



Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992

No. 61 of 1992

**An Act relating to the collection of levy imposed by the
*Coal Mining Industry (Long Service Leave) Payroll Levy
Act 1992*, and for related purposes**

[Assented to 26 June 1992]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*.

5 Commencement

2. This Act commences on the same day as the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992*.

*Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992*

Interpretation

3. In this Act, unless the contrary intention appears:

“**Board**” means the Board of Directors of the Corporation;

“**Corporation**” means the Coal Mining Industry (Long Service Leave Funding) Corporation established by the Funding Act; 5

“**eligible employee**” has the same meaning as in the Funding Act;

“**eligible wages**” means remuneration or allowances (including production-related bonuses) paid to an eligible employee in respect of employment by virtue of which he or she is an eligible employee, whether or not paid under a relevant industrial instrument, but does not include overtime, penalty rates, the cost or value of benefits provided to an eligible employee otherwise than as remuneration or allowances, or any other allowances which, because of their nature, an eligible employee is not entitled to be paid during a period of long service leave; 10 15

“**financial statements**”, in relation to a company in relation to a financial year of the company, means the company’s financial statements for that year for the purposes of the Corporations Law;

“**Fund**” means the Coal Mining Industry (Long Service Leave) Fund maintained by the Corporation under section 40 of the Funding Act; 20

“**Funding Act**” means the *Coal Mining Industry (Long Service Leave Funding) Act 1992*;

“**Levy**” means levy imposed by the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992*;

“**month**” means one of the 12 months of the calendar year; 25

“**taxation law**” has the same meaning as in the *Taxation Administration Act 1953*.

Due date for payment

4. Subject to section 6, levy in respect of eligible wages paid to eligible employees is payable at the end of the period within which a return is required by this Act to be made in respect of those wages. 30

Returns by employers

5.(1) A person who employs eligible employees at any time during a month that ends after the commencement of this Act must, within 28 days after the end of that month, make a return of the eligible wages paid by the person to those employees during that month. 35

Penalty: \$1,000.

(2) A return for the purposes of this section:

(a) must be made:

(i) if the Corporation has given written notice to the person who is required to make the return that a person specified in the notice is authorised, in lieu of the Corporation, to 40

receive returns under this section—to the specified person in such manner as is prescribed by the regulations or, if there are no such regulations, as that person directs; or

(ii) otherwise—to the Corporation in such manner as is prescribed by the regulations or, if there are no such regulations, as the Board directs; and

(b) must be in accordance with a form approved by the Board; and

(c) must contain such information as is required by that form.

(3) It is a defence to a prosecution for failure to comply with subsection (1) if the defendant establishes that there was a reasonable excuse for the failure.

Extension of time and payment by instalments

6.(1) The Corporation may, in such circumstances as the Corporation thinks fit, extend the time for payment of an amount of levy for such period or periods as the Corporation determines, and, if the Corporation does so, the levy is payable accordingly.

(2) The Corporation may, in such circumstances as the Corporation thinks fit, permit the payment of an amount of levy to be made by instalments in such amounts and at such times as the Corporation determines, and, subject to subsection (3), each instalment is payable at the time so determined in relation to that instalment.

(3) If the Corporation permits the payment of an amount of levy to be made by instalments and an instalment of an amount of levy is not paid on or before the time for the due payment of the instalment, the whole of the amount outstanding becomes payable at that time.

(4) In this section:

“levy” includes additional levy under section 7.

Additional levy

7.(1) If any levy remains unpaid on any day after the time when it became payable, or would apart from section 6 have become payable, additional levy is payable by way of penalty by the person liable to pay the levy, at the percentage applicable under subsection (2) in respect of that day, on the amount unpaid, computed from that time or, if under section 6 the Corporation has granted an extension of time for payment of the levy or has permitted payment of the levy to be made by instalments, from such date as the Corporation determines, not being a date before the date on which the levy was originally payable.

(2) The percentage applicable in respect of a day is 2 percentage points above the maximum indicator interest rate for that day, where:

“maximum indicator interest rate”, in relation to a day, means the higher or the highest, as the case may be, of the range of rates of interest per annum current on that day quoted by the Reserve Bank,

Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992

on the basis of reports by each bank regarded by the Reserve Bank as a major trading bank operating in Australia, in respect of overdrafts of \$100,000 or more.

(3) If judgment is given by, or entered in, a court for payment of:

(a) an amount of levy; or

(b) an amount that includes an amount of levy;

then:

(c) the levy is not taken, for the purposes of subsection (1), to have ceased to be payable merely because of the giving or entering of the judgment; and

(d) if the judgment debt carries interest, the additional levy that would, apart from this paragraph, be payable under this section in relation to the levy is, by force of this paragraph, reduced by:

(i) in a case to which paragraph (a) applies—the amount of the interest; or

(ii) in a case to which paragraph (b) applies—the amount worked out in accordance with the formula:

$$\text{amount of the interest} \times \frac{\text{amount of the levy}}{\text{amount of the judgment debt.}}$$

Remission of additional levy

8.(1) If additional levy is payable by a person under section 7 in relation to an amount of levy, the person may request the Corporation in writing to remit the additional levy or a part of the additional levy.

(2) If such a request is made and:

(a) the Corporation is satisfied that:

(i) the circumstances that contributed to the delay in payment of the levy were not due to, or caused directly or indirectly by, an act or omission of the person; and

(ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or

(b) the Corporation is satisfied that:

(i) the circumstances that contributed to the delay in payment of the levy were due to, or caused directly or indirectly by, an act or omission of the person; and

(ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and

(iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional levy or part of the additional levy; or

Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992

- (c) the Corporation is satisfied that there are special circumstances because of which it would be fair and reasonable to remit the additional levy or part of the additional levy;

5 the Corporation may remit the additional levy or part of the additional levy.

(3) The Corporation must give to the person who made the request written notice of the Corporation's decision on the request.

10 (4) If the Corporation does not make a decision on the request within 30 days after the request is made, the Corporation is taken for the purposes of this section to have made a decision refusing the request.

(5) Notice of the Corporation's decision on a request must include a statement to the effect that:

15 (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made by or on behalf of the person who made the request to the Administrative Appeals Tribunal for review of the decision; and

20 (b) except where subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

25 (6) A failure to comply with a requirement of subsection (5) in relation to a decision does not affect the validity of the decision.

(7) Subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal by a person who has made a request under subsection (1) for review of a decision by the Corporation on the request.

30 (8) In subsection (7):

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Recovery of levy or additional levy

35 9.(1) An amount of levy, or an amount of additional levy under section 7, is a debt due to the Commonwealth, and payable:

40 (a) if the Corporation has given written notice to the person who is liable to pay the amount that a person specified in the notice is authorised, in lieu of the Corporation, to receive such an amount—to the specified person in such manner as is prescribed by the regulations or, if there are no such regulations, as that person directs; or

Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992

(b) otherwise—to the Corporation in such manner as is prescribed by the regulations or, if there are no such regulations, as the Board directs.

(2) Subject to subsection (3), an amount of levy, or an amount of additional levy under section 7, that is payable but has not been paid may be sued for and recovered by the Corporation or by the other person (if any) to whom the amount is payable, as the case may be, in any court of competent jurisdiction. 5

(3) The Board must give written notice to the Minister before any proceedings are brought to recover an amount under subsection (2). 10

(4) The Minister may give directions as to how amounts paid to, or recovered by, the Corporation or another person under this section are to be dealt with before they are paid into the Consolidated Revenue Fund.

Audited accounts and certificates to be provided to Corporation 15

10.(1) If a company, at any time during a financial year of the company, employed eligible employees, the auditor of the company appointed under the Corporations Law must give to the Corporation, not later than 6 months after the end of that year, a certificate stating whether, in the opinion of the auditor, the company has paid all amounts of levy, or amounts of additional levy under section 7, that the company was required to pay in respect of that year. 20
Penalty: \$1,000.

(2) The Board may give to the auditor of a company that employed eligible employees at any time during a particular period a written notice requiring the auditor to give to the Corporation, not later than 28 days after receiving the notice, a certificate stating whether, in the opinion of the auditor, the company has paid all amounts of levy, or amounts of additional levy under section 7, that the company was required to pay in respect of the first-mentioned period, and, if such a notice is given, the auditor must comply with the notice. 25 30
Penalty: \$1,000.

(3) If the auditor of a company gives a certificate under subsection (1) or (2) stating that, in the opinion of the auditor, the company has not paid all the amounts of levy, or the amounts of additional levy under section 7, that the company was required to pay in respect of a financial year or other period, the auditor must also state in the certificate in what respect and to what extent, in the auditor's opinion, the company has not paid those amounts. 35
Penalty: \$1,000. 40

(4) A company is liable to pay to its auditor such fees as the auditor reasonably charges for the giving of a certificate to the Corporation under subsection (1) or (2).

Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992

(5) If a certificate given to the Corporation by the auditor of a company pursuant to a notice given to the auditor by the Board under subsection (2) states that, in the opinion of the auditor, the company has paid all amounts of levy, or amounts of additional levy under section 7, that the company was required to pay in respect of the period to which the notice related, there is payable to the company out of the Fund an amount equal to the amount paid by the company to the auditor under subsection (4) in respect of the giving of the certificate.

(6) It is a defence to a prosecution for failure to comply with a provision of this section if the defendant establishes that there was a reasonable excuse for the failure.

Functions of Corporation under this Act

11.(1) The Corporation has the following functions on behalf of the Commonwealth under this Act:

(a) to receive returns made, or financial statements or certificates given, under this Act; and

(b) to receive payments of levy made under this Act; and

(c) to receive payments of additional levy made under section 7; and

(d) to sue for and recover amounts of levy and amounts of additional levy that have not been paid.

(2) The Corporation may, on behalf of the Commonwealth, enter into an agreement with a person authorising that person to perform on behalf of the Commonwealth any one or more of the functions referred to in subsection (1).

(3) The Commissioner of Taxation has power to enter into an agreement with the Corporation under subsection (2) for the performance by the Commissioner of Taxation of a function referred to in subsection (1) and, if such an agreement is entered into, the Corporation is liable to pay to the Commissioner of Taxation such charges for the performance of that function as are agreed between the Corporation and the Commissioner of Taxation.

Access to premises and books

12.(1) This section applies if the Corporation enters into an agreement under subsection 11(2) authorising the Commissioner of Taxation to perform a function referred to in subsection 11(1).

(2) An officer of the Commonwealth authorised in writing by the Commissioner of Taxation to exercise powers under this section is entitled at all reasonable times to full and free access to all premises and books for the purpose of performing the function, and for that purpose may make copies of, or take extracts from, any such book.

Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992

(3) An officer is not entitled to enter or remain in or on any premises under this section if, on being requested by the occupier of the premises for proof of authority, the officer does not produce his or her authority under subsection (2).

(4) The occupier of any premises entered or proposed to be entered by an officer under subsection (2) must provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: \$3,000.

Power to obtain information and evidence

13.(1) This section applies if the Corporation enters into an agreement under subsection 11(2) authorising the Commissioner of Taxation to perform a function referred to in subsection 11(1).

(2) The Commissioner of Taxation, or an officer of the Commonwealth authorised in writing by the Commissioner of Taxation to exercise powers under this section, by written notice given to a person, including a person employed by or in connection with a Department, or an authority, of the Commonwealth, of a State or of a Territory, may require the person:

(a) to give to the Commissioner of Taxation or officer such information as the Commissioner of Taxation or officer requires for the purpose of the performance of the function; and

(b) to attend before the Commissioner of Taxation or officer and:

(i) give evidence; and

(ii) produce all books in the possession of the person; relating to any matters connected with the performance of the function.

(3) The Commissioner of Taxation or authorised officer may require the information or evidence to be given on oath, and either orally or in writing, and for that purpose may administer an oath.

(4) Subject to subsections (5) and (6), a person who attends before the Commissioner of Taxation or an authorised officer under subsection (2) is entitled to be paid by the Commissioner of Taxation:

(a) the prescribed allowance in respect of each day or part of a day on which the person so attends; and

(b) amounts equal to any reasonable expenses incurred by the person for transport, meals and accommodation in connection with the person's attendance.

(5) A person is not entitled under subsection (4) to be paid in respect of any expenses unless the person produces to the Commissioner of Taxation or authorised officer sufficient documentary evidence to establish that the person incurred those expenses.

Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992

(6) A person is not entitled under subsection (4) to payment of an amount or amounts in respect of an allowance or expenses for any attendance or attendances pursuant to a particular notice except to the extent to which the amount, or the total of the amounts, that, apart from this subsection, would be payable to the person under that subsection in respect of an allowance or expenses for that attendance or those attendances exceeds \$500.

(7) If an amount is paid by the Commissioner of Taxation to a person under this section, an amount equal to the amount so paid is payable to the Commissioner of Taxation out of the Fund.

(8) A person must not, without reasonable excuse, fail to comply with a notice under subsection (2).

Penalty: \$3,000.

(9) A person must not, in purported compliance with a notice under subsection (2), knowingly give information or evidence that is false or misleading.

Penalty for a contravention of this subsection: Imprisonment for 6 months.

Secrecy

14.(1) In this section:

“**officer**” means a person:

(a) who is or has been appointed or employed by the Commonwealth; or

(b) to whom powers or functions have been delegated by the Commissioner of Taxation;

and who, because of the appointment or employment or in the course of the employment, or because of, or in the course of the exercise of powers or the performance of functions under, the delegation, as the case may be, may acquire or has acquired information with respect to the affairs of any other person disclosed or obtained under or for the purposes of this Act.

(2) For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth is taken to be employed by the Commonwealth.

(3) Subject to subsection (5), a person who is or has been an officer must not, except for the purposes of this Act or in the performance of the person’s duties as an officer, directly or indirectly:

(a) make a record of any information with respect to the affairs of a second person; or

(b) divulge or communicate to a second person any information with respect to the affairs of a third person;

being information disclosed or obtained under or for the purposes of this Act and acquired by the person because of the person's appointment or employment by the Commonwealth or in the course of such employment, or because of the delegation to the person of powers or functions by the Commissioner of Taxation or in the course of the exercise of such powers or the performance of such functions, as the case may be. 5

Penalty: \$10,000 or imprisonment for 2 years, or both.

(4) Except when it is necessary to do so for the purpose of carrying into effect the provisions of a taxation law, a person who is or has been an officer is not required: 10

- (a) to produce in court any document made or given under or for the purposes of this Act; or
- (b) to divulge or communicate to a court a matter or thing with respect to information disclosed or obtained under or for the purposes of this Act; 15

being a document or information acquired by the person because of the person's appointment or employment by the Commonwealth or in the course of such employment, or because of the delegation to the person of powers or functions by the Commissioner of Taxation, or in the course of the exercise of such powers or the performance of such functions, as the case may be. 20

(5) Nothing in subsection (3) prohibits the Commissioner of Taxation, a Second Commissioner of Taxation, a Deputy Commissioner of Taxation, or a person authorised by any of them, from communicating any information to a person performing, as an officer, duties in relation to a taxation law, for the purpose of enabling the person to perform those duties. 25

(6) For the purposes of subsection (3), an officer is taken to have communicated information to another person in contravention of that subsection if: 30

- (a) the officer communicates that information to any Minister of State of the Commonwealth, any Minister of the Crown of a State, any Minister for the Australian Capital Territory or any Minister of the Northern Territory; and 35
- (b) the information was acquired by the officer otherwise than for the purposes of Part II of the *Taxation Administration Act 1953*.

(7) An officer must, if and when required by the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation to do so, make an oath or declaration, in a manner and form specified by the Commissioner of Taxation by writing, to maintain secrecy in conformity with the provisions of this section. 40

*Coal Mining Industry (Long Service Leave)
Payroll Levy Collection No. 61, 1992*

Regulations

15. The Governor-General may make regulations:

(a) prescribing all matters required or permitted by this Act to be prescribed; or

5 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act or for facilitating the collection or recovery of amounts of levy or amounts of additional levy under section 7;

and, in particular:

10 (c) providing for the manner of payment of levy and of amounts of additional levy under section 7; and

(d) requiring employers to keep records relating to the employment of eligible employees; and

15 (e) requiring employers to give to such persons as are prescribed information relating to the employment of eligible employees; and

(f) prescribing penalties, not exceeding a fine of \$1,000, for offences against the regulations.

*[Minister's second reading speech made in—
House of Representatives on 30 April 1992
Senate on 27 May 1992]*