



**Portable
Long Service
Authority**

Guidance Note 1

About this Guidance Note

This Guidance Note 1 is relevant for Employers registered in the community services sector under the Portable Long Service Benefits Scheme.

Guidance Note 1 will assist registered employers of the Scheme to complete their quarterly returns. Guidance Note 1 provides guidance on how the Portable Long Service Authority intends to assess whether individual employees of registered employers are considered 'workers' in the community services sector for the purposes of the *Long Service Benefits Portability Act 2018* (Vic) and the *Long Service Benefits Portability Regulations 2019* (Vic).

Issued: 20 November 2019

Table of Contents

About this Guidance Note	1
About PLSA Guidance Notes	3
Document History	3
Disclaimer	3
Guidance Note.....	5
Using the “predominance test” to determine who is a community services employee.....	5
What is the scope of the “predominance test” in practice?	5
Appendix 1 – General Overview of the Portable Long Service Scheme.....	7
What is the Portable Long Service Scheme?	7
What industries are covered by the Scheme?	7
How does a worker become eligible?	7
Who is required to apply for registration?	7
Appendix 2 – Technical Overview of the Community Services Sector	8
What is the community services sector?	8
What is community services work?.....	8
What is not community services work?	9
Who is a community services employer?	10
Who is not a community services employer?	10
Who is an employee for the community services sector?	11
Who is not an employee for the community services sector?	11
Using the “predominance test” to determine who is a community services employee.....	11

About PLSA Guidance Notes

The PLSA may issue Guidance Notes from time to time to provide guidance to employers and workers on:

- explaining when and how the PLSA will exercise specific powers under the Act;
- explaining how the PLSA applies the law; and
- describing the principles underlying the PLSA's approach to giving practical guidance.

Document History

This Guidance Note 1 was originally issued on 16 October 2019, based on legislation and regulations in operation as at 16 October 2019.

The Guidance Note was re-issued on 20 November 2019 to reflect the making of the Long Service Benefits Portability Interim Regulations on the same date.

Where legislation and regulations are from time to time amended, this Guidance Note 1 will not apply to amended provisions although will still have applicability to unamended portions of the legislation until updated to reflect changes to the legislation.

Disclaimer

This Guidance Note 1 does not substitute the need for employers and workers of the Scheme to seek their own professional advice (where relevant) to find out about the operations of the *Long Service Benefits Portability Act 2018* (Vic) and the *Long Service Benefits Portability Interim Regulations* (Vic) and how these laws apply to each specific set of facts and circumstances.

Examples and additional information (provided in italics) in this guide are for illustrative purposes only; they are not exhaustive and not intended to impose or imply particular rules or requirements.

Definitions

The following definitions apply to this Guidance Note 1 and Appendices.

Term	Definition
The Act or <i>LSBP Act</i>	The <i>Long Service Benefits Portability Act 2018</i> (Vic).
The Regulations or <i>LSBP Regulations</i>	The <i>Long Service Benefits Portability Interim Regulations</i> (Vic).
The Scheme	The Portable Long Service Benefits Scheme as set out in the Act and Regulations.
PLSA	The Portable Long Service Benefits Authority.
Employers	Employers for a covered industry as defined in the Act and Regulations.
Workers	Eligible employees of registered employers as defined in the Act.

PLSA website

The Portable Long Service Authority's website: <https://www.plsa.vic.gov.au>

Guidance Note

Using the “predominance test” to determine who is a community services employee

- GN 1.1 Under reg 10(3) of the Regulations, a person is only a community services employee if the predominant activity of the individual’s substantive role is the personal delivery of services or the personal performance of community service activities.

What is the scope of the “predominance test” in practice?

- GN 1.2 The Scheme is intended to provide an economic or financial benefit to employees in the covered sectors (i.e. the community services sector). This is consistent with the main purpose of the legislation, which is to provide portability of long service benefits to covered industries. To achieve the Scheme’s beneficial objective of providing long service benefits to employees whose employment is in the community services ‘industry’, the approach to the predominance test should be as broad as the wording of reg 10(3) of the Regulations allows.

- GN 1.3 The ‘personal delivery of services’ or the ‘personal performance of activities’ in reg 10(3) of the Regulations should not be restricted to those who have direct interactions with the community (front-line services) when performing community services work under cl 2 of sch 1 to the Act. Reg 10(3) of the Regulations should be applied at the organisational level rather than simply at the occupational level of the individual employee.

- GN 1.4 Therefore, the Authority’s view is that the **scope of the predominance test** in its practical application will encompass not only employees who have direct contact with clients in providing services and performing activities constituting community service work (front-line services) but also those employees who, at an organisational level, support those who deliver front-line services.

At the organisational level, work that involves the direct management of, direct assistance to, planning for, directly enabling and directly supporting those who deliver the front-line services within the organisation are likely to meet the requirements of a community services worker. As an example, a manager or team leader of a worker who has direct client contact, who regularly attends client meetings, or who frequently or actively works with members of the team on case management will demonstrate on a broad reading the personal performance of activities constituting community services work.

Additionally, some guidance may also be taken from the scope and classifications in significant industrial awards such as the Social, Community, Home Care and Disability Services Industry Award 2010, the Children’s Services Award 2010 and the Educational Services (Teachers) Award 2010 in determining personal performance of community service work is the predominant activity.

- GN 1.5 This Guidance Note must not be read as meaning that all employees in an organisation are to be registered because an employer is registered.

Many organisations operate across multiple industries of work. Employees who do not work in the community services ‘industry’ should not be registered in the community services Scheme even if their employer is registered.

GN 1.6 In applying the predominance test, job title alone is not determinative. In each case, it is necessary to identify the work that the employee is performing for the organisation.

In smaller organisations, senior management is often required to perform work that involves direct interactions with the community and the senior management employee is frequently providing direct services. In contrast, with larger organisations, senior management may be employed in roles mainly for their leadership and resource management skills, often with very remote and/or limited personal delivery of services or performance of activities in the community services sector. In each case, the registered employer should make an informed assessment about each employee before including them in the quarterly return as a covered worker.

Appendix 1 – General Overview of the Portable Long Service Scheme

What is the Portable Long Service Benefits Scheme?

The Portable Long Service Benefits Scheme is established under the *Long Service Benefits Portability Act 2018* (Vic) (the Act). The main purpose of the Act is to provide portability of long service benefits in certain industries¹ where, due to the contract and project natures of the work often undertaken in these industries, workers may not qualify for long service entitlements under traditional schemes. The Portable Long Service Benefits Scheme recognises that workers can work for multiple employers and have their service in the industry recognised and enable them to claim a long service benefit.

The role of the PLSA is to administer the Scheme established under the Act.²

What industries are covered by the Scheme?

There are 3 industries covered by the Portable Long Service Benefits Scheme:

1. the community services sector;
2. the contract cleaning sector; and
3. the security industry.³

The scope of each covered industry is defined in the Act. The Act sets out the activities and services that make up the work done in the covered industry for the purposes of the Scheme. The Act must be read in conjunction with the covering the *Long Service Benefits Portability Interim Regulations* (Vic) (the Regulations).

How does a worker become eligible?

There are three prerequisites to a worker being eligible under the Portable Long Service Benefits Scheme:

1. the worker is a worker in a covered industry; and
2. the worker performs work for a registered employer for the covered industry; and
3. the worker is a registered active worker for the covered industry.⁴

Who is required to apply for registration?

For eligible workers in the covered industry to access the Scheme, employers for a covered industry must apply for registration.⁵ Application for registration is done via the PLSA website and information about the application process is also on the website.

When a registered employer for a covered industry lodges the quarterly return, the employer must tell the PLSA how many community service workers are in the organisation and how many hours of work they have done during the quarter. The quarterly return process and the information that is required is explained on the PLSA website.

¹ *Long Service Benefits Portability Act 2018* (Vic) s1.

² *Ibid* s36(a).

³ *Ibid* s3.

⁴ *Ibid* s5.

⁵ *Ibid* s11.

Appendix 2 – Technical Overview of the Community Services Sector

This purpose of this section is to assist stakeholders by setting-out the main concepts that are used to define the scope of community services as a covered industry under the Portable Long Service Benefits Scheme and to assist people in applying these concepts to specific circumstances. These concepts in combination will assist in determining the requirement or eligibility to register employees for the Scheme.

The main concepts used to define community services as a covered industry are:

- community services sector;
- community services work;
- community services employer;
- community services employee; and
- the “predominance test”.

What is the community services sector?

For the purposes of the Act, the community services sector is the sector in which community service work is performed in Victoria. The scope of community services work for the purposes of the Act is broad.

What is community services work?

Community services work for the purposes of the Scheme is work that provides:¹

- Training and employment support or employment placement for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- Financial support or goods for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- Accommodation or accommodation-related support services for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- Home care support services for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis;
- Other support services for people with a disability or their carers or persons who are vulnerable, disadvantaged or in crisis;
- Community legal services;
- Community education and information services;
- Community advocacy services;
- Community development services;
- Fundraising assistance for community groups; or
- Services to assist cultural or linguistically diverse communities.

¹ *Long Service Benefits Portability Act 2018* (Vic) sch 1, pt 1 cl 2(1)(a)–(i) (*‘LSBP Act’*).

Other services that are also included as community service work are:²

- Social work;
- Welfare work;
- Youth work services;
- Home care support services provided in a private residence that is not health or aged care work;
- Crisis counselling;
- Emergency material relief;
- Custodial or supportive care and social welfare;
- Assessment of individual or family needs;
- Social and community development, education and advocacy;
- Family support services;
- Youth services;
- Housing and homelessness services;
- Family violence prevention and response;
- Neighbourhood houses;
- Drug and alcohol services; and
- Migrant and refugee support services.

From **1 January 2020** community service work will also include:³

- An activity that is funded by the National Disability Insurance Scheme.⁴
- A service provided by an organisation that is a licensed children's service⁵ or
- A service provided by an approved provider under the *Education and Care Services National Law* (Victoria) except an entity that is also a registered school within the meaning of the *Education and Training Reform Act 2006* (Vic).⁶

What is not community services work?

The following is not community services work for the purposes of the Scheme:

- A service provided by an approved provider under the *Education and Care Services National Law* (Victoria) that is also a registered school within the meaning of the *Education and Training Reform Act 2006* (Vic);⁷
- An activity that is health or aged care work or;⁸
- A service providing activities that are a mix of health or aged care work and other activities where health or aged care work is the predominant activity provided by the service.⁹

² *Long Service Benefits Portability Interim Regulations* (Vic) pt 4, div 1, reg 8(1)(a)–(n) ('LSBP Regs').

³ *Ibid*, reg 8(2)–(3).

⁴ within the meaning of the *National Disability Insurance Scheme Act 2013* (Cth).

⁵ under the *Children's Services Act 1996* (Vic).

⁶ *LSBP Regs*, pt 4, div 1, reg 8(3).

⁷ *Ibid*.

⁸ *Ibid*, reg 8(4).

⁹ *Ibid*, reg 8(5).

Who is a community services employer?

Once an employer has established that they are performing community services work, eligibility depends on the worker performing community services work for a community services employer.

To be a community service employer, the entity must be one that is:

- a non-profit entity that employs one or more individuals to perform community service work;¹⁰ or
- an entity for profit that employs one or more individuals to perform community service work for persons with a disability.¹¹

Non-profit entity has two meanings for the purposes of the Scheme. Non-profit entity means a corporation that is not carried on for the profit or gain of individual members and by the terms of its constituent documents is prohibited from making a distribution to members.¹² Non-profit entity also means an individual carrying on a business or other activity for a purpose that does not include profit or gain for that individual¹³.

Who is not a community services employer?¹⁴

The following are not community services employers:

- The Commonwealth of Australia
- The State of Victoria
- An entity that has a governing body appointed under an Act of Commonwealth or State
- A municipal council
- A public statutory body
- A public health service
- A public hospital under the *Health Services Act*

Consistent with the general exclusion of health and aged care related services from community services work, also excluded from the employer category are:

- An aged care service operated by a hospital within the meaning of s.3 of the *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015*;¹⁵
- A bush nursing centre specified in Schedule 1 of the Regulations;¹⁶
- A bush nursing hospital specified in Schedule 2 of the Regulations.¹⁷

¹⁰ *LSBP Act*, sch 1, pt 1, cl 3(1)(a).

¹¹ *Ibid*, cl 3(1)(b).

¹² *Ibid*, cl 3(3)(a).

¹³ *Ibid*, cl 3(3)(b).

¹⁴ *Ibid*, cl 3(2)(a) – (e).

¹⁵ *LSBP Regs*, pt 4, div 1, reg 9(a).

¹⁶ *Ibid*, reg 9(b) – The Bush Nursing Centres are: Balmoral; Buchan; Cann Valley; Dargo; Dartmoor & District; Dingee; Elmhurst; Ensay; Gelantipy District; Harrow; Lake Bolac; Lockington & District; Swifts Creek; Walwa and Woomelang & District.

¹⁷ *Ibid*, reg 9(c) – The Bush Nursing Hospitals are: Ballan and District Soldiers' Memorial Bush Hospital, Euroa Health; Heyfield Hospital Incorporated; Nagambie HealthCare and the Neerim District Health Service.

Who is an employee for the community services sector?

A community services employee is an individual who is employed by a community sector employer in Victoria or elsewhere. Employee includes those who are employed on a casual basis.¹⁸

Who is not an employee for the community services sector?

The meaning of community services employee **currently** excludes a person who works for an employer:

- who operates a business in addition to being a licensed children's service under the *Children's Services Act 1996* or an approved provider under the *Education and Care Services National Law* (Victoria) and the person's individual role is not to care for children or co-ordinate the care of children for the licensed children's service or approved provider.¹⁹

As stated earlier, as of **1 January 2020**, this type of service **will** be considered community service work).

- who provides services for persons with a disability and the worker's primary role is to provide health services to the services clients;²⁰

If an individual is employed under the following awards and agreements, they are also excluded as a community services employee²¹:

- The Aged Care Award 2010²²
- The Ambulance and Patient Transport Industry Award 2010²³
- The Amusement, Events and Recreation Award 2010²⁴
- The Educational Services (Schools) General Staff Award 2010²⁵
- The Fitness Industry Award 2010²⁶
- The Medical Practitioners Award 2010²⁷
- The Pharmacy Industry Award 2020.²⁸

Using the “predominance test” to determine who is a community services employee

A person is a community services employee if the predominant activity of the individual's substantive role is the personal delivery of services or the personal performance of community service activities²⁹.

Further information on the application of the “predominance test” in the community services sector is provided in this Guidance Note 1.

¹⁸ *LSBP Act*, sch 1, pt 1, cl 4(1).

¹⁹ *Ibid*, cl 4(2)(a).

²⁰ *Ibid*, cl 4(2)(c).

²¹ *LSBP Regs*, pt 4, div 1, reg 10(2) deems an employee to be engaged under one of the listed awards even if an enterprise agreement applies in the employee's workplace.

²² *LSBP Act*, sch 1, pt 1, cl 4(d)(i).

²³ *LSBP Regs*, pt 4, div 1, reg 10(1)(a).

²⁴ *Ibid*, reg 10(1)(b).

²⁵ *Ibid*, reg 10(1)(c).

²⁶ *Ibid*, reg 10(1)(d).

²⁷ *Ibid*, reg 10(1)(e).

²⁸ *Ibid*, reg 10(1)(f).

²⁹ *LSPB Act*, sch 1, pt 1, cl 4(e) and *LSPB Regs*, pt 4, div 1, reg 10(3).