



SACOSS' Submission on the Draft of the Portable Long Service Leave Bill 2024

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Summary of Recommendations

Overarching Position

1. SACOSS supports the introduction of a portable long service leave scheme, and we are generally supportive of the architecture of the scheme set out in the draft Bill in relation to the intent to cover all workers in the sector and the governance arrangements for the scheme.

Recommendations on Specific Issues

Financial Impacts

2. That the government commit now, in principle, to fund the financial shortfall for sector services arising from the introduction of PLSL, with the amount and details to be worked out when the actuarial work is done and levy rates are known.

Coverage

3. That the government look again at the feasibility of including aged care at the start of the scheme. In the alternative, if the government is still of a mind not to include aged care, we seek an assurance that its inclusion will be a high priority once this scheme is established.
4. That the Bill be altered to clarify that an employee is either in or out of scope for their job (and not have their time apportioned between in-scope and out-of-scope services), and to set any appropriate parameters around the extent of in-scope work necessary to be eligible in the scheme.
5. That the government or Board should provide some clear and detailed guidelines to assist organisations make the correct determination of eligibility.

Part-time Workers

6. That the government fix the eligibility problem for part-time workers, and consult with SACOSS on the resolution before the Bill is introduced into parliament.

The 9-year Plus Employee Problem

7. That the government consult further on this issue and potentially insert a clause into the bill stating that a new employee can only take PLSL after a set period of employment with the current employer (e.g. 6 months or 1 year) – unless otherwise agreed between employee and employer.

Non-standard Pay or LSL Arrangements

8. That, in working through options to deal with non-standard pay and LSL arrangements, preference should be given to solutions that maintain the integrity of the scheme as a whole and portability of the entitlement across the workforce.

Transitional Provisions

9. That the government and the Board need to provide sector education to ensure that sector organisations know that they will need to maintain their existing LSL provisions so they are able to pay the Board when required.
10. That (to the extent possible given privacy considerations) the Board be required to provide information to registered employer organisations of the current amount of their potential LSL liability.
11. That, in addition to the above, consideration be given to inserting into the Bill a provision to allow employers the option to buy out their potential liability for LSL service accrued before the commencement of the scheme.
12. That the government clarify issues of how the scheme (and the transition provisions in particular) will apply to employees with multiple jobs in the sector, and ensure that the Bill facilitates coverage fairly.
13. That the government consider the issue of the LSL liability of defunct organisations and whether potential future liability to the Board should be considered a debt to be paid at the time of winding up.

Timeframe

14. That levy collection and eligibility for the scheme does not begin before 1 July 2025.
15. That any commencement difficulties for particular sectors be addressed through exemptions under section 7 of the Act when it is passed, rather than removing any sectors from Schedule 2 of Bill.

Administrative Arrangements

16. That clause 42 be amended to ensure a market rate of return on any loans.
17. That the bill be amended to better define its territorial application, and at a minimum, to enable employers to only register in relation to employees within SA, rather than having to register potentially for interstate employees and then apply for an exemption for them.
18. That the government establishes a reference group of sector organisations to consult on the implementation of detailed administration issues.

Introduction

The South Australian Council of Social Service (SACOSS) is the peak representative body for the non-government health and community services sector in South Australia. Our membership includes charities, and organisations and individuals working in a range of health and community services sectors. Our submission on the Draft Portable Long Service Leave Bill 2024 (“the Bill”) is informed by:

- our history of policy research and analysis on funding and employment models in our sector,
- our discussion with interstate Councils of Social Service on portable long service leave schemes in their jurisdictions; and
- consultation with our member organisations, including a major sector briefing held on 5 February 2024 on the proposed bill.

SACOSS has a history of support for the idea of a portable long service scheme. In 2010 our [major research paper](#) on employment models in the sector recommended a task force be established to investigate a portable long service scheme for the sector, and our [submission to the 2011-12 state budget process](#) called for funding for a feasibility study. In 2021 we again consulted our membership who agreed that the call for a portable long service scheme would form part of our policy platform in the lead up to the 2022 state election.

Against this background, SACOSS continues to support the principle of a portable long service leave scheme for our sector. We make the following comments and recommendations to help improve the Bill and the scheme as currently proposed, so that the scheme lives up to its promise and implementation is as easy as possible.

Note: in this submission, the acronym PLSL means portable long service leave and refers to leave under this scheme, while LSL is used to designate long service leave more generally or leave accrued under the existing *Long Service Leave Act 1987*.

Any questions related to this submission should be directed to Dr Greg Ogle, SACOSS Senior Policy and Research Analyst, who is the lead author of this submission.

Issues to be Addressed

Financial Impacts

Organisational Impact

There will be significant costs to employer organisations under this scheme arising from the loss of access to LSL provisions freed up by employees leaving, and loss of earnings on their provision pool. This is important because of the amount of money involved, but also because the existing income stream is untied funding which can be used flexibly and to assist with cash flow (it creates cash on hand, whereas the proposed levy will be an outflow of cash). Most importantly, this extra income is used by organisations to fund additional or better-resourced services.

SACOSS recognises that there is some financial offset for sector organisations in the proposed arrangements. While the PLSL scheme essentially transfers the financial benefits of accessing forfeited entitlements and interest earning capacity from individual sector organisations to the Board, this will contribute to keeping the cost of levies down. In theory, (all other things being equal) the Board levies should be lower than the provisions currently made by many organisations. This may cushion, but will not remove the impost on organisations and their ability to provide services.

Sector Impact

At the sector level, it is clear that without action by government, the PLSL scheme will also represent a net loss of funding for services, or at least a transfer of existing funding from services to wages. The goal of the scheme – which SACOSS supports – is to enable more employees to access LSL entitlements. However, if that happens, then the amount of money needed to cover entitlements overall will be increased. If there is no net increase in money provided to the sector, that money needs to come from the existing pool of sector funding.

The maths is clear: unless the scheme fails in one of its main deliverables (allowing greater access to PLSL), the total cost to the sector overall will be greater than the current cost of LSL payments. The government needs to recognise this cost to the sector and fund the gap, lest we see services being cut as a result of the introduction of PLSL.

SACOSS recommends that ***the government commit now, in principle, to fund the financial shortfall for sector services arising from the introduction of PLSL, with the amount and details to be worked out when the actuarial work is done, and levy rates and staff numbers are known.***

Coverage

SACOSS supports the intent for the PLSL scheme to cover all workers in the community services sector, not just those employed under the SCHADS award or those involved in

direct service provision. However, there are a number of issues arising from the implementation of this in the draft Bill.

Aged Care and Other Services

The list of services in scope provided in Schedule 2 of the Bill is a good categorisation of services in the community services sector. Further, we recognise that boundaries are always difficult to draw and there will always be issues at the edges. However, there is a major issue for a number of sector organisations with the exclusion of aged care from the scope of the Bill and the scheme.

SACOSS understands the government's desire to get the scheme established with a discrete base, but many of our sector's large organisations (in particular) have aged care provision as part of a range of services they provide. The exclusion of aged care from the scheme thus creates a divide in organisations and in the sector which does not reflect the sector more broadly, and it will greatly expand the numbers of organisations and employees in the grey area discussed below. This argument applies to aged care more than any other allied service (such as medical provision – to use the example in the discussion paper) and the aged care exclusion is particularly problematic where there is now a national policy to treat disability and aged care workers as a single workforce.

While SACOSS recognises the challenges of including aged care at this late stage, we ask that ***the government look again at the feasibility of including it at the start of the scheme. In the alternative, if the government is still of a mind not to include aged care, we seek an assurance that its inclusion will be a high priority once this scheme is established.***

Ambiguity re Some Support Employees

Again, SACOSS supports the intent to cover all employees in the sector, but there is currently ambiguity in the bill as to the position of support workers in organisations where some of its programs and staff are in-scope and others are out of scope – as per example 1 in the Discussion Paper. In that example, would fundraisers and administration staff working for that organisation be in scope if their work goes to the supporting the organisation as a whole, so only a part goes to community services (and the rest to supporting medical services)?

One reading of clause 5(1)(a)(ii) of the Bill would be that support workers providing funds or administration for such organisations would be included in the scheme because they support the provision of community services (with the other services benefiting being irrelevant). However, does this still apply if it is only 5% of the staff members' time that supports community services, or if only 5% of an organisation's services are in-scope?

We presume the intent is to treat a worker as a whole, not have their LSL entitlement divided by what portion of their work goes to in and out of scope services – as this would be a fiction and an administrative nightmare.

The Bill needs to clarify that an employee is either in or out of scope for their job (and not have their time apportioned between in-scope and out-of-scope services), and it should set any appropriate parameters around the extent of in-scope work necessary to be eligible in the scheme.

Further, while we recognise that ultimately sector organisations will have to make their own determination as to which of their employees are eligible, ***the government or Board should provide some clear and detailed guidelines to assist organisations make the correct determination of eligibility.***

Part-time Workers

The way eligibility for PLSL is calculated in the draft bill, it would take most part-time workers longer than 10 years to become eligible – which is clearly unfair in a sector where more than half of all workers are part-time. We have raised this with the government and welcome the commitment to fix these provisions so that part-time workers are not disadvantaged and the eligibility criteria reflect current entitlements.

However, given the fundamental importance of this issue, and the ramifications for other issues throughout the bill, **SACOSS would like to be consulted on the proposed resolution of the part-time worker problem before the Bill is introduced into parliament.**

The 9-Year Plus Employee Problem

SACOSS is concerned that the scheme sets up a disincentive to employ a worker with a PLSL entitlement or a service length approaching eligibility. Given the prevalence of short-term funding and employment contracts in the community services sector, it would be difficult for an organisation to employ someone with more than 9 years' service for a 1-year contract as they could be missing for a significant part of the contract period. While it may be technically illegal to discriminate on this basis, this is hard to police – and if the person is employed, it is unfair on the employer to have a short-term employee disappear for 3 months.

Currently the Bill says that an eligible employee needs to give 60 days' notice to take their PLSL, so a new employee could be eligible for leave after only 2 months employment. There is provision for refusal of leave for operational reasons, but this is not defined and it is not clear if it would apply simply because the employee is working on a 1-year contract, or a 2-year contract or whenever.

The government should consult further on this issue and potentially insert a clause into the bill stating that a new employee can only take PLSL after a set period of employment with the current employer (e.g. 6 months or 1 year) – unless otherwise agreed between employee and employer.

Non-standard Pay or LSL Arrangements

Safework SA has advised that they are considering the issue of early access to pro rata LSL, and in particular where organisations and employees have a current Enterprise Agreement allowing early access to LSL. This is not catered for in the current draft Bill, but enabling this in the scheme is critical to ensuring that some workers are not left worse-off by the introduction of the PLSL scheme. In this context, we note that the Queensland PLSL scheme has provision for reimbursement of LSL payments made under industrial instruments. We believe that this option should be explored.

Similarly, the draft Bill sets out entitlement for payment for leave in fairly standard terms. However, many employees in our sector have salary packages, and it not clear how this could be dealt with when they take PLSL. Presumably the authority can't pay the salary package, so does the employee miss out during LSL – or does the employer continue to pay benefits while the Authority pays the base wage? As above, this needs to be fixed in a way that ensures that employees are not made worse-off with the introduction of the PLSL scheme.

There may be a range of ways to deal with these non-standard issues, including carving out exemptions, or changing the system so that the Board pays (or reimburses) the PLSL entitlement to the organisation rather than the employee (so that the organisation can then make whatever adjustments are necessary).

SACOSS is not making a specific recommendation here, but we are ***recommending that as a general principle, preference should be given to solutions that maintain the integrity of the scheme as a whole and the portability of the entitlement across the workforce.***

Further, while some of the solutions may be administrative fixes which can be worked out by the Board when it is established, the government needs to ensure that the wording in the Bill does not prevent options being adopted to address issues raised by non-standard pay or LSL arrangements.

Transitional Provisions

Changing and Unknown Liabilities

The draft bill establishes that current employers will be liable for LSL accrued prior to commencement of the scheme, and will be invoiced by the Board when it pays out that entitlement to the employee. This is a sensible transition provision and simply recognises that employers should already be making provision for LSL accrual under the current Act.

However, there are two issues. The first is that ***the government and the Board need to provide sector education to ensure that sector organisations know that they will need to maintain their existing LSL provisions so they are able to pay the Board when required.***

The second and bigger issue is around what share of the PLSL payout will be owed by the employer organisation, and the information flow around changing liability. The LSL liability for any employee will change as they change their normal work hours or rates of pay. For instance, an employer may make a provision for an employee who has worked two days a week at SCHADS level 2 for two years prior to the commencement of the scheme. However, the employee may be working full-time at level 5 by the time they are eligible for PLSL 8 years later. They are entitled to that leave at that full-time level and higher rate. If the part-time worker problem in the draft bill is fixed and the PLSL entitlement is based on years of service, we assume that the sector organisation then will be liable for 20% of that full-time level 5 payout, even though they won't have provisioned for it because the employee was only working 2 days per week at level 2 when the LSL provision was done prior to the scheme.

This mirrors existing LSL provisions in that the employer will be liable to pay out at the end rate, but the difference is that currently the employer will know of any changes in pay or hours and can adjust their provisioning accordingly. Under a portable scheme, the employer may not know of such changes and so won't know the extent of LSL liability they need to provision for.

There needs to be provision, either in the legislative function of the Board or by regulation or by policy, to ensure ***that (to the extent possible given privacy considerations) the Board is required to provide information to registered employer organisations of the current amount of their potential LSL liability.***

A further option might be to ***insert into the Bill a provision to allow employers the option to buy out their potential liability for LSL service accrued before the commencement of the scheme.*** That is, sector employers could be given the option of paying into the Fund an amount that covers pre-PLSL scheme LSL liability, and then be relieved of any further liability with the Board covering the whole payment when the employee becomes eligible for LSL. SACOSS does not think that this will be taken up by many organisations, but it may be valuable as an option for some sector organisations.

Employees with Multiple Jobs

SACOSS member groups have queried how the proposed system will deal with employees who have multiple employers in the sector – as it is not uncommon for some staff to piece together full-time work across a number of part-time and casual jobs. We believe that the

system will deal fairly easily with this in the long run, with employers simply paying the levy as with any part-time worker (regardless of any other employment) and the Board paying the multiple entitlement when due. However, there is an issue in the transition phase, as evident in the following example.

Example: an employee works:

- 1 day per week for Organisation A and has done so for 9 years before the scheme starts,
- 2 days for Organisation B for 5 years, and
- 2 days for Organisation C for just six months before the scheme starts.

The employee will be entitled to LSL after just one year of the PLSL system as that will represent 10 years continuous service, but at what rate – the total average remuneration currently received (i.e. 5 days per week), or just at 1 day per week (being the remuneration from where the LSL entitlement arises)? And if it is at 5 days per week, how will cost of entitlements prior to the PLSL scheme be allocated? Will Organisation C be liable for a 1/3 share of the 90% of LSL accrued prior to the scheme start, or 40% because they are currently employing for 2 days per week, or only a small fraction because of the limited length of time employed?

This is not clear in the Bill, and may depend on how the issue of part-time employees is fixed. Accordingly, ***the government needs to clarify issues of how the scheme (and the transition provisions in particular) will apply to employees with multiple jobs in the sector, and ensure that the Bill facilitates coverage fairly.***

Defunct Organisations

If an organization goes out of business in the period after the scheme starts, its employees will still carry their accrued service credit into the scheme, but the Board would be unable to bill that organisation when PLSL is paid out. We presume that the employee is still paid their entitlement, and the Board simply has to cover the cost of the unrecoverable amount owed by the defunct organisation. This is a reasonable outcome for the employee and SACOSS is happy if this is how the scheme works.

However, SACOSS ***recommends that the government consider whether the organisation's share of LSL entitlements (i.e. their potential future liability to the Board) can be regarded as a debt to be paid (to the Board) before the organisation winds up and distributes surplus.*** This may be different depending on whether the LSL eligibility criteria has been met. Our understanding is that, until an employee meets the eligibility criteria, there is no money actually owing. Accordingly, any LSL provision would not be regarded as a debt and would not be taken into account in winding up the organisation. However, in a case where an employee has worked for 10 years (5 before the scheme commences, and 5 under the

PLSL scheme), is the organisation's half share of this entitlement a debt to be paid by the organisation if it is wound up in the third year of the PLSL scheme (when there is a pro rata entitlement – even if the entitlement is not taken at the time and the Board does not raise an invoice)?

SACOSS is not necessarily calling for, but would support the insertion of a requirement that upon an organisation being wound up, money which may in future be owed as a pro-rata contribution to employees PLSL provision is regarded as a debt of the organisation.

Timeframe

Even allowing for the vagaries of parliamentary processes, the timeframe suggested in the Discussion Paper is unclear as to the actual start date for levies and eligibility. Safework SA's latest Briefing Paper suggests that organisations would be required to register by 1 January 2025, with levy payment beginning 1 July 2025. We assume that eligibility in the scheme would also begin on 1 July next year. Given that SACOSS supports PLSL, we want to see the scheme implemented as soon as possible. However, we believe that anything quicker than that timetable is not viable.

Sector organisations will require significant time after the scoping issues and other details are locked down to make the required changes to HR and payroll systems. This is not just identifying eligibility and calculating levy payments, but may require software rewrites for different categories and records – for instance, to deal with how superannuation and staff entitlements are accounted for during the period of LSL when they are not being paid by the organisation.

Further, any start date for levies and eligibility prior to 1 July 2025 would involve payments and liability changes in the 2024-25 financial year. This would need to be known when organisations are doing their financial year budgeting in April-June this year. Clearly this is impossible given the arrangements and levy will not be known, and it is therefore unreasonable to start the payment system in the 2024-25 financial year.

Assuming the Bill is passed in the first half of this year, SACOSS supports the aim for employer registration by 1 January 2025, but does not support the start of levy collection and eligibility before 1 July 2025.

SACOSS is also aware that some organisations and service sectors have indicated that they may have difficulty in meeting even that timetable. These concerns should be taken seriously. However, to maintain the integrity and maximise the effectiveness of the scheme, SACOSS recommends that ***any such timing difficulties be addressed through exemptions under section 7 of the Act when it is passed, rather than removing any sectors from Schedule 2 of Bill.***

Administrative Arrangements

SACOSS supports the proposed architecture of the scheme with a Community Services Sector Board governing the scheme and the expansion of the construction industry PLSL scheme executive role for administrative purposes. We do this on the assumption that the Community Sector executive role will be adequately resourced in this combination and not be the “poor cousin” of the construction industry, and in that case, we can see the cost and efficiency benefits of the proposed arrangements.

Further, we welcome the fact that this architecture is worded in the Bill in such a way that it should be legislatively easy to add new Boards and sectors to the scheme in the future.

There are however a few issues of administration that need to be addressed.

Training Fund

Clause 42 of the Draft Bill allows the Board to lend from the Fund to unions or organisations for the purpose of group training schemes, and that such loans may be interest free. If such loans are made interest-free or at below-market interest, the Fund would be effectively losing money on the loan (due to inflation and the opportunity cost of lost investment income). This means that levies would be higher than they would otherwise need to be, and that, in essence, sector organisations would be paying for training schemes through the Fund. This is not a transparent way to fund training schemes, and ***clause 42 should be amended to ensure a market rate of return on any loans.***

Geographical Limitations

There are questions from our sector around who is in-scope where national organisations employ support staff in other states, or where interstate employees work in SA (or SA staff work interstate). We note that the Bill does not have a general clause analogous to s4 of the *LSL Act 1987* which defines the territorial application of the scheme. This is important because under the wording of clause 5(1)(a)(ii) of the draft Bill, workers employed interstate who are supporting the provision of community services in SA (e.g. national fundraisers, head-office administrators) may be captured in the PLSL scheme. We presume this is not the intention of the Bill, and we note that clause 56 provides for exemptions for certain interstate employers. However, for an organisation with in-scope employees in SA, the requirement to register and then apply for an exemption for interstate employees is inefficient and a duplication of effort.

The bill should be amended to better define its territorial application, and at a minimum, enable employers to only register in relation to employees within SA, rather than having to register potentially for interstate employees and then apply for an exemption for them.

Administrative Detail

There are a range of administrative details which will sit at levels below the legislation, either in regulations or simply in administrative arrangements. Examples which have been raised with SACOSS include:

- the level and nature of information required by the Board;
- the method by which data will be collected;
- the timing of reporting periods (which should be fitted to normal sector reporting cycles)
- data security and privacy issues in information provision;
- how LSL payment information will be handled to enable superannuation payment.

There will inevitably be many more issues. While further consultation has been promised on Regulations, ***SACOSS urges the government to establish a reference group of sector organisations to consult on these detailed issues.*** A group of 6-8 sector representatives could be consulted on:

- the next iteration of the Bill,
- Regulations before they go out for consultation, and
- administrative arrangements after the Board is established and is setting up its reporting systems.

This reference group would enable problems to be identified earlier in the process, making the formal consultation and implementation much smoother.

Conclusion

As noted above, SACOSS supports the introduction of a portable long service leave scheme, and we are generally supportive of the architecture of the scheme set out in the draft Bill in relation to the intent to cover all workers in the sector and the governance arrangements for the scheme.

We have raised a range of issues which need to be addressed either in the drafting of the Bill or in the Regulations and administrative systems established after the passage of the Bill. We have also suggested working with a sector reference group to assist in the identification and solving of administrative problems as they arise.

We look forward to continuing to work with the government to see the introduction of the PLSL scheme, and are happy to provide further information or discuss any of the issues above.