

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Small and Family Business, the Workplace and Deregulation

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

Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018

The *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (the Act) is one of three Acts that together provide for a portable long service leave scheme for employees in the black coal mining industry.

The scheme operates by imposing a levy on wages paid to eligible employees. The levy is collected by the Coal Mining Industry (Long Service Leave Funding) Corporation (the Corporation) and paid into a fund. When an employee accesses long service leave, the employer is reimbursed out of the fund for the payments made by the employer to the employee.

Section 5 of the Act provides that the rate of the levy on wages paid by employers is the prescribed percentage of the eligible employee wages paid. Subsection 8(1) of the Act provides that the Governor-General may make regulations prescribing a percentage for the purposes of section 5.

The *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 1993* (the Former Regulations) provided that for the purposes of section 5 of the Act, 2.7% was the prescribed percentage of the eligible employee wages paid. The Former Regulations were scheduled to sunset on 1 October 2018.

The *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018* (the Regulations) replace the Former Regulations so that for the purposes of the levy, a percentage of eligible employee wages paid will continue to be prescribed. The Regulations specify that for the purposes of section 5 of the Act, 2.0% is the prescribed percentage of the eligible employee wages paid.

Under section 43 of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Administration Act), the Corporation is required to seek advice from an actuary, every three years, on the adequacy of the levy rate contained within the regulations, including any recommended changes to the rate and advise the Minister on the outcome.

The latest review was completed by Mercer Consulting (Australia) Pty Ltd (Mercer), and examined long service leave benefits accrued up to 30 June 2017. On 7 November 2017, the Corporation submitted this actuarial review to the then Minister for Employment. The review concluded that the fund was in a strong financial position, with an actuarial surplus of 49% of liabilities. On this basis, the Board of the Corporation accepted Mercer's recommendation to reduce the payroll levy from 2.7% to 2.0% of eligible employee wages from 1 July 2018.

The reduction in the quantum of the levy does not affect employee entitlements to long service leave. The rules and payments for long service leave are specified in the Administration Act and are not affected by the Regulations.

The Regulations also repeal the Former Regulations. In addition to the power to make the Regulations under section 8 of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Details of the Regulations are set out at [Attachment A](#).

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (OBPR Ref: 23212).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Chief Executive Officer of the Corporation was consulted during the drafting of the Regulations. The Chief Executive Officer reports to the Board of the Corporation. The Board is made up of representatives of employers and employees in the black coal mining industry.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Statement). The Statement's assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

The Regulations will commence on 1 July 2018. This date of commencement provides time to make necessary changes to IT systems, prepare communications materials and enable the new rules to commence at the start of the new financial year.

Details of the proposed Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018

Part 1 - Preliminary

Section 1 - Name

This section provides that the title of the Regulations is the *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018*.

Section 2 - Commencement

This section provides that the Regulations commence on 1 July 2018.

Section 3 - Authority

This section provides that the regulations are made under the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992*.

Section 4 - Schedules

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

Section 5 - Definitions

This section provides that in the Regulations, **Act** means the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992*.

Part 2 – Prescribed matters

Section 6 – Rate of levy

This section provides that for the purposes of section 5 of the Act, 2% is the prescribed percentage of the eligible wages paid.

Part 3 – Application and transitional provisions

Section 7 – Application of instrument

This section provides that section 6 applies in relation to eligible wages paid on or after 1 July 2018. This section is intended to make clear when the reduction in levy takes place.

Schedule 1 - Repeals

Coal Mining Industry (Long Service leave) Payroll Levy Regulations 1993

Item 1 – The whole of the instrument

This item repeals the *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 1993*. These regulations were scheduled to sunset on 1 October 2018 and the Regulations provide for the new levy.

Statement of Compatibility with Human Rights

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

Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018

The *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018* (the Regulations), as a disallowable legislative instrument, are 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 Regulations

The *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (the Act) is one of three Acts that together provide for a portable long service leave scheme for employees in the black coal mining industry.

The scheme operates by imposing a levy on wages paid to eligible employees. The levy is collected by the Coal Mining Industry (Long Service Leave Funding) Corporation (the Corporation) and paid into a fund. When an employee accesses long service leave, the employer is reimbursed out of the fund for the payments made by the employer to the employee.

Section 5 of the Act provides the rate of the levy on wages paid by employers is the prescribed percentage of wages paid. Subsection 8(1) of the Act provides that the Governor-General may make regulations prescribing a percentage for the purposes of section 5.

The Regulations replace the *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 1993* so that for the purposes of section 5 of the Act, a levy as a percentage of wages paid will continue to be prescribed.

The Regulations also reduce the quantum of levy from the previous 2.7% to 2.0% as the prescribed percentage of the eligible wages paid.

The reduction in the quantum of the levy does not affect employee entitlements to long service leave. The rules and payments for long service leave are specified in the *Coal Mining Industry (Long Service Leave) Administration Act 1992* and are not affected by the Regulations.

Human rights implications

The Regulations engage paragraph (d) of Article 7 of the International Covenant on Economic, Social and Cultural Rights. This paragraph provides that:

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

...

(d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

The Regulations provide for a levy on the wages paid to eligible employees to fund a portable long service scheme. The scheme generally enables eligible employees to remain entitled to long service leave despite changing employers in the black coal mining industry. Without the levy, the scheme would eventually run down the fund established over a period of years and the scheme would not be able to meet the entitlements of employees. Accordingly, the Regulations promote human rights by ensuring that adequate funds are available for meeting the long service leave entitlements of eligible employees.

The levy applies to the wages of eligible employees regardless of the employee's gender or race.

Conclusion

The Regulations are compatible with human rights by advancing the protection of human rights.

The Hon Craig Laundry MP, Minister for Small and Family Business, the Workplace and Deregulation