

Fact sheet

Consultation on portable long service leave for community services

Please note that this fact sheet gives a snapshot of the proposed scheme. More information is available in the impact statement and draft Bill. If you want to make a written submission, please read the regulatory impact statement to help inform your response.

1. What is portable long service leave?

Long service leave is a workplace benefit that entitles workers to paid time off after their extended tenure with a single employer. A portable scheme will recognise a worker's continuous employment in the sector, even when they change employer, meaning that workers do not forfeit their long service leave when they change employer. NSW already has two portable schemes for the building and contract cleaning industries, where work is primarily contract or project based.

2. Why the community services sector?

On 25 August 2023, the Hon. Sophie Cotsis MP, Minister for Industrial Relations announced the NSW Government is taking the first step to fulfill its election commitment to establish a portable long service leave scheme for workers in the community services sector. The sector plays a vital role in promoting community inclusion and wellbeing, but faces challenges that can impact long-term security such as short-term funding arrangements. By providing access to long service leave benefits based on industry-wide service, rather than service with individual employers, the scheme aims to improve access to leave and help attract and retain skilled workers.

3. What's next and when will the changes begin?

A public consultation on the draft Bill is open until **30 April 2024**. The purpose of consultation is to test the model and help refine the Bill before it is finalised. We will consider all feedback and comments provided.

When the scheme begins will depend on the response to public consultation, and the passage of the Bill to create the scheme in NSW Parliament. The indicative dates are:

- **March - April 2024** – Public consultation closes on 30 April 2024
- **Mid-2024** – Bill to establish the scheme finalised and introduced in NSW Parliament
- **Late 2024** – Consultation on supporting regulations once the Bill receives royal assent

- **Mid-2025** – Commencement of the Bill on proclamation.
-

4. Who will be covered by the new scheme?

Workers and employers covered

The scheme will apply to the for-profit and not-for-profit sectors and will include full-time, part-time, and casual employees, with the ability for contractors to opt in. Employers (including labour hire) will be covered in relation to each eligible worker they employ, such as paying a periodic levy. Workers will be eligible if they deliver a community service, or they work in an organisation that predominantly delivers a community service (see examples provided in the impact statement).

The services captured are:

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

Workers and employers not covered at this stage

- Services not listed above are not covered by the proposed scheme (for example, standalone health care, early childhood education and care, or aged care). However, the Bill may cover some of this work where it is delivered incidentally as part of a community service that is covered.

- The scope is a starting point. We will consider the scope and if there is a need in future, could consider a phased approach where portable leave is expanded to additional sectors.
 - The Bill does not apply to the public sector. Workers employed by Australian public sector agencies and entities will be excluded as portable entitlements are often available already. The new scheme will also not apply to all employers associated with the public sector.
 - Additionally, partners (who share the profits of the partnership), directors and trustees are not considered workers where they are performing work for their partnership, corporation or trust.
-

5. What will workers be entitled to?

The Bill sets out our proposed model that includes the following key benefits.

- Employees will accrue service based on time employed, with one service credit given for each eligible day of employment and recorded in a workers' register.
 - A worker will be entitled to 6.1 weeks of paid long service leave after completing 7 years of eligible service (equivalent to 2,555 service credits) in the sector.
 - Workers will receive a one-off gift of service (equivalent to 12 months) if they register in the scheme in the first six months after it rolls out, so they will be able to access leave after 6 years.
 - Workers will be able to have a break in service of up to 4 years (or extended under special circumstances like a serious illness) without losing entitlements.
 - Workers can claim leave at any time after they become eligible by applying to the NSW Government, through the NSW Long Service Corporation (LSC).
 - An employer will need to grant leave to a worker on request within 6 months, or if longer is needed, the worker and employer can agree on a period of up to 5 years. Further extensions can be considered by the LSC where needed.
 - Workers will need to take leave but may receive a cash pay-out, without taking leave, in limited cases. This will include where they have accrued 5 years of service and intend to leave the sector permanently, or in relation to deceased estates. The amount of the payment will be pro-rata.
-

6. How will the scheme be funded?

All registered employers share the cost of the scheme, which will be funded through a periodic levy on employers and investment earnings. The levy will depend on the final design of the scheme but is likely to be around 1.7% of the ordinary wages of workers captured by the scheme.

The NSW Government, through the NSW Long Service Corporation, will create and manage a central sector fund to hold levy payments and other contributions. The NSW Government's financial

services provider, T-Corp, will invest these funds. Payments from the fund will be limited to paying worker benefits and administration costs of the scheme, or another reason authorised by law.

7. What will I need to do under the proposed bill?

All workers and employers will need to be registered with the NSW Long Service Corporation, to track service, entitlements and payments. The Long Service Corporation will maintain registers.

Employers

If you are an employer, you will need to:

- apply for registration as an employer with the NSW Long Service Corporation
- apply to register each eligible worker, unless the worker applies themselves
- keep records about eligible workers including their employment and pay
- complete and lodge a quarterly return to the Long Service Corporation with information such as their total amount of ordinary remuneration, the employment dates and other information
- pay the periodic levy as part of the quarterly return process.

Contractors

If you are a contractor, you can opt in to participate in the scheme but this will not be required.

Contractors who decide to participate in the scheme will need to:

- apply for registration with the LSC and keep it up to date
- complete and lodge a quarterly return to the LSC with information such as your total amount of ordinary remuneration, work dates and other information
- pay a periodic levy as part of the quarterly return process.

Employees

Workers who are employees will be able to apply for their own registration with the LSC, however are not required to do so. Responsibility will ultimately rest with the employer.

8. Who will administer the scheme?

Role of the Long Service Corporation

The Long Service Corporation is a statutory authority that will administer the scheme including registration, fund management and compliance. For example, the Long Service Corporation will:

- maintain a register of workers and a register of employers
- make decisions about registration and service credits

- set up a discrete sector fund to hold levies, and work with T-Corp to invest contributions and maximise the available fund for workers' long service leave claims
- monitor and enforce compliance with the scheme.

The Long Service Corporation's existing Audit and Risk Committee will provide expert advice and oversight over this process including identifying and mitigating risks.

Community services sector committee

The Bill will create a new committee for the community services sector, to serve as a key platform for industry engagement and appeals resolution. It provides the sector with an advisory role to offer guidance and recommendations regarding scheme administration, investment, and levies. The Bill will reserve membership for organisations including worker, employer, and sector representatives.

Compliance and enforcement framework

The scheme will aim to support a range of compliance options and outcomes, to help ensure both employers and workers comply with key obligations under the final model.

Key features of the proposed compliance and enforcement regime will include:

- offences and penalties will be based on the CCI scheme with adjustments where appropriate.
- the LSC will be able to appoint inspectors for the scheme and determine their functions.

These inspectors will have audit, information-gathering, and ability to perform on-site inspections to determine compliance with the scheme.

9. How will the transition to the new scheme work?

We are proposing that the new scheme will begin on proclamation, around one year after it is introduced to NSW Parliament. This will give employers, workers, and the LSC time to prepare for the changes. An added one-year grace period will apply once the scheme begins where the LSC focuses on education and encouraging self-regulation.

The new scheme will operate alongside existing long service leave entitlements, including the *Long Service Leave Act 1955*. Workers who have already been at their employer for an extended time will be able to choose to continue to 10 years to reach an entitlement. Their employer will still register them in the portable scheme and pay levies but can then apply for a reimbursement to cover the time that the worker has served after the new scheme begins.

Communication and education will be a key focus because it is important that employers and workers register as soon as the scheme begins. Late registration may mean that an employer needs to submit retrospective returns from date the scheme begins.