



Australian Government
Department of Employment
and Workplace Relations

Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2025

Submission of the Department of
Employment and Workplace Relations to the
Senate Education and Employment
Legislation Committee

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Introduction

The Employment and Workplace Relations Portfolio acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respects to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

The Department of Employment and Workplace Relations (department) welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee on the Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2025 (the Bill). The Bill amends the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* and the *Coal Mining Industry (Long Service Leave) Administration Act 1992*.

Background

The Coal Long Service Leave Scheme (the Scheme) is a Commonwealth portable long service leave scheme for eligible employees in the black coal mining industry. The Scheme is managed by the Coal Mining Industry (Long Service Leave Funding) Corporation (the Corporation).

The Scheme enables employees in the black coal mining industry to access long service leave on the basis of their cumulative service across the industry, rather than service with a single employer. This portability accounts for the high mobility of the black coal mining workforce by ensuring employees keep their accrued entitlements even when they move between employers. The Scheme also strengthens workforce retention by providing one of the most generous long service leave arrangements in Australia.

The Scheme is funded by an employer levy on eligible wages. Levy amounts are paid into the Coal Mining Industry (Long Service Leave) Fund (the Fund) and used to reimburse employers for long service leave payments made under the Scheme. Those levy payments are invested through the Fund to help meet future reimbursement obligations as they fall due. The levy rate is set as a percentage of eligible wages, prescribed through regulation, which is informed by advice from the Corporation to government.

In 2010, amendments were made to the Scheme's enabling legislation, including to the definition of eligible employee, to ensure that the Scheme applied universally in the black coal mining industry. Following these changes, some employers disputed whether particular employees met the statutory

definition of eligible employee under the Scheme. Subsequent Federal Court decisions¹ clarified Scheme coverage for workers performing duties in the black coal mining industry, including workers in roles such as maintenance and supply services.

These decisions confirmed that some employers hold historical levy liabilities for past periods in which levy was not paid. As a result, affected employees did not have qualifying service recorded for those periods and were unable to accrue or access long service leave entitlements under the Scheme.

The Bill responds to the practical impacts of these legacy issues by providing a structured pathway to resolve historical unpaid levy liabilities and connect employees with their entitlements.

The Bill also updates the additional levy rate (which acts as a penalty rate) so it can operate as an effective deterrent and penalty for late levy payments.

A 2021 independent review undertaken by KPMG, titled *Enhancing certainty and fairness: Independent Review of the Coal Mining Industry (Long Service Leave Funding) Scheme*, identified a need for government support to resolve historical onboarding and compliance issues. Recommendation 2 of the report called for the government to resolve legacy issues associated with coverage provisions through targeted legislative amendments. The Bill implements Recommendation 2 by introducing legislated payment arrangements to address these legacy coverage issues

Key elements

Payment arrangements for historical unpaid levy

The Bill establishes a time limited, voluntary pathway for employers with historical unpaid levy to enter an unpaid levy payment arrangement with the Corporation. Payment arrangements are intended to support the identification of eligible employees and relevant employment periods. This will enable service records to be created or updated, and entitlements to be accessed under the Scheme. Payment arrangements also provide a predictable and sustainable timeframe for payment of historical unpaid levy, supporting the financial sustainability of the Fund and affected employers.

Payment arrangements are not available for unpaid levy that is subject to a court order requiring payment. This is because it would not be appropriate for the Bill's waiver and payment arrangement to apply where a court has already determined the liability and ordered the amount to be paid.

The Bill sets clear milestones for employers to move through the payment arrangement process and to support the timely creation or updating of employee service records. Setting such milestones enables employees to be connected with their entitlements in a timely manner while also safeguarding the Fund's sustainability. The process works as follows.

- Within 2 months of the unpaid levy calculation day, employers give written notice to opt in to the payment arrangement process.

¹ *Hitachi Construction Machinery (Australia) Pty Ltd v Coal Mining Industry (Long Service Leave Funding) Corporation* [2024] FCAFC 166.

Orica Australia Pty Ltd v Coal Mining Industry (Long Service Leave Funding) Corporation [2025] FCAFC 65.

- Within 6 months after opting in, employers give the Corporation a draft payment arrangement for review and consultation (extensions of up to 3 months may be available).
- Within 2 months after receiving the draft, the Corporation reviews it and consults with the employer.
- Within 5 months after lodging the draft, employers lodge a final payment arrangement for Board consideration (extensions of up to 6 months may be available).
- Within 30 days after the final arrangement is lodged, the Board decides whether to approve or refuse it against the legislative criteria.² If the Board requests further information, the decision period runs from the deadline for providing that information.

An eligible employer who chooses not to enter a payment arrangement remains fully liable for all unpaid levies. The Corporation may commence proceedings against these employers in the usual way. This includes seeking declarations about employee eligibility to recover unpaid amounts and penalties.

Instalments and waiver

Approved arrangements allow unpaid levy to be paid in legislatively prescribed instalments over a period of up to six years. Where an employer complies with the arrangement and pays 80% of the unpaid levy covered by the arrangement, the remaining 20% is waived. Providing a partial debt waiver is intended to incentivise employers to voluntarily enter the payment arrangement process and promptly resolve legacy debts, enabling eligible employees to be connected with their long service leave entitlements as quickly as possible.

The impact of the waiver is borne by the Fund. There is no diminishment to employee entitlements.

The instalment schedule is front loaded with the first (largest) instalment due 30 days after the payment arrangement's approval. Subsequent instalments gradually decrease over the course of the agreement – from 20% for the first payment to 10% for the final payment. This approach is intended to bring a substantial proportion of historical liabilities into the Fund early, reduce financial risk to the Scheme, and balance timely recovery with employer affordability to support participation and sustained compliance.

Small business employers have a longer period of 6 months before the first instalment falls due. This recognises that small businesses generally have less capacity to absorb a large, early payment and allows them time to manage cash flow and administrative steps.

Employers may apply to postpone an instalment target day by up to six months. This is narrowly confined to where an employer would experience significant financial hardship or where other

² The Corporation's Board must approve a payment arrangement unless it is satisfied, on reasonable grounds, that one or more of the statutory refusal grounds apply. These include where the arrangement does not meet the legislative requirements (including timeframes, form and content, assumptions and the audit report), where the employer has not complied with a request for further information, or where the Corporation would not have sufficient information to work out the long service leave entitlements for an employee covered by the arrangement for the relevant period.

exceptional circumstances exist. Such an approach is designed to support employers facing genuine, temporary pressure, while maintaining clear limits to protect the integrity of the Scheme and the Fund.

Assumptions and service records

Payment arrangements must specify the individual employees covered and the relevant employment periods for each employee.

Given the nature of historical levy liabilities, employers often face incomplete or missing records, especially for long serving employees. These gaps make it difficult to reconstruct detailed payroll information and verify past service.

The Bill addresses this by allowing the use of specified assumptions in some instances where there is insufficient information to calculate unpaid levy amounts and by enabling the Corporation to create or update service records where information is insufficient. In limited cases, the Corporation may make reasonable assumptions based on available information to determine long service leave entitlements covered by an approved arrangement.

Assurance is provided to the Board in approving a payment arrangement through the requirement for payment arrangements to include an auditor's report. The report is required to state that the amount specified in the proposed arrangement is correct and the reasons for that opinion.

Employees can raise concerns directly with the Corporation if they believe their service record is incomplete or their entitlement is understated.

Additional levy for late payments

Under the Scheme, additional levy is payable as a penalty when payroll levy is overdue. The current method for calculating additional levy relies on a reference rate that is no longer published by the Reserve Bank of Australia. The interest rate used to calculate that penalty is obsolete and no longer operates as intended. This makes it harder for the Corporation to enforce late-payment penalties.

The Bill replaces the defunct reference rate with a contemporary benchmark. It sets the additional levy rate at 2% above the cash rate target published by the Reserve Bank of Australia, with capacity for an alternative interest rate to be prescribed by regulation. This restores the additional levy as a functioning late-payment penalty and supports timely compliance with levy obligations.

Impacts on workers

The Bill is intended to connect eligible employees with their long service leave entitlements as quickly as possible by incentivising, and supporting, the onboarding of affected employers and employees into the Scheme. By enabling the Corporation to create or update service records using information provided through payment arrangements, employees can begin accruing long service leave and access existing entitlements without unnecessary delay. The 20% debt waiver will not impact an employee's entitlement under the Scheme.

The Bill allows the Corporation to make reasonable assumptions in cases where older employment records are incomplete, so that long serving employees are not disadvantaged. This approach ensures gaps in historical records do not prevent recognition of qualifying service.

Employees covered by an approved payment arrangement can have their service recorded and entitlements recognised even while the employer is still finalising outstanding levy payments under the arrangement.

Impacts on employers

The Bill provides a structured pathway for affected employers to resolve historical levy liabilities in a manageable and orderly way, with a debt waiver to incentivise their participation.

While an approved arrangement is on foot, penalties and recovery action are paused for amounts covered by the arrangement. However, if an employer fails to comply with an arrangement:

- the entire outstanding unpaid levy amount becomes due and payable the following day
- the amnesty from penalties and enforcement action ends, and
- additional levy becomes payable on the outstanding amount.

The Bill also supports calculation of liabilities through specified assumptions, and the Corporation will assist employers through draft review and guidance, supported by Board approval and an audit requirement.

Financial impact

The Bill does not impact on Commonwealth finances, noting that the Scheme is funded through employer levies.

The 20% waiver will be absorbed by the Fund. The Fund is considered to be in a healthy position. The Corporation's 2024–25 Annual Report noted that it has \$2.64 billion in funds under management and has generated double digit returns in each of the past three financial years (2022-23 to 2024-25).³

The Bill's impact on the Fund is expected to be limited. It includes measures that protect the Fund's position, such as frontloading of payments through larger early instalments, and the six-year limit for completing payments.

Commencement

The Bill commences in two stages. The amendments to the additional levy rate commence the day after Royal Assent. The payment arrangement framework commences on the first day of the second calendar month after Royal Assent to allow time for employer engagement and administrative set up.

Consultation

The department consulted on an exposure draft of the Bill with the Corporation and key industry and worker representative stakeholders on the proposed payment arrangement framework and the additional levy amendment. Consultation was undertaken on a confidential basis. Stakeholders engaged productively in consultation and provided helpful feedback on ways to improve the Bill.

³ 2024-25 Coal LSL Annual Report, p. 15.

The Corporation is expected to continue engaging directly with affected employers during implementation, including by providing guidance during the drafting stages to support accurate and complete payment arrangement plans.

Conclusion

The Bill represents a balanced approach to address legacy issues that resulted from disputes over coverage and compliance under the Scheme. It supports the orderly resolution of historical unpaid levy liabilities and restores an effective additional levy rate for late payments. These measures are intended to improve certainty for employers and ensure eligible employees can access their long service leave entitlements.