issues associated with the introduction of a PLSL scheme for the SACS sectors raised by stakeholders as having a significant impact – both positive and negative.

### 6.1 Benefits and positive impacts of a PLSL scheme

The Consultation RIS anticipated that a PLSL scheme would improve SACS sector workers' access to a long service leave entitlement and may consequently improve employee health and productivity as well as create stronger attraction and retention incentives. Long service leave can provide a needed break from the stresses prevalent in SACS sector work. Further anticipated benefits included enhanced protection of employee entitlements in the event of employer insolvency.

The Deloitte report estimated that there were approximately 44,495 SACS sector workers employed in Queensland in 2015. The increased numbers of workers accessing long service leave under a portable scheme would depend on factors including how much service is recognised prior to the introduction of the scheme. However, combining the Deloitte report's statistics with the McKell Institute's methodology, it was calculated that approximately 3,500 to 4,500 workers in a given year would receive a long service leave payment under the scheme once it reaches maturity.

During the initial consultation process, a strong consensus emerged from employee submissions in favour of implementing a PLSL scheme. Benefits cited in support of a scheme included:

- providing a reward for consistent service in the sector;
- providing an opportunity for workers to rest and rejuvenate;
- offsetting many of the disadvantages of working in the sector;
- assisting in employees' long-term career planning; and
- making the sector more attractive to new employees.

Some specific comments made by workers in the sector reflected on not just the benefits that a PLSL scheme will bring for them personally but also for the sector and the community as a whole:

- *"In thirty years, I have had long service leave only once, at the workplace where I served 13 years... Taking long service strengthened my sense of belonging and obligation to the organization... In 30 years, I have had no other opportunity to claim long service leave... For me, there is no prospect of advancement within the organization, so I can expect no wage increase outside of award entitlements unless I move to another workplace.... Because the wages are not high, and job status, security and prospects of advancement are low in this sector, every benefit is important to me. Aside from the personal benefits that come from extended time to spend at rest, with family or pursuing personal interests, portability helps to legitimise the sector and attract quality people to it." - Advocacy Worker*



- *“The very nature of the sector is that certainty of employment is rare and most roles are challenging on a deeply personal level – and this leads to a large amount of casual employment and movement between roles. Having transferable long service leave would mean a great deal to me and the sustainability of my presence in the sector. The sector needs people who can stick around and invest in themselves, their skills and perhaps most importantly – the relationship they have with the individuals they work with. This alone will lead to better outcomes to the individuals we work with, let alone the benefits to the individuals who choose to work in this sector.” – Social worker with 15 years’ experience in the sector and having worked for about 8 employers*
- *“Individual workers who have specific skills and knowledge should be encouraged to continue working towards longer term goals that will lead to better outcomes for disadvantaged and vulnerable people in our community. Often skills can be transferable across different areas of practice and gaining experience in different areas of SACS can lead to more diversity in knowledge and awareness of issues.” – Senior Practitioner in SACS sector*

These sentiments were echoed in The Services Union’s submission to the Consultation RIS, which noted the external industry factors mitigating the opportunity for SACS workers to access their long service leave entitlements but also the reasons why these workers need the break from work that long service leave provides. The Services Union submission provided details of a members survey it conducted in 2017 about PLSL:

*“It was not surprising that prevention of burn out was the most repeated reason by respondents as to why a portable long service leave scheme was needed... The common theme from the survey was that respondents believed a portable long service leave scheme was the only way in which they would ever achieve the 10 years continuous service required to be entitled to long service leave. Respondents also saw the provision of a portable long service leave scheme for the SACS industry as a means for employers to attract and retain skilled and qualified employees to the industry.” (p5)*

In relation to the benefits for the industry as a whole, The Services Union argued *“The scheme will not provide the complete solution to retention issues, but it will certainly increase the viability of the industry by improving its capacity to attract and retain workers and retain their knowledge and experience.” (p6)*

A majority of employer peak bodies and 7 employers who made submissions also supported the establishment of a PLSL scheme, whether outright or in principle on the basis that it would be of benefit to workers as well as the sector through the same retention of skilled workers.

The peak body position statement provided in-principle support for a PLSL scheme on the basis that *“a mandatory PLSL scheme for the SACS sector in Queensland is not only desirable, but necessary” (p4)*. The submission goes on to note that: *“SACS organisations find it difficult to recruit and retain staff due to short-term funding arrangements, the gender balance of the workforce and the personal toll on employees of providing caring services to the community. Overall, while we acknowledge the implementation of a PLSL scheme will require initial investment of resources, over time, these costs are outweighed by the benefits for all stakeholders.”*

CLCQ members, quoted in the above submission, noted that a PLSL scheme would *“increase the sector’s profile to employees in other sectors making it a more viable place to work. Quality services being retained and it would demonstrate that an employees’ worth/contribution to society is the same*

as in other sectors". A principal solicitor is quoted in the CLCQ submission as saying that a benefit of a PLSL scheme would be "more diversity in experienced people sharing their knowledge in the sector."

MDA Ltd's submission in support of a scheme noted that:

*"The Palaszczuk government's commitment to fund pay equity rates and introduce longer term contracts is already creating a more sustainable social and community services industry. The establishment of a portable long service leave scheme that covers all employees across the varied sector within the industry i.e. mental health; disability; child protection; homelessness and housing regardless of whether their employer is for-profit or not-for-profit organisation will build on this solid foundation by improving the lives of these employees and adding to the sustainability of the industry."*

Children by Choice's submission also noted capacity building benefits for the sector were needed in light of the full roll out of the NDIS:

*"Employee mobility/turnover has the potential to be intensified even more were [sic] funding is driven by consumer demand such as the National Disability Insurance Scheme (NDIS) coupled with the required attraction of new employees to meet the increase in expected clients. It is therefore vital to find strategies to reward and retain employees, to ensure the SACS Industry's sustainability."*

Some employer submissions disputed the attraction, retention and capacity building benefits that other stakeholders argued would come from a PLSL scheme. Open Minds' submission stated that "Many staff leave the sector due to low wages. It is disputable if the potential to access long service leave many years in the future would be sufficient to compensate for low earning for that period of time. People work in the sector due to passion and commitment. It is true that there is a high level of resilience required to be in this field, and as a result, if additional costs were to be imposed on business, this money would be better spent on initiatives to support staff through recognition and resilience support in the 'now' rather than in many years in the future."

The Taskforce very quickly came to a consensus view that a PLSL scheme should be introduced for the SACS sector in Queensland as it will be a significant long-term investment in the workforce as well as the sector as a whole. Not all members of the Taskforce agreed on the timing of the introduction of a PLSL scheme, with some members seeking commencement in 2020 and others expressing a desire for the scheme to commence at an appropriate time after all the issues of a PLSL scheme's impact and implementation have been worked through with stakeholders. However, all members agreed that it was feasible for a PLSL scheme to be able to commence in 2020.

### 6.1.1 Government response

The Government considers that a PLSL scheme for the SACS sector is a reform that's time has come. In addition to providing many dedicated community workers with the much-needed break through access to long service leave entitlements for the first time, the Government considers a PLSL scheme is justified based on the wider benefits to the sector that have been identified by stakeholders, such as the potential to build the workforce capacity.

The *Partnering for the future: Advancing Queensland's community services industry 2017-25* strategy, co-developed by the sector and the Queensland Government, identifies growing jobs and skills as one of four key focus areas. A part of this is the vision of the sector being "an employer of choice, with effective strategies for attracting, utilising and retaining a strong diverse and appropriately skilled

workforce”.<sup>17</sup> Establishing a PLSL scheme would provide the SACS sector with a unique benefit to encourage skilled and experienced workers to join and remain with the sector, as the challenging work will be offset by access to a sustained break that PLSL provides. It is considered this will lead to reduced recruitment and training costs for employers across the sector over time as it will contribute to a larger pool of highly skilled and experienced workers for the sector.

The *Partnering for the Future* strategy also notes that focussing on the SACS workforce capacity can help to:

- attract and retain workers to meet service demand and support the business operations of Queensland’s community services industry into the future;
- ensure workers have the diverse range of skills, attributes and backgrounds needed to deliver responsive, flexible, culturally safe services that achieve positive outcomes for clients, and to drive innovation in service delivery and business operations;
- build a culture of diversity, equity and inclusion across the workforce; and
- grow the industry’s contribution to Queensland’s society and economy.<sup>18</sup>

Building the capacity of the SACS workforce will have flow on benefits for Queensland’s community by helping the sector to provide the critical services needed to reduce disadvantage and grow Queensland’s social and economic prosperity.

## 6.2 Cost impacts of the scheme

The Consultation RIS noted that the main costs of the introduction of a PLSL scheme to employers are from a PLSL levy (which would include an administrative component) for all eligible employees and in a reporting burden to a PLSL scheme authority. It was also noted that these costs are not wholly new as employers have existing long service leave accrual liabilities and record keeping obligations. However, stakeholder feedback confirms that a PLSL scheme would increase the probability that these entitlements would need to be paid and require the provisioning to be paid up front into a central fund via a PLSL levy on employee wages.

In response to focus question (iii) posed by the Consultation RIS about the potential costs of a PLSL scheme, most peak bodies and a number of employers considered the imposition of a PLSL levy would have a cost impact given it represents a change compared to their current long service leave provisioning practices. However, there were varied responses on the extent to which this change would negatively impact on employers.

Many employers stated that a PLSL levy at the rates outlined in the Consultation RIS would represent an additional cost to them:

*“Proposed funding for the PLSL scheme is based on a levy, estimated to be around 1.5% of salaries. This would cause significant financial distress in the not for profit sector where margins are already tight.” – Open minds, p1*

*“A PLSL levy at the rates presented in the CRIS (1.5 and 2%) would present a significant unfunded additional financial burden” – COCQ, p3*

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<sup>17</sup> Community Services Partnership Forum, *Partnering for the future: Advancing Queensland’s community services industry 2017-25*, 2-3.

<sup>18</sup> Community Services Partnership Forum, *Partnering for the future: Advancing Queensland’s community services industry 2017-25*, 15.

*“As an organisation we will be forced into making decisions about the reduction of service provisions to the disadvantaged and vulnerable persons we serve.” – COCQ, p3*

It was also clear from submissions, that a significant factor in determining the degree of impact a PLSL levy would have is how employers currently provision for their staff LSL entitlements. However, there is no specific requirement for how employers are to provision for LSL and there is a large degree of variance in when and how an employer starts this provisioning. Some stakeholders reported their practice is to start provisioning from the beginning of an employee’s tenure, while others only start provisioning after 5-7 years of the employee’s tenure. There is also no standard rate at which employers provision, although if an employer was to provision for an employee’s LSL entitlement from early on, the rate of provisioning would be accounted for at about 1.6667% of a worker’s ordinary wages<sup>19</sup>. The later the stage in an employee’s tenure that an employer starts the LSL provisioning, the higher the rate at which they will have to set aside funds to be able to meet the liability. Peak bodies and employers reported that the rate at which they provision is based on a determination of the probability that an employee will reach the minimum years of required service to access the long service leave entitlement. Many employers estimated that probability to be relatively low in the SACS sector and this is reflected in the provisioning rate of some organisations. This feedback from employers is supported by the submission from a BDO tax consultant in response to the Consultation RIS as well as informal information provided to the Taskforce by a BDO accountant specialising in audits and advice to the SACS sector.

*“Given the small numbers of employees currently accessing their LSL entitlements, LSL allocations may not be made for or realised by many employees.” – Peak body statement, p10*

*“Accounting for long service leave provision at CofCQ commences after four years eligible employment. It is noted that financial liability and reporting obligations under the PLSL scheme would commence at day one. Further, monies for LSL would need to be found and transferred to the administering agency.” – COCQ, p3*

*“These statements [in the Consultation RIS] do not reflect reality as most community organisations do not make provision for LSL, at least until the 7-year mark (the minimum continuous service qualifier). Why? It is down to the fact that funds are not available, remembering the majority rely upon Government funding, either State or Federal”. – PEO, p1*

In addition to the varied approaches to long service leave provisioning, organisations also reported that they can also earn interest on provisioned funds. Furthermore, the low probability that the LSL entitlement will be realised by a worker means that provisioned funds for that worker are freed up when their employment ends and may be redirected to service delivery. The Peak body statement notes that:

*“Employers may benefit from employees leaving the organisation before accessing LSL entitlements, which allows employers to reallocate funds set aside for this purpose.” (p10)*

Similarly, Queensland Alliance for Mental Health (QAMH) noted that under a PLSL scheme, the provisioning is paid by employers up front into a centralised fund:

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<sup>19</sup> The Australian Accounting Standards Board Standard 119, Employee Benefits, provides general direction on accounting for long-term employee benefits but this recommended approach is reflected in the [Institute of Certified Bookkeepers Long Service Leave Guide \(February 2019\)](#) (page 8).

*“Another issue which has not been properly reflected in the Consultation RIS is the absolute liability that a PLSL scheme creates for organisations. Community agencies make provisions for entitlement liabilities contingent on a service threshold being met. Where employment ends prior to the threshold being met, the monies remain with the community agency. A portable scheme would obligate payment from the first day of employment and create an absolute liability.” – QAMH, p2*

However, some employers stated that the impact would be less for those organisations who are already provisioning and saw the potential for a PLSL scheme to reduce costs and administrative burden, particularly over time. For example:

*“For employers who are setting aside funds for employee entitlements, this will not result in any additional cost, and in fact, may reduce costs for many employers.” - Peak body statement p10*

*“The majority of CLCs in Queensland have made some provision for future employee entitlements, including LSL. While there will need to be some adjustment to the way these LSL entitlements are being treated by our members, we feel confident that the levy and administrative costs (pending actuarial assessments and calculations) will be reasonable and achievable for most CLCs.” – CLCQ, p2*

*“Our organisation is aware of existing obligations to account for the accrual of long service leave for employees. We envisage that any costs incurred in establishing the proposed scheme would be minimal if the existing authority in Queensland, QLeave, which administers the Contract Cleaning scheme, was utilized.” – Children by Choice, p2*

The Services Union also noted the existing statutory obligation of employers to pay long service leave to those employees who achieve the entitlement and the longer-term benefits to employers and the sector more broadly.

While not specifically raised through the Consultation RIS, government agency feedback is that funding arrangements and services agreements require SACS organisations to comply with all employment obligations and relevant legislation.

#### *Administration costs of a PLSL scheme*

A further impact noted by employers is the administrative cost and burden in transitioning to a PLSL scheme. The transition was seen as requiring new systems and processes and it was noted there was likely to be a period of time during which employers remained liable for long service leave before all employees transitioned fully to the PLSL scheme, requiring employers to maintain two sets of records. Some peak bodies and employers also argued administering the scheme (i.e. making quarterly service returns to a PLSL authority based on their employees' work hours and wages) will have a greater impact on an organisation's resources than the Consultation RIS suggested. For example:

*“It is our experience that the likely administrative costs would be closer to \$30-\$35 per hour. At \$35 per hour the administrative cost to the industry could be as high as \$1 million annually (based on the modelling used at page 23 of the Consultation RIS).” - QAMH, p3*

*“The SACS workforce is not homogenous, which would create significant administrative and industrial / practical difficulties for employers to comply.” - COCQ, p3*

In contrast, the Peak body statement commented that:

*“Some employers may cite that additional administrative costs and resources will be required to accurately track and monitor LSL entitlements and records, however, this is not new, as employers have existing LSL accrual liabilities and record keeping obligations. The Deloitte Report estimates that an additional 5-10 minutes per quarter would be needed to administer a PLSL scheme, or an additional cost of approximately \$1.80-\$3.65 per employee per quarter. We believe these costs are reasonable and achievable for the majority of SACS employers.” p10*

Most stakeholders saw value in having a new scheme administered by the existing PLSL Authority, QLeave, given this would provide cost and administrative efficiencies that will keep the scheme costs low. While retaining QLeave’s existing systems and processes will minimise the impact on government, employers argued they would still need to adapt to these systems. However, the BDO submission noted that employers will already be capturing information about their employees’ service and wages through their existing payroll systems.

In noting the cost of a PLSL scheme, a number of stakeholders drew attention to the existing inadequacy of funding models for the sector and in doing so, some called for additional funding or some form of support for the establishment of a scheme for the sector. For example:

*“NDIA pricing assumptions do not take account of state specific additional costs on service providers. In relation to NDIS-funded services, a PLSL scheme in Queensland could impose state-based costs on what is a Federally funded scheme. This issue is not reflected in the Consultation RIS and needs to be further explored in future analysis”. – QAMH, p3.*

*“If governments do not cover the additional costs of a portable long service leave scheme, introduction of this legislation would have significant financial impacts on our organisation. As an organisation we will be forced into making decisions about the reduction of service provisions to the disadvantaged and vulnerable persons we serve.” – COCQ, p1*

In summary, most, but not all, peak bodies and employers consider that there is an additional cost to them in forgoing these provisioned funds and paying a PLSL levy from day one of an employee’s tenure. The issues raised in respect of the current inadequacy of funding arrangements for the sector are clearly critically important but exist irrespective of the introduction of a PLSL scheme for the sector.

The Taskforce recognised that as employers are already required to provision for LSL, a PLSL levy will not be a new cost for most employers but will likely have an impact on cashflow at implementation, particularly for new and some small organisations. The Taskforce also acknowledged that there is likely to be some administrative cost in transitioning to a PLSL scheme but also noted the advice from SACS stakeholders in ACT and from QLeave that PLSL schemes were efficient and responsive and that employers and employees were able to readily adapt and that in the longer term, the administrative burden for employers was eased. In response, the Taskforce has advocated that a key principle of a PLSL scheme for the SACS sector should be to keep the cost of the scheme, particularly the levy rate, as low as possible and as simple and easy for employers to administer as possible.

### 6.2.1 Government response on cost impact of the proposed scheme

As noted in the Consultation RIS, it is reasonable to assume that a PLSL scheme will increase the number of workers who are able to access the entitlement and so accordingly, incremental costs and benefits will apply.

A high-level view of the proposal suggests that a PLSL scheme would lead to an increase in benefits to workers (as the probability that they will claim the leave increases) as well as an associated increase in costs to employers (through having to regularly pay the PLSL provisioning up front). Given the currently low probability of SACS workers being able to access their LSL entitlement with a single employer, it is acknowledged that the PLSL proposal represents a change in practice for employers.

The Government accepts the Taskforce view that as employers are already required to provision for LSL, a PLSL levy will not be a new cost for most employers but the increased probability of the PLSL entitlement being taken and the payment of the provisioning up front into a central fund will likely have an impact on cashflow at implementation, particularly for new and some small organisations. The Government is in agreement with the Taskforce that the PLSL levy be kept as low as possible to minimise the impact on the sector.

The impact of a PLSL levy on SACS employers will vary across the sector due to a variance in current LSL provisioning practices amongst providers. Provisioning for the standard legislative entitlement of 8.667 weeks leave after 10 years of service equates to an amount of 1.667% of ordinary wages for each week of employment. If an employer provisions for LSL for all employees from the start of their employment on the probability that 100% of employees will become eligible for the LSL, they would need to provision 1.6667% of ordinary wages. Where employers assume different (i.e. lower) probabilities of their employees becoming eligible for LSL they would provision at a lower rate and if those assumptions prove wrong, they would have to find the funds elsewhere. Also, if employers choose to commence accruing for an employee's LSL liability later in the employee's tenure, the rate at which they provision will be higher. Anecdotal evidence provided by employers and the Taskforce indicates a range of current approaches, such as provisioning early but at a lower rate around 1.3% to 1.6% (based on a lower probability) or provisioning at around 1.6667% (based on 100% probability) but from a later point in the employee's tenure (e.g. after 5 years).

By contrast, PLSL schemes require employers to regularly pay the same levy rate for their employees into a central fund to provision for the accumulating entitlements.

As stated in the Consultation RIS, the current levies for existing PLSL schemes are commonly set as a percentage of ordinary wages paid and range from 0.75 to 2.7 percent.

The initial levy rate for a PLSL scheme can vary depending on the extent to which the administering structure of a scheme needs to be established. The levy rate for the ACT PLSL scheme for the SACS sector is currently set at 1.2% of gross ordinary wages (since 1 April 2018) but when the scheme commenced in 2010, the levy rate was set at 1.67% and reduced to 1.6% in 2015-16. The initial levy rate for the Victorian scheme has been set at 1.65% and the levy rate is capped at 3% by the legislation. The ACT and Victorian schemes recognised no retrospective service but offer earlier access to PLSL (after five and seven years respectively).

Both the ACT and Victorian schemes have had additional costs associated with establishing the scheme authorities that impacts on the initial levy rate. The ACT SACS scheme was a new scheme on commencement in 2009-10 but it also established the current single PLSL authority, ACT Leave, combining the existing PLSL authorities for the building and construction and contract cleaning schemes so start-up costs were involved for new systems. A new portable long service authority administers the Victorian SACS scheme with PLSL schemes established for the contract cleaning and security industries as well. This new authority is separate to ColInvest, the existing PLSL authority for Victoria's building and construction industry scheme. The proposed Queensland PLSL scheme for the SACS sector is able to benefit from significant savings in start-up costs achieved by having the existing authority, QLeave administer the scheme.

The levy rate for a PLSL scheme will be determined once all of the elements of the scheme have been finalised, but preliminary actuarial modelling was obtained to provide stakeholders with an indication of a more specific range for the potential levy rate based on a range of entitlement options. The main factors influencing the levy rate are the PLSL entitlement, minimum service period and the retrospectivity of the scheme. Given the existing Queensland schemes recognised past service on commencement, the actuary modelled four options recognising retrospective service based on the standard legislative entitlement of 8.67 weeks leave after 10 years of service that was proposed in the Consultation RIS. This modelling also took into account the other standard provisions contained in the IR Act and Industrial Relations Regulation 2018 as they relate to the standard LSL entitlement (e.g. pro-rata access on termination, redundancy, retirement or permanent incapacity or death.) This resulted in a range of levy rates in the vicinity of 1.2% - 2.28% of ordinary wages.

Considering the ACT and Victorian schemes recognised no retrospective service but offer earlier access to PLSL (after 5 and 7 years respectively), the Taskforce requested the options be modelled on an earlier entitlement of 6.1 weeks leave after 7 years. (All other standard provisions of the IR Act regarding the standard LSL entitlement remained unchanged.) This resulted in a range of levy options in the range from 1.33% - 2.50% of ordinary wages. On this basis, all members of the Taskforce but one agreed that allowing access to PLSL after 7 years (instead of recognising any retrospective service) gives a beneficial entitlement for workers who traditionally miss out on long service leave but will still minimise the cost of the scheme levy for employers.

Based on with the anecdotal advice of stakeholders and the Taskforce, a levy rate at this lower estimated range (i.e. around 1.2% to 1.33%) would reflect the existing LSL provisioning practice for some employers (although the rate at which individual employers provision varies and is not always provisioned from the start of employment as a PLSL levy is). It is also lower than the potential levy rate range estimated in the Consultation RIS (1.5% – 2%) and aligns with the Taskforce’s guiding principle of ensuring the cost impact on employers is minimised. However, it is important to note that the initial levy rate for any scheme would need to be confirmed once all elements of the scheme are finalised.

The specific impact of the levy on individual employers will depend on their current provisioning practices. However, the following examples aim to better illustrate the impact of a regular levy based on the weekly costs of provisioning, both according to the status quo and in a PLSL scheme.

At current rates of pay, a current entitlement of 8.6667 weeks of long service leave after 10 years’ service for a SACS community service worker level 4 step 4 of the SCHADS Award (\$1,392.26)<sup>20</sup> is \$12,066.30. Funding this obligation over 10 years based on a 100% probability the worker will become eligible for the leave would require an employer to put aside an additional \$23,2044 per week (based on the current award prescription).

Using the same scenario but assuming the employer determined the probability an employee would become eligible for their LSL entitlement was about 50% (i.e. they provisioned at a rate of 0.83% of wages), then their weekly provisioning would be \$11,6022. However, they would also need to find the balance later if the entitlement was realised.

Similarly, if an employer opted not to provision at all for an employee’s LSL entitlement on the assumption that there was 0% probability the worker would serve the required number of years, the

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<sup>20</sup> Weekly pay rate as of 1 July 2019, see Fair Work Ombudsman, *Pay Guide: Social, Community, Home Care and Disability Services Industry Award 2010, 2019, 2*. Level 4 pay point 4 has been used as it represents the middle point of the classification and pay schedule under the SCHADS Award.



employer would need to fund the full entitlement at a later date if the worker became eligible to access the leave.

The Taskforce also noted that where employers do not provision for LSL or do so at low rate, this can lead to undesirable consequences. For example, where organisations are declared bankrupt and no provisioning has been made for employee entitlements, such as LSL, or where an employee is approaching access to LSL and the employer has not made any or adequate provision for that leave.

By comparison, the Consultation RIS provided an estimate of the expected weekly levy cost to an employer per employee again using the SCHADS Award as a basis. For example, an employer's levy liability for a SACS Community Service worker level 4 pay point 4 under the SCHADS Award was assessed as follows:

- 1.5 per cent levy - \$20.88 per employee
- 2.0 per cent levy - \$27.85 per employee.

When this scenario is modelled on the known levy rates in the ACT and Victorian schemes i.e. 1.2% and 1.65%, the weekly costs are:

- 1.2 per cent levy - \$16.71 per employee
- 1.65 per cent levy - \$21.20 per employee.

It is noted that these examples assume a higher probability of a worker accessing their entitlement than may currently be assumed by employers. Although addressing the tendency towards a low probability of employees accessing LSL is also one of the key aims of, and arguments for, a PLSL scheme for the SACS sector.

These examples indicate that the PLSL levy is likely to be consistent with the current LSL provisioning levels of many employers where the amounts being put aside assume that all employees will be able to access LSL and for some may be slightly lower. However, it is recognised that paying this levy up front for all employees into a central scheme fund will bring this payment forward and is a departure from current practice that will have a cashflow impact for employers, particularly those that have not been provisioning for LSL as early in an employee's tenure, or have been provisioning on the basis of different probability of the entitlement being realised. However, the weekly cost comparisons detailed above illustrate that on balance, a PLSL scheme provides a reasonable levy rate to provide for this employee entitlement especially in the context of the increasing likelihood that employees will access a PLSL entitlement and the potential administrative savings available under a central scheme model administered by QLeave.

It is also noted that by paying the PLSL provisioning from the start of employment and into a central fund, employers will not be able to retain unused LSL provisioning or redirect it to service delivery. However, the government considers this existing provisioning is for the employee's LSL entitlement and not service delivery so should not adversely affect the accounts of organisations. Existing provisioning balances could also be used to pay the PLSL levy. Employers will not be able to seek a refund if an individual worker leaves the industry as the focus of a PLSL scheme is sector-wide and not at an individual organisational level. The levy funds will remain in the scheme and contribute to its ongoing sustainability and help keep the levy rate low.

Further, feedback from Queensland Government agencies is that their service agreements require organisations to comply with all employment obligations and relevant legislation and so note that PLSL does not represent a new provisioning liability for SACS organisations. It is noted that other funding sources from the Commonwealth Government would similarly require organisations to comply with employment obligations. However, a scheme would change their provisioning practices which would create an initial cashflow impact as their immediate provisioning obligations changes.

The levy will not have a direct impact on government (as it is not proposed to include Commonwealth, state or local government services or employees in the scheme). However, due to the majority of service providers being largely government funded, there may be an indirect impact through the proposed levy being raised by organisations as an additional cost. This will be a consideration for government agencies in future funding negotiations.

The experience of the ACT's PLSL scheme for the SACS sector is also noted as not imposing an additional undue burden on SACS employers in that jurisdiction. In evidence to the Victorian Parliamentary Inquiry into the portability of long service leave benefits, a representative from the Australian Services Union noted that *"we have seen no evidence of cuts to service provisions or agencies closing down in the ACT as a result of portable long service leave being introduced there"*<sup>21</sup>.

As noted above, there are considerable additional benefits for the sector in the attraction and retention of skilled and experienced employees which will be realised in reduced recruitment and training costs for employers across the sector over time. When combined with the overall benefits for workers (in gaining a sustained break from PLSL) and the flow on benefits expected for their clients from a stronger SACS workforce, the government considers the benefits of the scheme outweigh the initial cost impacts of a PLSL levy.

#### *Administration costs of a PLSL scheme*

The Consultation RIS noted that a PLSL scheme will have administrative costs to employers in completing and lodging employee returns and processing levy payments. However, since long service leave is an existing obligation, employers are currently required to maintain time and wages records for their employees. However, it is recognised that there is likely to be some administrative cost in transitioning to a PLSL scheme.

The Consultation RIS also reported that QLeave estimate that it takes an average of 15 minutes per worker per quarter to complete returns and make payments online under the existing PLSL schemes (e.g. contract cleaning industry and building and construction industry). Assuming that employers currently spend time administering LSL entitlements, it can be assumed that employers would be spending an additional 5 to 10 minutes per quarter in administration of a PLSL. If administrative staff are remunerated at approximately \$22 per hour, this would be an additional cost of between approximately \$1.80 and \$3.65 per employee per quarter. For the sector as a whole, the Deloitte report estimates the SACS sector employed approximately 44,495 Queenslanders in 2015 which would mean that a PLSL scheme would result in additional administrative costs of between approximately \$320,000 and \$650,000 industry wide.

With regards to the administration of a PLSL scheme, the Government is committed to ensuring the practical impact for SACS employers is low. Having QLeave administer the scheme will deliver significant efficiencies for a SACS PLSL scheme given QLeave's existing systems and processes. While SACS employers will have to adapt to a new process, QLeave's online portal is considered to be user friendly by employers and workers in the existing schemes. The Annual Report for Queensland's contract cleaning scheme notes that *"Employers were given an opportunity to complete an online satisfaction survey in April and May 2018. 80% of employers who completed the survey were very satisfied, or satisfied, with the online employer return and levy payment process."* Employers in the building and construction scheme also completed a survey about their experience with the online lodgement process. The 2017-18 Annual Report advised *"A satisfaction rating of 91% was achieved for the online return process. 89% of employers were satisfied with the time taken to complete their return."* Feedback from stakeholders highlighted that the administrative impact on individual

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<sup>21</sup> Parliament of Victoria, [Inquiry into portability of long service leave entitlements Committee report](#) June 2016, page 111.

employers will vary but keeping records of staff service and wages for the purposes of LSL provisioning would form part of an organisation's existing processes. QLeave has a significant focus on customer service and will be committed to assisting employers through the transition to minimise the administrative impact on their organisations.

The central administration and risk management of the LSL entitlement may result in administrative efficiencies, as opposed to individual employers making their own arrangements. A central funding pool and risk management framework would also make financial liability more predictable and consistent. This may be beneficial when employees achieve substantial career advancement or pay increases, which would ordinarily require accelerated investment by an employer to 'catch up' as an employee approaches the required period of service. Under a portable scheme, this type of risk is factored into the actuarial calculation of the levy and shared across the sector as a whole so there would be no 'spike' in payments for any given employer.

As noted in the Consultation RIS, it is anticipated that, by leveraging existing QLeave infrastructure and experience, levy costs can be kept lower. Equally, administrative arrangements already used by QLeave for the other schemes could be adapted at marginal cost. The authority's powers and functions would continue to require clear legislative underpinning, such as the appointment of authorised officers and for compliance and enforcement powers.

The contract cleaning PLSL scheme established in 2005, with the assistance of QLeave, provides a useful illustration of the costs of establishing a PLSL scheme. Establishment costs were \$110,000 in 2005<sup>22</sup> (\$151,000 in today's dollars) compared to the establishment costs of a new PLSL leave authority in Victoria, for which the Victorian Government set aside \$5 million in 2010<sup>23</sup> (\$5,915,000 in today's dollars).

In keeping with the current governance arrangements for the existing PLSL schemes in Queensland, the administration of a PLSL scheme by QLeave would be overseen by a governing board of directors that gives representation to both employers and workers in the sector as well as a chair and deputy chair with strong governance and financial management experience.

### 6.3 Timing with the rollout of the NDIS

Further to these general considerations of the funding impact of a PLSL scheme, peak bodies and employers were also largely consistent in their concerns about the timing of introducing a PLSL scheme with a new levy so soon after the initial roll out of the NDIS in Queensland. Most peak bodies and employers consider that many SACS employers have experienced significant financial pressures in transitioning to the NDIS with some having to consider restricting service delivery and others choosing to close down.

It is in this context that the NDS submission to the Consultation RIS did not support a PLSL scheme for the sector applying to services funded via the NDIS:

*"While we acknowledge the final costs of the Scheme and the administrative impacts of its implementation are unknown, we do feel that any imposed changes are likely to significantly impact the financial sustainability of disability services. This is at a time when service providers are currently struggling under NDIS prices."* p3

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<sup>22</sup> Portable Long Service Leave Scheme for the Cleaning Industry In Queensland – Report on Initial Funding 2005.

<sup>23</sup> Australian Services Union, Submission to the Victorian Parliamentary Inquiry into Portability of Long Service Leave Entitlements (August 2015), 13.

*“Scheme cost and cash flow implications will undermine the financial viability of many organisations. This could contribute to withdrawal of some services from the market, exacerbating the emerging thin markets for people with disabilities in some parts of Queensland at a time when substantial growth is required.” p4*

While accepting of the long-term benefits and investment that a PLSL would be for the sector, the NDS representative on the Taskforce has continued to advocate strongly for the cost of the scheme levy to be minimised for NDIS funded organisations to ensure there is no further impact on services.

### 6.3.1 Government response on timing with NDIS

The Government notes the existing financial and administrative pressures reported by stakeholders in disability services in their responses to the Consultation RIS. The transition to the NDIS has been a particularly significant change for all stakeholders in the disability services field and has meant that service providers have had to adapt to a very different environment for providing services and seeking funding. At the same time, however, the advent of the NDIS has heightened the growing need for SACS workers and especially the attraction and retention of skilled workers which a PLSL scheme seeks to address. It is also clear that the community services sector more broadly, as well as disability support services, faces further changes and challenges into the future as the demands for community services continues to grow. These factors point to the need for action on a PLSL scheme sooner rather than later if the benefits of a scheme are to be realised in order to support this change and growth.

Feedback from the disability sector, on the NDIS pricing model in particular, is noted. The Queensland Government has shown strong support for the disability sector and has consistently called on the Commonwealth Government to ensure that the NDIS is fully funded.<sup>24</sup> In evidence provided to the Victorian Parliament’s 2016 Inquiry into portability of long service leave entitlements, the NSW and ACT branch of the Australian Services Union reported that in national discussions with workers and organisations on the NDIS, the issues experienced by stakeholders “were not any worse or any better in the ACT because of the long service leave scheme there”.<sup>25</sup>

### 6.4 Potential impact on existing employee entitlements

A commonly raised concern from peak bodies, most employers and The Services Union is ensuring that existing employee entitlements and benefits are not adversely affected by the scheme. The Peak body statement advises:

*“Currently, to try and stem staff turnover issues and attract new employees, SACS employers often look to non-cash based incentives such as salary sacrificing to offset the low wages. Even with these incentives, a graduate social worker in a hospital or government department is paid approximately 15% more than in the SACS sector, as an example.” p5*

A number of peak bodies and employers confirmed this in their submissions, advising that employees are often given a more beneficial LSL entitlement than the standard entitlement under the IR Act. Without breaching confidentiality of these stakeholders, many provide earlier access to long service leave (e.g. after five or seven years) or a greater accumulation rate so workers get more leave. OIR’s further research indicates that larger employers also offer portability of long service leave within different branches of their own organisations. Individual employers reported using these more

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<sup>24</sup> Stuart Robert and Coralee O’Rourke, ‘Future of the NDIS secured for Queensland’ (Media Release 10 July 2019).

<sup>25</sup> Parliament of Victoria, [Inquiry into portability of long service leave entitlements Committee report](#) June 2016, page 118

beneficial entitlements as an attraction and retention strategy to solidify their own workforce and were concerned these current entitlements will be replaced by a PLSL scheme that could potentially leave their employees at a disadvantage.

*“Through enterprise agreements and policy, some CLCs have recognised that reducing the point at which an employee can access LSL from 10 years to 7 years, and in some cases, 5 years, provides further incentive for an employee to remain with the employer, rather than seeking out higher wages elsewhere, helping to ensure their longevity in the sector and avoid burnout.” – CLCQ, p2*

*“Children by Choice have a provision for access to long service leave pro-rata after 5 years as a means to attracting and retaining employees. We know within the Social and Community Services Industry this is a provision that other employers across different sectors of the industry provide to be competitive within a low wages market. We believe that the establishment of a portable long service leave scheme would need to make allowances for these provisions.” – Children by Choice, p2*

A further incentive that peak bodies, employers and The Services Union confirm is widely used across the sector is generous salary sacrificing arrangements for SACS workers. The Consultation RIS did not consider these arrangements but the peak body statement summarises the similar questions stakeholders have asked on this issue:

*“Not-for-profit SACS organisations with public benevolent institution (PBI) status are able to offer their employees fringe benefits tax (FBT) concessions that allow employees to take advantage of salary sacrifice arrangements. How will these salary sacrifice arrangements be maintained and managed in the payment of LSL entitlements? Who has responsibility for payments to workers accessing LSL entitlements, including withholding income tax, administering FBT and salary sacrifice (as noted above), as well as issuing of PAYG summaries?” p2*

Stakeholder submissions reported that this is commonly used by SACS employees who salary sacrifice towards their mortgages, car loans, school fees as just a small example:

*“Currently, to try and stem staff turnover issues and attract new employees, our CLC members (all of whom have obtained deductible gift recipient status) utilise non-cash based incentives such as salary sacrificing to offset the low wages.” – CLCQ, p2*

The Taskforce have also considered the impact on salary sacrificing arrangements as it was raised by stakeholders in the ACT as being an issue for workers in their SACS scheme because their legislation does not expressly allow for the PLSL authority to make salary sacrificing payments on behalf of a worker.

#### 6.4.1 Government response to potential impact on existing employee entitlements

OIR considers legislation for a scheme will be able to protect existing employee entitlements.

Firstly, and most importantly, a PLSL scheme does not replace an employee’s existing long service leave entitlement whether it be the standard IR Act entitlement or a more beneficial entitlement offered by their employer. Nor does a PLSL replace an employer’s existing obligation to pay long service leave if one of their employees reaches the required period of service with them. If an employee reaches the required period of service with the one employer, they can still take their long

service as agreed with their employer. However, the employer is able to claim a reimbursement from the PLSL scheme for the portion of the worker's service for which they paid the PLSL levy.

For example, a worker has worked the five years with their employer required to access long service leave under their industrial instrument or employment contract but four of those years are following the commencement of a PLSL scheme. The employer must have provisioned for the first year of service but can seek reimbursement from the PLSL scheme for the remaining proportion of leave that equates to the four years they paid a PLSL levy for that employee. The PLSL scheme will then deduct those four years of PLSL from the worker's registered service. This ensures that existing long service leave entitlements can be retained under a PLSL scheme while also preventing double-dipping or duplicated entitlements.

This example also shows how the process for taking leave does not change under a scheme as the worker still needs to reach agreement with their employer about when and how much PLSL leave they can take so the employer can appropriately backfill the worker as they would for any other staff leave. This illustrates how a PLSL scheme essentially provides a further option to ensure that employees are not missing out on an entitlement that is available to many other workers.

The Government agrees with stakeholders that it would be an unfortunate and unintended consequence for a PLSL scheme to jeopardise the existing salary sacrificing benefits enjoyed by many SACS employees. A key principle to be adopted in the scheme will be that salary sacrifice arrangements will be supported by the scheme. While this is not an issue for existing Queensland PLSL schemes, OIR and QLeave consider there are a range of legislative and administrative options to ensure salary sacrificing payments can continue to be made while a worker is being paid their long service leave.

## 6.5 Scope of the scheme

Within the scope of focus question (iii) posed by the Consultation RIS are a number of concerns stakeholders have raised about how the scheme would be administered and the practical impacts it would have for employers and workers in the sector.

In response to the Consultation RIS, most stakeholders have sought clarity on exactly which SACS workers and employers would be captured in the scope of a PLSL scheme as this will have a significant impact on how it is administered. As was noted in the Consultation RIS and in this Decision RIS, there is no single industry classification or agreed definition that definitively reflects the SACS sector. The Consultation RIS pointed to the scope of the SCHADS Award and the Deloitte Report as a general guide for the scope of the PLSL scheme proposal.

However, peak bodies and some employers with a multi-service delivery model queried whether the scheme's scope should be extended to include aged care workers as well. Initially aged care was considered to be out of scope of the proposal as it was seen as more of a health-related industry that was separate to the SACS sector. However, some employers reported that their organisations had a more holistic service delivery model that included aged care work as well as SACS work. Further, these employers advised that often their staff work across both the SACS and aged care parts of the organisation doing largely the same work because of the increasing similarity between disability care and support and aged care work. It is due to this increasing overlap of SACS and aged care work that some larger employers argue it would be administratively simpler for them and more equitable for their employees if aged care work was also covered in these organisations. In its submission to the Consultation RIS, COCQ queried "*why is it not being considered for Aged Care Award*" noting that its workforce is split across the SCHADS and Aged Care Awards. COCQ further outlined the difficulties multi-service organisations such as it would have if aged care was not included in a scheme:

*“Moves towards flexible workforce (e.g. across community and residential aged care) would make compliance with a PLSL scheme administratively difficult and create an industrial impediment to achievement of a multi-skilled, flexible workforce goal. This is because residential aged care work is underpinned by the Aged Care Modern award rather than the SCHCDSI Award.” p4*

Only one peak body for the aged care industry, LASA, provided a submission to the Consultation RIS. As detailed earlier in the consultation summary, LASA argues that:

*“the aged care industry is not based on fixed term contracts or contracts for labour but rather offers long term, ongoing employment in a growing sector. Consequently, portable long service leave is not appropriate for this type of workforce as the structure of the aged care industry and workforce composition does not match those of the industries currently offering portable long service leave schemes.” p1*

The BDO submission also queried whether community education services delivered by a not-for-profit provider, such as after-school-care delivered by a P&C group or a kindergarten, or health services delivered by a not-for-profit organisation such as the RFDS would be considered in scope of a scheme.

A key consideration for the Taskforce has been the scope of a PLSL scheme. The Taskforce agreed that a scheme should broadly cover ‘community services’ workers and that the profile of the SACS sector used in the Deloitte report, *Forecasting the future: Community Services in Queensland 2025* and also the coverage of the SCHADS Award provided a useful basis for defining this group. Consideration of the scope of the SACS schemes in the ACT and Victoria also resulted in a unanimous view amongst the Taskforce members that the scope of a Queensland scheme should be clear and simple for stakeholders to understand and administer. As such, a guiding principle recommended by the Taskforce is that a scheme should cover any worker engaged by an organisation where a dominant purpose is delivering community services in Queensland. This has the effect of capturing administration workers and executive employers. It would also capture some aged care, child care and health care workers who work for holistic or multi-service organisations (e.g. emergency care or drug health workers employed in a neighbourhood community centre or holistic community organisation). The effect of not adopting this approach would be that some workers in an organisation would be captured while others would not and would also mean that in some cases, part of a worker’s hours may be caught while another part of their hours would not (e.g. if an employer provided both disability support and aged care services for the employer). A situation such as this would be relatively common for smaller organisations operating in regional areas. For example, a regionally based SACS organisation that was originally established to support children with disabilities and their parents but has evolved to provide a range of disability, respite and community building support services including some aged care support and a weekly child’s playgroup for the local community. The Taskforce considers this approach provides clarity and administrative ease for employers and QLeave. It also ensures an equitable outcome for employees within organisations who identify as SACS workers despite not working in a direct frontline capacity and for those that perform multiple kinds of SACS roles.

However, the majority of Taskforce members considered that substantive childcare, early childhood education and health care services should be out of scope of a scheme for the SACS sector. This was on the basis that these are considered to be separate industries to the SACS sector and these workers do not experience the same short-term funding leading to short-term employment issue that prevents SACS workers from accruing a full LSL entitlement with a single employer.

Finally, focus question (iv) posed in the Consultation RIS also queried whether a scheme should apply to both for-profit and not-for-profit organisations. This was on the basis that such a distinction was

made (particularly for disability services) in Victoria's *Long Service Benefits Portability Bill 2018*, which was then before the Victorian Parliament. Stakeholders were in unanimous agreement that this was not a meaningful distinction for the sector and would lead to a significant degree of confusion and inequity in the administration of a scheme:

*"The issues of short-term contracts, employee retention and inability to access LSL exist for employees of both not-for-profit organisations and for-profit organisations. Movement of employees is not quarantined to not-for-profits; it is experienced by for-profits as well. Employees move between not-for-profit and for-profit organisations, and excluding for-profits from the scheme would hinder the accrual of LSL entitlements for workers."* – Peak Body statement, p11

*"It would not be reasonable or sustainable to have one set of employers operating within the same sector of the industry while exempt from participating in a portable long service leave scheme. Movement of employees is not quarantined to not-for-profits, it is experienced by for-profits as well."* – The Services Union, p7

The Taskforce members reiterated this advice early in their discussions about the scope of a PLSL scheme, noting that the Victorian example of distinguishing between the not-for-profit and for-profit organisations is undesirable given the confusion it has created for the sector.

#### 6.5.1 Government response on the scope of the proposed scheme and other administrative impacts

In response to the feedback from stakeholders and in line with the advice of the Taskforce, the Government proposes that any scheme for the sector have a broad scope that avoids confusion and inequity for stakeholders. To that end it proposed that a PLSL scheme for the SACS sector:

- cover workers engaged in community services work, broadly defined;
- cover all workers engaged by an organisation (non-government) where a predominant purpose is delivering community services in Queensland;
- applies to aged care or child care workers only where they work for an organisation (non-government) where a predominant purpose is delivering community services in Queensland
- cover contract workers; and
- apply in the same way to both the for-profit and not-for-profit sector.

Consistent with the Consultation RIS and following consultation with stakeholders and considerations by the Taskforce, a PLSL scheme is not proposed to include organisations or workers whose predominant purpose is to provide aged care or child care services in Queensland.

As reflected in the Consultation RIS, a number of stakeholders considered that the aged care and child care sectors are separate sectors which are not subject to the same issues as the broader community services sector. This was reflected most strongly in the submission of the peak body for the aged care sector, LASA, who wrote that the aged care sector should not be included in a PLSL scheme due to the following reasons:

- The aged care sector is not characterised by short-term funding and high rates of employee mobility as experienced by the SACS sector;
- Significant financial constraints and a high level of regulation within the aged care sector means a PLSL scheme would place a significant administrative and financial burden on organisations; and



- Many aged care workers remain with employers and can access current long service leave entitlements, which also acts as an incentive for employers to attract and retain experienced staff within this specialised area.

Furthermore, the Consultation RIS relied on the SCHADS Award and the defined scope of the sector was reflected in the Deloitte Report as providing useful information on the characteristics of the SACS sector. As a result, the aged care and child care sectors did not feature in the Consultation RIS and although submissions were received from some aged care stakeholders, other key stakeholders in the aged care, child care and health industries may not have seen a need to engage in this consultation process so their views cannot be considered to have been adequately canvassed and considered.

However, the following examples aim to provide clarity around what is included in the proposed scope as it relates to aged care and child care:

- A SACS organisation that also delivers aged care services and would be in scope of the proposed scheme would be a regional community service organisation that was originally established 40 years ago to provide support to the parents of children with disabilities. The organisation has evolved to provide a range of disability, respite and community building support services including some aged care support. A predominant purpose of the organisation is the provision of community services and the proposed scope would mean that all of the organisation's employees would come within the scope of the scheme, including the administration staff and those employees who provide aged care services, including whether they are employed entirely to provide aged care services or where the provision of aged care services is a part of their role; and
- A SACS organisation that also delivers some child care services and would be covered by the scope of the proposed scheme would be a neighbourhood-based community organisation that delivers a broad range of services including migrant settlement and engagement support, literacy, multicultural programs and community development services. The organisation also runs a weekly supervised playgroup and employs child care workers to support this service. The predominant purpose of the organisation is the provision of community services and the proposed scope would mean that all the organisation's employees would be covered by the scheme, including the administration staff and those employees who provide child care services.

Similarly, the following examples aim to clarify what kind of child care and aged care services are not included in the proposed scope:

- A standalone nursing home which provides residential aged care services and also provides care for a few younger clients who have complex or high-care needs due to a disability, would not be within the proposed scope. In that example, the predominant purpose of the organisation is aged care service provision, with disability services being only a small part of its purpose. The SACS component exists only because there is a shortage of home-care options for younger people needing higher care such that they reside in aged care facilities. Similarly, a retirement home that employs or contracts occupational therapists or social workers to support its residents would not be covered within the proposed scheme as the work is in the context of aged care services; and
- Child care organisations or services that would not be in the scope of the proposed scheme are standalone child care and early childhood education centres, kindergartens and school-based child care services such as before-and-after school care and vacation care. These services are considered to be separate from the SACS sector.

The proposed approach is not entirely consistent with either the Victorian or ACT PLSL schemes for the SACS sector. The ACT scheme has included child care within its scope since inception in 2010 and

all of aged care was included from 2016 with the inclusion of residential aged care (although it still excludes aged care of a medical nature). The reason for including all aged care from 2016 was based on a Government election commitment to extend the PLSL scheme for the community services sector in light of the findings from the Senate Inquiry into portable long service leave.<sup>26</sup> It is also important to note that the ACT scheme is small, reflecting the size and population of the ACT. The ACT scheme registers approximately 20,000 active workers, of which more than a quarter are child care workers. This compares to the estimate of approximately 44,495 community services workers in the Deloitte report which does not include child care workers. The Victorian scheme also includes child care but does not include aged care. The Victorian Government also did not include aged care or health professionals within their PLSL scheme for the community sector as the employees and employers were under separate awards and/or legislation to most community services.<sup>27</sup> (Although there is potential for entities which provide both aged care and community services to be included if they predominantly provide community services and their aged care workers are not employed under the aged care or a health care related award.)

In accepting that aged care workers should not be in the scope of a PLSL scheme for Queensland, it is recognised that the Taskforce considered that there was significant and growing overlaps between aged care and other community care services, particularly disability services. This, to some extent, reflects the structure of the sector in Queensland where there are more smaller community services organisations delivering multiple services given the large geographical size of the state and the dispersed population in regional and remote areas. In these organisations it is not uncommon that some aged care services (particularly in-home aged care) are delivered by organisations engaged in a diverse of community service delivery. These organisations employ both community service workers and aged care workers and may also employ individuals who provide both community and aged care services. Given this reality, it was the advice of the Taskforce that where workers are employed by a multi-service organisation, all workers should be included within the scope of the PLSL scheme. The Taskforce and stakeholders consider this approach as administratively simpler for organisations, providing equity among workers employed within one multi-service organisation and who may perform multiple SACS roles. For example, a multi-service organisation may provide disability support services as well as in-home aged care services. If aged care was excluded in such an organisation, some of their employees would be excluded from a PLSL scheme while others would be included based on their role, or some employees may have their disability service work covered but not their aged care work. Therefore, it would reduce complexity and enhance equity within multi-service SACS organisations for all workers to be included within a PLSL scheme.

In accepting that child care workers should not be in the scope of a PLSL scheme for Queensland, it is also recognised that there would be some overlap for multi-service organisations that provide some child care services. Similar to the overlap with aged care services, the Taskforce process highlighted that it would be easier and clearer for SACS organisations also providing some child care services to also cover their child care staff. These could be larger organisations such as COCQ, which provides some child care services as well as community and aged care services, or smaller organisations based in a particular region or neighbourhood. However, OIR agrees with United Voice (a member of the Taskforce with significant coverage of the child care industry) that the proposed PLSL scheme's scope would need to have a limited and clearly defined application to avoid confusion and inequity in the child care sector.

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<sup>26</sup> Education and Employment References Committee, Australian Senate, *Inquiry into the Feasibility of, and options for, creating a national long service standard, and the portability of long service and other entitlements*, 2016, 49.

<sup>27</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 28 March 2018, 938 (Natalie Hutchins, Minister for Industrial Relations).

While there has been little stakeholder feedback regarding community health workers, OIR is similarly aware that the proposed scheme's scope would need to have a clearly defined application to ensure it does not unnecessarily capture health care workers engaged in a substantively medical context. This is not considered to be a departure from the Consultation RIS, which included a range of community services delivered by SACS organisations that are health related but delivered in a community context (including community health, counselling, mental health and alcohol and other drug support). This is supported by feedback from SACS workers, with a number identifying as a member of the SACS sector even though their roles might be considered health-related (e.g. psychologists, drug nurses, occupational therapists). It is considered that including these workers will help retain their much-needed skills in the SACS sector when the health industry may offer more attractive pay rates.

In defining the application of the scope of the PLSL scheme it will be important to avoid perverse outcomes such as multi-service organisations restructuring to avoid being within the scheme. This will be achieved by using key characteristics to define organisations who have as a predominant purpose, the provision of community services rather than using a quantitative measure such as a certain percentage of workers/income/funding being for community services. The structure of the larger multi-service is also very different to the smaller organisations as the larger organisations often operate separate businesses under the one umbrella structure and there will need to be further clarification provided to guide the application of scope for those organisations.

This scope for the proposed PLSL scheme differs from the scope originally outlined in the Consultation RIS by specifically including all staff employed by a SACS organisation – i.e. administrative and executive staff and some aged, child and health care workers employed in a multi-service organisation. This is considered justified given the expanded scope is in direct response to stakeholder feedback about the current nature of SACS organisations and work and to ensure clarity and administrative ease for organisations in understanding and complying with the scope of the scheme.

## 7. Conclusion and recommended option

Following the conclusion of the consultation process, the Government has determined that it will implement a statutory PLSL scheme for the SACS sector in a model similar to Queensland's existing PLSL scheme for the contract cleaning industry. In response to specific questions raised by stakeholders during the consultation process, the Government intends to develop a portable long service leave scheme for the social and community service that:

- covers workers engaged in community services work, broadly defined (based on a definition of the sector profile in the Deloitte report, *Forecasting the future: Community Services in Queensland 2025* in combination with the scope as set out in the *Social, Community, Home Care and Disability Services Industry Award 2010*);
- also covers all workers engaged by an organisation (non-government) where a predominant purpose is delivering community services in Queensland;
- applies only to aged care or child care workers where they work for an organisation (non-government) where a predominant purpose is delivering community services in Queensland
- covers contract workers;
- applies to both for-profit and not-for-profit organisations in the SACS sector;
- keeps the levy rate as low as possible to minimise the impact on employers;
- provides workers with a meaningful PLSL entitlement, potentially through earlier access (e.g. 6.1 weeks PLSL after 7 years' service rather than the existing statutory entitlement to 8.67 weeks after 10 years);

- is clear and simple for all stakeholders to understand and comply with; and
- be administered by the existing PLSL Authority, QLeave, and supported by a governing board consisting of a Chair and Deputy Chair with financial/investment expertise and equal number of employer and employee representatives.

This proposal generally aligns with Option 3, which was the preferred option outlined in the Consultation RIS. However, there are some aspects of the proposal that differ slightly from the proposal outlined in the Consultation RIS:

- the scope of the scheme is proposed to include administrative, executive and some aged care and child care workers who were not originally considered as being within scope of a scheme; and
- the PLSL entitlement is accessible earlier at 7 years, as opposed to the existing statutory entitlement accessible after 10 years.

These divergences from the Consultation RIS proposal are considered preferable given that these aspects of the proposed scheme have evolved directly in response to stakeholder feedback and are supported by further research by OIR. This will ensure the proposed scheme is easier for employers and QLeave to transition to while still providing workers with an accessible and beneficial entitlement.

This proposal is considered preferable to Option 1 because retaining the status quo does not address the current problem of SACS workers being prevented from accessing LSL, nor does it provide the wider benefits to the SACS sector that are anticipated under the Option 3 proposal.

Option 2 as outlined in the Consultation RIS, to introduce a PLSL scheme for the SACS sector but to have it administered by a separate authority than QLeave, is not considered to be a desirable option given the significant benefits that can be gained from having QLeave administer the proposed scheme. Not only will the proposal outlined in this Decision RIS deliver cost and administrative efficiencies for the new scheme but the wealth of experience QLeave has in successfully administering Queensland's existing PLSL schemes will give SACS stakeholders confidence that the new scheme will operate effectively.

It is difficult to calculate the overall costs and benefits of a PLSL scheme, given the lack of data on current LSL uptake for the sector and the significant variance reported by stakeholders and the Taskforce in how SACS organisations currently provision for their employees' LSL entitlements. The Consultation RIS noted that under a scheme there would be costs to employers offset by benefits to workers and the sector as a whole. Also noted in the Consultation RIS and this Decision RIS, is the reasonable assumption that PLSL will increase the number of workers who are able to access the entitlement and that the upfront PLSL levy payable by employers will have an initial impact on the cashflow of SACS organisations. It is acknowledged that SACS organisations have existing concerns about tight fiscal margins, which is why the government is committed to ensuring the levy rate is kept as low as possible. However, it is considered that in the long term, a PLSL levy will be a manageable approach to provisioning for this minimum employee entitlement and that there are potential administrative savings to be realised under a centralised fund managed by QLeave. As such, the government considers that over time the proposed PLSL scheme is desirable on the basis that it will deliver a net benefit for workers, the SACS sector and the Queensland community as a whole. Enabling these workers to access this minimum leave entitlement which has been unattainable to them through no fault of theirs or their employers, has merit on its own. Furthermore, it will help prevent burnout amongst the workforce and provide a greater incentive for workers to join the SACS sector. Helping to build a strong SACS workforce will in turn deliver benefits for the many Queenslanders that are assisted by the critical support services the sector delivers, and supporting our most vulnerable Queenslanders will contribute to our state's social and economic prosperity.

## 8. Consistency with fundamental legislative principles

No conflicts with fundamental legislative principles were identified during consultation.

It is proposed the scheme will adopt the compliance model outlined under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* (CCI Act), which imposes both civil and statutory penalties for non-compliance with a range of obligations. Authorised officers within QLeave are also given a range of investigatory and information gathering powers under the CCI Act to be able to ensure employer and worker compliance. OIR will consult with the appropriate agencies to ensure these powers continue to respect fundamental legislative principles when replicated for the proposed SACS scheme.

## 9. Consistency with COAG competition principles

As the new scheme will apply equally across all employers in Queensland's SACS sector, there is not expected to be any restriction of competition. While it is not proposed to include government services in the scheme, competition does not exist between the government and non-government sectors as government has increasingly outsourced its service delivery obligations. Providing PLSL to those in the non-government sector will also help not-for-profit organisations in particular compete with the more beneficial wages and conditions offered in the government sector.

## 10. Implementation, compliance support and evaluation strategy

### 10.1 Implementation

The Government proposes to introduce primary legislation into the Parliament by the end of 2019. If this primary legislation is passed by early 2020, it is anticipated a scheme would commence operation on and from 1 July 2020, after the development of the necessary subordinate legislation.

In this case, it would be necessary to appoint the governing board prior to the commencement of the scheme so that it is able to confirm the levy rate for the scheme at the earliest possible opportunity (noting that once the scheme is established by primary legislation the presumptive administering authority, QLeave, will be able to obtain final actuarial advice to specify the appropriate levy rate in the subordinate legislation).

QLeave will need to have established the SACS sector in its systems and processes following the passage of legislation and before June 2020 to ensure a smooth transition. Workers and employers in the sector will be required to register with the scheme either prior to or soon after commencement. On a quarterly basis, employers will also be required to start registering their workers' service with the scheme, and making the associated levy payments, starting at the end of the first quarter of 2020–21. Workers will not have any further administrative requirements after registering other than keeping their contact details up to date via an annual service record QLeave will provide. As the proposed scheme will not recognise any retrospective service for workers, it is anticipated that fewer leave claims will be made in the first seven years of the scheme. However, if after the commencement of the scheme a worker reaches their LSL entitlement with their employer, the employer will be able to claim reimbursement from the scheme for the portion of their employee's service on which they paid the PLSL levy.

To support both employers and workers with this transition, an education campaign will be developed for the sector that outlines the legislative basis and intent of the scheme while also clearly stepping out the respective obligations of stakeholders

## 10.2 Compliance

QLeave will have responsibility for ensuring both employers and workers comply with their respective obligations under the scheme's legislation. It is proposed to adopt the compliance model outlined under the CCI Act, which imposes both civil and statutory penalties for non-compliance with a range of obligations. Authorised officers within QLeave are also given a range of investigatory and information gathering powers under the CCI Act to be able to ensure employer and worker compliance. Employers and workers will also have appropriate administrative review and appeal mechanisms to challenge the decisions of QLeave.

The governing board will have oversight of QLeave's administration of the scheme and both the board and QLeave will be required to report to the Minister on an annual basis on the state of the scheme.

## 10.3 Evaluation

The legislation to be introduced will include a requirement for the Board to obtain regular actuarial advice to monitor the ongoing financial stability of the PLSL scheme. This obligation will be modelled on similar statutory obligations under section 35 of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and section 42 of the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

QLeave and the Office of Industrial Relations will continue to monitor and report on the performance of the scheme. To that end, it is proposed the legislation establishing a scheme will require a full review of the scheme's operation within 5 years of its commencement. This will provide stakeholders with a confirmed avenue to raise any specific issues with the implementation or operation of the scheme, including consideration of scope and the impact of the levy rate.

## Appendix 1 - List of stakeholder submissions

\*signatory to peak body position statement

<b>EMPLOYER PEAK BODIES</b>
Leading Age Services Australia Ltd
Australian Community Workers Association
Queensland Alliance for Mental Health
Tenants Queensland
National Disability Services Queensland
Queensland Council of Social Services*
Community Legal Centres Queensland*
Community Services Industry Alliance*
PeakCare*
Ethnic Communities Council of Queensland*
Queensland Network of Alcohol and Other Drug Agencies*
Queenslanders With A Disability Network*
Volunteering Queensland*
Positive Employer Outcomes (via Employer Services)
CCIQ
<b>SERVICE PROVIDERS (I.E. EMPLOYERS)</b>
DV Connect (verbal submission)
Open Minds
Churches of Christ in Queensland
Royal Flying Doctors Service - Queensland section
Children by Choice
MDA Ltd
Richmond Fellowship Queensland
Eight confidential submissions
<b>UNIONS</b>
The Services Union
<b>INDIVIDUAL WORKERS</b>
311 x Services Union members
Anthony Cooke
Hugh Rose-Miller
Don Moore
Nick Collyer
Rebekah Leong
Tanya Bastiaans
Tracey Blok-Earl
Dave Kearney
K McDonnell
<b>OTHER MISCELLANEOUS SUBMISSIONS</b>
Queensland Law Society
BDO
R & M Cleaning (NSW)
John Homan
Unidentified stakeholder