



# Coal Mining Industry (Long Service Leave Funding) Scheme

## Equal treatment of casual employees

These amendments implement Recommendation 4 of the KPMG Report: Enhancing certainty and fairness: Independent Review of the Coal Mining Industry (Long Service Leave Funding) Scheme – to ensure casual employees are treated no less favourably than permanent employees under the Coal Mining Industry (Long Service Leave Funding) Scheme.

### What has changed?

The *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* amends the:

- *Coal Mining Industry (Long Service Leave) Administration Act 1992*, and
- *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*.

The amendments ensure that casual employees are treated no less favourably than permanent employees for the purposes of their entitlements under the Scheme:

- A casual employee's casual loading will be applied to levy payments by the employer into the Coal Mining Industry (Long Service Leave) Fund (the Fund) and the payment of the long service leave entitlement by the employer to the employee.
- Updated methods will be provided for calculating the accrual of a casual employees' long service leave entitlement.
- The Coal Mining Industry (Long Service Leave Funding) Corporation (Coal LSL) will be required to publish the levy return form publicly, via a notifiable instrument after consultation with the Secretary of the Department of Employment and Workplace Relations (the department). The levy return form will be publicly available on the Federal Register of Legislation.

### What do these changes mean?

These amendments ensure a casual employee's casual loading will be applied to the levy and to the payment of their long service leave entitlement:

- Employers pay a levy, which is a percentage of an eligible employees' eligible wages to the Scheme, to allow employees in the black coal mining industry to accrue and carry their long service leave entitlement with them between employers.
- The amendments clarify previous confusion from both employers and employees about the meaning of 'eligible wages' within the Scheme, specifically whether that includes casual loading.
- The amendments clarify that 'eligible wages' includes casual loading to address this confusion and ensures casuals are treated fairly under the Scheme.
- The amendments ensure the levy rate and payment of a casual employee's entitlement is calculated on their base rate of pay (including incentive-based payments and bonuses), plus the casual loading (if any) identified in their workplace instrument.
- If the casual employee is paid at a rate that does not identify a specific amount as casual loading (e.g., a rolled-up rate), the eligible wages are the employee's ordinary pay rate including incentive-based payments and bonuses.

The calculation methods for the accrual, payment and reporting of a casual employee's long service leave entitlements have been updated:

- The definition of 'working hours' for the purposes of calculating an employee's qualifying service for accrual of long service leave is different for casual and permanent employees. There is a weekly cap of 35 hours for the purposes of long service leave accrual applied to all employees within the Scheme, which will remain in place. Previously, however, that calculation resulted in circumstances where full-time and casual employees could work, for example, the same number of hours in a fortnight, yet due to rostering patterns a casual employee could accrue fewer entitlements than their permanent counterparts.
- The amendments change the method of accrual of a casual employee's 'working hours' to the total of hours worked per week, averaged over the weeks in a quarter. This ensures a fairer calculation of casual employees' working hours where they may vary week-to-week (sometimes exceeding 35 hours).
- The amendments also expand the meaning of 'qualifying service' to deem that certain weeks where a casual employee does not work due to specific rostering arrangements are periods of qualifying service.
- Reporting periods for employers remain monthly, with a reconciliation process at the end of the quarter to be undertaken by Coal LSL.

Coal LSL will be required to publish the levy reporting form publicly, with departmental consultation:

- This change ensures that Coal LSL's levy reporting forms are available on the Federal Register of Legislation.

## When will these changes come into effect?

The *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023* received Royal Assent on 30 June 2023.

These amendments will take effect on 1 January 2024, unless an earlier date is fixed by proclamation.

For more information on the Protecting Worker Entitlements package visit:

[www.dewr.gov.au/protecting-worker-entitlements](http://www.dewr.gov.au/protecting-worker-entitlements)