

LONG SERVICE BENEFITS PORTABILITY ACT 2018

Long service benefits reward workers for service within covered industries. Due to the mobile nature of employment in the community service industry, the cleaning industry and the security industry, the recognition of long service has previously been inaccessible.

On 1 July 2019 the **Long Service Benefits Portability Act 2018** (the 'Act') commenced operation in Victoria. This scheme allows workers to 'transfer' their service from one employer to another. Other States and Territories in Australia may have their own applicable schemes governing the entitlements and obligations of employers.

How does the scheme work?

This Act is administered under the Portable Long Service Benefits Authority (the 'Authority'). This Authority must keep an employer and worker register. Employers whom are registered with the Authority as an 'active' employer will lodge a quarterly return to the Authority.

What constitutes a 'covered industry'?

The scheme covers the community services sector, the contract cleaning industry and the security industry.

Community services sector

The Act covers 'workers' in the community services sector. A 'worker' is defined as an employee for the sector. The Act and Regulations define what kinds of businesses are in the 'community services sector' for the purposes of the scheme.

Contract cleaning industry

The Act covers 'workers' in the contract cleaning industry. A 'worker' includes an employee and a contract worker for the sector. The Act defines what businesses are deemed to be in the 'contract cleaning industry' for the purposes of the scheme.

Security industry

What is the security industry?

- > in relation to Victoria—the industry in which security activities are undertaken by persons licensed to undertake them under the Private Security Act 2004; and
- > in relation to a reciprocating jurisdiction— the security industry within the meaning of the corresponding law of that jurisdiction.

The Act provides coverage for both an employee and a contract worker. It will also provide further clarity on the definition of the security industry for the purposes of the scheme.

Key Provisions of the Long Service Leave Benefits Portability Act 2018

Statutory Authority

This legislation establishes the Portable Long Service Benefits Authority (the 'Authority'). The Authority's functions include:

- > administering the act
- > making payments under the act
- > keeping registers under the act
- > resolving disputes under the act
- > consulting other industries that may be affected by decisions made under this act

The Authority is governed by a board consisting of nine appointed persons. The function of the board is to provide strategic planning and risk management of the Authority. Most importantly the Governing Board will set the levy payable by the employer for each employee for a covered industry.

For further advice on the Portable Long Service Authority please follow this [link](#).

Levy

In order to fund the scheme employers will need to pay a levy to the Authority as part of their quarterly return. The levy is a percentage of the ordinary pay for each employee in a covered industry and the ordinary pay for each contract worker for a covered industry.

How much is the levy?

The Governing Board sets the levy from time to time. The amount is a percentage of the employee's ordinary pay. This levy must not exceed 3% of the employee's ordinary pay.

The levy is currently set as follows:

- > 1.65% for community services
- > 1.80% for contract cleaning
- > 1.80% for security

Registers

The Authority will keep an employers register and a workers register for each covered industry. The employer will need to register to the employers register within 3 months of the commencement of the Act or becoming a covered industry. The employee will need to register to the workers register within the same time period, if they do not then the employer will have the obligation to register them before the next quarterly return is submitted.

Quarterly returns

Registered active employers need to submit returns no later than one month after the end of the quarter. The information the return needs to include:

- > the name of each worker who performed work for the employer during the quarter
- > for each worker:
 - the total ordinary pay paid or payable by the employer to the worker for work performed during the quarter
 - the number of days or part days during the quarter to which the pay relates
- > any other prescribed information

Long Service Leave records

An employer for a covered industry must keep a long service record relating to a worker during the worker's service with the employer. This must be kept for at least 7 years after the worker stops working for the employer. See *section 34* of the Act for the information the record must contain.

Contract Cleaning Industry

Entitlement

After the completion of 7 years of recognised service, a registered active worker is entitled to take Long Service Leave equal to 1/60th of the worker's total period of recognised service (minus any long service leave previously taken).

Taking leave

The worker can apply to their employer for their leave and when granted payment is made via the authority. If an employer rejects the application for leave the worker can request a review by the authority. Refusing the leave can be done so on reasonable business grounds.

Leave can be taken in no less than one day blocks.

Payment for leave

Leave is paid on the workers ordinary pay. This includes allowances (including shift allowances) but does not include amounts paid for overtime, reimbursements for expenses incurred by the worker or use of materials/equipment of motor vehicle provided by the worker.

Cashing out leave

Payment in lieu of leave cannot be made.

Continuity of service

Continuous service will be interrupted if no work has been performed in the covered industry for four years.

Service by an employee prior to the commencement of this Act

On application by a registered active worker for a covered industry, the registrar may credit the worker with one day of service in the workers register for the industry for each day or part day of service in the industry in the 12 month period immediately before the relevant day, if the registrar is satisfied that the person was employed or engaged in the industry at the time.

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Community Services Industry

Entitlement

After the completion of 7 years of recognised service, a registered active worker is entitled to payment for the benefit of long service equal to 1/60th of the worker's total period of recognised service.

Payment

The worker can apply to the Authority for a determination as to whether the worker is entitled to the long service benefit and if entitled, for the payment of the benefit. The Authority will provide a determination to the worker within 21 days.

The benefit is paid on the workers ordinary pay. This does not include amounts paid of overtime, reimbursements for expenses incurred by the worker or use of materials/equipment of motor vehicle provided by the worker or allowances (including shift allowances).

Continuity of service

Continuous service will be interrupted if no work has been performed in the covered industry for four years.

Service by an employee prior to the commencement of this Act

The Act does not include provisions for recognition of service for work in this covered industry prior to the introduction of this legislation.

Frequently Asked Questions

If an employee leaves our covered industry, do we receive a refund for the levy paid to the fund?

No, the amount paid will be retained by the Authority.

What if there are Long Service benefits that are derived from other laws (e.g. Long Service Leave Act 2018, a fair work instrument) that could apply to the employee?

Security Industry and Contract Cleaning

If the worker is eligible for long service leave benefits under this act and other legislation the worker must nominate to the Authority in writing:

- > The law or instrument under which the worker elects to take the long service benefits and
- > The service period or part of the service period for which the election is made

Community services industry

If a registered worker has an entitlement to long service leave or the payment of long service benefits under a fair work instrument, the entitlements of the worker and the obligations of the employer and the Authority under this Act are to be determined in accordance with the regulations.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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