

Community Sector Portable Long Service Leave Scheme

Frequently asked questions

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Rationale for introducing a Portable Long Service Leave (PLSL) Scheme

Q: Why is the Victorian Government pursuing the introduction of a PLSL Scheme for the community services sector?

A: Portability of long service leave entitlements was strongly advocated for by the sector. PLSL is an initiative with significant potential to increase the capacity of community sector organisations through improved workforce retention. In response to the sector, the Victorian Government announced the intention in April 2008 to implement the CSS PLSL Scheme.

A portable long service leave scheme will provide additional entitlements to an estimated 40,000 workers in the community services sector.

The Scheme will deliver multiple benefits to the sector, including:

- Improved attractiveness of working in community services roles and higher retention rates across the sector as employees gain improved entitlements
- Improved employment benefits to a low paid, predominately female section of the workforce.

The introduction of the Scheme will also provide the opportunity to create a minimum data set of industry characteristics for the community services sector. This will enable more effective measurement and identification of benefits in the future.

Scope of the Scheme

Determining eligibility for the Scheme

Q: How will employer and employee eligibility for the Scheme be determined?

A: Employee eligibility will be determined by a new Community Services Sector Long Service Leave Statutory Authority (the Authority) in accordance with the list of community service activities as specified in the Scheme Legislation.

The Victorian Government has identified the list of community services to be within the scope of the Scheme with reference to Australian Bureau of Statistics and Australian Institute of Health and Welfare classification systems. In line with these classifications, the definition focuses on service activities rather than on services for specific demographic groups.

Eligibility for the Scheme will be determined via a 'whole of organisation' approach for all **not-for-profit, non-government** organisations that employ permanent, fixed-term, part-time or casual workers who provide **community services** in Victoria.

There are a number of instances where the whole of organisation approach has been modified to account for exceptional circumstances. These include the excision of staff who provide community aged care services and the inclusion of staff who undertake community services activities in Community Health Centres.

The Authority will be granted discretionary powers to ensure that organisations or employee groups not intended to be part of the Scheme are not included, and to consider others not in scope who apply for inclusion.

Q: How will 'not-for-profit, non-government organisations' be defined by the Scheme?

A: The Scheme will adopt the following definition to determine the not-for-profit, non-government organisations that will fall within the scope of the Scheme:

- Any organisation that employs one or more individuals to carry out community service activities that is a corporation not carried on for the profit or gain of its individual members, and that by the terms of its constituent documents, is prohibited from making a distribution to its members, whether in money, property or otherwise; or
- Any organisation that is a not-for-profit licensed children's service under the Children's Services Act 1996.

The above definition incorporates organisations that directly deliver community services, social enterprises and organisations such as peak bodies established to support the community services sector.

Q: How will 'community service activities' be defined by the Scheme?

A: The Scheme will define community service activities as activities that provide:

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

Q: Are peak bodies included in the list of community services activities?

A: Yes. Employees of peak bodies are included in the Scheme as 'community development services'.

Residential Aged Care and Home and Community Care

Q: Why have community services staff who provide aged care services been excluded from the Scheme?

A: Despite sharing some similarities with community services such as disability support, aged care services are more closely aligned with the health sector and therefore are **not** included in a community services sector Scheme here in Victoria. The decision to exclude community services staff who provide aged care services is consistent with the defined scope for the Australian Capital Territory CSS PLSL Scheme.

Q: How will the excision of aged care work in practice?

A: The Scheme describes the exclusion of employees delivering community aged care services by award coverage. That is, any person employed under the **Aged Care Award 2010** will **not** be included in the Scheme.

This excision will encompass all community aged care services, including staff providing community aged care services that fall under the following Aged Care Assessment Services (ACAS) programs:

- o Community Aged Care Packages (CACP)
- o Extended Aged Care at Home (EACH)
- o Extended Aged Care at Home – Dementia (EACH-D)
- o Transitional Care program
- o National Respite for Carers Program (NRCP)

Aged care services are also omitted from the list of community service activities defined as being within the scope of the Scheme.

Q: Why are some Home and Community Care services included in the PLSL Scheme?

A: Extensive consultation with the sector has identified that the delivery of home and community care services (HACC) are often integrated with broader community services.

It is estimated that of the 301 non-government, not-for-profit organisations in Victoria delivering HACC services, only 38 also deliver aged care services. The majority of those providing HACC also provide other community services that fall within scope of the Scheme.

The excision of HACC services would create considerable administrative complexity for the large number of organisations that deliver HACC services and other eligible community services. As a result, staff employed by community service organisations that provide HACC services will remain within scope.

Q: Why are some HACC workers included in the Scheme?

A: HACC workers that deliver services to a range of clients are included in the Scheme. These workers will be employed by community services organisations that deliver services to people with disabilities and/or other special needs.

HACC workers are excluded when they provide HACC services only to aged care clients. This most commonly occurs where those workers are employed by an organisation that solely delivers aged care services.

Kindergarten Teachers and Assistants

Q: Why are kindergarten teachers and assistants excluded from the Scheme?

A: Kindergarten teachers and assistants fall outside of the scope of the Scheme. This decision is based on the fact that these employees currently have access to retrospective entitlements that will not be available to them under the new PLSL Scheme, which only recognises prospective entitlements.

Children's services

Q: Are administrative and management staff in childcare centres going to be included in the Scheme?

A: Yes. If administrative and management staff employed in child care organisations are engaged wholly and exclusively in the provision of administration and/or management of child care services, they are included in the Scheme.

Q: What about large organisations whose main functions fall outside the community services sector, but the organisation delivers some children services (for example a small child care centre at a local YMCA) – are the child care centre workers employed in these organisations included in the Scheme?

A: Where organisations are involved in the provision of children's services, as well as a broader range of services unrelated to the community services sector, inclusion in the Scheme will be confined to those workers who are employed wholly and directly in the provision of the relevant children's services.

Q: What about the administration staff in these organisations that support the child care centre, but also work in other parts of the organisation. Are they included in the Scheme?

A: Any staff who work in other parts of the organisation, but also provide some support to the children's service such as management or administration staff will not be included in the Scheme.

Q: Are Out of School Hours Care (OSHC) staff included?

A: Yes. Childcare staff employed in OSHC are included in the scope of the Scheme where the service is delivered by School Councils and incorporated under Part 2.3 of the Education and Training and Reform Act or by not-for-profit organisations such as the YMCA and Try.

Community Health Centres

Q: Why have stand alone Community Health Centres as whole organisations been excluded from the Scheme?

A: Stand alone registered Community Health Centres fall outside of the scope of the Scheme as these organisations predominantly deliver health services. In practice, health workers in registered Community Health Centres are, by virtue of their awards and enterprise agreements, already entitled to portability when moving between registered Community Health Centres and the broader health system.

Q: What about those workers employed in Community Health Centres who provide community services? These employees are unlikely to have access to the same arrangements as their health colleagues. How will they be treated in the Scheme?

A: All employees within registered Community Health Centres who provide community services (as opposed to health services) as described in the scope are included in the Scheme. Registered Community Health Centres will be required to register individuals who are directly involved in the provision of community services with the Scheme Authority.

This presents a limited departure from the Scheme's whole of organisation principle; however it ensures that approximately 250 workers will have access to the same entitlements as their peers.

Royal District Nursing Services (RDNS)

Q: *A significant proportion of funding received by the RDNS is to provide HACC services. Why isn't the RDNS included within the scope of this Scheme?*

A: The RDNS employs approximately 1000 district nurses providing nursing care to people in their homes across Victoria. RDNS services include general and specialist nursing and some allied healthcare. The RDNS is also a major provider of aged care services.

As RDNS nursing services are provided in the person's home, the RDNS does receive a significant amount of funding from the Home and Community Care funding stream. However, this funding is to support home based nursing and aged care, rather than the type of community services defined within the scope of the Scheme.

This is a refinement to the treatment of HACC services to account for the particular circumstances of the RDNS.

Overall, the RDNS in practice operates in alignment with the Victorian health sector rather than the community services sector. Therefore, the RDNS is not considered to be within the scope of the Scheme.

Bush Nursing

Q: *Why have you decided to exclude bush nursing centres from the Scheme?*

A: Bush Nursing Centres provide health and aged care services in small, relatively isolated Victorian communities. While these nursing centres also receive funding from the Home and Community Care funding stream, Bush Nursing Centres are considered to be a health based service, and their operations are administered by the Victorian Department of Health.

Therefore, Bush Nursing Centres are not considered to be within the scope of the Scheme.

Rate of Levy and Costs

Q: *What is the government going to do to support my organisation in meeting the financial burden of the Scheme?*

A: The Victorian Government is aware that the cost of funding the Scheme has been a concern for employers. While costs during the initial set up period may be a difficult adjustment for some organisations, it is likely that over time any negative financial impacts will be offset by the benefits to be gained from the Scheme – such as increased retention across the sector, resulting in a more stable, experienced workforce.

The Victorian Government, through the Department of Human Services, will fund costs associated with the set up and establishment of the Scheme, which may include office space, initial staffing requirements and legal costs. These costs are estimated to be up to \$5 million. The fund will not retrospectively reimburse the government for these costs.

Additionally, to support employers in adjusting to the implementation of the new Scheme, the Government will provide an additional \$4 million to defray Scheme administration costs. This funding will be injected directly into the Scheme's central fund over the first three years of operation. As a consequence, the 0.2% administration levy described above will be reduced for the first three years.

Rate of levy

Q: *What is the rate of the levy that employers will have to pay?*

A: The long term estimated contribution rate required to fund the Scheme is 1.6% of wages. This amount reflects the total cost to employers, per employee eligible for inclusion in the Scheme, and will be calculated as a percentage of each employee's wages only, not the total employment costs.

A 1.6% levy estimate is based on a registered workforce of 40,000 workers. Administration costs for central fund management are factored into the levy (which includes monitoring and enforcement costs). This levy comprises approximately 0.2% for the administration costs of operating the Scheme and a 1.4% levy for the costs of workers' direct LSL entitlements.

Q: *Will the levy vary over time?*

A: The 1.6% estimates are very conservative with the aim of ensuring that levy rate remains stable over time.

Administration

Q: *When the PLSL Scheme is introduced, will my organisation need to keep two sets of LSL books: one for the PLSL and one for my employer specific above-award entitlements?*

A: The Scheme will give employers the option of outsourcing the administrative aspects of all of their long service leave obligations to the central Scheme Authority, to help overcome the additional complexity posed by the introduction of the Scheme.

Many small community sector organisations have reported they currently have great difficulty in administering their existing long service leave liabilities reliably. The outsourcing of any over and above LSL obligations will provide these organisations with the added benefit of having their LSL accruals centrally managed.

Financial management

Q: *Who will manage the Scheme's funds?*

A: The Authority will manage the Scheme's funds. It is intended that the Authority will contract a fund manager to manage the Scheme and its resources, including the investment portfolio. The fund manager will be directly accountable to the Authority who in turn will report to the Minister for Community Services.

Q: *What safeguards are in place to ensure the Scheme does not fail?*

A: The legislation provides for an independent actuarial review every three years after the commencement of the Scheme. Annual and ongoing financial assessments will also be conducted by the fund. Conservative modelling has been used to determine costs and ensure viability of the fund. The Authority will be required to report to Parliament annually to ensure transparency and accountability.

Q: *What will happen to the Scheme's earnings on investments?*

A: The Authority's Board will make all policy decisions related to the Scheme's functioning including investment decisions. It is anticipated that earnings on investments will be invested back into the Scheme to ensure fund viability and sustainability over the longer term.

Q: *Can earnings on the Scheme's investments be used to decrease the levy?*

A: The Board of the Scheme may recommend to the Minister that the levy be reduced if actuarial scrutiny and advice support such a decision. However, in the context of the global economic downturn, any reductions would be minimal to ensure fund viability over the long term.

Q: *What safeguards will be in place to ensure competent management of the Scheme's finances?*

A: The Authority has the power to invest and borrow funds and to delegate such powers to another entity such as the funds manager. A Board will be appointed by the Minister for Community Services to oversee the Authority. Financial expertise and funds management experience will be key criteria used to select Board candidates.

The Authority may choose to engage a funds manager to ensure that the Scheme has recognised financial expertise and experience in a similar business such as managing other LSL or superannuation funds.

The Authority must comply with the Financial Management Act 1994 and must account to the Minister for Community Services and to Parliament for its decisions regarding the financial management of the Scheme.

Sector training and support

Q: *What training and support will be provided?*

A: Extensive training and support will be made available to all eligible community services sector employers prior to the Scheme's commencement. The Authority will provide ongoing support to assist the sector during the first year of implementation.

Information will also be available for employees explaining their new entitlements.

Transition

Q: *How will the transition arrangements work when the Scheme commences?*

A: The Scheme will be prospective, meaning that it will manage LSL entitlements from the date the Scheme commences. Past entitlements will only be recognised where they have been accrued with the current employer.

Employers will remain responsible for managing and providing any entitlements accrued before the Scheme commenced and all entitlements above the *Long Service Leave Act 1992*.

The Authority will provide community sector employers with training and support materials to ensure that organisations understand clearly how the transitional arrangements will work in practice.

Differences and similarities between LSL entitlements under the proposed Scheme and those provided under the LSL Act 1992

Q: *Apart from portability, what are the key differences and similarities between the proposed legislation and the LSL Act 1992?*

A: Key similarities are:

- Employee long service leave (LSL) entitlements are comparable: 13 weeks leave after 15 years continuous service with an 8.7 week pro-rata entitlement at 10 years continuous service and a pro-rata leave entitlement if the worker leaves after 7 years continuous service with a sole employer.

- All employees are eligible for LSL regardless of the terms of their employment whether permanent, fixed term, part-time or casual.
- The LSL payout is based on current ordinary rate of pay and does not include penalties or overtime.
- Employees can negotiate with their employer to take a LSL entitlement on half pay for double the length of time.
- Annual leave, sick and injury leave (up to 48 weeks), maternity, paternity or adoption leave up to 12 months (or as per award), other agreed unpaid leave (up to 12 months) and long service leave do not interrupt the 'continuous service' of an employee for the purposes of being eligible for a LSL entitlement.

Key differences are:

- A pro-rata LSL entitlement at seven years where an employee remains employed with a sole employer. The employee does not have to leave the employer to access the LSL entitlement as currently required under the Long Service Leave Act.
- Greater flexibility for employees and employers to negotiate how a LSL leave entitlement can be taken (this flexibility is not intended to replace other forms of leave). The employee can negotiate with the employer to:
 - take multiple small amounts of leave at a time; and
 - to take a full or part cash payout of a LSL entitlement.
- Breaks in employment in the sector for up to 12 months at one time, and four years over a working life-time considered as continuous service.
- Accessing LSL entitlements prior to when they are due is not provided for in the Scheme whereas, leave in advance is provided in the LSL Act 1992.
- The calculation of a worker's LSL entitlement payout reflects their whole employment pattern, part-time, full-time over the period of their entitlement, rather than solely their terms of employment at the point of their entitlement becoming due.

Q: Can a pro rata entitlement be accessed after five years, seven years or both?

A: Yes, the Scheme design currently allows for long service leave to be accessed after ten years employment within the sector, and for a pro rata entitlement to be accessed after seven years only for employees who have remained with a single employer (or five years where this entitlement is specified in an enterprise agreement). Encouraging employees to remain with their current employer until they achieve seven years service will support employers as they adjust to a sector wide portable long service leave scheme.

Jurisdictional issues

Q: Is it appropriate that the Victorian Government impose new workplace conditions without incorporating them into awards and enterprise agreements, and wouldn't these changes be better dealt with through workplace relations?

A: Legislative changes to workplace conditions such as this scheme ensure favourable workplace conditions are uniform across the entire sector. Legislation creates certainty in terms of administration, governance and enforcement. Simply introducing PLSL into existing awards and enterprise agreements would not result in a uniform approach to PLSL, as Victoria's community services workers are employed across different awards and enterprise agreements.

Commonwealth Fair Work Act & the Scheme

Q: *What is the relationship between the Fair Work Act 2009 and the Scheme?*

A: Legislative change at both the Commonwealth and state levels of government is required for the Scheme to become fully operational. In principle, the Fair Work Act 2009 over-rides the Victorian CSS LSL legislation, as Victoria has referred its industrial relations powers to the Commonwealth.

However, the Commonwealth Government has agreed to work with Victoria to ensure that the Fair Work Act 2009 can accommodate the Victorian legislation, and thereby permit the operation of the Victorian CSS PLSL Scheme.

This will require an amendment to the Fair Work Act 2009 to be passed before the Scheme can become operational.

Multi-state and national community sector organisations

Q: *What is the situation for organisations that provide community services within Victoria but also in areas outside Victoria? Will workers outside the state be inadvertently included?*

A: Victorian laws do not have any legal mandate or effect outside Victoria. The rule of extra-territoriality applies in this case.

Community services workers providing services in Victoria will be included in the Scheme although their employer may be a national or multi-state employer.

Where payroll and human resource business units of a national or multi-state employer are located outside Victoria, they will have to comply with the Victorian legislation for its Victorian employees. That is, such units will have to supply quarterly reports and levies to the Authority.

Q: *What if an employee of a national or multi-state employer moves from Victoria to a service of the same employer in another state. Will the employee's accrued LSL be portable to another state?*

A: Where there is a similar scheme operating in another state, the legislation can deem the scheme reciprocal, which would permit portability of accrued LSL and payment of monies for respective workers between schemes in different states.

PLSL payout and moderated pay

Moderated pay formula

Q: How is the LSL payout calculated under this Scheme?

A: To ensure viability of the fund and fair payout of entitlements to employees, employee payouts will correlate with the hours worked over the entire accrual period and the levies paid into the fund.

The calculation of the payout will be based on the worker's current ordinary hourly rate of pay. To maintain consistency with the entitlement under the LSL Act 1992 and entitlements under a range of other schemes, penalty rates and overtime are not included in the calculation of the LSL payout.

Q: *Can workers be employed by two or more employers simultaneously and be eligible for LSL?*

A: Yes. For example, a worker can be employed by a number of employers simultaneously and accrue LSL with each employer. Each employer will pay the levy for the worker.

This arrangement will not affect the amount of leave accrued because an employee can only accrue one quarter at any one time, regardless of how many employers are contributing a levy. However, the amount of the payout when an entitlement is due will be affected because the levy paid by each employer will be added together when the payout is calculated as per the moderated pay formula. Should the employee choose to take an entitlement as leave, both employers will experience the employee's absence.

Q: How will entitlements be calculated?

A: The quantum of the final LSL payout to the employee will be calculated using a 'moderated pay' formula to ensure equitable payment to employees and ensure Fund viability. Application of the formula will result in leave payouts commensurate with hours worked over time. (It will not affect length of leave entitlement.) This formula will ensure that entitlements reflect the diversity of an employee's employment pattern, including part-time, casual and full time work, increasing and decreasing numbers of hours worked over time and employment at one time with multiple employers.

Q: Is there capacity/allowance for employees to 'cash out' of the Scheme?

A: Yes. Where an employee has a LSL entitlement due, the entitlement can be paid out in cash under the Scheme. Under the Scheme the employee can negotiate with the employer on the following:

- o How their entitlements can be taken, i.e. full cash payout in lieu of leave, part payout/part leave, full paid leave. This permits greater flexibility than under the LSL Act 1992 and may reduce worker replacement costs for employers.
- o The option for leave entitlements to be taken in small units, allowing greater flexibility than exists currently under the LSL Act 1992, which permits only two periods of leave for the whole entitlement. Flexible arrangements must be agreed by both parties (employer and employees).

Long service leave entitlements will be recognised in addition to all other leave entitlements such as maternity leave, study leave or annual leave and so on.

Compliance and enforcement

Scheme implementation.

Q: When will I have to register my employees and start making payments?

A: The Scheme legislation was presented before the Victorian Parliament in September 2010.

Legislative change at both Commonwealth and State levels is necessary to implement the Scheme. As such, the Scheme requires Commonwealth Government support to become operational. The Commonwealth Government has signalled its intent to support the introduction of the Victorian CSS PLSL Scheme.

Once the Scheme has been legislated, there will be an 18 month period prior to the first levy payments being made into the Fund to ensure that organisations have sufficient time to adjust to the new requirements of the Scheme.

Employer responsibilities

Q: What are the responsibilities of community services sector employers and how will they find out about them?

A: Eligible community services sector employers will be required to register their organisation and all their staff with the Authority, keep specified records and pay a quarterly levy. The Authority will provide support to employers to assist them to meet the requirements of the Scheme. The Scheme will perform considerable outreach, communication and training to assist organisations to transition and ensure employers and employees are aware of their responsibilities and entitlements.

Enforcement

Q: How will the Scheme be enforced?

A: The proposed legislation provides for an enforcement process similar to that contained in the LSL Act 1992.

The Authority will be granted enforcement powers in the legislation to ensure resolution of disputes or non-compliance. Monitoring and enforcement powers will include authorised inspectors conducting site visits, issuing penalties, mediating between parties and submitting applications to the Industrial Court of the Magistrates Court and the Victorian Civil Administrative Tribunal as appropriate for resolution of issues.

Q: Who will undertake this role?

A: The Authority will be responsible for enforcement and will have the powers to appoint inspectors to oversee enforcement operations.

Q: How will enforcement costs be met?

A: Estimated enforcement costs have been factored into the 0.2% administration component of the levy paid by employers on each worker's salary.

Q: Will there be penalties for non-compliance?

A: Yes, there are provisions for penalties to be applied which are similar to those contained in the LSL Act 1992.

The Authority

Q: Who is ultimately responsible for the Scheme?

A: The Minister for Community Services is ultimately responsible for the Scheme and will provide annual reports to Parliament. The Authority will operate and administer the Scheme.

Q: What are the responsibilities of the CSS LSL Statutory Authority?

A: The Authority will be responsible for:

- registering and keeping a record of employers and employees participating in the Scheme
- collecting payments from employers in respect of each employee on a quarterly basis
- making payments to employers for the employer to devolve to the employee
- administering long service leave benefits established under the legislation

- o managing and investing the funds provided by employers
- o providing annual statements to employees of the leave credits paid in by their respective employers.

Scheme Authority Board Arrangements

Q: What type of authority will it be?

A: The Authority will be established as a body corporate. It will be governed by a Board appointed by Governor in Council. The Board will have the power to:

- o appoint a CEO
- o employ and discharge staff
- o delegate any or all of its functions.

Q: How will the Board be selected?

A: A governing board (the Board) will be appointed to oversee the Authority.

The Board will have 5 members, and will be representative of the sector:

- 2 **employee** representatives
- 2 **employer** representatives and
- 1 Chair with experience in Funds management.

Financial and funds management expertise will be key selection criteria for Board candidates.

Existing 'good will' portable LSL arrangements

Impact of PLSL Scheme on informal LSL arrangements

Q: What impact will the introduction of the Scheme have on other informal ('good will') portable LSL arrangements already operating in the community services sector?

A: The PLSL legislation is a statutory Scheme and will over-ride any informal arrangements.