

24 January 2020

Our ref: KB-ILC

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [REDACTED]

Dear Committee Secretary

Community Services Industry (Portable Long Service Leave) Bill 2019 – Supplementary submission

Thank you for the opportunity to appear before the Education, Employment and Small Business Committee (the **Committee**) on the Community Services Industry (Portable Long Service Leave) Bill 2019 (the **Bill**) on Tuesday, 21 January 2020.

At the hearing, Queensland Law Society (**QLS**) was asked to consider the response provided by the Department of Education (the **Department**) to our written submission to the inquiry. This response is dated 17 January 2020 and was provided to us at the hearing on 21 January 2020.

QLS has now reviewed the response and has had the opportunity to consult further with the Department on how best to improve the drafting in the Bill and what further supporting material is necessary to achieve the stated policy objective. QLS welcomes the opportunity to consult at each stage of the policy development process, including once a bill has been introduced into Parliament and we are extremely grateful to representatives from the Department for seeking the input of the Society at this time.

Upon this further review and consultation, we make the following comments:

QLeave not specified

We are advised that QLeave is the body who will practically administer the scheme and is the body that currently administers similar schemes. This was referred to in the explanatory material provided with the Bill. Our concern is that QLeave is not mentioned in the Bill, but rather the authority is established. We believe that some further clarification in the legislation is necessary.

Definitions and scope

Following consultation with the Department about who is intended to be covered by the scheme, our submission remains that some provisions require amendment. In particular, we note the extensive list of services in Schedule 1 and the possibility that any one, or combination of these services may cause an individual or employer to consider that they are captured by the scheme. For example, “accommodation support services”, “home and community services”, “respite services” and “seniors community support services” may suggest that someone employed in the aged care industry will be covered by the scheme when it is the intent that this scheme should not extend to the aged care industry.

If the Department’s preference is not to specifically clarify the application of the bill of the bill to certain groups or sectors either in the Bill or in the subordinate legislation, then we are generally supportive of a note being inserted into the schedule to provide examples of the types of workers and/or employers who will or will not be captured by the scheme.

Reviews and appeal

We refer to comments made in our submission and in the Department’s response about Clause 93(2).

Clause 93(1) requires the authority to make a decision and give an information notice within 45 days after receiving the application for review. Subsection (2) provides that the authority is deemed to have refused the application if the notice is not given within this time (where they have not asked the applicant for further information). Clause 94 gives a right of appeal to someone who has a deemed refusal under clause 93(2). The appeal must be brought within 28 days of the deemed refusal.

Whilst we consider that an aggrieved person should be able to bring an appeal from the time an application is deemed to have been refused under clause 93(2), we do not consider that it is in the interests of natural justice and procedural fairness for the appeal period to end without the person having received notice of the decision. We seek amendment to clause 94 which allows the appeal period to commence from the date of the deemed refusal, but for the period not to end until 28 days after the aggrieved person receives notice of the decision.

Power of authorised officers

QLS maintains our submission in respect of these broad powers adopted from the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*. We would welcome the development of new provisions for authorised officers which do not breach the cornerstone principles of our justice system outlined in our previous submission.

Once again, we thank the Department for the opportunity to consult further in the development of the legislation for this scheme and the Committee for allowing QLS to make a submission to this inquiry.

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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy
President