



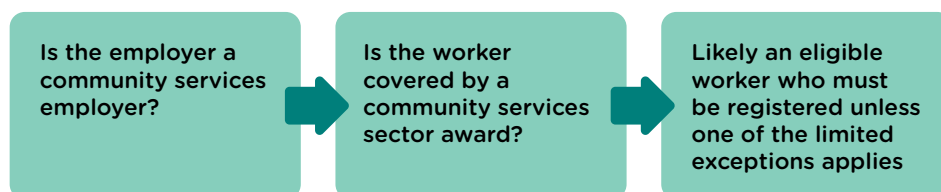
This fact sheet helps employers and workers understand the **Long Service Benefits Portability Act 2018** ('the Act') and the criteria for registering workers with the community services portable long service scheme ('the Scheme').

Registration of workers - community services sector

The community services sector is very broad. The Scheme was created to provide portable long service benefits for most workers working in the sector. It does so by defining eligible workers by reference to the five most common community services awards (with only limited exceptions). In most cases, if a worker is employed by an eligible employer, they are likely to be covered by the Scheme and should be registered.

This fact sheet provides information on whether workers are covered by the Scheme and is not legal advice. Workers who are unsure of their entitlements should contact the Portable Long Service Authority ('the Authority') for more information. Employers who are unsure of their obligations should obtain their own independent legal advice or contact the Authority.

Summary



Who is a worker?

A worker in the community services sector is an individual employed by an employer for the sector (whether in Victoria or elsewhere) and includes someone employed on a casual basis.

What is the community services sector?

The community services sector is the industry in which community services work is performed in Victoria. It can apply to businesses based in Victoria or interstate as long as they perform work in Victoria.

The scope of community services work for the purposes of the Act is very broad. A business or organisation may be covered even if they do not consider themselves to be undertaking what they consider to be community services work. It is ultimately an objective test based on the actual work that a business or organisation performs.

Is the worker employed by an employer for the sector?

To assess if an employer is an employer for the sector in Victoria, please refer to the Fact sheet: Registration of employers - community services sector.

Details of employers who are already registered with the Scheme can be found on the Employer lookup page on the Authority's website. If workers see that their employer appears on the Authority's website, but they are not registered with the Authority as workers themselves, they should speak with their employer and/or contact the Authority.

Is the worker covered by one of the five community services sector awards?

The Scheme defines a worker by whether they are covered by one of the five common community services sector awards. The awards are very broad and cover most workers in the sector, including clerks, administrative and managerial staff and support workers.

The awards are:

- Social, Community, Home Care and Disability Services Industry (SCHADS) Award 2010
- Children's Services Award 2010
- Educational Services (Teachers) Award 2010
- Labour Market Assistance Industry Award 2020
- Supported Employment Services Award 2020

If employers are unsure of what award covers their workers, they should contact the Fair Work Ombudsman at fairwork.gov.au or obtain their own independent legal advice. Workers who are unsure of their award coverage should contact their union or the Fair Work Ombudsman.

Workers in the following examples are included in the Scheme:

- Workers covered by one of the five awards are considered to be employed under that award even if an enterprise agreement exists in the workplace.
- It is irrelevant if workers are on an individual agreement, common law contract or only employed under the National Employment Standards. If one of the community services sector awards covers them then they are included.
- If an employer is a community services employer, it is unlikely that they have 'award free' workers.
- The Registrar may be satisfied a worker is covered by an award even if they are not actually employed under that award. For example, they may be incorrectly employed under the wrong award. This will depend on the facts of each individual worker, information provided by the employer and whether it's more likely than not that the worker is covered by one of the five awards.

In summary, so long as an employer and worker fall within the scope of the five community services awards, they are covered by the Scheme regardless of whether or not they are employed under the award, an enterprise agreement or an individual contract.

Do any of the exceptions apply?

From October 2020, there are some limited exceptions to a worker being registered.

Does the worker work for a multi-business employer which includes care for children?

If an employer is a licensed children's service under the *Children's Services Act*, or an approved provider under the Education and Care Services National Law (Victoria) and operates another business unrelated to the community services sector, workers who work for the other business and are not involved in caring for or coordinating the care of children, are excluded.

For example, if a non-profit community gym runs a creche, an individual only employed as a fitness instructor in the gym is not eligible for registration.

Is the worker employed by a Community Health Centre but not performing community services work?

Workers at the Centre who carry out what is known as 'community service work' are included in the Scheme. You can find out what falls within that category by visiting the Community services coverage page on the Authority's website. If the worker does not carry out community services work, then they are not eligible for registration.

Is the worker employed by an employer for the sector?

To assess if an employer is an employer for the sector in Victoria, please refer to the Fact Sheet Employer registration - community services sector.

Details of employers who are already registered with the Scheme can be found on the Employer lookup page on the Authority's website. If workers see that their employer appears on the Authority's website, but they are not registered with the Authority as workers themselves, they should speak with their employer and/or contact the Authority.

Does the employer provide health services for persons with a disability?

If the employer does provide health services for persons with a disability and a worker's primary role is to provide health services to those persons, those workers are excluded.

Does the Aged Care Award apply to you?

If the *Aged Care Award 2010* applies to workers, they are excluded from the Scheme.

Does the employer employ health professionals?

Registered employers with workers covered by one of the health professional occupations awards or if the business operates between two sectors might be excluded. However, unless the employer is excluded, a worker covered by SCHADS is a worker under the Scheme.

If workers are employed by a registered employer but are not covered by one of the five community services sector awards, they should contact the Authority. The Authority will seek to understand whether the major or substantial part of a worker's role falls within one of the five awards and, in turn, decide whether the worker is eligible.

Obligation to register workers

Employers

If an employer covered by the Scheme has employees who should be registered, they must be registered within the required period. The required period is three months after the worker is employed by a registered employer to the Scheme.

An employer must apply for registration of an employee when they submit their next quarterly return. For information on submitting quarterly returns please contact the Authority by emailing enquiries@plsa.vic.gov.au or calling 1800 517 158.

Workers

If you believe you meet the criteria for a worker for the Scheme, but you are not yet registered please contact the Authority by emailing enquiries@plsa.vic.gov.au or calling 1800 517 158.

Criminal Offences

A failure by employers to register all their eligible workers may lead to criminal prosecution and financial penalties. This can include criminal prosecutions against an officer of a body corporate who commits an offence if:

- the officer authorised or permitted the commission of the offence by the body corporate, or
- was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.

This is known as 'accessorial liability' and can result in criminal convictions and fines being imposed by the Court on directors and officers personally.

The Authority's approach

Since July 2019, the Authority has conducted an extensive education program and collaborated with industry peak bodies, groups, employers and unions.

Where the Authority identifies, or is approached by, employers who have not registered for the Scheme, the Authority will initially work with them to register and for the employer to pay backdated levies due.

If the education and collaborative approach does not achieve registration and/or payment of all levies due, the Authority will pursue proportionate compliance activities, which includes exercising its power to require information, civil debt recovery and/or pursuing criminal prosecutions.

This may result in criminal convictions (against a company or individual), financial penalties, and interest being imposed, in addition to recovering all outstanding fees owed by the employer.

Questions?

If you have questions about this fact sheet, please contact the Authority by emailing enquiries@plsa.vic.gov.au or calling 1800 517 158.

Alternatively, please obtain your own independent legal advice.

For more information visit plsa.vic.gov.au and to stay up to date **register** for our email newsletter.

