



Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009

No. 127, 2009

**An Act to amend the law relating to long service
leave in the black coal mining industry, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009

No. 127, 2009

An Act to amend the law relating to long service leave in the black coal mining industry, and for related purposes

[Assented to 10 December 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009*.

Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009 No. 127, 2009

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2 Commencement

This Act commences on 1 January 2010.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Coal Mining Industry (Long Service Leave Funding) Act 1992

1 Subsection 4(1)

Insert:

black coal mining industry has the same meaning as in the Black Coal Mining Industry Award 2010 as in force on 1 January 2010.

2 Subsection 4(1) (definition of *eligible employee*)

Repeal the definition, substitute:

eligible employee means:

- (a) an employee who is employed in the black coal mining industry by an employer engaged in the black coal mining industry, whose duties are directly connected with the day to day operation of a black coal mine; or
- (b) an employee who is employed in the black coal mining industry, whose duties are carried out at or about a place where black coal is mined and are directly connected with the day to day operation of a black coal mine; or
- (c) an employee permanently employed with a mine rescue service for the purposes of the black coal mining industry; or
- (d) a prescribed person who is employed in the black coal mining industry;

but does not include a person declared by the regulations not to be an eligible employee for the purposes of this Act.

Note: For prescription or declaration by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

3 Subsection 4(1)

Insert:

employee means a national system employee as defined in section 13 of the *Fair Work Act 2009*.

4 Subsection 4(1)

Insert:

employer means a national system employer as defined in section 14 of the *Fair Work Act 2009*.

5 Subsection 4(2)

Omit “or class of persons” (wherever occurring).

6 Subsection 44(3)

Repeal the subsection, substitute:

- (3) A reference in this section to an employee’s entitlement to long service leave, or to an employee’s entitlement to be paid for, or to take, long service leave, is a reference to the employee’s entitlement under any of the following:
- (a) section 113 of the *Fair Work Act 2009*;
 - (b) a relevant industrial instrument;
 - (c) a contract of employment.

Note: Schedule 2 to the *Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009* extends the operation of section 113 of the *Fair Work Act 2009*.

7 Application of amendments

The amendments made by this Schedule apply in relation to industry and employment occurring on or after the commencement of this Schedule.

Schedule 2—Long service leave entitlement

1 Extended operation of section 113 of the *Fair Work Act 2009*

- (1) This item applies to an eligible employee if there are no applicable award-derived long service leave terms in relation to the employee (apart from this item).
- (2) Section 113 of the *Fair Work Act 2009* applies to the eligible employee, and his or her employment as an eligible employee, as if The Coal Mining Industry (Production and Engineering) Consolidated Award 1997 would have applied to the employee immediately before the commencement of Part 2-2 of that Act if the employee had at that time been in that employment.

Note: This ensures there are applicable award-derived long service leave terms in relation to the eligible employee based on that award. Therefore subsection 113(1) of the *Fair Work Act 2009* entitles the employee to long service leave in accordance with those terms, subject to subsection 113(2) of that Act.

- (3) This item does not affect the operation of section 113 of the *Fair Work Act 2009* apart from this item.
- (4) In this item:
applicable award-derived long service leave terms has the meaning given by subsection 113(3) of the *Fair Work Act 2009*.
eligible employee has the same meaning as in the *Coal Mining Industry (Long Service Leave Funding) Act 1992*.

*[Minister's second reading speech made in—
House of Representatives on 18 November 2009
Senate on 26 November 2009]*

(209/09)

6 *Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009* No. 127,
2009