

**Contract Cleaning Industry
Portable Long Service Leave
Scheme**

**12 Month Review
Industrial Relations Advisory
Council
Report**

June 2013

1. Introduction

The Industrial Relations Advisory Council (IRAC) was established by the previous Government in late 2010 to provide in the public interest, a regular and organised means by which representatives of the Government, employers and employees, and other persons invited by the Minister, may consult together on industrial matters of State-wide concern. One such matter is the twelve month review of the portable long service leave (LSL) scheme in the contract cleaning industry which is required under the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* (the Act).

The portable LSL scheme commenced on 1 July 2011 and is established under the Act. The scheme is administered by the Long Service Corporation (LSC) which is established by the *Long Service Corporation Act 2010*.

Section 117(4) of the Act requires the IRAC to review the operation of the Act as soon as practicable after 1 July 2012 to assess the viability of extending the operation of the scheme to all employees in NSW. The relevant section of the Act requires a particular focus on those industries in which employees are generally engaged for short periods, such as the social and community services and security industries. A report of the outcome of the review is to be provided to the Minister within 12 months after 1 July 2012 (that is, by 30 June 2013).

In its capacity as Secretariat to the IRAC, NSW Industrial Relations drafted an Information Paper to provide a relevant background to assist it in its review. The Paper provided a synopsis of how the NSW contract cleaning scheme is operating and a summary of portable LSL schemes in other jurisdictions across different industries.

The Information Paper was provided to the IRAC members who were present at its meeting on 18 April and follow up correspondence was sent out on 30 April 2013. Submissions in response to the Information Paper were due on 20 May 2013. NSW Industrial Relations received six submissions to the review. Unions NSW and United Voice support an extension of the contract cleaning scheme, whilst the NSW Business Chamber Limited (NSWBCL), the Australian Industry Group (AiG), the Australian Federation of Employers and Industries (AFEI) and the Catholic Commission for Employment Relations (CCER) does not.

Submissions	Extension of scheme
Australian Federation of Employers and Industries	No
Australian Industry Group	No
Catholic Commission for Employment Relations	No
NSW Business Chamber	No
Unions NSW	Yes
United Voice	Yes

Chapters 2 and 3 of this report reflect the views of the IRAC members' submissions and their respective positions about whether or not the contract cleaning scheme should be extended.

2. Submissions supporting an extension of the scheme

There was general support for the extension of the contract cleaning scheme from both Unions NSW and United Voice.

Universal portability

While Unions NSW 'supports the thrust of the Information Paper' it has recommended that the NSW Government establish a joint working party to explore options for a state wide portable LSL scheme. It submits that such a scheme would apply to all workers not currently covered by a portable scheme and is warranted to respond to changes in the labour market.

Unions NSW notes that many industries have historically been disadvantaged in accessing LSL entitlements, including those working in the cleaning, construction and security industries. To illustrate its argument it states that employees in these industries may work at the same site for many years and have multiple employers because of periodic tender processes.

Central to its claim for a state wide portable scheme is its contention that there have been dramatic changes to the labour market over the last two decades, including an increase in the use of casual and temporary labour. It submits that these employees 'shift from employer to employer to find better paid and more secure employment' and as a result are generally not accruing LSL.

The Unions NSW submission also foreshadowed the release of a report by the McKell Institute that would examine the feasibility of introducing a nationally consistent portable LSL scheme for Australia. In support of its submission about the prevalence of insecure employment, Unions NSW noted the report would highlight that despite the importance of LSL, high mobility trends have resulted in a low proportion of workers being able to access such leave.

The McKell Institute report, '*The Case for a National Portable Long Service Leave Scheme in Australia*', was released on 14 June 2013. Part of its recommendations calls for the Commonwealth to consult with the States and Territories and employer and employee representative groups to determine the most effective mechanisms for implementing national portable LSL and to broaden the level of community support. According to the report, the costs to employers associated with an expanded portable LSL scheme would be offset by higher productivity and improved health and safety outcomes for workers.

Extension to the security industry

United Voice generally supports the content of the Information Paper and has argued for an extension of the contract cleaning scheme to workers in similar industries. In particular, it supports an extension of the scheme to those workers in the security industry. According to United Voice, this is because workers in both of these industries face similar issues in respect of accessing LSL entitlements.

Similar to the submissions made by Unions NSW, United Voice has noted that many workers are subject to short term contractual based work which has a detrimental impact upon their ability to acquire LSL entitlements.

Other matters

Operation of the scheme

Unions NSW also raised concerns about the operation of portable LSL schemes including how the funds of the scheme may be used. In this regard it noted that the previous State Government had withdrawn monies from the building and construction industry portable leave scheme 'to use for other purposes'.

To address this issue Unions NSW has recommended legislation should be introduced to ensure that monies from a portable LSL scheme cannot be withdrawn for purposes other than those that are legislatively prescribed.

It should be noted, however, that section 13 of the *Long Service Corporation Act 2010* provides safeguards to ensure monies paid from the fund can only be used for payments provided or authorised by the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*. Similar provisions apply to appropriate disbursement of funds in the building and construction industry long service payments scheme.

Unions NSW has also called for a more conservative approach to be taken when investing funds from portable schemes and supported more 'defensive investment portfolio' strategies.

Compliance

In its final recommendation Unions NSW notes its concerns about general compliance with the contract cleaning industry scheme. By contrast, the United Voice's submission notes the scheme 'has a good compliance record and we will continue to work with the LSC for this to continue.'

Unions NSW believes that both employer organisations and unions should be given resources and special powers to assist the LSC with compliance in the cleaning industry, including education programs to assist workers and employers, many of whom are from non English speaking backgrounds. In its view, a working group of the contract cleaning industry portable LSL committee should be established to consider legislative options to assist with future compliance.

Social and community services industry

As noted above, Unions NSW and United Voice support the extension of portable long service leave to all industries and consequently did not feel it necessary to specifically address why a portable scheme should apply to the social and community services industry.

3. Submissions that do not support an extension of the scheme

Submissions from the NSW Business Chamber Limited (NSWBCL), Australian Industry Group (AiG), Australian Federation of Employers and Industries (AFEI) and the Catholic Commission for Employment Relations (CCER) all oppose any extension to the contract cleaning portability LSL scheme into other industries.

The NSWBCL cites two main reasons in support of its submission. Firstly, it notes that the harmonisation of the LSL NES in the federal jurisdiction is yet to be completed and it is not known whether the many disparate portable LSL schemes across the States will be part of that process. Secondly, while it accepts that the contract cleaning scheme is well supported in the sector, such support in other industries for similar schemes is not apparent.

The AiG notes it has a great deal of experience in dealing with portable LSL schemes in the States and Territories and believes those funded by levies on individual employers¹ are costly and highly problematic. AiG submits that an extension of the scheme would lead to NSW businesses being economically disadvantaged compared to interstate and overseas competitors, which in turn would have a detrimental impact upon investment.

Similarly, the AFEI submits that industry based schemes are expensive, subject to complex and problematic management issues and in practice are a tax on employment in the relevant industry. In its view, the key issue is the viability of industry and the need to remain competitive in a high labour cost environment. The AFEI believes there is no evidence that portable LSL schemes provide commercial benefits nor enhance industry performance.

The CCER concurs with the concerns raised in the Information Paper, in particular, that as the contract cleaning scheme is in its formative stages any genuine review of its financial sustainability and efficacy is difficult at this juncture.

The majority of the concerns outlined in the submissions from the employer groups about the possible extension of the scheme appear to fall into two broad categories. These are that portable LSL schemes are costly to administer and querying the relevance of LSL in a contemporary labour market.

Cost of portable long service leave schemes

The cost impact associated with an extension of the contract cleaning scheme featured in all of the submissions from the employer groups and fell into the following areas:

¹ Of the thirteen portable LSL schemes throughout Australia only three including building and construction scheme in NSW are not funded by an employer levy based on an employee's remuneration.

- increased administration and labour costs;
- effect on employment;
- impact on the social and community services industry; and
- impact on the NSW economy

Administration costs

There was general concern voiced in the employer group submissions about the administration costs of portable LSL schemes. These range from the imposition of additional record keeping and reporting requirements to 'complex and problematic management issues' including the inherent challenges with determining appropriate coverage of the schemes and thereby providing sufficient support for its funding base.

Effect on employment

The AFEI and AiG submits portable LSL schemes operate as a 'tax on employment' because they require employers to make ongoing compulsory contributions from the commencement of employment instead of a contingent liability associated with employer based LSL, which may or may not be due under the *Long Service Leave Act 1955* (NSW).

In support of its view that portable LSL should not be extended to the security industry, the AFEI has pointed to the federal Department of Education, Employment and Workplace Relations job data which reveals above average unemployment levels in the sector.

Social and community services industry

While the union submissions did not directly address why the contract cleaning portable LSL scheme should be extended to the social and community services industry, the AFEI and CCER has explicitly opposed any extension to the sector.

They have expressed particular concerns about the impact of the 2012 Fair Work Equal Remuneration case on this industry noting the financial pressure already placed upon employers as a result of that decision.

The AiG also notes the potential cost impact on the NSW Government and other entities that use the services of companies in the social and community services industries.

Impact on the NSW economy

The AiG contends that investment in NSW will be negatively affected if the contract cleaning portable LSL scheme was extended to other industries. It submits that businesses in NSW would be economically disadvantaged compared to their interstate and international competitors.

Relevance of long service leave in a contemporary labour market

Many of the submissions from employer groups query the continuing relevance of LSL as an industrial entitlement in the context of its operation in the contemporary Australian labour market.

For example, the AFEI contends that LSL was introduced at a time when industry was protected by high tariff walls and was not subject to today's competitive pressures.

Both the AFEI and NSWBCL provides statistics showing that an LSL entitlement applies to approximately a quarter of the Australian workforce (based on ten years service with the one employer) and that less than 9 per cent have service with the one employer of more than 20 years.² Indeed, NSWBCL questions whether LSL can be 'sensibly continued as a statutory entitlement because of its increasing lack of fit with labour market dynamics'.

The AFEI also cites labour market data drawn from a recent Productivity Commission report³ which proposes that over the last decade there has been no dramatic changes to the composition of the labour market (including any increases in the use of short-term and casual workers across industries) requiring additional remuneration, such as LSL entitlements.

The NSWBCL submission also noted that many people are now entering the labour market at a later age, early jobs are not often career jobs and the prospect of mid-career reinvigoration is remote for an even smaller proportion of employees than in the past.

According to the NSWBCL it is clear that in many cases LSL is not regarded by employees as an opportunity for career renewal, but rather as an economic asset. This view is broadly shared by the AiG which notes that the original purpose of LSL as a way of rewarding employees for long and faithful service with one employer is lost with portable schemes which reward time served with an industry. It notes that the experience, in the other States and Territories, shows that it is rare for employees to actually take leave under these types of schemes and instead the 'emphasis has been on employees accumulating money'.

² The most recent statistics from ABS shows that 25.4% of employees have worked with their current employer for more than 10 years; 10.1% have worked with their current employer for more than 20 years and 18.6% have worked with their current employer for between 5 and 10 years. See ABS Labour Mobility, Cat No 6209.0 Feb 2012.

³ See Productivity Commission Staff Working Paper, Forms of Work in Australia (released 23 April 2013).

4. Conclusion

The submissions in response to the Information Paper illustrates the feasibility of extending the operation of the current portable LSL arrangements for the contract cleaning industry to other industries is complex and accordingly calls for a careful and balanced assessment. There is no consensus view among the IRAC members that have made submissions with two members supporting an extension of the scheme and four opposing any expansion of portable LSL arrangements.

The submissions from the IRAC members are broad in scope. They not only consider the specific regulatory issue of the financial viability of the current NSW statutory scheme and the feasibility of extending its operation but also explore the broader issue of the contemporary relevance of LSL as an industrial entitlement. This entails an analysis of the extent to which LSL fits with the current labour market dynamic of short-term, non-standard employment and the fact that only a relatively small proportion of workers accrue sufficient service to qualify for LSL.

The submissions made by the employer organisations stress the potential burden on employers of extending the operation of the scheme in a high labour cost environment where there are additional on-costs for employers associated with the administration expenses of running these types of schemes.

By contrast, the submission from Unions NSW contends that a nationally consistent portable LSL scheme is required to improve access to LSL for workers seeking to recover their energies mid-career in a labour environment characterised by short-term casual and part-time employment and high job mobility.

While none of the submissions advocates for the outright abolition of LSL, and others strongly support the entitlement, some IRAC members query its current utility. This is an issue which is essentially beyond the scope of the statutory inquiry and should appropriately be considered as part of the ongoing discussions between the jurisdictions concerning the development of a harmonised LSL National Employment Standard under the *Fair Work Act 2009*.

On the specific central question of whether it is viable to extend the operation of the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* to all workers in NSW, the AiG made the following observation:

Given that the cleaning LSL scheme has only recently been implemented and no claims have yet been made, it would not be appropriate to rely upon the scheme as a basis for implementing portable long service leave arrangements in other industries.⁴

⁴ See AiG Submission, p.2

Certainly, the scheme is still in its formative stages and with relatively few claims having been made by employers, it is difficult to accurately assess its potential liabilities and overall financial sustainability.

In this regard, it should be noted that a review of the Act must be completed after it has been in operation for five years (1 July 2016) to determine whether the policy objective of the Act remains valid and its provisions are appropriate.

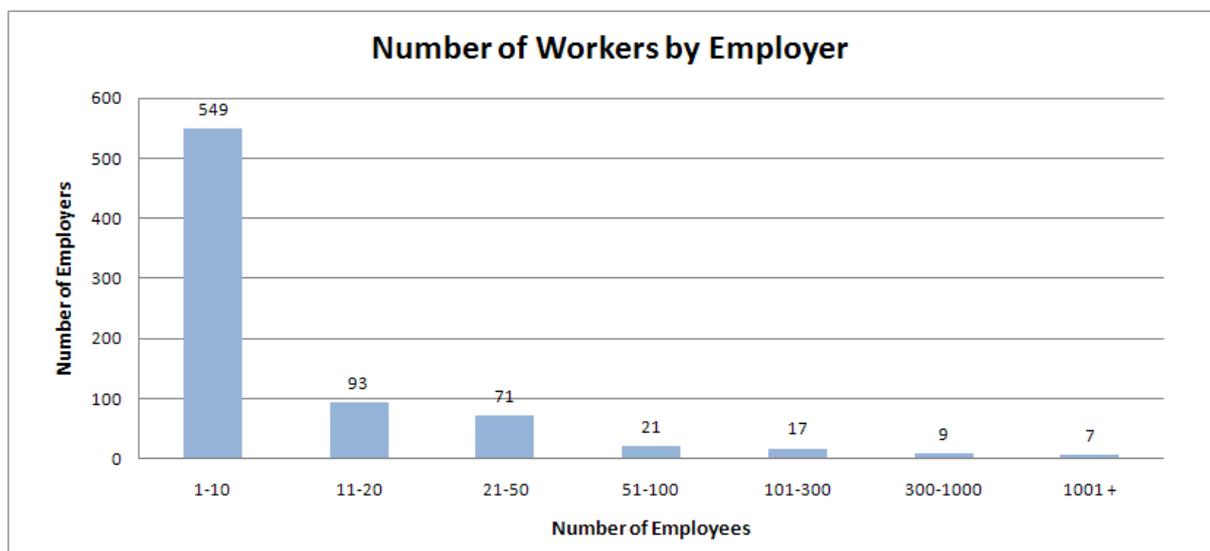
It is recommended that a more appropriate time to give further consideration to whether or not it is viable to extend the contract cleaning scheme into other industries may be after the five year statutory review has been completed.

APPENDIX

In the Information Paper (April 2013), the Long Service Corporation provided information about certain characteristics of the scheme to assist the IRAC in its deliberations. This information has now been updated to incorporate data as of the March 2013 quarter.

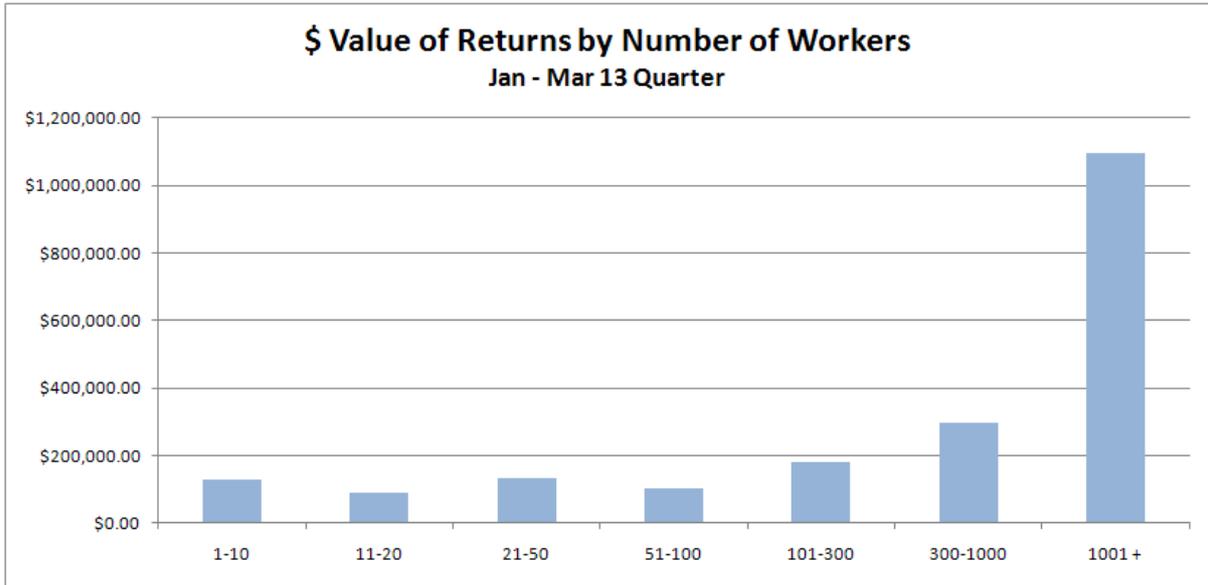
Registered employers and workers

As of June 2013, there were 813 registered active employers and 24,707 active registered workers (those workers who had received service credits in the preceding quarter). Of the total numbers of registered workers it is estimated approximately 23,000 have foundation membership status and therefore acquired 365 days service credits immediately upon registration with the scheme.



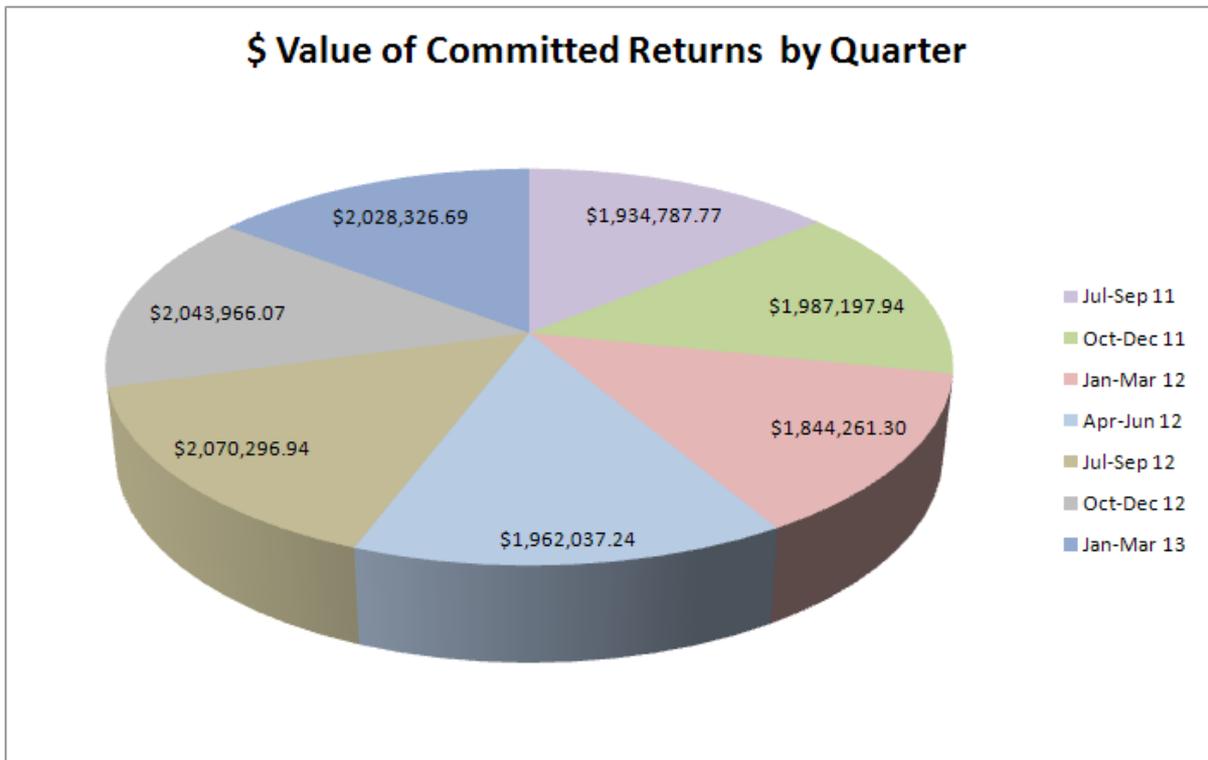
As the table (for the March quarter 2013) above indicates approximately 70 per cent of employers that are registered with the scheme employ ten or less employees, while seven employers (less than 1% of the total number of all employers) have more than 1,000 employees each in their workforce.

The table below predictably shows that larger employers (those whom employ more than 300 employees) accounted for approximately two-thirds of the total levy payments submitted by employers for the January-March 2013 quarter. Those employers who employ more than 1,000 employees contributed more than half of the total levy payments submitted by all employers.

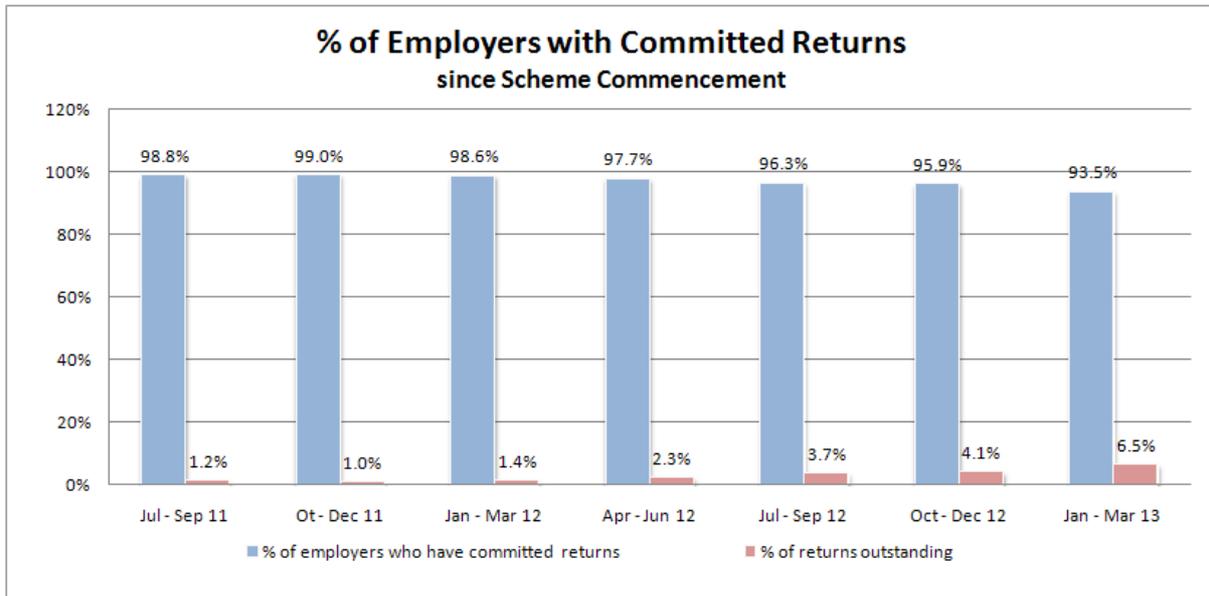


Employer returns and compliance rates

Since the scheme commenced in July 2011, seven quarterly returns have been due with \$13.5 million reported in levy income for those periods. (See table below).



Under the Act, an employer must lodge a return quarterly within 14 days after the end of the return period along with a levy payment. The table below shows a broadly positive (an average of 97% for all seven quarters) level of compliance has been achieved on the lodgement of returns by registered employers.



Reimbursements to registered workers

The scheme has not been in operation for the requisite amount of time for portable LSL entitlements exclusively accrued under the Act to be due to registered employees. However, the Act also provides for reimbursements to be made to employers who have paid out LSL entitlements to workers under the *Long Service Leave Act 1955* in circumstances where a levy was paid into the scheme for that part of the entitlement accrued while the employee had registered service with the scheme.

Where such circumstances arose during the first seven quarters of the scheme, 63 employers were reimbursed approximately \$25,000 from the LSC.