

16 December 2019

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George St
BRISBANE QLD 4000

By email: eesbc@parliament.qld.gov.au

Dear Sir

Invitation to make submission – Community Services Industry (Portable Long Service Leave) Bill 2019

Anglicare Southern Queensland welcomes the opportunity to provide a submission to the Queensland Parliament's Education, Employment and Small Business Committee in respect to the Community Service Industry (Portable Long Service Leave) Bill 2019.

OVERVIEW

Anglicare Southern Queensland, in principle, does not oppose the introduction of portable long service leave (the Scheme) into the Community Services Industry. However, we have a number of concerns which are summarised below before we could support the Bill. Our concerns are:

(a) Funding

Organisation's such as Anglicare Southern Queensland must be appropriately funded for the cost of the Scheme by increasing the service contracts with both the State and federal governments to cover for the additional cost of the Scheme and the additional administration cost of administering payment. If this additional labour cost is not properly funded by the governments, the implementation of this Scheme will create additional administrative and financial burdens on organisation's, impacting cash flows and service levels and operations. Unless organisations are reasonable compensated to cover the cost of the Scheme, it will result in reduce services or reduction in service hours being provided to the people who need the service.

(b) Practical impediments such as:

- Organisations who are providing more generous long service leave provisions to its employees such as accruing long service leave at the rate of 1.3 weeks for each year of continuous service for their employees compared to the accrual rate under the *Industrial Relations Act 2016* (the Act) being 8.6667 weeks for each year of service;
- Organisations who have more favorable conditions to allow employee to access long service leave after seven (7) years (Pro-Rata long service leave) compared to the limited entitlements under the Act that restricts the payment of pro-rata long service only in respect to termination of employment if the reason for the termination falls within the following criteria:
 - the employee's service is terminated by their death;

- the employer terminates their service because of their illness or incapacity or because of domestic or pressing necessity.
- The employer dismisses the employee for a reason other than the employee's conduct, capacity or performance
- The employee unfairly dismisses the employee.

It is unclear on a reading of the Bill and the Explanatory Notes how these concerns will be addressed.

BACKGROUND

Anglicare Southern Queensland is part of the Anglican Diocese of Brisbane, and it is a not-for-profit organisation committed to social and community welfare issues and providing care and supportive services to approximately 16,500 families living throughout Queensland. For nearly 150 years Anglicare Southern Queensland has supported individuals and families by enhancing their wellbeing, maintaining their independence and support healthy choices. A diverse range of services are provided including:

- Fully accredited residential aged care and independent living;
- Internationally certified in-home nursing and community care;
- Out-of-home care service to children and young people in care;
- Youth homelessness services;
- Foster care services;
- Mental health counselling and recovery;
- Disability support services;
- Accommodation support for women experiencing homelessness and their children;
- Transport;
- Chaplaincies services;
- Family counselling and support;
- Counselling and education for male perpetrators of domestic services;
- Other social service programs.

Anglicare Southern Queensland is part of the Anglican Diocese of Brisbane and comes under the governance structure of the Archdiocese of the Corporation of the Synod of the Diocese of Brisbane. Under the Diocesan Governance Canon the highest level of accountability sits with the Diocesan Council (Archbishop in Council) which provides oversight of five Commissions responsible for service delivery. The Community Services Commission (CSC) provides oversight of Anglicare Southern Queensland with the Executive Director of Anglicare reporting directly to the CSC.

Anglicare Southern Queensland revenue sources include Government funding from both State and Federal Department including:

- Department of Communities, Disability Services and Seniors (QLD)
- Department of Child Safety, Youth and Women (QLD)
- Department of Immigration and Border Protection
- Department of Justice and Attorney General
- Department of Housing and Public Works
- Department of Social Services
- Department of Veterans' affairs
- Department of Health
- Queensland Health (QLD)

Anglicare Southern Queensland employs 2,900 paid staff and 660 registered volunteers across the above services.

HISTORY OF LONG SERVICE LEAVE

Long service leave is a particular benefit that is peculiar to Australia. It has its genesis from the colonial era, providing public service employees in South Australia and Victor with a “furlough” to enable them to travel back to England.

In 1952 Queensland enacted long service leave legislation and in 1955 supplementary legislation was passed covering all employees outside the scope of State Awards and imposing direct statutory obligations.

The primary reason in the rationale underpinning long service leave is retention and rewarding “faithful service”. In the Productivity Commission Draft Report into Workplace Relations Framework 2015, the Commission made the following observation:

“While LSL may not be an efficient measure for creating employer loyalty, it must have some effect, which will be diluted with full portability”.

By introducing a portable long service leave into the Social and Community Sector in Queensland, it is likely to have the effect of increasing rather than reducing labour turnover in workplaces.

BREAKDOWN OF STAFFING NUMBERS

Anglicare Southern Queensland employs 411 employees across our different services that will be impacted by the introduction of the Scheme. They are all employed under *Social, Community Home Care and Disability Services Industry Award 2010* (the SCHCDI Award). The following table provides a breakdown of their years of service:

Years of Service	Number of Employees
Less than 5 years of service	331
5 years and less than 7 years	26
7 years and less than 10 years	30
10 years plus	24

The majority of our staff have less than 5 year’s employment with Anglicare Southern Queensland which has not incurred a significant cost impost on our business. However, by mandating portable long service leave, it will entail an additional significant costs on Anglicare Southern Queensland that we currently are not incurring now.

SPECIFIC CONCERNS

Anglicare Southern Queensland seeks to raise a number of practical concerns regarding the Bill and the potential confusion of its application.

1. Meaning of Community Service Industry

- 1.1 The meaning of the “community service industry” is defined “as the industry in which an entity provides community service work in Queensland.” The definition of “community service work” includes “**providing support and assistance to facilitate community participation, enable independence and protect and provide accommodation and respite for vulnerable population groups.**” The proposed legislation is intended to include workers who are employed by an employer in the community services industry doing “community services work”. It includes employees whose works supports the employer’s provisions of community service work including administrative and /or management staff. The proposed

legislation seeks to clarify the intention of the legislation by excluding the aged care industry and the child care industry.

- 1.2 The applicable federal Award applying to the social and community sector in Queensland is the *Social, Community Home Care and Disability Services Award 2010 (SCHCDI Award)*. It defines “social and community service sector” as:

“the provisions of social and community services including social work, recreation work, welfare work, youth work or community development work including organisations which primarily engage in policy, advocacy or representation on behalf of organisations carry out such work and the provision of disability services including provisions of personal care and domestic and lifestyle support to a person with a disability in the community and/or residential setting including respite and day services.”

Since 2001, when the SACS (Qld) federal Award was made which was subsequently replaced by the SCHCDI Award 2010, the social and community industry has been operating under the coverage clause of this Award. The proposed definition of the “Industry”, in part, seeks to reflect the demarcation agreement reached between the Australian Service Union and the Australian Workers Union in 2001 when the SACS (Qld) 2001 was made. The Queensland government should minimise any potential disruption across the “care” industry by limiting this Scheme to only people employed in the social community sector as defined by the SCHCDI Awards and not create confusion by expanding the reach of the Scheme into areas that have previously not been included in this sector.

Under Schedule 1 – Types of community services of the proposed Bill, it lists a number of services that would be captured by the portable long service leave. One of the services listed is “**home and community care services.**” Under the Explanatory Notes it states that

“this service has been included to include services whom provide support to people with a disability and their families in particular neighborhood or region and which has broadened and change its services over time to provide a range of disability services respite and community building support services including home care support for its elderly clients or a community childcare playgroup held in its centre.”

We would strongly object to this type of service being listed. This service conflicts with the statement in the Explanatory Notes, that the proposed Bill will not include Age Care. Home and Community Care Packages are a traditional part of the Aged and Community Care industry and not the Social and Community Service industry. They are generally engaged as a Home Care Workers and are employed under the Home Care Sector of the SCHCDI Award. The Home Care Sector is a distinct sector to the Social and Community sector and such distinction should remain under the proposed Bill.

It would be Anglicare Southern Queensland’s recommendations that:

- (a) **The definition of “Community Services Industry” should reflect or be more closely align to the definition of the “Social and Community Sector” under the SCHDI Award.**
- (b) **The description of the service “home and community care services” be removed from Schedule 1.**
- (c) **If any employers are paying their “Home Care Workers” as Social and Community Workers from long standing arrangements, then these employees can be included in the Scheme.**

- 1.3 The Scheme is intended to also include administrative and/or management employees that provide support to the community services work. The Bill is not intended to extend the meaning of worker to include workers engaged by the employer in work unrelated to the employer's purpose of providing community service work. The difficulty in understanding the intention of the Bill is that Anglicare Southern Queensland has a number of Administrative /management employees who undertake a proportional amount of their work time connected to the community service industry and the balance of their work time connected to work not associated with the community service industry. In respect to Anglicare Southern Queensland, classifications that perform work across both would include Anglicare's Leadership Team that includes the Chief Executive Officer, Directors of Services, IT Organisation Development and Governance, Risk and Assurance. This list would grow if we then include our Group Managers of our various services and then to other staff involved in accounts, accounting/finance, IT, Marketing, Communication and Organisational Development. Based on the above interpretation, it is difficult to determine which classifications would be covered by the Scheme and which classifications are not.
- 1.4 The difficulty in administering such arrangements when the definition of who will be covered by the Scheme is so broad that it become unworkable for organisation that work across different sectors/services.

It would be Anglicare Southern Queensland's recommendation that:

- (a) the Bill be amended so that the Scheme will not apply to any ancillary staff and/or management employees and where the Employer business operates across a range of different sectors/services.**

2.0 PRACTICAL DIFFICULTIES

2.1 Moving in and out of the community services sector

- 2.1.1 The introduction of the Scheme will create some complexities and confusion particularly where an employee in Anglicare Southern Queensland can move in and out of the community service sector or where an employee acts in different roles. In submitting the individual times to the Q Leave will involve additional administrative time to separate the times that would apply when an employee is working in the community service and time working outside of this service.

- 2.1.2 It would be Anglicare Southern Queensland's recommendation that:

- (a) the Bill be amended to exclude employees from the Scheme who are temporary working in the community service industry but, are employed by the same employer in a primary position which is not covered by the Scheme.**

2.2 TRANSITIONAL ARRANGEMENT

- 2.2.1 If the Bill is approved by the Queensland Government, the Scheme will operate from an effective date, to be advised. All time accrued up to that date by an employee who will be covered by the Scheme will be retained by the Employer. All time worked subsequent to the effective date will be the subject to the rules of the Scheme. This will mean that if an employee leaves Anglicare Southern Queensland prior to the effective date, no accrual of long service leave is retained and payment is only made if the employee is entitled to payment. However, if an employee leaves after the effective date, Anglicare must retain that time worked for that employee. Sometime in the future, when the employee takes long service leave, the payment will be made by the Scheme and by

Anglicare. This will mean that Anglicare Southern Queensland must continue to accrue this time on its financial accounts thus incurring additional cost to the organisation.

2.2.2 It would be Anglicare Southern Queensland's recommendation that:

- (a) **a formula be developed that would give an Employer the option of making a payment to the Scheme within 6 months from the effective date of the Scheme for all their employees who will be members of the scheme rather than accruing this time on their book and making payment to this person at a later date whether an employee or not or by allowing the Employer to make the payment to the employee at a later date when requested by the employee.**

2.3 DIFFERENT LONG SERVICE LEAVE ENTITLEMENTS

2.3.1 Anglicare Southern Queensland has more beneficial long service leave entitlements compared to the long leave entitlements under the Act. Anglicare employees are:

- (a) entitled to 13 weeks leave after 10 years of continuous service compared to 8.667 weeks under the Act; and
- (b) entitled to access their long service leave after 7 years of service; and
- (c) paid out their long service leave on termination after 7 years of continuous service without any of the same restrictions under the Act.

2.3.2 The practical effect of this is that there will be differing long service entitlements applying to employees when the Scheme become law. It is unclear from the reading of the Bill and the Explanatory Notes how these different entitlements will operate/apply under the Scheme. For example, if an employee who has worked 8 years in the industry is then engaged by Anglicare Southern Queensland, after a further two years' service with Anglicare Southern Queensland, the employee has worked a combined 10 years continuous service Under our Agreements/contracts/policies an employee who has accumulated 10 years' service can access 13 weeks long service leave. Anglicare Southern Queensland has contributed only two years of levies for this employee, which raises the question of who pays the balance between 8.667 weeks under the Act and 13 weeks being 4.333 weeks? It would be manifestly unfair for this additional burden becoming the responsibility of Anglicare Southern Queensland. If it is Anglicare Southern Queensland responsibility then this financial impact will become a significant factor in engagement.

2.3.3 It is fundamentally wrong for any business to have liability on their financial accounts for an employee who is no longer an employee for that business.

2.3.3 There are numerous different arrangements of long service leave entitlement applying across the industry. Unless these e complex issues are resolved by the Industry, the benefits of any portable long service leave scheme would be marginal at best and significantly more costly and complicated at its worst. It would then become arguable if whether the introduction of the Scheme would justify the additional cost and time that would be required to administer the law and the uncertainty of applying the law correctly unless these issue are made clear in the legislation to organisations.

3.0 CONCLUSIUON

3.1 It has been a long term aim by a number of parties involved in the Community Service Industry to implement a portable long service leave scheme. As state at the beginning of our submission, Anglicare Southern Queensland indicated that it does not oppose the

concept of a portable long service leave in the Community Service Industry. However, in our submission we have raised a number of key concerns that need to be addressed before we can give it our endorsement.

- 3.2 Anglicare Southern Queensland is concerned that the additional cost and complexities that will be imposed on employers, unless adequately funded by governments, will result in reduced services being provided to the public.
- 3.3 Unless the definition of "Community Service Industry" under the Bill is amended to reflect more closely the definition of the "Social and Community Services Sector" under the SCHCDI Award and secondly to exclude from Schedule 1 "Home and Community Care Service", then it is unlikely that Anglicare Southern Queensland can endorse the Scheme because it will simply become too complex to manage and would create too many legalistic arguments of determine which in the Scheme or not.
- 3.4 The Scheme should only apply to employees who are primarily engaged in this sector and not apply to employees including management who will move in and out of this sector in undertaking their daily work and/ or any employee who is primarily working in any other part of the business that is not covered by the definition of Community Service Industry but, are temporally engaged in this sector.
- 3.5 There needs to be further information provided by the Government regarding the transitional concerns that we have raised prior to the passing of this Bill.

We would welcome the opportunity to discuss further these issues with you in further details if required.

If you have any questions please contact Stephen Nance, Workplace Relations Manager on 38387658 or by email snance@anglicare.org.au

Yours sincerely



Karen Crouch
Executive Director