

## COMPLIANCE AND ENFORCEMENT POLICY

### INTRODUCTION

The Long Service Corporation (the Corporation) administers the *Building and Construction Industry Long Service Payments Act 1986* (the BCI Act) and the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* (the CCI Act). These Acts allow approximately 280,000 building and construction and 30,000 contract cleaning workers in NSW to record long service.

To effectively run the schemes, the Corporation ensures that employers, workers, levy payers and levy approving authorities are complying with their legal obligations.

This policy outlines the approach used by the Corporation to monitor and enforce compliance. It operates together with other policies and procedures covering other parts of the Acts including collection of levies, recording of worker service, payment of claims, and other matters.

This policy is available on the Corporation's website at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au)

### AIM

The Corporation aims to ensure that:

- Eligible workers are registered and are recording service
- Eligible employers are registered and recording service for workers
- Levies are collected and managed in investment funds
- Claims are paid when workers become eligible
- Workers, employers, levy payers and approving authorities are compliant.

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

- Maintenance of the workers and employers register
- Collection of levies
- Payment of claims
- Management of funds
- Enforcement of compliance.

While the Corporation will maintain its educational approach, it is also necessary at times to enforce these obligations where required.

The Corporation will use the most effective mix of education, monitoring and deterrents. In doing so, it needs to balance a number of issues, including:

- Industry expectations that employers will be held accountable if they fail to comply
- Building awareness of complying with the Acts
- Working with industry, worker representatives and other stakeholders to promote continuous improvements to benefit the industries covered by the Acts.

The services provided by the Corporation include:

- A telephone Helpline (from 8.30am - 5.00pm Monday to Friday)
- Interpreter services for non-English speaking individuals
- TAFE presentations to apprentices
- Site talks and tool box meetings
- Advisory services to employers, employer associations, unions, accountancy firms and tax agents
- Field visits to private certifiers and local councils to provide support and assist in levy matters
- Presentations at industry events.

Compliance monitoring activities may include:

- Field visits
- Office based inspections
- Audits and other verification activities.

There are a number of ways non-compliance is detected by the Corporation, including:

- Data matching - where systems automatically highlighting employers that fail to submit Employer Returns within the required time frames
- Reported breaches by workers are investigated and employers audited where required
- Prosecution or penalties.

## STRATEGIC ENFORCEMENT PRIORITIES

Focus for the coming months/year(s) will be directed at employers that have repeatedly failed to update worker service records.

Note that for **building and construction industry employers**, recording service is done by submitting Start Notices, End Notices, and - most importantly - through completion of annual Employer Returns, which are **due on 31 July each year** for the financial year most recently finished (ie. for the financial year 2012/13 ending 30 June 2013, Returns were due on 31 July 2013).

For **contract cleaning industry employers**, recording service is done by submitting **quarterly** returns and paying levies based on the ordinary pay rates of their eligible employees.

Key risks being addressed by this activity are:

- That ineligible service is not being recorded
- That claims are being paid to eligible workers/employers at correct rates of pay
- That correct levy payments are made.

In addressing these key risks it is essential to:

- ensure that Inspectors maintain a consistent approach to compliance and enforcement
- ensure that emerging compliance and regulatory issues are dealt with appropriately
- minimise the compliance and regulatory burdens for employers and levy-payers where possible.

## DATA MATCHING

In addition to activities already mentioned, the Corporation also shares information with other agencies. It gathers and uses this and other information to target particular industry segments for proactive compliance reviews.

## INSPECTOR POWERS

Inspectors have significant powers under the Acts and Regulations, including the ability to:

- Enter premises to find out whether workers are employed there or to verify the cost of erecting a building
- Inspect documents and employer records such as payroll systems.

Investigations are done for a range of reasons. For example:

- Verifying the correct cost of building and construction work being done
- Verify the correct levy is paid based on the cost of work done
- Verify that only eligible employers and workers are registered and recording service
- Verify that correct levies have been paid based on ordinary pay of contract cleaning employees.

Given the size of the industries the Corporation looks after, resources available for investigations are dedicated to the most serious cases first. Therefore it is not possible to investigate all issues of non-compliance. In deciding which complaints to investigate, the Compliance team uses the following steps to prioritise:

- The seriousness and magnitude of the reported or identified issue
- The history of the party reported or identified
- The practicality of achieving results
- The wider effect of the event.

The following circumstances or allegations are priority areas for investigations:

- Non-payment or underpayment of levies
- Recording service for ineligible workers
- Not recording service within time frames specified in legislation
- Rates of pay for Claims
- Potential fraud when claiming.

## COMPLIANCE AND ENFORCEMENT TOOLS

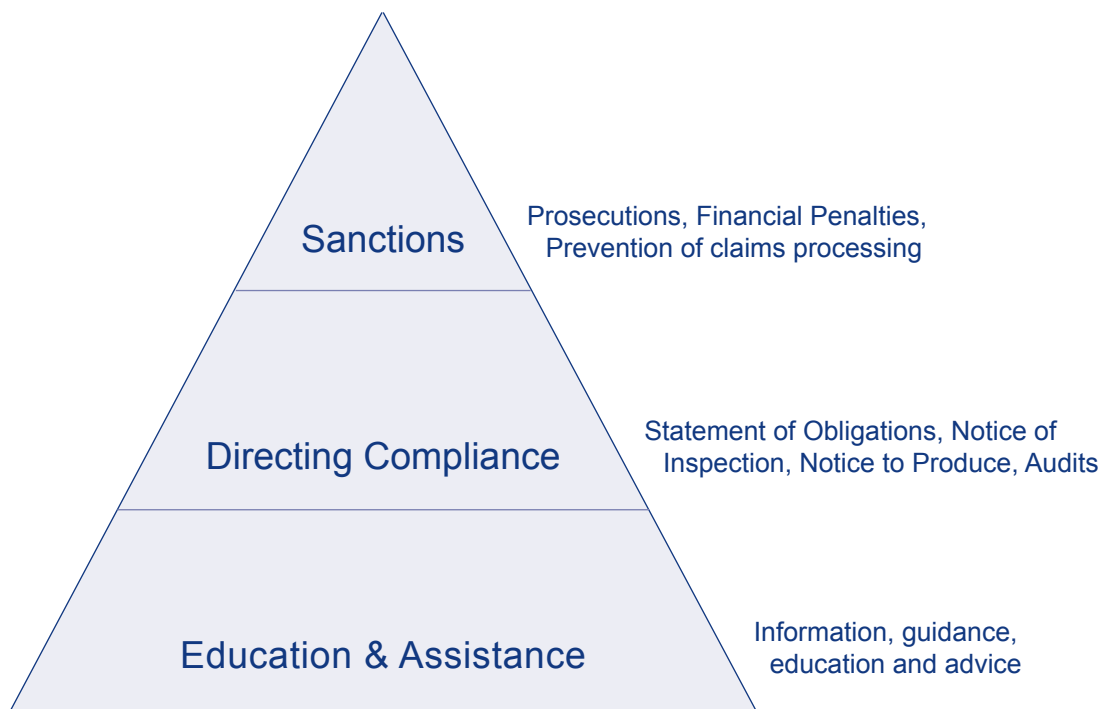
Where an investigation reveals evidence of an alleged breach, Inspectors will consider what enforcement action, if any, should be taken.

A number of instruments are available to Inspectors to make a duty holder (e.g. employer) resolve an outstanding issue. These options may be used alone or as a mix. Inspectors determine the most appropriate tool to be used depending on the circumstances.

The tools that are available include:

- Giving advice and seeking voluntary compliance
- Conducting audits of employer's records
- Conducting audits of self employed building and construction worker's records
- Issuing legal notice(s) to produce records (repeat offenders will be asked to bring records to our office/s)
- Publishing enforcement actions and outcomes.

The following diagram provides an overview:



The lowest level of the pyramid is our preferred approach and is often used in combination with other tools. Sanctions (such as prosecutions) are at the top of the pyramid and are used as a last resort for repeat offenders.

Inspectors will start their intervention using the tools that are most appropriate in the particular circumstances. Some tools, as indicated in this policy, are alternatives while others may be used in combination. Using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.

## CRITERIA WHICH GUIDE ENFORCEMENT DECISION-MAKING

In deciding the most appropriate action to take, the Corporation's Inspectors are guided by the following considerations:

- The seriousness of the breach and the actual or potential consequences
- The compliance history and attitude of the duty holder
- If it is a repeat offence or there is a likelihood of the offence being repeated
- Impact of enforcement
- Any exceptional circumstances, including efforts undertaken by the duty holder to comply with legislation
- Whether the issue can be rectified in the presence of an inspector or the inspector is satisfied with a plan to fix the breach.

In addition to these general guidelines, the remainder of this policy elaborates on the specific criteria which guide Inspectors in the use of each compliance tool.

## ADVICE OR GUIDANCE

Advice and guidance aims to raise workplace party's awareness of their rights and obligations and help duty holders know how to comply with legislation.

Having provided guidance as to how compliance may be achieved, if satisfied that a person has taken timely and satisfactory steps to remedy a breach at the time of detection or through agreed action, the Inspector may decide to take no further action.

Advice and guidance can also be provided to support the use of other compliance and enforcement tools, such as notices, audits, refusal of claims, removal and/or rejection of service and registration cancellation.

## NOTICES

Inspectors have the power to issue a number of legal notices. The aim of issuing notices is to ensure that non-compliance with obligations under the Acts & Regulations is minimised.

Inspectors may issue a 'Notice to Produce' or 'Notice to Inspect' books, documents and records for inspection at a nominated date, time and place. These notices are not penalty measures however, where not complied with, prosecution action (for failing to comply with the Notice) may be taken.

A Levy Assessment Notice may be issued where the relevant levy has not been paid.

Where there is a failure to comply with an Inspector's notice, the Corporation may seek to prosecute the party to whom the notice was directed.

## AUDITS

Audits can be conducted at either the employer's premises or other location nominated by the Corporation. Employers are advised what records are required for inspection. These records are checked to ensure accuracy of service lodged for periods of work, type of work performed and eligibility as well as ensuring that all eligible workers are included.

## FINANCIAL PENALTIES

While the Acts provide financial penalties for failing to comply with certain requirements, all proceedings for offences against the Acts or Regulations will be dealt with by the Local Court which will determine the extent of any penalty.

## PROSECUTIONS

Prosecutions may be brought in relation to the following alleged breaches of the ***Building and Construction Industry Long Service Payments Act 1986***:

- Section 16A - Failure to advise the Corporation within 7 days of a worker commencing employment to perform building and construction work;
- Section 20(1)(a) - Failure to lodge a certificate of service within 1 month after 30 June for workers employed in the year immediately preceding that 30 June;
- Section 20(1)(b) - Failure to lodge a certificate of service within 7 days after a worker ceases to be employed;
- Section 20(1)(c) - Failure to lodge a certificate of service within such time frame as specified by the Corporation in a Notice served on the employer;
- Section 39 - Failure to pay long service levy;
- Section 41(2) & 41(3) - Failure to provide information and/or pay supplementary long service levy;
- Section 56 - Failure to keep prescribed books and records;
- Section 58(4) - Wilfully delay or obstruct an authorized person
- Section 58(5) - Failure to comply with a requirement made under S58;
- Section 58A - Making a false or misleading statement.

Prosecutions may be brought for the following alleged breaches of the ***Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010***:

- Section 17(2)(a) & (b) - Failure to register as an employer within legislated time frames
- Section 20(1) - Failure to notify change of employer details within seven days of the change
- Section 23(2) - Failure to register a worker within 14 days after the end of the three month return period
- Section 39(1) - Failure to lodge a return within 14 days after the end of a return period
- Section 39 (2)(a),(b) & (c) - Failure to report on a return the total amount of ordinary wages paid to the worker for cleaning work, the day on which engagement began and the day on which the worker ended during the period.
- Section 39(3) - Failure to verify information contained in a return
- Section 39(4) - Failure to notify the Corporation about a change to information contained in the return within 14 days after the change
- Section 45(a) & (b) - Failure to pay an additional levy amount due to a variation of ordinary wages, as determined by the Corporation, within the required time frame
- Section 46(1) - Failure to keep a written record showing the relevant particulars for each employee who performs cleaning work
- Section 46(2) - Failure to keep service records for each employee for a period of seven years after the employee stops being employed

- Section 50 - Failure to pay the levy
- Section 59 - Failure by an employer to grant long service leave to eligible workers within the prescribed period
- Section 95(1) - Failure to comply with a requirement made under this Act
- Section 95(2)(a) - Wilfully obstruct, delay or hinder an inspector
- Section 95(2)(b) - Refusal to allow an inspector to enter any premises the inspector may lawfully enter
- Section 98(1) - Failure to provide additional information regarding an application to register as an employer
- Section 100 - Failure of unregistered employers to provide information or documents as requested in a written notice given to them by the Corporation
- Section 101 - Making a false or misleading statement.

The decision to prosecute for a breach of either Act is a significant one as the effect on those impacted by the decision will be considerable.

In determining whether or not to prosecute, the Corporation will consider factors such as an employer's previous compliance history, the number of contacts made by the Corporation to try and achieve compliance and what actions the employer has done to comply.

Proceedings for an offence under either Act may be brought within six (6) years after the Acts or when non-compliance was first reported.

## REVOKING, SUSPENDING OR CANCELLING REGISTRATIONS

Inspectors may decide to cancel a worker or employer's registration in cases where the worker/employer is not performing eligible building and construction work.

## PUBLISHING ENFORCEMENT ACTIONS AND OUTCOMES

The Corporation may choose to publicise information about its enforcement actions in order to raise awareness of the legislation and the consequences of non-compliance, thereby deterring people from engaging in similar conduct and promoting better practices.

Examples of the ways the Corporation may publicise information about enforcement actions are:

- Summarising cases on its website
- Speaking to the media and sending press releases about a case
- 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, and
- Using information from a case to gather and publish data and statistics.

At any stage of an investigation or prosecution, the Corporation's authorised representatives may disclose information about a case for the purposes of preventing similar offences from occurring. They may also disclose information about a case to the public at any time where they consider that it is necessary to quell speculation or to correct or forestall inaccurate media reports.

At all times, the Corporation aims to be accurate, impartial, balanced and fair in the way in which it communicates about investigations, inspections, audits and enforcement actions.

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## CHALLENGING DECISIONS

The Acts allow internal and/or external review of certain types of decisions that are made by Inspectors and the Corporation. This is done by way of an appeal to the relevant independent industry Committee. Appeal can be sought for:

- Refusing or cancellation a registration
- Refusing recognition and the recording of service
- Amount of levy
- Direction to pay interest on levies
- Refusal to grant an exemption, or revoke an exemption, from lodging a return (CCI only)
- Limitations to the minimum and maximum rates of pay used to pay claims

Information on how to appeal against a Corporation decision is available on the Internet at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au)

## PERIODIC REVIEW

The implementation of this policy will be reviewed following the first anniversary of the publishing.