

Submission by BDO QLD Pty Ltd to the Consultation Regulatory Impact Statement relating to the investigation of the introduction of a portable long service leave scheme for the social and community services

Sector

In paragraph 2.5 there is a list of the services that are considered in the statement paper as provided by the social and community services.

The list is extensive and the range of services diverse.

There will be difficulties separating those services that are delivered by a community based organisation from those delivered by other organisations.

For example - community education

A small education facility that operates as a not for profit in a regional community delivers education to young people who drop out of the mainstream education sector. This may fit the definition of community education for the purposes of the PLSL. After several years of operation, the school is supported into a larger education provider (such as the Edmund Rice organisation). The members of the NFP change from individuals to the larger organisation. There is no change to the actual legal structure, staffing or student needs that are targeted. Is it still community education? If not, what happens to the entitlements of those working in that school?

Is after school care delivered by a P&C community education?

Kindergartens regularly present themselves as community based reflecting their focus on the local community in which they are located. Kindergartens are charities under the category of education.

Does this mean all kindergartens are also subject to PLSL?

Health services are delivered by a wide range of service providers from individuals, volunteer based organisations, large charities such as the Royal Flying Doctor Service and Bushkids, and for profit providers.

All can have a mix of funding sources such as government block funding, bulk billing under Medicare and fee paying patients. Is there a need to distinguish between a community service and a for profit provider who is delivering an essential service to the community?

In many regional communities, the local GP would be regarded as a community health provider due to the nature of the services delivered and support for the local community.

BDO Comment: The definition of the sector to be covered by the PLSL scheme is inherently difficult to define without reference to not only the service but the size or character of the service provider.

Changes influenced by the National Disability Insurance Scheme (NDIS)

In paragraph 2.5 on page 12 the paper suggests that the introduction of the NDIS is a significant factor that will impact on the employment in the sector.

All commentary regarding the implementation of the NDIS suggests that it will impact on the delivery of services to those covered by the NDIS. The most fundamental change is that services cease to be block funded and become the selection by the individual - consumer directed care.

The historical experience of the roll out of a similar scheme in the United Kingdom over twenty years ago is that disability services are no longer delivered by NFP's, and are now delivered by smaller for profit providers.

We understand that organisations like BUPA and Telstra are looking to expand their health services market in the disability sector

BDO Comment: BDO believes that Australia will follow the UK experience and the introduction of the NDIS will disrupt the existing model of delivery of disability support services both in terms of the types of services provided and the organisations that will deliver those services.

Service providers

In paragraph 4.2 there is discussion on the scope regarding for profit and not for profit providers. The selection criteria for application of the PLSL scheme is the social and community services, with a multitude of categories suggested in paragraph 2.5.

BDO Comment: If a category is to be included, all service providers in the selected categories should be included namely:

- Not for profit entities, including charities
- For profit entities
- Government service providers

Government would need to include State, Commonwealth, Local and government owned enterprises.

If one category of service provider is excluded, the PLSL scheme introduces a market distortion including:

- Employees within one category of employer are offered PLSL while others employed by an employer with a different purpose or ownership group is excluded.
- Employers required to contribute to a PLSL have a fixed cash outflow expense to contribute to PLSL irrespective of whether their employees will remain with that organisation for the ten years' minimum.
- Employers that are outside the PLSL may accrue the liability as a provision but are only required to fund the cash flow and confirm the expense when the employees have attained ten years' service.
- Employers required to contribute to a PLSL have an additional administration cost completing service record returns to the authority that administers the PLSL.

- Employers required to contribute to a PLSL have an additional administration cost to claim back amounts held from the authority that administers the PLSL in respect of employees that remain with that employer and who become entitled to long service.
- Employers required to contribute to a PLSL have an additional administration cost to calculate their long service leave liability in that the entity would normally provide for long service leave in accordance with Australian Accounting Standards and will need to undertake additional work to ascertain the net long service leave liability.
- Companies limited by guarantee and charities are required to prepare financial statements in accordance with Australian Accounting Standards

Note that a large proportion of not for profit entities require an audit to meet registration requirements (such as the ACNC requirements or the Incorporated Associations Act requirements) and the auditors will incur costs to undertake their review of these calculations.

Rate of PLSL contribution

The liability for long services for an employer is estimated as 1.6% of wages. Long service leave is designed to reward employees who remain with an employer for more than the qualifying period, generally ten years.

Paragraph 6.2.2 canvases a range of rates.

BDO Comment: It is inappropriate to compare the rate that applies in the building and construction industry as this rate applies to cost of construction work including labour and materials.

The introduction of a PLSL scheme should not cost the employer any more than the existing cost of long service leave. Given the additional administration cost to the employer it should be less than 1.6%.

Administration

The statement paper notes that there is an administrative requirement for all employers to maintain leave entitlements.

The Industrial Relations Act requires all employers to maintain adequate records to allow the calculation of leave entitlements.

Where an employee remains with the employer for a period that qualifies the employee to receive long service leave, the employer remains liable to pay the long service leave entitlement to the employee and to seek reimbursement from the PLSL scheme.

From 1 July 2018, employers with more than 20 employees are required to implement Single Touch Payroll - a system requiring employers to electronically report all payroll payments to the Australian Tax Office on or before the date of the payroll payment.

This Single Touch Payroll electronic reporting system extends to all remaining employers effective from 1 July 2019.

The practical impact of the Single Touch Payroll system is that the reporting requirements are so detailed requiring all employers to use an electronic software payroll package to manage their taxation administration requirements.

The change from 1 July 2019 applies to all employers, including both for profit and not for profit entities.

Each payroll software application includes the management of annual, personal and long service leave entitlements. Each employer will have this information as part of their compliance with the Single Touch payroll reporting requirements.

Consequently, calculating and reporting to a State based authority on the qualifying hours of employees will introduce separate and additional reporting commitments.

Sub Paragraph 6.2.2 (ii) includes the statement

There may also be administrative efficiencies in the long service leave entitlement being centrally administered and risk-managed, as opposed to individual employers making their own arrangements.

Employers are not relieved of their responsibility to maintain employment records for long service leave entitlements. Many employees will only qualify under the Qld PLSL for part of their employment with a particular employer.

BDO Comment: All employers will have payroll software that will assist in managing the employer's responsibilities under the Industrial Relations Act. Any reporting required pursuant to a PLSL scheme will be additional and the amount of time will depend on the design of the system - refer our comments on qualifying employees.

Individual employers will continue to need to manage their records and finances to deal with the long service entitlements of their employees.

Sector employee retention

Paragraph 6.0 includes the statement

A PLSL scheme has potential to improve the attraction and retention of skilled employees in the sector thereby reducing training, recruitment and retention costs and encouraging improved productivity.

If employee service in any of the categories listed in paragraph 2.5 qualifies for the PLSL scheme, the range of skillsets and qualifications is very wide.

The above extract from Paragraph 6.0 will have little application if all employers in the sector are not included - that is, not for profit, for profit and government entities.

Whilst it may be argued that a PLSL scheme may encourage an individual to remain in the same sector, the introduction of a PLSL scheme may make it more attractive to employees to move between employers.

This will result in higher costs for the employers as they need to replace staff, incurring recruitment costs, induction training costs and lost production / efficiency during the handover time.

As the suggested PLSL scheme is limited to Queensland, the scheme may introduce other distortions.

Example 1 - a national based employer within the social and community services sector has a staff member in Queensland who qualifies under the PLSL scheme. The staff member has been employed by this employer for 8 years. The employer is contemplating a permanent

transfer / promotion of the employee to New South Wales. This may be the employer's choice or at the request of the employee.

If the employer proceeds with the transfer, after 10 years of service the employer will remain liable to pay long service leave to the employee. However, the employer would be unable to claim any reimbursement from the Qld PLSL scheme.

As a consequence, the employer has paid the nominated levy, say 1.6 %, of the employee's wages to the Qld PLSL scheme for 8 years but is now required to pay that amount again when it pays the entitlement to the employee. This increases the cost to the employer significantly.

One consequence may be that the employer does not approve the transfer / promotion of that employee.

Example 2 - a national based employer within the social and community services sector has a staff member in Queensland who qualifies under the Qld PLSL scheme. The staff member has been employed by this employer for 1 year but the employee has already 8 years qualifying service with previous employers under the Qld PLSL scheme.

The employer is contemplating a permanent transfer / promotion of this employee to New South Wales with an employment period of 5 years. The employee is asking the employer for compensation for the fact that they will forfeit their entitlement under the Qld PLSL scheme.

One consequence may be that the employer does not approve the transfer / promotion of that employee.

BDO Comment: The statement that the Qld PLSL scheme will reduce costs has limited scope as a PLSL scheme is likely to result in additional costs to the employer.

Qualifying employees

The Impact Statement paper does not consider the question of which employees qualify and where employees are partly engaged in the services that are considered in the statement paper as provided by the social and community services (paragraph 2.5).

The implication is for the entitlement of the employee and the determination of amount of payroll on which the levy will apply.

There are a number of questions to be resolved:

1. Where an employee is engaged in delivering services for part of their employment and the balance of their time is devoted to other activities

Example - a person employed for 3 days per week on the delivery of community health services and two days a week on fundraising support

Does the employee participate in the Qld PLSL scheme as to 100% or a lesser percentage - in the example 60%?

2. Where an employee is engaged in delivering services in Queensland for part of their employment and the balance of their time is devoted to delivering services in another state

Example - a person employed for 3 days per week on the delivery of community health services and 2 days a week on the delivery of community health services at a NSW community.

Does the employee participate in the Qld PLSL scheme as to 100% or a lesser percentage - in the example 60%?

3. Where an employee is employed by a national organisation and their residential address is interstate but they are on secondment to a qualifying activity in Queensland, is that employee required to be included in the list of persons on whose payroll the levy is paid, even though the employee and the employer both know that the employee will not complete ten years' service in Queensland. (If yes, this will be another example where the employer will be required to pay the cost of long service leave twice)
4. Many of the service categories will be delivered by charities that have Public Benevolent Institution status. For qualifying entities, they are able to offer effective salary packaging to their employees with the result that the entity is able to pay a lesser salary that would be required if it were a for profit enterprise.

Where an employee is salary packaging an amount, is the payroll to which the levy applies the actual payroll paid to the employee or is the payroll have to be adjusted to a notional payroll.

5. An individual commences full time employment in the qualifying sector and is paid a low wage whilst training and in support of the cause they are working for. At a later date, they are employed on a full time basis with a different organisation in a well-paid role.

Example - employee for 9 years at \$25,000pa and then 3 years at \$80,000pa.

How is the inverse applied - employee for 9 years at \$75,000pa and then 3 years at \$30,000pa?

What rate is used for the employee when they access the PLSL for their 12 years of service?

6. Only a handful of people will be employed under the awards referred to. Others will be employed under Nurses awards, EBA's for doctors and similar. Will the scheme apply to all employees who deliver the qualifying services?
7. Will there be a minimum wage requirement for the time worked to qualify for PLSL scheme purposes?
Presumably a volunteer does not qualify for their time to count as time for PLSL scheme purposes. Will there be a minimum wage level for the time to count for PLSL?
8. Where a person's employment remuneration level fluctuates over the years, how is the amount paid to a person qualifying for PLSL calculated?

BDO Comment: The remuneration levels of employees within the sector vary from volunteers, to minimal to substantial for highly qualified specialists. It is hard to envisage a mechanism that accommodates the variations in employment hours and in employment remuneration.

Taxation

Sub Paragraph 6.2.2 (i) includes the statement

Employers would face additional direct costs such as increased payroll tax (PLSL payments would be counted in determining payroll tax liability) and fringe benefits tax (which would be payable on contributions to the PLSLS).

BDO Comment: We note the comment that fringe benefits tax (FBT) will apply to the contributions. If this is an outcome, the cost to the employer of a PLSL scheme will be approximately double the amount of the contribution paid to the scheme. Some charities have FBT exemption but this is generally used in a manner to reduce the cost of payroll. The exempt component is generally already fully used so the employer will be liable to pay FBT on the extent of any fringe benefits provided.

FBT applies at the top personal income tax rate.

The scheme should be designed to ensure that FBT does not apply.