

EXPLANATORY STATEMENT

Employer Reimbursement Rules 2017

Coal Mining Industry (Long Service Leave) Administration Act 1992

Issued by the Coal Mining Industry (Long Service Leave Funding) Corporation

Purpose

The *Employer Reimbursement Rules 2017* (**the Rules**) set out rules for how the Board of the Coal Mining Industry (Long Service Leave Funding) Corporation (**the Corporation**) calculates reimbursement amounts to employers under the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (**the Act**).

Legislative Provisions

The Rules are made under section 45 of the Act, which provides that the Board of the Corporation must make rules relating to:

- amounts to be reimbursed to employers for payments to eligible employees under Part 5A of the Act;
- amounts to be reimbursed to employers for payments to the legal personal representative of an eligible employee; and
- the creation of notional accounts for eligible employees.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Background

The Act sets out a long service leave funding scheme for the black coal mining industry and establishes the Corporation to administer that scheme. The Act also requires the Corporation to establish and maintain in its books the Coal Mining Industry (Long Service Leave) Fund (the Fund). The long service leave funding scheme has been agreed to between employers and employees in the Australian black coal mining industry.

Under the long service leave funding scheme, employers are required to pay levy imposed by the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* to the Corporation in respect of eligible employees. Such employers are subsequently entitled to be reimbursed an amount by the Corporation after the employer makes a payment of long service leave to the eligible employee.

In 2011, the Board of the Corporation made the *Employer Reimbursement Rules 2011* (**the 2011 Rules**). In late 2015, the Corporation agreed to review the operation of the 2011 Rules with respect to the amounts reimbursed to employers. In December 2015 the Corporation released the Reimbursement Rules – Issues Paper (**Issues Paper**) seeking comment on a proposal to implement revised rules to provide for an alternative method for the reimbursement of employers for payments made to eligible employees in respect of long service leave accrued under the Act.

Operation

The 2011 Rules are revoked effective from 1 July 2017 and replaced with the Rules.

The Rules require the Corporation to create notional accounts for eligible employees and set out how the Board is to calculate reimbursement amounts to be paid to employers in respect of claims made by those employers under section 44 of the Act.

The account is referred to as a "notional account" because an employee is not directly entitled to the amount credited to the account as levy. Rather, the notional account is used to record the amounts of levy paid into the Fund in respect of an eligible employee after 1 January 2012.

The Rules provide that the Board is not required to calculate a reimbursable amount separately in relation to amounts of long service leave accrued by an eligible employee before and after 1 January 2012, if the reimbursable amount is claimed by the employer after the commencement of the Rules. For reimbursement claims submitted by an employer before the commencement of the Rules, the 2011 Rules will apply.

The method of calculation of a reimbursable amount is based on the amount of long service leave hours paid for by the employer multiplied by the eligible wages amount per hour. Eligible wages are determined in accordance with the Act, by reference to the meaning of eligible wages in the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (Payroll Levy Collection Act).

A decision of the Board under section 44 of the Act, which relies on calculations made under the Rules, is reviewable by the Administrative Appeals Tribunal.

Consultation

Section 17 of the Legislation Act requires the Board to be satisfied that any consultation it considers to be appropriate, and that is reasonably practicable to undertake, has been undertaken before making the Rules.

In preparing the Rules, the Corporation has consulted closely with the Industry Working Party (the **IWP**) and has considered the comments received from members of the IWP in response to the Issues Paper. The IWP is constituted by representatives of black coal mining employees, employers and employee organisations and has provided advice and guidance to the Government in relation to the long service leave funding scheme in the Act.

Regulatory Impact

The Office of Best Practice and Regulation (**OBPR**) has considered the matter and formed the opinion that no regulatory impact analysis is required for the Rules. The OBPR reference number is 21752.

Details

Details of the Rules are provided in Attachment A.

Statement of Compatibility

A Statement of Compatibility with Human Rights (prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*) for the Rules is at Attachment B.

NOTES ON RULES

Part 1 – Preliminary

Rule 1 Name of Rules

Rule 1 provides that the name of the instrument is the *Employer Reimbursement Rules 2017*.

Rule 2 Commencement

Rule 2 provides that the Rules commence on 1 July 2017.

Rule 3 Revocation

Rule 3 provides that the *Employer Reimbursement Rules 2011* are revoked.

Rule 4 Definitions

Rule 4 provides definitions used in the Rules.

Rule 4 also notes that the Rules contain terms which have the same meaning as in the Act e.g. eligible employee, eligible wages, employer and Payroll Levy Collection Act.

Part 2 – Notional Accounts

Part 2 of the Rules sets out rules regarding the creation of notional accounts and how and when the Corporation must record amounts of levy and correct notional accounts.

Rule 5 Creation of notional accounts

The Corporation is required by rule 5 to create notional accounts for all eligible employees that the Corporation becomes aware of after the Rules commence.

Rule 5 also deems notional accounts created before the commencement of the Rules to be a notional account as required by rule 5. This ensures that notional accounts created under the 2011 Rules can be dealt with under the Rules.

Rule 6 Recording of amounts of levy

Rule 6 requires that the Corporation must, each month, record in a notional account an amount that is the amount of levy paid by an employer under the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* in respect of the eligible employee to whom the account relates.

Rule 7 Correcting of notional accounts

Rule 7 provides that the Corporation may make corrections to a notional account if it determines that the details of that account are incorrect, provided that the Corporation records the reasons why the correction is made.

Part 3 – Calculation of reimbursable amounts (Part 5A of the Act)

This part of the Rules sets out the way in which a reimbursable amount is decided by the Board.

The Rules ensure that reimbursement amounts to employers do not exceed the amount actually paid to the employee in respect of their LSL credits.

Rule 8 How does the Board decide the reimbursable amount for an employer?

Subrule (1) requires the Board to decide the amount the employer is to be reimbursed by using the methods provided in Rules 9 or 10, depending on if the employer made a payment to an eligible employee or to an eligible employee's legal personal representative (respectively).

Subrule (2) provides that the Board is not required to deal with claims relating to pre-2012 entitlements separately from any claims relating to post-2012 entitlements.

Rule 9 How is the reimbursable amount for a payment to an eligible employee calculated?

Subrule (1) sets out a formula to be used in calculating reimbursable amounts to be paid to eligible employees. The formula is:

LSL paid x eligible wages amount per hour

Subrule (1) also sets out definitions of "LSL paid" and "eligible wages amount per hour". Both concepts are defined by reference to hours rather than to days or weeks.

"LSL paid" is defined to mean the hours of long service leave entitlement paid for by the employer, not exceeding the hours recorded by the Corporation with respect to the employee immediately prior to the date of payment by the employer and not including any hours of long service leave for which a reimbursement has already been made. This ensures that an employer is not reimbursed for any part of a payment to an employee for long service leave in excess of the LSL credits that the Corporation has recorded for the employee and that the employer is not reimbursed twice in respect of the same long service leave payment.

"Eligible wages amount per hour" is defined to mean the amount per hour of the employee's eligible wages immediately before the employee was paid for (or commenced to take) the long service leave, or immediately before the employee left their employment with the employer, depending on if the employee was employed at the time the payment was made or not (respectively). The amount per hour of eligible wages is as determined under the Payroll Levy Collection Act 1992.

Subrule (2) provides that if the amount calculated under subrule (1) is more than the amount actually paid to the eligible employee, the reimbursable amount is taken to be the amount paid to the eligible employee. This ensures that the Corporation does not pay more in a reimbursement than was paid out by an employer for a long service leave payment to an employee.

Rule 10 How is the reimbursable amount for payment to a legal personal representative calculated?

Rule 10 operates to ensure that the same method of calculating reimbursable amounts for employers under Rule 9 is used to calculate the reimbursable amount for an employer in respect of a payment made to a legal personal representative under either of sections 39C or 39CC of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Employer Reimbursement Rules 2017

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Coal Mining Industry (Long Service Leave) Administration Act 1992* (the Act) sets out a long service leave funding scheme for the black coal mining industry and establishes the Coal Mining Industry (Long Service Leave Funding) Corporation (the Corporation) to administer that scheme. The long service leave funding scheme reflects agreement between employers and employees in the Australian black coal mining industry.

Under the long service leave funding scheme, employers are required to pay levy imposed by the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (the Payroll Levy Act) to the Corporation in respect of eligible employees. These employers are subsequently entitled to be reimbursed an amount by the Corporation after the employer makes a payment for long service leave to an eligible employee or the legal personal representative of a deceased employee, who would have been an eligible employee.

The *Employer Reimbursement Rules 2017* (the Rules) are made under section 45 of the Act for the purpose of enabling the Board of the Corporation to decide, under section 44 of the Act, the reimbursable amount an employer is to be paid by the Corporation.

The Rules also require the Corporation to create notional accounts for eligible employees. The account is referred to as a "notional account" because an employee is not entitled directly to the amount in the account. Rather, the notional account is used to record the amounts of levy paid into the Fund in respect of an eligible employee after 1 January 2012.

Human rights implications

The Rules engage the following human right:

Right to work and rights in work

The Rules deal with financial aspects related to the secure provision of, and payment for, long service leave for employees in the black coal mining industry. The Rules operate as an integral part of the overall long service leave scheme agreed to by employers and employees.

In ensuring that employers are provided appropriate reimbursement for long service leave payments made to an employee, those employers are therefore returned some proportion of the payroll levy paid by them in respect of eligible employees.

Accordingly, the Rules, in conjunction with the Act, contribute to the smooth operation of the long service leave scheme and in particular, ensure the secure and prudent use of monies paid by employers, by which the long service leave scheme for workers in the black coal mining industry

is funded. This process facilitates the provision of long service leave by employers in the black coal mining industry to their employees.

The Rules support the substantive rights arising under the Act, and do not diminish rights under any other law directly in relation to individuals employed in the black coal mining industry or otherwise. It is thus the case that the Rules do not operate to limit the human rights of any class of persons or particular individuals.

Conclusion

The Rules are compatible with human rights as they advance the protection of the right to work and rights in work for employees in the black coal mining industry, and do not limit any human rights for those or other persons.