



Australian Industry Group

# Inquiry into the *Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2025*

Submission to the Senate Education and  
Employment Legislation Committee

6 March 2026



## Introduction

The Australian Industry Group welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee's inquiry into the *Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2025 (Bill)*.

We support the Bill. It provides a workable and fair approach for all parties.

When passed by Parliament, the Bill will provide a voluntary mechanism for employers with historical levy liabilities to obtain some relief from historical levy debts. The relief includes a timeframe of up to 6 years over which historical levy debts can be paid, the waiving of additional levy (which operates like penalty interest), and the remission of 20% of the levy debt once 80% of the debt has been paid.

Many employers that provide services to coal mining companies have historical levy debts, due to the uncertainty that has existed regarding the coverage of the coal mining industry long service leave scheme (**CLSL Scheme**), particularly businesses that provide maintenance services on coal mining sites. Employers covered by the CLSL Scheme are required to pay a levy of 2.7% on the eligible wages of employees covered by the scheme.

Some of the affected businesses, including some small businesses, are likely to be driven into insolvency, with the loss of many jobs, unless relief is provided. The Bill provides a fair and balanced voluntary relief mechanism.

Australian Industry Group was heavily involved in the Government's lengthy consultation process which resulted in the development of the Bill.

## Uncertain coverage

It is widely acknowledged that the definition of an "eligible employee" in the *Coal Mining Industry (Long Service Leave) Administration Act 1992 (Cth)* has been uncertain since the definition was substantially amended from 1 January 2010. This uncertainty has led to many businesses which provide maintenance services to coal mining industry clients, being unsure about their obligations under the CLSL scheme. The affected businesses have typically continued to apply the long service leave provisions in the relevant State long service leave laws or the National Employment Standards (NES), as they had done for many decades prior to the 2010 amendments.

The 2010 amendments were rushed through Parliament without any scrutiny by the Senate Education and Employment Committee, the National Workplace Relations Consultative Council or the Committee on Industrial Legislation, as usually occurs with workplace relations legislation. The Bill to amend the legislation was introduced into Parliament on 18 November 2009, debated and passed by the House of Representative on 24 November 2009, and then introduced, debated and passed by the Senate on 26 November 2009. There was no consultation with the Australian Industry Group, despite the fact that our organisation is the main representative of contracting businesses that provide maintenance services to coal mining companies.

In the final report of the 2021 [Independent Review into the Coal LSL Scheme](#), conducted by KPMG Law, it was acknowledged that the amended definition of 'eligible employee' had led to significant uncertainty: (emphasis added)

## Analysis

There is consensus that the amended legislative criteria for what constitutes an 'eligible employee' has created significant uncertainty. The source of the uncertainty appears to be the removal of the former reference to a "relevant industrial instrument" and a shift from an eligible employee being one "employed by a company that mines black coal" to simply "employed in the black coal mining industry". The amended reference to the 'black coal mining industry' is problematic, in so far, as that term is open to differing interpretations, and has attracted judicial consideration. Despite attempts by the Corporation to provide clarity through the issuing of Guidance Notes on the meaning of 'eligible employees' a number of stakeholders have commented that changes occurred in guidance material over the period 2013 to present and that the Corporation's guidance has not assisted in addressing the uncertainty. A fit for purpose definition of 'eligible employee' will need to be sufficiently clear, certain and simple as to allow uniform application across the diverse range of stakeholders affected by the Scheme.

There is now more clarity regarding the coverage of the CLSL Scheme, as it relates to maintenance work carried out by contracting firms on coal mining sites, due to the judgment of the Full Court of the Federal Court of Australia in [Hitachi Construction Machinery \(Australia\) Pty Ltd v Coal Mining Industry \(Long Service Leave Funding\) Corporation \[2024\] FCAFC 166](#). In its judgment, the Federal Court held that four employees of Hitachi Construction Machinery (Australia) Pty Ltd who carried out maintenance work on Hitachi machinery on coal mining sites, were covered by the CLSL Scheme.

The Court held that the employees were covered by the following paragraph (b) in the definition of an 'eligible employee' under the relevant legislation:

- (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;

Australian Industry Group Legal represented Hitachi in the Federal Court proceedings.

## Relief provided for in the Bill

The voluntary relief package provided for in the Bill includes the following key elements:

1. An ability for employers to enter into an Unpaid Levy Payment Arrangement (**ULPA**) with the Coal Mining Industry (Long Service Leave Funding) Corporation (**Coal LSL**).
2. A simplified formula for calculating the historical levy debt.
3. Employers who have already made a long service leave payment directly to an employee upon cessation of employment (under a State long service leave law, the NES or an enterprise agreement) can deduct this amount from their historical levy debt.
4. A timeframe of up to 6 years, over which the historical levy debt can be paid.
5. Employers experiencing significant financial hardship or exceptional circumstances can apply to Coal LSL for an extension of time (up to 6 months) to pay an instalment.

6. The waiving of the remaining 20% of the historical levy debt, once 80% of the debt has been paid.
7. Under a ULPA, additional levy (penalty interest) is not payable on the levy debt.
8. Where there are incomplete records for an employee, Coal LSL can use Minister-approved or reasonable assumptions to work out long service leave entitlements for those employees covered by a ULPA.

The relief only applies to levy debts for periods of service up to the date of commencement of the legislative amendments. The relevant amendments commence on the first day of the second calendar month after the day the amendment Act receives Royal Assent.

In relation to levy which is payable for periods of service after the commencement of the amendments, employers are required to comply with their obligations under the CLSL Scheme, including paying levy by the due date for payment. If levy is not paid on time, additional levy (penalty interest) is payable

### Process for accessing the relief

The following stages apply for an employer who wishes to access the relief provided for in the Bill:

Stage	Description	Deadline
Stage 1	Employer to give written notice to Coal LSL of its intention to submit an ULPA	Within 2 months of the 'unpaid levy calculation day', i.e. within 2 months of the day the relevant legislative amendments commence (unless the Minister determines a later day).
Stage 2	Employer to submit a draft ULPA to Coal LSL for review	Within 6 months of the employer providing the written notice referred to in Stage 1
Stage 3	Coal LSL to review the employer's draft ULPA and provide feedback to the employer	Within 2 months of receiving the employer's draft ULPA
Stage 4	Preparing and submitting a final ULPA, including: <ul style="list-style-type: none"> <li>• the details of the individual eligible employees covered by the arrangement;</li> <li>• all periods of qualifying service;</li> <li>• the eligible wages of the eligible employees;</li> <li>• details of any long service leave cessation payments made to eligible employees (e.g. under State long service leave laws);</li> <li>• the levy debt owing; and</li> <li>• an auditor's report verifying the accuracy of the employer's calculations.</li> </ul>	Within 5 months of the employer lodging their draft ULPA
Stage 5	Coal LSL Board determines whether to approve or refuse an employer's ULPA.	Within 30 days of the employer lodging its final ULPA

Payment instalments	20% of the levy debt is payable	30 days after the final ULPA is approved by Coal LSL (6 months for a 'small employer', as defined in the <i>Fair Work Act 2009</i> )
	A further 15% of the levy debt is payable (35% in total)	1 year after the first due date
	A further 15% of the levy debt is payable (50% in total)	2 years after the first due date
	A further 10% of the levy debt is payable (60% in total)	3 years after the first due date
	A further 10% of the levy debt is payable (70% in total)	4 years after the first due date
	A further 10% of the levy debt is payable (80% in total)	5 years after the first due date
Remaining debt	The remaining 20% of the debt is waived	5 years after the first due date

The Bill enables an employer, ahead of some of the above deadlines, to apply to Coal LSL for an extension of time. However, a high bar applies to the granting of any application to extend a payment instalment deadline. The Coal LSL Board can only postpone a payment date if reasonably satisfied that the employer would experience significant financial hardship if the date was not postponed, or other exceptional circumstances justify granting an extension.

If at any stage during the implementation of an ULPA, the arrangement is not complied with by the employer, the remaining outstanding levy debt becomes immediately payable on the day after non-compliance. In these circumstances, additional levy (penalty interest) applies to the debt, and no portion of the debt is waived.

## **A proposed technical amendment to the Bill**

We recommend the following technical amendment to improve the operation of the Bill.

Item 11 of the Bill allows an employer to make reasonable assumptions about the amount and timing of any incentive-based payment or bonus paid to an employee in the past, when working out the amount of 'eligible wages' for the purposes of a ULPA (and hence the amount of the levy debt).

There is no logical reason why the flexibility in Item 11 should be restricted to incentive-based payments and bonuses.

Over 16 years has elapsed since the coverage uncertainty arose and many employers will have difficulty locating all relevant payroll records. The *Fair Work Act 2009* (Cth) requires that payroll records be kept for 7 years (s 535(1)). The record-keeping challenges are recognised in Item 3 of the Bill which allows Coal LSL to make 'reasonable assumption' when determining the long service leave entitlements of employees. However, item 3 only relates to the entitlements of employees – not the obligations of employers.

To address this issue, we recommend that Item 11 in the Bill is amended as follows:

## 11 Assumptions

For the purposes of specifying or including information in an unpaid levy payment arrangement that a person gives to the Corporation:

- (a) the person must assume that, in this Act, “eligible wages” had, at all times before the unpaid levy calculation day, the meaning “eligible wages” has on the commencement day; and
- (b) the person must assume that:
  - (i) paragraph 3B(1)(b) of this Act had never been enacted; and
  - (ii) on the unpaid levy calculation day, the reference in subsection 3B(1) to the greater of the amounts mentioned in paragraph 3B(1)(a) and (b) is a reference to the amount referred to in paragraph 3B(1)(a); and
- (c) if the person does not have sufficient information to work out:
  - (i) the base rate of pay paid to the employee or whether an incentive-based payment or bonus (within the meaning of section 3B of this Act as in force on the commencement day) was paid to an employee; or
  - (ii) the amount or timing of such a payment or bonus;

the person may, in working out the matter mentioned in subparagraph (i) or (ii) of this paragraph, make reasonable assumptions that are based on information about base rates of pay or incentive-based payments or bonuses paid or intended to be paid to a class of employees of which the employee was a member.

The levy calculation method referred to in Item 11(b)(ii) above (i.e. the method for calculating ‘eligible wages’ within a ULPA) is the following method in paragraph 3B(1)(a) of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (Cth):

- (a) the base rate of pay paid to the employee, including incentive-based payments and bonuses; and

As can be seen from the above, there are two payroll components included in paragraph 3B(1)(a): “the base rate of pay paid to the employee” and “incentive-based payments and bonuses”. It is logical for an employer to have the ability to make ‘reasonable assumptions’ about both of these components when preparing a ULPA in circumstances where payroll records are incomplete.

This amendment would benefit employers, employees and Coal LSL, by improving the practicality and workability of the legislation.

Any reasonable assumptions made by an employer would be reflected in the employer’s proposed ULPA. All final ULPAs must be approved by Coal LSL before they take effect.

## Conclusion

We urge the Committee to recommend that the Bill is passed by Parliament, with the above amendment that we have proposed.