

Registration of employers – community services sector

The following information aims to assist employers understand the *Long Service Benefits Portability Act 2018* ('the Act') and whether they are required to register for the community services portable long service scheme ('the Scheme').

The community services sector is very broad. Employers operating in the community services sector are likely to be covered by the Scheme, unless one of the limited exceptions applies.

This 'Fact Sheet' is not legal advice and employers who are unsure of their obligations should obtain their own independent legal advice.

There is a separate 'Registration of workers – community services sector' Fact Sheet which provides details of workers who are eligible for registration with the Scheme.

Who is an employer in the community services sector?

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

The legislation offers broad coverage of workers and organisations.

There is a **three-step** test which determines whether an employer is a community services employer as defined in the Act.



Step One: Are you an 'Excluded Employer'?

Excluded employers in the community services sector are:

- the Commonwealth of Australia, the State of Victoria, a municipal council
- an entity that has a current governing body appointed under an Act of the Commonwealth or the State, by the Governor-General, the Governor in Council, or a Minister
- a public statutory body
- an entity for profit that is an approved children's service under the *Children's Services Act 1996* or an approved provider under the Education and Care Services National Law (Victoria)
- A public hospital or health service under the *Health Services Act 1988* ('Health Act')
- a health or related service within the meaning of section 3(1) of the *Health Act*, including:
 - i. a registered funded agency, multi-purpose service or health service establishment
 - ii. any other person, body or organisation that provides, delivers, funds, facilitates access or provides insurance in relation to health services, being services that include, but are not limited to aged care services, palliative care services, pharmaceutical services, ambulance services, health services in association with correctional services, residential care services.

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

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

The following are **not excluded** employers:

- Registered community health centres
- Women's health service
- Organisations that provide both disability services and a service mentioned above (in ii).

If you are unsure whether your organisation falls under any of the above exclusions, you should obtain independent legal advice.

Failure to register can lead to criminal prosecution and significant financial penalties.

Step Two: Are you a 'Listed Employer'?

You are a Listed Employer if you fall in either of the following categories:

A non-profit entity

That employs one or more individuals to perform community services work

An entity for profit

That employs one or more individuals to perform community services work for persons with a disability

Step Three: Do you have one or more employees performing ‘community services work’?

Employers only need to employ **one** person who performs any of the following community services work to satisfy this section.

The definition of community services work is broad and expansive. It includes the following:

- assessment of individual or family needs*
- community development services
- community legal services, community education and information services, or community advocacy services
- crisis counselling*
- custodial or supportive care and social welfare*
- drug and alcohol services*
- emergency material relief*
- family support services*
- family violence prevention and response*
- fundraising assistance for community groups
- home care support services provided in a private residence, irrespective of the age of the client*
- housing and homelessness services*
- migrant and refugee support services*
- neighbourhood houses*
- other support services for
 - persons with a disability or their carers
 - persons who are vulnerable, disadvantaged or in crisis
- services providing assistance to particular cultural or linguistically diverse communities
- social and community development, education or advocacy*

- social work or welfare work*
- youth work or youth services.*

It also includes performing the following work for persons with a disability or other persons who are vulnerable, disadvantaged or in crisis:

- training and employment support, or employment placement
- financial support or goods
- accommodation, or accommodation-related support services
- home care support services.

Since 1 January 2020:

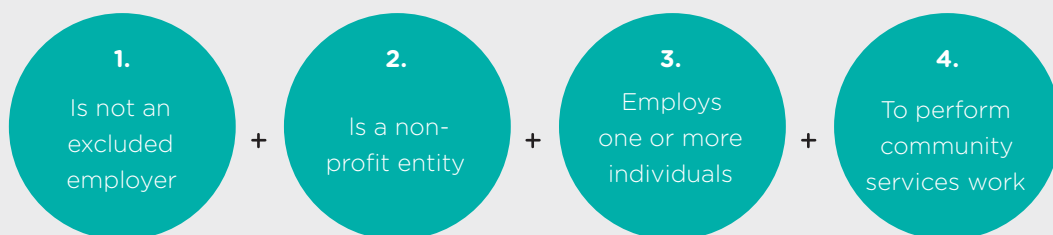
A service provided by a non-profit entity that is one of the following is considered to be community service work:

- an approved children’s service under the Children’s Services Act 1996 or
- 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*).

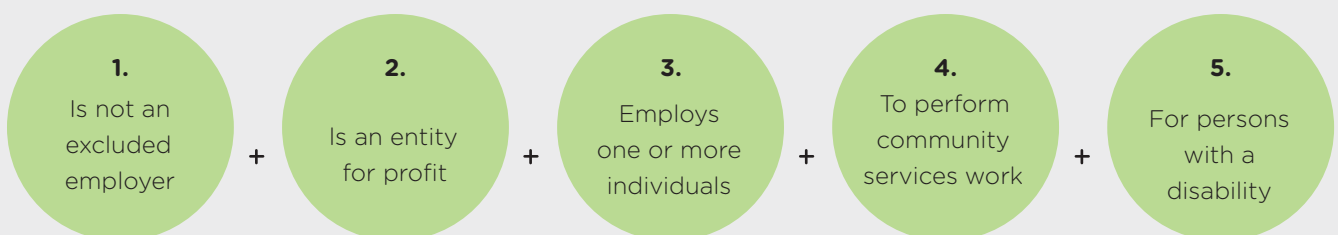
Note: Prior to 1 January 2020, activities funded by the National Disability Insurance Scheme were not community services work.

Summary of employer test

Non-profit entities



For profit entities



A note on the SCHADs award

The Social, Community, Home Care and Disability Services Award (SCHADs) is the most common industrial award in the community services sector. It is an industry award and is very broad. If an employer is covered by SCHADs, then unless a limited exception applies, all its workers who are covered by that award will also be covered by the Scheme. See the Worker Fact Sheet for further information.

Obligation to register

An employer who meets the three-step test **must** apply for registration within the required period, or such additional period allowed by the Registrar. The required periods are:

- **By 1 October 2019**, if they were an employer in the community services industry as at 1 July 2019 or
- In any other case, **3 months after** the employer becomes an employer for the covered industry. For example, a new company or an existing company who begins to employ individuals performing community services work.

The Registrar may allow an employer an additional period to apply for registration if they are satisfied that the employer has a good reason for requiring additional time. The Registrar will assess any requests for an additional period on their facts.

Criminal Offences

Failure to register 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 or your obligations as an employer, please contact the Authority by email at enquiries@plsa.vic.gov.au or call 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.

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