

Guidance Note 2

Direct Worker Registration Process

Date of publication: 16/12/2024

About this Guidance Note

Background

This Guidance Note 2 provides information on the Portable Long Service Authority's (the Authority) process for handling direct worker registrations made to the Authority under the *Long Service Benefits Portability Act 2018* (Vic) (the Act).

The Portable Long Service Benefits Scheme (the Scheme) establishes that eligible employers are required to include in the register each of the employer's eligible workers who performed work for the employer during a preceding quarter and include details of their hours of service. Failure to do so is an offence under the Act and punishable by a fine of up to 24 penalty units in the case of an individual employer (and 120 penalty units in the case of a body corporate employer) for each day during which the offence continues. As a result, all eligible workers of the Scheme receive coverage through registration by their employer.

The Authority will continue to work collaboratively with employers to educate them about their obligations under the Scheme. Now that the Scheme has been established for five years the Authority has adopted a structured approach to compliance and enforcement as per its published [Regulatory Strategy](#).

The Authority values information from workers and employers that will assist it in meeting the objective of equitable administration of the Scheme. Equitable administration includes ensuring that all eligible workers are included in the Scheme. The Authority therefore welcomes information about employers who should be registered (as well as workers who should be registered) and instances of missing hours or entitlements. The Authority will endeavour to respond to information provided and applications made in a timely manner.

Where a worker is of the view that they should be registered with the Scheme, the most common starting point will be to make the relevant inquiries with the employer. A worker may also approach the Authority directly, including in cases where an employer inquiry does not produce a satisfactory result. A worker can apply for registration using the “Direct Worker Registration Process” form at any time. However, we encourage workers to work through the following steps in the first instance:

Step 1

Check if your employer is registered with the Scheme.

Step 2a

If your employer is not registered with the Scheme and you suspect that the employer is intentionally or inadvertently breaking the law by not registering a worker’s portable long service leave entitlements, then you should complete the “Report An Employer” form and submit to the Authority.

Step 2b

If your employer is registered with the Scheme, check whether or not you have been included as a registered worker. You can either contact your employer or reach out directly to the Authority.

Step 3a

If you are included as a registered worker but believe that the employer has not included all your work hours, then you should complete the “Missing Service Claim form” and submit to the Authority.

Step 3b

If you have not been included as a registered worker but believe that you are an eligible worker, then you can raise this matter with your employer or directly with the Authority.

Step 4

If you have raised the matter with your employer or the Authority in the first instance and this has failed to produce a satisfactory outcome within a reasonable time period, or if your employer is liquidation, then you can apply directly as a worker with the Authority using the “Direct Worker Registration Process” form and submit to the Authority.

Note: If a worker applies directly as a worker using the “Direct Worker Registration Process form” under Step 4 but has not completed the steps, then the Authority will normally need to complete the above steps before progressing further with an application for direct worker registration.

Contents of this Guidance Note

This Guidance Note deals with the Authority's processes when dealing with a worker who lodges a direct worker registration application to the Authority where the employer is in existence.



Table of Contents

About this Guidance Note	2
PLSA Guidance Notes	6
Guidance Note	7
Appendix 1 - General overview of the Portable Long Service Benefits Scheme	10

PLSA Guidance Notes

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

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

Document History

This Guidance Note 2 is issued on 16 December 2024, based on legislation and regulations in operation as at 30 November 2024.

Where legislation and regulations are amended, this Guidance Note 2 will not apply to amended provisions although it will still have applicability to unamended portions of the legislation until updated to reflect changes to the legislation.

Disclaimer

This Guidance Note 2 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 Regulations 2020 (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.

Guidance Note

Can an unregistered worker make a direct application to the Authority to be registered into the Scheme under the Act?

- GN 2.1 The purpose of the *Long Service Benefits Portability Act 2019* (Vic) is to provide portability of long service benefits in certain sectors and industries. As of the date of this Guidance Note, these industries include the community services, the contract cleaning and the security industry.
- The main purpose of the legislation is to provide portability of long service benefits in certain industries.
- GN 2.2 In situations where an employer is in existence, two situations can arise:
1. The employer has registered with the Authority as an eligible employer but not registered the worker seeking to make a direct application for registration to the Authority; or
 2. The employer has not registered with the Authority as an eligible employer (and therefore has not registered the worker seeking to make a direct application for registration to the Authority).
- GN 2.3 In both cases, the Authority will commence investigations into potential contraventions of the Act under either section 11 for failure to register as an employer, or section 27 for failure of including the required information on quarterly return submissions.
- GN 2.4 In most situations it is intended that eligible workers will be registered by their employer, either voluntarily or as a consequence of compliance and enforcement activity conducted by the Authority. However, it is the opinion of the Authority that Part 3 - Division 3 (sections 16 to 22) of the Act provides for a worker to make a direct application to the Authority.

Does the Act allow a worker to apply for registration where a worker is already registered as an eligible worker?

GN 2.5 Workers that are already registered into the Scheme cannot apply a second time for registration.

Where a worker is registered but is of the view that they have missing entitlements, the worker should complete a Missing Service Claim form. This includes the situation where there has been a change in employment for the worker.

Does Part 3 - Division 3 of the Act allow a worker to apply for registration where an employer is already a registered eligible employer?

GN 2.6 As long as the worker is not already registered, nothing in the Act precludes an individual from otherwise making an application for registration as a worker to the Scheme irrespective of whether the employer is registered or not.

In reaching a decision on an application by a worker to apply for registration to the Scheme, is the Authority required to consider the views of the employer that has not registered the worker in question?

GN 2.7 While the *Long Service Benefits Portability Act 2019* (Vic) is silent on this issue, it is the opinion of the Authority that in order to be satisfied that a worker is a covered worker for the Scheme, it is required to make reasonable inquiries about the eligibility of the employer as well as the nature of the work performed by the worker.

GN 2.8 This would require in almost all cases inquiries to both the worker and the employer allowing for a reasonable timeframe of not less than 28 days for an employer to respond to the Authority's questions.

GN 2.9 This is because implicit to an application of registration by a worker where an eligible employer has not registered the worker under section 17 of the Act is the implication that the eligible employer ought to have registered the worker but has not done so. In this situation, it is appropriate to understand both the worker and the employer perspective on eligibility of the worker for the Scheme.

The Authority will not register a worker unless it is satisfied that the worker is covered and that in order to be satisfied, it is required to make reasonable inquiries in support of their coverage.

GN 2.10 The above does not preclude the Authority from making a decision in the event that an employer is no longer in existence or does not wish to cooperate with the Authority.

Where an application for registration is made by a worker and the employer is already registered with the Scheme, can the Authority conclude the application after it has completed its investigation, or must the Authority make a decision prior to making an investigation?

GN 2.11 Where a worker is eligible for the Scheme, their entitlements will ultimately be recognised by the Authority. Whether an employer makes a contribution for an individual worker's entitlement to the Scheme is a matter for the Authority in regulating the Scheme according to the legislation, as well as a matter of compliance and enforcement to ensure continued viability of the Scheme and equity to all employers.

It would therefore be in the interests of efficient administration of the Scheme for all stakeholders that the Authority complete its investigations in the first instance and afford the employer an opportunity to register a worker and make the appropriate contributions in the first instance.

GN 2.12 Notwithstanding the above, the Authority is of the view that if an employer does not wish to cooperate with the Authority's investigation or there may otherwise be exceptional circumstances that result in a prolonged delay to the determination of an application for worker registration, then the Authority can register the worker and may use that fact to support its compliance / enforcement activities.

When will an eligible worker be directly registered following an application for direct worker registration into the Scheme?

GN 2.13 A worker is directly registered when the Authority registers the worker into the Worker Register. In the case of an application for direct worker registration into the Scheme, this will occur:

1. After the completion of any investigations that the Authority considers necessary; and
2. Provided the employer with an opportunity to register (if they are not already registered) so that the employer can include the worker into their quarterly return; and
3. Notwithstanding the above, the employer has continued to fail to include the eligible worker in their quarterly returns in breach of section 27 of the Act.

Following the above, if the Authority is satisfied that the worker making the application for direct registration is covered, then the worker will be registered into the Worker Register of the Scheme.

The Authority will also continue to pursue compliance / enforcement activities against the employer.

GN 2.14 In the interests of effective administration, in some cases, an eligible employer will have been provided with the opportunity to register either themselves or their workers' as part of the investigation process, whilst in other cases the opportunity may be provided after the investigation process has concluded.

GN 2.15 If the Authority is satisfied that a worker is covered and their eligible employer is in liquidation or administration then the Authority will also directly register the worker.

What information will be provided to the applicant worker about the progress of the application to be registered?

GN 2.16 The worker will be provided with updates about the progress of their application. However, in many cases, the Authority may not be able to provide information as to whether it is satisfied that a worker is covered until after it has completed its investigations. The Authority will endeavour to provide information including the stage reached in the application process. The Authority will monitor progress of applications to ensure that timeframes are reasonable.

Appendix 1 – General overview of the Portable Long Service Benefits 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 nature 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 Authority is to administer the Scheme established under the Act.²

What industries are covered by the Scheme?

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

1. the community services industry;
2. the contract cleaning industry; 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 Regulations 2020* (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

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

² *Ibid* s36(a).

³ *Ibid* s3.

⁴ *Ibid* s5.

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 Authority how many 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 further on the PLSA website.

Obligation to register employees

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.

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 subscribe for our email newsletter.

⁵ Ibid s6.

