

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment and Workplace Relations

Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992 ***Coal Mining Industry (Long Service Leave) Payroll Levy Amendment Regulations 2023***

AUTHORITY

The *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (the Payroll Levy Act), together with the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (the Administration Act) and the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (the Collection Act), provide for a portable long service leave (LSL) scheme for ‘eligible employees’ in the black coal mining industry (the Scheme).

The Scheme is funded by a levy on eligible wages paid to eligible employees. Section 5 of the Payroll Levy Act provides that the rate of the levy is the prescribed percentage of the eligible wages paid. Pursuant to subsection 8(1) of the Payroll Levy Act, the Governor-General may make regulations prescribing a percentage for the purposes of section 5.

The *Coal Mining Industry (Long Service Leave) Payroll Levy Amendment Regulations 2023* (Payroll Levy Amendment Regulations) are made under subsection 8(1) of the Payroll Levy Act.

PURPOSE AND OPERATION

Section 6 of the Administration Act establishes the Coal Mining Industry (Long Service Leave Funding) Corporation (Coal LSL), a corporate Commonwealth entity responsible for administering the Scheme. The functions of Coal LSL include, among other things, the creation and maintenance of the Coal Mining Industry (Long Service Leave) Fund (the Fund) and advising the Minister as to the rates of payroll levy that should be imposed on employers.

Section 6 of the *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018* prescribed 2% of the eligible wages paid as the rate of payroll levy.

Pursuant to the Collection Act, the levy is collected by or on behalf of Coal LSL via monthly returns made by employers who employ eligible employees. Levy monies collected are paid into the Consolidated Revenue Fund and amounts equal to the amounts of levy monies collected are appropriated from Consolidated Revenue and paid into the Fund.

If an eligible employee takes a period of LSL, the employer must pay the employee for the LSL. When an employer makes a payment to an eligible employee in respect of a LSL entitlement covered by the Scheme, the employer is entitled to reimbursement from the Fund. The amount of reimbursement is determined in accordance with the Administration Act and the Employer Reimbursement Rules.

Part 3 of the Administration Act requires that there be a Board of Directors of Coal LSL (the Board) who are required to manage the affairs of Coal LSL and administer the Fund.

Pursuant to section 43 of the Administration Act, the Board is required at least once every three years to obtain actuarial advice as to whether the rate of payroll levy imposed would be adequate to ensure the Fund will be sufficient to reimburse employers in accordance with the

Employer Reimbursement Rules and, if not, what rate would be adequate. When the Board obtains actuarial advice, the Board must notify the Minister of the terms of the advice and make a recommendation to the Minister as to whether the rate of payroll levy needs to be changed and, if so, the rate that should be imposed.

The latest review was completed by Mercer Consulting (Australia) Pty Ltd (Mercer) and examined the Fund at 30 June 2022. Mercer recommended that the levy rate be increased from 2.0% to 2.7% of eligible wages with effect from 1 July 2023.

On 23 December 2022, Coal LSL submitted Mercer's actuarial report to the Minister and recommended the payroll levy rate be increased from 2.0% to 2.7% from 1 July 2023.

The Payroll Levy Amendment Regulations amend the *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018* and in so doing implement Coal LSL's recommendation that the payroll levy rate be increased from 2.0% to 2.7% of eligible wages paid to eligible employees from 1 July 2023.

Details of the Payroll Levy Amendment Regulations are set out in the [Attachment](#).

The Payroll Levy Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*

REGULATORY IMPACT

The Office of Impact Analysis has advised that a Regulation Impact Statement is not required (OIA23-04806).

COMMENCEMENT

The Payroll Levy Amendment Regulations commence on 1 July 2023.

CONSULTATION

The Department of Employment and Workplace Relations consulted with Coal LSL during the drafting of the Payroll Levy Amendment Regulations. Separately, targeted written consultation was undertaken with key employer groups representing those employers anticipated to be affected by the amendments.

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 Amendment Regulations 2023

The *Coal Mining Industry (Long Service Leave) Payroll Levy Amendment Regulations 2023* (the 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 Instrument

The *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (Payroll Levy Act), together with the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (the Administration Act) and the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (Collection Act), provide for a portable long service leave (LSL) scheme for ‘eligible employees’ in the black coal mining industry (the Scheme).

The Scheme is funded by a levy on eligible wages paid to eligible employees. Section 5 of the Payroll Levy Act provides that the rate of the levy is the prescribed percentage of the eligible wages paid.

The Instrument amends the *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018* to provide that for the purposes of section 5 of the Payroll Levy Act, 2.7% is the prescribed percentage of the eligible wages paid.

The effect of the Instrument is to increase the quantum of levy from 2.0% to 2.7% of the eligible wages paid. The Instrument gives effect to a recommendation made by the Coal Mining Industry (Long Service Leave Funding) Corporation that the rate of payroll levy imposed be increased to ensure the sufficiency of the Coal Mining Industry (Long Service Leave) Fund.

Human rights implications

The Instrument engages the right of everyone to the enjoyment of just and favourable conditions of work contained in Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Right of everyone to the enjoyment of just and favourable conditions of work – Article 7 of the ICESCR

Article 7 of the ICESCR enshrines the right of everyone to the enjoyment of just and favourable conditions of work. Paragraph (d) of Article 7 provides that:

The States Parties to the present Covenant recognize 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 Instrument promotes and facilitates this right by providing for a levy on eligible wages paid to eligible employees to fund a portable LSL scheme in the black coal mining industry. Broadly, the scheme enables eligible employees to remain entitled to LSL while employed in the black coal mining industry despite changing employers.

The Instrument operates to increase the rate of levy from 2.0% to 2.7% of the eligible wages paid. This increase has been assessed as necessary to ensure that adequate funds are available to meet the LSL entitlements of eligible employees.

Conclusion

The Instrument is compatible with human rights because it promotes the protection and enjoyment of the right to just and favourable conditions of work.

The Hon. Tony Burke, Minister for Employment and Industrial Relations

Coal Mining Industry (Long Service Leave) Payroll Levy Amendment Regulations 2023

EXPLANATION OF PROVISIONS

Section 1 – Name

This section provides that the name of the instrument is the *Coal Mining Industry (Long Service Leave) Payroll Levy Amendment Regulations 2023* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on 1 July 2023.

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

Schedule 1 – Amendments

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

Item 1 – Section 6

Item 1 amends section 6 of the *Coal Mining Industry (Long Service Leave) Payroll Levy Regulations 2018* by omitting “2%” and substituting “2.7%”. This has the effect of increasing the rate of levy imposed on eligible wages paid to eligible employees.

Item 2 – At the end of Part 3

Item 2 inserts a new section 8 that provides the amendment made by Schedule 1 of the Regulations applies in relation to eligible wages paid on or after 1 July 2023.