



Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009

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Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009

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Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Coal Mining Industry (Long Service Leave Funding) Act 1992* and the *Fair Work Act 2009* (FW Act) to ensure that long service leave entitlements continue to accrue and the costs to coal industry employers of meeting employee long service leave payments can be met from the industry fund.

Background

Long service leave benefits were granted to black coal miners under an industrial award of the former Coal Industry Tribunal in 1949.¹

The then Commonwealth Minister, the Hon J.J. Dedman, introducing the legislation in 1949 to establish excise arrangements to fund the long service leave award provisions, stated that it was impracticable for long service leave costs to be borne solely by individual coal employers and concluded that these would need to be financed on an industry-wide basis.² Other stated objectives

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1. Functions performed by the Coal Industry Tribunal were assumed by the Australian Industrial Relations Commission in 1994 and coal industry awards became awards of the AIRC.
 2. J Dedman, 'Second Reading Speech: States Grants (Coal Mining Industry Long Service Leave) Bill 1949', House of Representatives, *Debates*, p. 1794.

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were the support of labour mobility within the coal industry and protection for employees against employers going out of business or becoming insolvent.

The coal mining long service leave award allowed miners to count retrospective service up to a maximum of 13 years for the purposes of accumulating long service leave. For each year of service, miners were granted one week leave.

After June 1949, each employee would accumulate leave at a rate equivalent to 13 weeks for each 10 years of service, and in 1966 the qualifying period was reduced to 8 years of continuous service.

To finance the coal industry long service leave award provision, a Commonwealth excise was imposed which in 1949 was 6d on 1 ton of coal; by 1982 this was 20c and by 1993 it had become 5 per cent of company payroll levy.³

The Hawke Government commissioned a review of coal mining long service leave funding arrangements in 1990.⁴ It created the Coal Mining Industry (Long Service Leave Funding) Corporation as a Commonwealth statutory corporation in 1992 via the *Coal Mining Industry (Long Service Leave Funding) Act 1992* and related Acts.

The 1992 legislation restructured the operation of the Fund by replacing the excise payable from coal sold, to a scheme based on a rate applied to the industry pay-roll – similar in principle to pay-roll tax. Through a pay-roll levy system, it reimburses employers for payments to eligible employees of long service leave entitlements and advises the Minister as to the rates of levy that should be imposed on employers. The Department of Education and Employment and Workplace Relations (DEEWR) administers the *Coal Mining Industry (Long Service Leave Funding) Act 1992*.

The coal mining long service leave scheme has worked thus:

- Award provisions set the rate of long service leave accumulation in the industry for employees
- The *Coal Mining Industry Long Service Leave Funding Act 1992* creates the Coal Mining Industry (Long Service Leave Funding) Corporation. It operates

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3. P Reith, Review of Black Coal Mining Industry Long Service Leave Funding Arrangements: Report to the Minister for Workplace Relations and Small Business, World Competitive Practices, June, 1998, p. 15.
 4. L Willett, Review of Funding Arrangements – Coal Mining Industry Long Service Leave, unpublished, 1990.

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in New South Wales, Queensland, Western Australia and Tasmania. It is managed by a joint union-management board

- Producers pay payroll levy, currently set at 2.7 per cent of payroll,⁵ to the Coal Mining Industry (Long Service Leave Funding) Corporation via the *Coal Industry (Long Service Leave) Payroll Act 1992*
- Coal Mining Industry (Long Service Leave Funding) Corporation transfers funds into Commonwealth Consolidated Revenue
- Funds are transferred back to Coal Mining Industry (Long Service Leave Funding) Corporation by DEEWR
- Coal Mining Industry (Long Service Leave Funding) Corporation manages funds, tracks entitlements and reimburses employers for their cost of meeting employee long service leave entitlements
- Monthly levy collection transfers are made from the consolidated revenue fund to the central fund.⁶

Particular issues for long service leave entitlements arise under the *Fair Work Act 2009* as long service leave has not been prescribed as an award provision; nor did the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* which framed award modernisation specify long service leave as a modern award provision.

In other words, modern awards (as these are being developed) do not prescribe a long service leave entitlement. Long service leave is prescribed under the National Employment Standards but without a schedule of leave accrual. Actual long service leave entitlements for employees are preserved under the FW Act's National Employment Standards (NES) by preserving instruments such as State and Territory long service leave legislation, 'old' federal and state awards or other instruments.

The Bill's Explanatory Memorandum explains how the Government thus intends to preserve coal mining long service leave entitlements and fund leave acquittals in the absence of award provisions:

... from 1 January 2010, the present industry awards prescribing long service leave will be superseded by modern awards under the *Fair Work*

5. DEEWR, *Annual Report 2008-09*, p. 223. The rate was kept at 5 per cent until 2006.

6. P Reith, *Review of Black Coal Mining Industry Long Service Leave Funding Arrangements: Report to the Minister for Workplace Relations and Small Business*, World Competitive Practices, June, 1998, pp. 6–7.

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Act 2009 (the FW Act). Modern awards will not include long service leave entitlements. Rather, existing award based entitlements will be preserved as a statutory entitlement under the National Employment Standards, pending development of national long service leave arrangements.

As a consequence of these changes, because the (Coal Mining Long Service Leave) Funding Act does not currently cover entitlements determined by the National Employment Standards, employers will not be entitled to reimbursement from the Fund in respect of the long service payments they make to employees.

The amendments contained in the Bill address this situation. The amendments ensure that, from 1 January 2010, employers will be entitled to reimbursement from the Fund in respect of long service payments they make to employees pursuant to the preserved entitlements in the FW Act, in addition to the current arrangements for reimbursement of entitlements paid under industrial instruments and contracts. This is a technical amendment which will not affect employees' long service leave entitlements or employers' long service leave Fund obligations.

This Bill also contains the following amendments to ensure that the scheme applies universally in the black coal mining industry from 1 January 2010:

- the definition of 'black coal mining industry' in the Funding Act (which flows through to related legislation) will be aligned with the definition in the Coal Award; and
- the current long service leave entitlements in The Coal Mining Industry (Production and Engineering) Consolidated Award 1997 (the main industry award) will be extended to all eligible employees who do not otherwise have an award-derived long service leave entitlement.⁷

Main provisions

Schedule 1— Coal Mining Industry (Long Service Leave Funding) Act

Item 1 and **item 2** align, respectively, the definitions of 'black coal mining industry' and 'eligible employee' in the Act with definitions in the new Black Coal Mining Industry Award as it comes into force from 1 January 2010. The definition of eligible employees is widened to include those employed in mine

7. Explanatory Memorandum, Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009, p. 1.

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rescue service as well as prescribed persons employed in the black coal mining industry.

Item 3 and **item 4** define ‘employer’ and ‘employee’ to be national system employers and national system employees as expressed in sections 13 and 14 of the FW Act.

Item 6 repeals subsection 44(3), replacing it with **new subsection 44(3)** which ensures an employer’s entitlement to reimbursement from the Fund for payments made to eligible employees where the employee’s entitlement to long service leave is derived from either:

- section 113 of the FW Act (the NES provision pertaining to long service leave)
- a relevant industrial instrument, or
- a contract of employment.

Item 7 deals with the application of these amendments, meaning employment occurring on or after the commencement of this Schedule.

Schedule 2 — Long service leave entitlement

Provisions under this Schedule extend the operation of the NES long service leave standard (FW Act at section 113) to eligible employees and their employment as if the Coal Mining Industry (Production and Engineering) Consolidated Award 1997 would have applied to the employee immediately before commencement of the FW Act’s National Employment Standards. The effect being that coal mining employees who would not otherwise have had award-derived long service leave, will accrue this entitlement from 1 January 2010.

Concluding comments

The Bill is similar in purpose to the *Long Service Leave Legislation Amendment (Telstra) Act 2009* in preserving long service leave entitlements, in this case, across an industry.

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