

Compliance and Enforcement Policy

28 July 2022

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1. Policy Statement

The Long Service Corporation (LSC) is a statutory authority that administers the *Building and Construction Industry Long Service Payments Act 1986* and the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* to provide portable long service payments to building and construction and contract cleaning workers in NSW.

LSC safeguards worker and employer rights and investigates potential breaches of the laws it administers. We ensure that workers, employers, levy payers and levy approving authorities are complying with their legal obligations.

1.1 Industry obligations

We support the industry to ensure:

- Eligible workers receive long service payments
- Industry employers register as an employer, notify change of employer details, keep prescribed books and records, and register their workers
- Building and Construction industry:
 - Employers record worker service by submitting Start Notices, End Notices, and annual Employer Returns
 - Tax agents submit self-employed worker service returns on an annual basis
 - Applicants pay the appropriate levy based on levy threshold and the value of the construction.
- Contract Cleaning industry:
 - Employers record worker service by submitting quarterly returns and pay levies based on the ordinary pay rates of their eligible employees.

To achieve this, the Acts and Regulations provide LSC with a range of functions including:

- Education, compliance, and enforcement
- Maintenance of worker and employer registers
- Collection of levies
- Payment of claims
- Management of funds.

1.2 Scope

This policy sets out the principles and priorities adopted by LSC to monitor and achieve compliance with legislation. It outlines the range of activities and powers available to encourage and enforce compliance.

This overarching policy works in conjunction with additional LSC policies and procedures.

2. Our compliance and enforcement model

2.1 LSC commitment

We use a risk-based compliance and enforcement model to ensure consistency in our approach. We commit to:

- Following existing policies and procedures to ensure procedural fairness
- Developing sound relationships with internal and external stakeholders
- Continuous professional development of Compliance Investigators
- Undertaking proactive compliance programs throughout the calendar year
- Undertaking inspections of high-risk matters
- Undertaking determinations and assessments of construction costs
- Developing and delivering educational programs
- Undertaking inspections and communicating outcomes in a timely manner
- Undertaking inspections consistently and in a timely manner.

2.2 Guiding principles

We adhere to the following guiding principles when undertaking all our compliance and enforcement activity in line with best practice.

Diagram 1

Best Practice	We strive to undertake our compliance and enforcement functions efficiently and effectively and to foster public confidence in our capacity and effectiveness as a regulator.
Objectivity	We act fairly and objectively to ensure our enforcement actions are based on evidence and that appropriate checks and balances exist in the decision-making process and advise rights and processes for appeal.
Transparency	We deal with industry, workers, and employers in an open and transparent manner so that they have a clear understanding of what is expected from them and what they can expect from us. Transparency has two aspects: <ol style="list-style-type: none">1. Our decision-making takes place within appropriate governance arrangements. It can be reviewed by courts, industry committees, and other agencies such as the NSW Ombudsman, the Independent Commission Against Corruption and the NSW Auditor General.2. Enforcement matters that are dealt with through our administrative or criminal powers will be made public, consistent with section 3 of this policy.
Timeliness	When managing investigations, we conduct a process of full, impartial, and timely enquiry and investigation, into all significant aspects of the matter, and provide fair and reasonable outcomes where warranted.
Accessibility	We are customer service focused. We provide our workers, employers, and industry stakeholders with information on the legislation we administer and our role as a regulator. We also provide them with relevant information on our complaints management process.

2.3 Compliance and enforcement strategy

Our risk-based compliance and enforcement strategy provides a focus on intelligence led compliance. We determine the seriousness and magnitude of the identified issue, any previous non-compliance, and public interest. Our risk-based approach allows us to exercise judgement and discretion in determining the appropriate resources allocated and action to be taken on a case-by-case basis, including the commitment of resources to a formal investigation.

2.3.1 Annual Priorities

Priorities are set in line with our risk model and by considering the assessed risk of business practices and/or industry conduct that are of greatest concern based on analysis, intelligence, and past enforcement activity, and designing compliance programs proposed to target the non-compliant activity.

We assess all referrals to ensure consistency of investigations and that resources are appropriately applied against competing priorities. This enables resources to be targeted more effectively and consequently use of resources is continually monitored and reviewed.

We publish general compliance outcomes in our annual report. All LSC publications, including annual reports and this policy are available on our website.

2.3.2 Detection

There are several proactive and reactive ways that we detect non-compliance including:

- Data matching - e.g. where our systems automatically highlight employers who fail to submit Employer Returns within the required timeframes
- Data matching with relevant third-party data sources - e.g. Cordell Construction Projects data
- Investigations
- Investigation intelligence.

Compliance activities may include:

- Field visits
- Office based inspections
- Advisory services to employers, employer associations, unions, accountancy firms and tax agents
- Field visits to private certifiers and local councils to provide support and advice.

We use a mix of education, monitoring and deterrents to balance issues including:

- Industry expectations that scheme participants will be held accountable if they fail to comply
- Building awareness of legislative provisions and obligations
- Working with industry, worker representatives and other stakeholders to promote continuous improvements to benefit the industries covered by our legislation.

We use a variety of platforms to educate and inform our workers, employers, and industry stakeholders of their obligations under our legislation and seek to ensure that it is as simple as possible for customers to comply with their obligations.

2.3.3 Investigative Powers

Our Investigators have significant powers under legislation including, but not limited to:

- Enter premises to ascertain whether workers are employed there
- Enter premises to verify the cost of erecting a building
- Ascertain work undertaken by employer and worker
- Inspect business records and employer records
- Issue PINs.

Investigations are undertaken for a range of reasons including, but not limited to verifying that:

- The correct cost of building and construction work undertaken
- The correct levy is paid based on the cost of work undertaken
- Only eligible employers and workers are registered and recording service
- Correct levies have been paid based on ordinary pay of contract cleaning workers
- Claims paid to only eligible workers.

2.4 Risk based compliance and enforcement

We use our risk-based model (Diagram 2) to analyse the behaviour and consequences, and to evaluate identified breaches.

This model is used as a guide for resource allocation, team prioritisation and early identification of the possible actions considered.

Depending on the identified breach, the evaluated consequences could be severe, high, medium, or low.

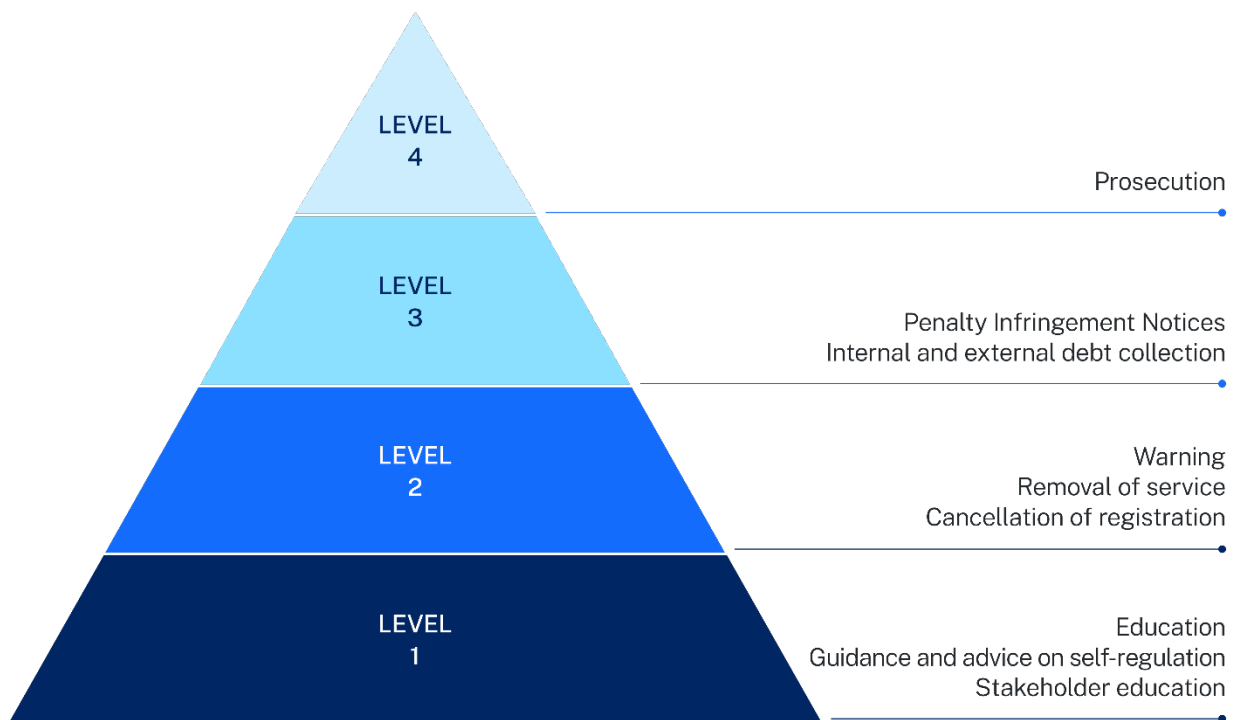
Diagram 2

Severe	Examples may include failure to pay a significant amount of levy; failure to record a significant percentage of a worker's eligible service; registering numerous people to the scheme who are not eligible.
High	Examples may include failure to pay large amount of levy; failure to record a large amount of a worker's eligible service; registering multiple people to the scheme who are not eligible; multiple occurrences of medium/low rated breaches.
Medium	Examples may include failure to pay minor amount of levy; failure to keep records; failure to record a small percentage of a worker's eligible service; registering a small amount of people in the scheme who are not eligible.
Low	Examples may include failure to pay negligible amount of levy; registering a person to the scheme who is not eligible; failure to record minimal percentage of a worker's eligible service; failure to keep full records.

2.5 Compliance and enforcement outcomes

The compliance and enforcement options and outcomes are summarised in the chart below (Diagram 3). We will exercise judgement and discretion in determining the appropriate resources allocated and the action to be taken in individual matters based on specific circumstances.

Diagram 3



Level 1 - Education

We are committed to working with employers and workers, so they understand their obligations. Education is the preferred method for resolving single instance, minor or technical matters. It is the least formal, and most common way to bring compliance issues to the attention of someone.

Level 2 - Warnings

Sometimes the discovered behaviour requires a more formal response, warnings, to ensure the parties understand what was non-compliant about their behaviour and that it must cease immediately.

Warnings may be issued when a levy has not been paid or has been underpaid.

Service credit adjustment and/or rejection/suspension/cancellation of registration may occur if we discover that service has been recorded incorrectly.

Level 3 – Penalty Infringement Notices and Debt Collection

A Penalty Infringement Notice (PIN) is a breach notice usually issued on the spot, to a person that is alleged to have committed a specified offence. That person may pay the specified amount for the offence depicted on the PIN within a specified time or request a review. Alternatively, they may elect to have the matter heard before a court.

PINs are used to improve the current compliance and enforcement regime. We will apply PINs as specified within the regulations.

Internal debt collection activity may occur when an investigation discovers that a significant levy has not been paid fully or there was an overpayment made from the scheme. This debt may include penalties and interest where applicable.

We also have the ability, to engage an external agency for debt collection purposes.

Level 4 - Prosecution

Some behaviours require us to seek prosecution to ensure scheme integrity or to remedy the matter.

When warranted, we take action in courts to address identified criminal breaches which can lead to the imposition of penalties or fines and deters others from breaching the law.

Prosecutions can be taken against a person or business under any legislation administered by LSC or the *Crimes Act 1900*.

2.5.1 Outcome Focused

When we decide to take compliance or enforcement action, our first priority is always to achieve the best possible outcome for Scheme integrity, our participants, stakeholders and the community. Our objective is to ensure that our action will deliver an intentional result, for example to:

- Stop non-compliant conduct
- Change behavior of the individual/s involved
- Address any unlawful financial gain or benefit from non-compliance
- Deter businesses or individuals who deliberately flout their legal obligations, including publishing enforcement outcomes where appropriate
- Improve community confidence in our ability as a regulator.

We provide a general explanation of the actions we propose to take and where possible, we aim to give a reasonable opportunity to respond. However, in some instances it may be necessary to act promptly and without prior warning to protect the public interest.

3. Appealing decisions

Appeals can be made to the relevant independent industry advisory committee against certain decisions made by LSC. Appealable decisions may relate to the administration of the scheme and can be appealed by a registered worker, employer, a person attempting to register as a worker or by a levy payer in respect of levy payments.

Appeals can only be lodged for:

- Refusing or cancelling a registration
- Refusing recognition and recording of service
- Removal of service credits
- Amount of levy payable
- Direction to pay interest on levies
- Refusal to grant an exemption, or revoke an exemption, from lodging a return (contract cleaning industry only)
- Limitations to the minimum and maximum rates of pay used to pay claims.

Information on how to lodge an appeal against a decision is readily available on our [website](#).

4. Releasing information

4.1 Releasing information to regulators

LSC may exchange information about compliance and enforcement activities with other regulators and government agencies. Information sharing and cooperation strengthens and coordinates regulatory activities and promotes consistency of enforcement actions.

4.2 Releasing information publicly

4.2.1 Releasing information in the public interest

LSC may choose to publicise information about our compliance and enforcement actions to raise awareness and the consequences of non-compliance. Publicising outcomes of our compliance and enforcement actions has a positive deterrent effect and promotes best practice.

We may release information to the public, social media, or broadcast media when we consider it is in the public interest to do so, having regard to circumstances of the case, the stage of an investigation and the parties involved in the matter, and in compliance with privacy law.

Publicising unidentifiable information may include, but is not limited to:

- Summarising examples on our website
- Speaking to the media and sending press releases about a case (upon consideration and approval from the Media and Social Media Department of Customer Service)
- Using a case as a teaching tool at seminars, conferences and in materials distributed to various groups
- Using information about a case in publications and guidance materials
- Using information from a case to gather and publish data and statistics.

At any stage of an investigation, we may disclose information about a case for the purposes of preventing similar offences from occurring.

At all times, we aim to be accurate, impartial, balanced and fair in the way we communicate about investigations, inspections and enforcement actions.

4.2.2 Releasing information under GIPA

The *Government Information (Public Access) Act 2009* (the GIPA Act) sets up a right to information system that is focused on making government information more readily available. A government agency must release information unless there is an overriding public interest against disclosure.

All requests for information under the GIPA Act must be made through the Department of Customer Service. Each application is considered on its own merits, subject to the specific circumstances. Consultation may be undertaken with individuals whose information is contained in the documents, and all documents are subject to the 'public interest test' prior to a decision regarding release being made.

4.2.3 Dealing with the media during an investigation

LSC recognises the role of the media as a legitimate source of information and encourages the media to provide information to us for our compliance and enforcement review.

We may release information on our compliance and enforcement activities to representatives of the media. We may do this in response to requests for information from the media, or proactively to highlight compliance and enforcement activities being undertaken by us. We will not release information to the media which would jeopardise an investigation. Investigation information will only be released upon consideration and approval from the Media and Social Media Department of Customer Service.

4.2.4 Releasing information about customers

When we release information about an investigation, information identifying a person or business customer will not be released unless permitted to do so by law or if they have agreed to its release.

Policy date: 28 July 2022