

# Community Services Industry (Portable Long Service Leave) Bill 2019

## Submission of Queensland Council of Unions

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**Queensland  
Council of Unions**

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## Introduction

This submission is made by the Queensland Council of Unions (QCU) in support of the Services Union (TSU) and on behalf of other affiliated unions. The QCU supports the introduction of the *Community Services Industry (Portable Long Service Leave) Bill 2019* (the Bill) into parliament and congratulates the Queensland Government for this policy development that will improve the working life of many Queenslanders. The Bill if enacted would provide for portable long service leave for community service workers. To place this in this perspective it is important to understand that this is not a new entitlement but rather it is making an existing entitlement accessible to a group of workers who have been likely to be denied for reasons beyond their own control (Market et al 2016:50).

This submission also supports amendments to section 95 of the Industrial Relations Act 2016. These amendments seek to overcome an anomaly in the scheme of the legislation that arose out of *Schipp & Anor v The Star Entertainment Qld Limited*<sup>1</sup> (Schipp).

Long service leave is a uniquely Australian condition of employment that has its origins in the colonial civil service (Love 1992:1; Markey et al 2016:49). As it turns out, this antipodean employment condition could be well described as an “enlightened development” (Burgess et al 2002:22) in the context of the emerging labour market. Long service leave, once restricted to the public sector, found its way into awards and then legislation by the 1950s. The use of legislation to introduce a condition of employment, particularly at such a relatively early stage, demonstrates an intention of Parliament to give long service leave universal application.

## Portable Long Service Leave

However not all workers were able to maintain employment with one single employer for the qualifying period for reasons beyond their control. In order to address this inequity, the concept of portable long service leave evolved. The first appearance of portable long service leave in the private sector was in coal mining in the wake of a major dispute (Market et al 2016:49). In the 1970s portable long service leave was introduced into the building and construction

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<sup>1</sup> Schipp & Anor v The Star Entertainment Qld Limited [2019] ICQ 009

industries in several jurisdictions (love 1990:88). Now all states and territories have portable long service leave in the building and construction industry (Markey et al 2016:51; Stewart 2018:276; Thornthwaite and Markey 2014:10), with Queensland introducing it in 1992 and the Northern Territory in 2005 (Ferris et al 2015B:69; Markey et al 2016:49).

It is probably no surprise that the coal mining and building and construction industries were first to introduce portable long service leave (Markey et al 2016:50; Thornthwaite and Markey 2014:7). These industries have a tradition of high levels of union membership in which workers and unions have considerable bargaining power (Thornthwaite and Markey 2014:9). Moreover, the building and construction industry is associated with high level of labour turnover where workers are expected to follow the job. Employment is usually limited to the length of a project and workers will be required to obtain employment from whichever company has successfully won a competitive tender for work on a particular construction site. The nature of employment in the building and construction industry therefore meant that being with one employer for the qualifying period is highly improbable. Moreover, the process of competitive tendering meant that there is a distinct disincentive for an employer to maintain workers in their employment for the qualifying period (Thornthwaite and Markey 2014:9).

The contract cleaning industry shared this aspect of competitive tendering with the building and construction industry (Markey et al 2016:50). However, labour costs in contract cleaning are going to make a higher proportion of the overall tender price than is the case in the building and construction industry (Barnes 2006; Howe and Landau 2009). Lower financial barriers to entry into the contract cleaning industry (Campbell and Peeters 2008:30) mean that it is probably more competitive than the building and construction industry. Workers in the contract cleaning industry will often “change shirts” throughout their working life meaning that the work they perform, and its location don’t change but rather their employer will change by virtue of a change of contractors. Given that labour costs are such a high component of the tender price providing for the payment of long service leave (Holley 2014:679) in the traditional sense would in fact be counterproductive to the competitive tendering process.

It follows that portable long service leave was extended to the contract cleaning industry in Queensland and other jurisdictions (Markey et al 2016:49). The difference between workers in contract cleaning and the building and construction industry is their respective bargaining strength. The extension of portable long service leave to this group of workers, via the Q Leave scheme was therefore providing access to the entitlement to a group of low paid workers with

little bargaining power. Unlike the building and construction industry, where in Queensland a levy is placed on construction work, in the contract cleaning industry the levy is placed on rates of pay. This has the effect of spreading out the expense through the life of contract rather than being a single hit taken by a contractor who may happen to have an employee who has worked the eligible period of time.

## The Contemporary Labour Market

The “enlightened” policy of portable long service leave shares some characteristics with the European concept of “flexicurity” (Thornthwaite and Markey 2014:15). The concept of flexicurity defines labour market initiatives that are intended to provide employers with flexibility whilst providing workers with much needed security (Lindberg and Karlson 20012:5). As such, portable long service leave is policy development that recognises the conditions of a contemporary labour market. Such conditions include the ongoing employment insecurity and labour mobility. The decline of standard employment arrangements has been associated with increased employer rights to hire and fire; an increase in labour market flexibility and wage moderation (Thornthwaite and Markey 2014:12). Wage moderation has more recently been described as a crisis of low wage growth (Australian Institute 2019:2; Kyloh 2018:229; Stanford, Hardy and Stewart 2018:3; Stanford 2019:2).

In a contemporary labour market, it is anachronistic to think of an employee working for a single employer (Thornthwaite and Markey 2014:3). As proportion of the workforce, those workers with an entitlement to long service leave has long been in decline (Burgess et al 2002:24). Moreover, employment in Australia has increasingly been associated with work intensification. Work intensification has manifested itself in an increase in the hours worked by workers at one end of the labour market as well as the extension of the expectation of a working life (Thornthwaite and Markey 2014:13). In so far as the latter is concerned, the Australian government has taken deliberate policy proposals, such as an increased pension age and an increased preservation age for superannuation, to ensure a longer working life (Ferris et al 2015A:17; Markey et al 2016:50).

Associated with work intensification has been a rise in mental health issues amongst Australian workers. In the context of this work intensification, long service leave is an appropriate

mechanism for recuperation in what has become a long and arduous working life. There have also been significant demographic changes to the Australian workforce. An increase in participation rates for women, a greater number of single parents and an aging population are all examples of demographic changes that impact upon the composition of the Australian labour market. Access to long service leave provides a further potential benefit to workers who have responsibilities for caring for children or the elderly (Ferris et al 2015A:17). The QCU supports the application of entitlements after the seven-year qualifying period as proposed by the Bill.

## Community Services

It is within this context that the community services industry must be considered. The community services industry is well understood as a highly feminised industry with at least three quarters of all workers in the industry being women and as much as 80 per cent of the workforce having direct contact with clients (Austen et al 2013:62; Bailey et al 2014:45; Cortis and Meagher 2012:378). Government funding is the primary source of income for the large number of small employers that operate in this industry. The QCU support the definition of community service industry as provided for in the Bill and that all workers within this industry should be covered by the Bill.

The Australian Capital Territory first introduced portable long service leave for the community services industry (Markey et al 2016:45; Thornthwaite and Markey 2014:10). This year portable long service leave was also introduced for the community services industry (Victorian Government 2019). These are significant developments that recognise the commitment that community service workers have to their industry. The work performed by community service workers provides an obvious benefit to the broader community and particularly its more vulnerable members. The high levels of non-standard employment also mean that community service workers are likely not to remain with the one employer for the usual qualifying period for long service leave (Markey et al 2016:50).

The method of collection of payment proposed by the Bill would appear to be the only logical way in which such a scheme could be introduced. As in the contract cleaning industry,

community services are not associated with large transactions, such as in the building and construction industry, upon which a levy could be set.

The community services industry has grown since the 1980s and 1990s with governments preferring to outsource functions to the community services industry rather than provide the services (Austen et al 2013:63). Government therefore whilst not the employer has significant control over pay and conditions (Bailey et al 2014:46). The work performed by the various operators within the industry and funded by government is subject to competitive tender (Austen et al 2013:62; Bailey et al 2014:47). These features of the industry make organising the industry and enterprise bargaining particularly difficult (Bailey et al 2014:47). This combination of circumstances has led to low pay, a high degree of casualisation and subsequently job insecurity within the industry is rife (Bailey et al 2014:46).

Table 1 sets out the labour force status (full time v part time) of employees within the four-digit industry classifications of community services (undefined); community care services (undefined); residential care services; and non-residential care services. These figures are derived from the 2016 census which whilst somewhat dated, provides a recent picture of demographics within this community services industry.

**Table 1****Community Services Workers in Queensland**

Full time			% of workers by status
Male	Female	Total	
4,251	9,095	13,346	52%
(31.9 %)	(68.1 %)		
Part time			
Male	Female	Total	
2,463	9,856	12,319	48%
(20.0%)	(80.0 %)	100	
Total			
Male	Female	Total	
6,741	18,951	25,665	
(26.2 %)	(73.8%)		

Source table builder 2016 Census <https://auth.censusdata.abs.gov.au>

As can be seen from Table 1, a little over one in four workers in this industry are men thereby making women the sizable majority of workers in community services. There are also four times as many women in part time employment as men within this industry. These figures are probably not surprising given the over representation of women in both caring industries and part-time employment. Unfortunately, the status part time used in the data above does not differentiate between permanent part-time employment, which could be potentially of benefit to the largely female workforce and precarious casual employment. Nonetheless it is reasonable to presume that included within this figure of part time employees, that is significantly higher than the Australian average (Austen et al 2013:63); there would be any number of workers who are in precarious employment.

It follows that a range of the features that exist for the contract cleaning industry also exist for the community services industry. Precarious employment is guaranteed by the process of



government funding that includes a competitive tendering process. However, in the community service industry, precariousness is caused by employment being linked to funding arrangements that will often be at the mercy of a whim of the government of the day. Employment contracts will therefore be contingent upon funding and continued employment with the same employer is by no means guaranteed.

## Schipp & Anor v The Star Entertainment Qld Limited

The QCU supports the amendments to section 95 of the *Industrial Relations Act 2016* that are proposed by the Bill. These amendments overcome the absurd legislative structure that the decision in *Schipp* held to be the case. That absurdity is that an employee who terminates their own employment on the grounds of illness or incapacity is entitled to a pro rata entitlement after serving the qualifying period of employment, whereas an employee whose employment is terminated by their employer for the same reason is not so entitled. We would commend the Queensland government for the prompt action in remedying this anomaly.

## Conclusion

The features of the building and construction industry and contract cleaning that justified the introduction of portable long service leave are clearly evident for the community service industry. The process of competitive tendering and its associated precarious employment mean that community service workers are unlikely to stay in employment for the usual qualifying period for long service leave. Unlike the building and construction industry, workers in the community services sector do not possess the level of industrial muscle to be able to bargain with the employers in this industry over such an entitlement as portable long service leave. Moreover, it requires coordination at an industry level that could only be properly introduced by legislation such as proposed by the Bill.

There has been expansion of the community services industry as this appears to be governments' preferred way of delivery of many social services. This policy of outsourcing social services shows no likelihood of dissipating. It therefore follows that without a scheme

as contemplated by the Bill, community service workers would continue to be denied long service leave for reasons beyond their own control.

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