



# **Coal Mining Industry (Long Service Leave) Administration Act 1992**

**No. 60, 1992 as amended**

**Compilation start date:** 1 July 2014

**Includes amendments up to:** Act No. 62, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* as in force on 1 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 1 August 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to make provision in relation to long service leave in the black coal mining industry, and for other purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Coal Mining Industry (Long Service Leave) Administration Act 1992*.

### **2 Commencement**

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), sections 35 and 44 to 49 commence on a day or days to be fixed by Proclamation.
- (3) If a section mentioned in subsection (2) does not commence under that subsection within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (4) Subject to subsection (5), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (5) If a provision mentioned in subsection (4) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **3 Object**

The main object of this Act is to make provision in relation to long service leave in the black coal mining industry by:

- (a) establishing a Coal Mining Industry (Long Service Leave Funding) Corporation; and

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- (ab) providing minimum entitlements and rights in respect of long service leave for eligible employees; and
- (b) requiring the Corporation to establish and maintain a Coal Mining Industry (Long Service Leave) Fund and to make payments out of the Fund to employers in the industry to reimburse them for payments made in respect of long service leave; and
- (c) appropriating money for the purposes of the Fund in respect of the amounts of payroll levy paid by employers under the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*.

### 4 Interpretation

- (1) In this Act, unless the contrary intention appears:

**bank** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

**base rate of pay** has the same meaning as in the *Fair Work Act 2009*.

**black coal mining industry** has the same meaning as in the Black Coal Mining Industry Award 2010 as in force on 1 January 2010.

**Board** means the Board of Directors of the Corporation.

**Chairperson** means Chairperson of the Board.

**civil penalty order** has the meaning given by section 49A.

**civil penalty provision** means a provision declared by this Act or the Payroll Levy Collection Act to be a civil penalty provision.

**Corporation** means the corporation established by section 6.

**covers**, in relation to an industrial instrument that is a modern award, enterprise agreement or workplace determination, has the same meaning as in the *Fair Work Act 2009*.

**Deputy Chairperson** means Deputy Chairperson of the Board.



**Director** means a member of the Board.

**eligible employee** means:

- (a) an employee who is employed in the black coal mining industry by an employer engaged in the black coal mining industry, whose duties are directly connected with the day to day operation of a black coal mine; or
- (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; or
- (c) an employee permanently employed with a mine rescue service for the purposes of the black coal mining industry; or
- (d) a prescribed person who is employed in the black coal mining industry;

but does not include a person declared by the regulations not to be an eligible employee for the purposes of this Act.

Note: For prescription or declaration by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

**eligible wages** has the same meaning as in the Payroll Levy Collection Act.

**employee** means a national system employee as defined in section 13 of the *Fair Work Act 2009*.

**employee organisation** has the same meaning as in the *Fair Work Act 2009*.

**employee-representative Director** means a Director referred to in subsection 13(4) or (5).

**employer** means a national system employer as defined in section 14 of the *Fair Work Act 2009*.

**Employer Reimbursement Rules** has the meaning given by section 45.

**employer-representative Director** means a Director referred to in subsection 13(2), (2A) or (3).

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**enterprise agreement** has the same meaning as in the *Fair Work Act 2009*.

**executive officer** of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

**fair work instrument** has the same meaning as in the *Fair Work Act 2009*.

**Federal Circuit Court** means the Federal Circuit Court of Australia.

**Federal Court** means the Federal Court of Australia.

**Finance Minister** means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

**Fund** means the Coal Mining Industry (Long Service Leave) Fund maintained by the Corporation under section 40.

**FWC** means the Fair Work Commission.

**industrial association** has the same meaning as in the *Fair Work Act 2009*.

**industrial instrument** means:

- (a) a fair work instrument; or
- (b) a contract of employment.

**insolvent** has the same meaning as in the *Corporations Act 2001*.

**LSL credit** has the meaning given by subsection 39AB(5).

**LSL dispute** has the meaning given by subsection 39D(1).

**modern award** has the same meaning as in the *Fair Work Act 2009*.

**National Employment Standards** has the same meaning as in the *Fair Work Act 2009*.

**ordinary hours of work** of an eligible employee means:

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- (a) if an industrial instrument that covers the employee specifies, or provides for the determination of, the ordinary hours of work of the employee—those hours; or
  - (b) otherwise—the hours agreed by the employee and his or her employer as the employee's ordinary hours of work;
- regardless of the number of hours actually worked by the employee.

**payroll levy** means the levy imposed by the Payroll Levy Act and includes any amount of additional levy paid under section 7 of the Payroll Levy Collection Act.

**Payroll Levy Act** means the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992*.

**Payroll Levy Collection Act** means the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*.

**previous Fund** means the Coal Mining Industry Long Service Leave Fund established under the *States Grants (Coal Mining Industry Long Service Leave) Act 1949*.

**public holiday** has the same meaning as in the *Fair Work Act 2009*.

**qualifying service** has the meaning given by section 39A.

**salary sacrifice arrangement** has the same meaning as in the Payroll Levy Collection Act.

**waiver agreement** means an agreement made under section 39B and includes such an agreement as varied under section 39BA.

**workplace determination** has the same meaning as in the *Fair Work Act 2009*.

- (2) A regulation is not to be made prescribing a person for the purposes of paragraph (d) of the definition of **eligible employee** in subsection (1) unless the prescribing of that person for those purposes has been recommended to the Minister by the Board.

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**5 Act to bind Crown**

This Act binds the Crown in each of its capacities.

## **Part 2—Establishment, functions and powers of Corporation**

### **6 Establishment of Corporation**

- (1) A corporation, to be known as the Coal Mining Industry (Long Service Leave Funding) Corporation, is established.
- (2) The Corporation:
  - (a) is a body corporate; and
  - (b) is to have a seal; and
  - (c) may sue and be sued in its corporate name.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Corporation. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (3) The seal of the Corporation is to be kept in such custody as the Board directs, and must not be used except as authorised by the Board.
- (4) All courts, judges and persons acting judicially are to take judicial notice of the seal of the Corporation appearing on a document and are to presume that the document was duly sealed.

### **7 Functions of Corporation**

The functions of the Corporation are:

- (a) to establish and maintain the Fund; and
- (b) to make payments into and out of the Fund, and invest the Fund, in accordance with this Act and the Payroll Levy Collection Act; and
- (c) to advise the Minister as to the rates of payroll levy that should be imposed on employers; and
- (d) to monitor payments of the payroll levy and keep the Minister informed of any failure by an employer to pay the payroll levy; and

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- (da) to maintain records relating to:
  - (i) the employment of eligible employees; and
  - (ii) the qualifying service completed by, and the long service leave entitlements of, eligible employees; and
  - (iii) employers of eligible employees; and
  - (iv) amounts that are, or may become, payable to employers under Part 7; and
- (e) to advise the Minister generally on the operation of this Act, the Payroll Levy Act and the Payroll Levy Collection Act; and
- (f) such other functions as are conferred on the Corporation by the Payroll Levy Collection Act.

### **8 Powers of Corporation**

- (1) The Corporation has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:
  - (a) acquire, hold and dispose of real or personal property; and
  - (b) enter into contracts; and
  - (c) occupy, use and control any land or building owned or leased by the Commonwealth and made available for the purposes of the Corporation; and
  - (d) appoint agents and attorneys; and
  - (e) do anything incidental to any of its powers.
- (2) The power of the Corporation to enter into contracts includes the power to enter into a contract with a person under which that person will administer the Fund on behalf of the Board.
- (3) Except with the written consent of the Minister, the Corporation must not enter into a contract under which, or as a result of which, the Corporation would or might be liable to pay, in respect of any one transaction, any commission, brokerage or fee exceeding \$100,000 or, if a higher amount is prescribed, that higher amount.
- (4) Without derogating from the obligation of the Corporation to comply with subsection (3), the validity of a contract is not

affected merely because the contract was entered into in  
contravention of that subsection.

## **Part 3—Board of Directors of the Corporation**

### **Division 1—Constitution of the Board**

#### **9 The Board**

There is to be a Board of Directors of the Corporation.

#### **10 Board to manage affairs of Corporation**

Subject to section 8, the Board is to manage the affairs of the Corporation and administer the Fund.

#### **11 Guidelines for managing affairs of Corporation**

- (1) This section does not apply to the investment of the Fund or payments out of the Fund under section 44.
- (2) The Board must prepare guidelines for the management of the affairs of the Corporation and submit them to the Minister for approval.
- (3) The Minister may approve the guidelines or refer them back to the Board for revision in accordance with the directions of the Minister.
- (4) If the guidelines are referred back to the Board, the Board must revise the guidelines and submit the revised guidelines to the Minister for approval.
- (5) Subsection (3) applies to revised guidelines submitted under subsection (4) as it applies to guidelines submitted under subsection (2).

#### **12 Constitution of the Board**

- (1) The Board consists of 6 Directors.
  - (2) The performance of a function or the exercise of a power by the Corporation or the Board is not affected by:
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- (a) a vacancy in the office of Chairperson or Deputy Chairperson; or
- (b) any vacancy in the membership of the Board.

### **13 Appointment of Directors**

- (1) The Directors are to be appointed by the Minister and hold office on a part-time basis.
- (2) One Director is to be appointed to represent the companies engaged in black coal mining in New South Wales or Tasmania.
- (2A) One Director is to be appointed to represent the companies engaged in black coal mining in Queensland.
- (3) One Director is to be appointed to represent companies engaged in black coal mining in Western Australia.
- (4) Two Directors are to be appointed to represent the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union.
- (5) One Director is to be appointed to represent the following organisations:
  - (a) the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia;
  - (b) the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union;
  - (c) the Association of Professional Engineers, Scientists and Managers Australia;
  - (d) the Colliery Officials Association of New South Wales;
  - (e) the Mine Managers Association of Australia.
- (7) If the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union changes its name or merges with another Division of that Union, the reference in subsection (4) to the first-mentioned Division is taken to be a reference to that Division under its new name or to the other Division, as the case requires.

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- (8) If an organisation referred to in subsection (4) or (5):
  - (a) changes its name; or
  - (b) merges with another organisation; or
  - (c) is succeeded by another organisation;the reference in that subsection to the first-mentioned organisation is taken to be a reference to that organisation under its new name or to the other organisation, as the case requires.
- (9) A person to be appointed as a Director as mentioned in subsection (2), (2A), (3), (4) or (5) is to be a person who the Minister considers, after consulting the bodies or organisations that the person is to represent, is suitable to represent those bodies or organisations, as the case may be.

**14 Appointment of Chairperson and Deputy Chairperson**

- (1) One of the Directors is to be appointed to be the Chairperson of the Board and another of them to be the Deputy Chairperson of the Board.
- (2) The first appointment of the Chairperson and the first appointment of the Deputy Chairperson are to be made by the Minister.
- (3) Subsequent appointments are to be made by the Board.
- (4) Subject to subsection (5), a Director appointed to be the Chairperson or Deputy Chairperson is to be so appointed for such period not exceeding 4 years as is set out in the instrument of his or her appointment.
- (5) In making an appointment under subsection (1) and in fixing the period of such an appointment, the Minister or the Board, as the case may be, must try to ensure, as far as is reasonably practicable, that:
  - (a) the Chairperson and the Deputy Chairperson are appointed from different categories of Directors; and
  - (b) the offices of Chairperson and Deputy Chairperson are rotated every 4 years between the two categories of Directors.

- (6) For the purposes of subsection (5), employee-representative Directors constitute one category of Directors and employer-representative Directors constitute another category of Directors.

## **Division 2—Meetings of the Board**

### **15 Convening of meetings**

- (1) The Board is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chairperson:
  - (a) may, at any time, convene a meeting of the Board; and
  - (b) must, on receipt of a written request from the Minister or at least one Director, convene a meeting of the Board.

### **16 Presiding at meetings**

- (1) The Chairperson is to preside at all meetings at which he or she is present.
- (2) In the absence of the Chairperson:
  - (a) if the Deputy Chairperson is present—the Deputy Chairperson is to preside; or
  - (b) otherwise—the Directors present are to elect one of their number to preside.

### **17 Quorum**

- (1) At a meeting, 4 Directors (including at least 2 employee-representative Directors and 2 employer-representative Directors) constitute a quorum.
- (2) If, as a result of the operation of rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*, it will not or may not be possible to constitute a quorum at a particular meeting as required by subsection (1) of this section, a quorum at that meeting is constituted by such number of Directors (whether or not including any employee-representative Directors or employer-representative Directors) as the Minister, acting on a written recommendation of the Chairperson or, in the absence of the Chairperson, of the Deputy Chairperson, determines.

## **18 Voting at meetings**

At a meeting:

- (a) all questions are to be decided by a two-thirds majority of votes of the Directors present and voting, being a majority that includes 2 employee-representative Directors and 2 employer-representative Directors; and
- (b) the Director presiding has a deliberative vote but, in the event of an equality of votes, does not have a casting vote.

## **19 Conduct of meetings**

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

## **20 Resolutions without meetings**

- (1) If a two-thirds majority of the Directors (being a majority that includes 2 employee-representative Directors and 2 employer-representative Directors) sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a duly constituted meeting of the Board held on the day the document was signed, or, if the Directors signed the document on different days, on the last of those days.
- (2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (3) A Director must not sign a document containing a statement in favour of a resolution if the resolution concerns a matter in which the Director has a material personal interest.

**Part 3** Board of Directors of the Corporation

**Division 2** Meetings of the Board

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**21 Records relating to meetings**

The Board is to keep minutes of its meetings and records of resolutions taken to have been passed in accordance with section 20.

## **Division 3—Provisions relating to Directors**

### **23 Term of appointment**

A Director is to be appointed for a period not exceeding 4 years, but is eligible for re-appointment.

### **24 Remuneration and allowances**

- (1) A Director is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination is in operation, such remuneration as is prescribed.
- (2) A Director is to be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **25 Leave of absence**

- (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as to remuneration or otherwise as the Minister considers appropriate.
- (2) The Chairperson may grant leave of absence to another Director on such terms and conditions as to remuneration or otherwise as the Chairperson considers appropriate.

### **26 Resignation**

- (1) A Director may resign by writing signed by the Director and delivered to the Minister.
- (2) The Chairperson or Deputy Chairperson may resign from the office of Chairperson or Deputy Chairperson by writing signed by him or her and delivered to the Minister but a resignation from such an office does not affect his or her appointment as a Director.

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**27 Outside employment**

A Director must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Director's functions.

**28 Termination of appointment**

- (1) The Minister may terminate a Director's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate a Director's appointment if:
  - (a) the bodies or organisations that the Director was appointed to represent request the Minister in writing to terminate the appointment; or
  - (b) the Director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (c) the Director fails, without reasonable excuse, to comply with an obligation imposed by subsection 20(3) or section 27.

Note: The appointment of a Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

**29 Terms and conditions of appointment not provided for by Act**

A Director holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

**31 Acting Chairperson and acting Deputy Chairperson**

- (1) If:
  - (a) there is a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or



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- (b) the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his or her office;

the Deputy Chairperson is to act as Chairperson.

Note: For rules that apply to persons acting as the Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister may appoint a Director to act as Deputy Chairperson:
  - (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia, is acting as Chairperson or is, for any other reason, unable to perform the duties of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (3) The Minister may determine the terms and conditions, other than terms and conditions relating to remuneration and allowances, applying to a person acting as Chairperson or as Deputy Chairperson.
- (4) A person acting as Chairperson or as Deputy Chairperson is to be paid the same remuneration and allowances as are payable to the Chairperson or the Deputy Chairperson, as the case requires.

### 32 Acting Director

- (1) If a Director (the ***absent Director***) is, or is expected to be, absent from duty or from Australia, or for any other reason unable to perform his or her duties as Director, the Minister may appoint a person to act as Director, during the period of the absence or inability, to represent the bodies or organisations that the absent Director was appointed to represent.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) A person to be appointed to act as a Director as mentioned in subsection (1) is to be a person who the Minister considers, after

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consulting the bodies or organisations that the absent Director was appointed to represent, is suitable to represent those bodies or organisations.

## **Part 4—Staff of the Corporation**

### **33 Employees**

- (1) The Corporation may engage such employees as are necessary for the performance of its functions and the exercise of its powers.
- (2) The terms and conditions of employment are to be determined by the Board.

### **34 Consultants**

- (1) The Corporation may engage persons who have suitable qualifications and experience as consultants to the Corporation.
- (2) The terms and conditions of engagement are to be determined by the Board.

## Part 5—Finance

### 35 Transfer of previous Fund to Corporation

- (1) Upon the commencement of this section, the amount in the Trust Fund standing to the credit of the previous Fund is payable to the Corporation, and the Finance Minister must arrange for the payment to be made as soon as practicable after that commencement.
- (2) Upon the making of the payment, the *States Grants (Coal Mining Industry Long Service Leave) Act 1949* is, by force of this subsection, repealed.
- (3) The Minister must cause notice of the repeal to be published in the *Gazette*.
- (4) Any assets in which money that formed part of the previous Fund is invested at the commencement of this section vest in the Corporation by force of this subsection and form part of the Fund.
- (5) Without limiting the generality of subsection (4), any money that, if the previous Fund continued in existence, would be, or would become, payable to the previous Fund is, or becomes, payable to the Fund.

### 36 Payments to Corporation

- (1) Subject to subsection (2), there are payable out of the Consolidated Revenue Fund to the Corporation amounts equal to amounts of payroll levy paid under the Payroll Levy Collection Act.
- (2) The amounts that, but for this subsection, would be payable out of the Consolidated Revenue Fund to the Corporation under subsection (1) are reduced by such amount or amounts as are determined by the Minister to represent the expenses incurred by the Commonwealth in procuring the enactment, and in connection with the administration, of this Act, the Payroll Levy Act and the Payroll Levy Collection Act.

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- (3) The Finance Minister may give directions as to the amounts and times of payments to the Corporation under this section.
- (4) The Consolidated Revenue Fund is appropriated for the purposes of this section.

**37 Borrowing**

- (1) Subject to this section, the Corporation may, with the written approval of the Minister and not otherwise, borrow money on terms and conditions specified in, or consistent with, the approval.
- (2) The approval of the Minister is not required for a borrowing if the sum of:
  - (a) the amount to be borrowed; and
  - (b) any amounts previously borrowed by the Corporation for the same purpose as the first-mentioned borrowing;does not exceed \$50,000 or, if a higher amount is prescribed, that higher amount.
- (3) Money may be borrowed wholly or partly in foreign currency.
- (4) Without derogating from the obligation of the Corporation to comply with this section, the validity of a borrowing is not affected merely because the borrowing was made in contravention of this section.

**38 Corporation may give security**

The Corporation may give security over the whole or any part of its assets for the performance of any obligation incurred under section 37.

**39 Application of the *Public Governance, Performance and Accountability Act 2013***

Section 59 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by corporate Commonwealth entities) does not apply to the Corporation.

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Note: Money standing to the credit of the Fund is relevant money for the purposes of the *Public Governance, Performance and Accountability Act 2013*. (See section 40 of this Act and the definition of **relevant money** in section 8 of the *Public Governance, Performance and Accountability Act 2013*.)

## **Part 5A—Entitlement to long service leave**

### **Division 1—Entitlement, amount and grant etc.**

#### **39A Entitlement to long service leave**

##### *General rule*

- (1) If an eligible employee completes a period of qualifying service that is, or periods of qualifying service that add up to, at least 8 years, the employee is entitled to long service leave under this Part in respect of that period, or those periods, of qualifying service.

##### *Meaning of **qualifying service***

- (2) A period of **qualifying service** by an employee is a period during which the employee is an eligible employee of one or more employers, but does not include any of the following:
  - (a) a period of unauthorised absence;
  - (b) a period of unpaid leave or unpaid authorised absence, other than:
    - (i) a period of absence under Division 8 of Part 2-2 of the *Fair Work Act 2009* (which deals with community service leave); or
    - (ii) a period of stand down under Part 3-5 of the *Fair Work Act 2009*, under an enterprise agreement that applies (within the meaning of that Act) to the employee, or under the employee's contract of employment; or
    - (iii) a period during which the employee is absent from work because of a personal illness, or a personal injury, for which the employee is receiving compensation under a law of the Commonwealth, a State or a Territory that is about workers' compensation or under an industrial instrument; or
    - (iv) a period of leave or absence of a kind prescribed by the regulations for the purposes of this paragraph;

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- (c) if the employee ceases to be an eligible employee for a continuous period (a **break period**) of 8 years or more—any period before the break period during which the employee was an eligible employee;
  - (d) any period during which a waiver agreement is in effect between the employee and an employer;
  - (e) any other period of a kind prescribed by the regulations for the purposes of this paragraph.
- (3) For the purposes of subsection (2), if a casual employee is an eligible employee at any time during a week, the employee is taken to have been an eligible employee for the whole week.

*Effect of break period once entitled to long service leave*

- (4) If:
- (a) an employee ceases to be an eligible employee for a continuous period of 8 years or more; and
  - (b) at the time of so ceasing, the employee is entitled to long service leave under subsection (1) in respect of a period, or periods, of qualifying service (the employee's **previous qualifying service**); and
  - (c) the employee becomes an eligible employee again;
- paragraph (2)(c) does not apply in respect of the employee's previous qualifying service.

**39AA Amount of long service leave**

- (1) The number of hours of long service leave that an eligible employee is entitled to for a week of qualifying service completed by the employee is worked out using the formula in subsection (2).
- (2) The formula is:

$$\frac{13}{416} \times \text{Working hours}$$

where:

**working hours** means:



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- (a) if the employee is a full-time employee at all times during the week—35 hours; or
- (b) if the employee is a part-time employee at any time during the week—the lesser of the following amounts (or either of them if they are equal):
  - (i) the total number of ordinary hours of work of the employee as a part-time employee for the week;
  - (ii) 35 hours; or
- (c) if the employee is a casual employee at any time during the week and paragraph (b) does not apply—the lesser of the following amounts (or either of them if they are equal):
  - (i) the total number of hours worked by the employee as a casual employee during the week;
  - (ii) 35 hours.

**39AB Grant of long service leave**

- (1) An eligible employee may apply, in writing, to his or her employer to take a period of long service leave.
- (2) The employee may only apply to take a period of long service leave that:
  - (a) is a single continuous period of at least 14 days (being equivalent to a number of hours of long service leave as agreed with the employer); and
  - (b) does not exceed the employee's LSL credit at the time the leave is to be taken.

Note: An employee is taken not to be on long service leave on public holidays and during certain other periods of absence (see section 39AE).

- (3) As soon as practicable, but no later than 14 days after the application is made, the employer must give the employee a written response:
  - (a) stating whether or not the employer grants the long service leave; and
  - (b) if the employer refuses to grant the long service leave—giving details of the reasons for the refusal.

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- (4) The employer may refuse to grant long service leave only on reasonable business grounds.

### *Meaning of **LSL credit***

- (5) For the purposes of this section, the long service leave credit (**LSL credit**) of an eligible employee on a day (the **calculation day**) is the number of hours worked out as follows:
- (a) first, add together the number of hours of long service leave that the employee is entitled to under section 39AA for each week of qualifying service completed by the employee before the calculation day;
  - (b) then, subtract the number of hours of long service leave (if any) previously granted to the employee under this section.

Note: The number of hours of long service leave that an employee is entitled to in respect of certain qualifying service may be affected by section 39CE.

### *Civil penalty provisions*

- (6) Subsections (3) and (4) are **civil penalty provisions**.

Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

## **39AC Payment for long service leave**

- (1) If an eligible employee takes a period of long service leave, the employer must pay the employee for the long service leave no less than an amount that is equal to the base rate of pay (including incentive-based payments and bonuses) that would have been payable to the employee during the period had the employee not taken the leave.

- (2) Subsection (1) is a **civil penalty provision**.

Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

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- (3) In this section:
- (a) a reference to the base rate of pay payable to an employee is a reference to the employee's base rate of pay before any amounts are deducted under a salary sacrifice arrangement; and
  - (b) a reference to an incentive-based payment in relation to an employee is a reference to a payment of that kind that is paid to the employee at least once a month; and
  - (c) a reference to a bonus in relation to an employee is a reference to a bonus that is paid to the employee at least once a month.

**39AD Manner of payment for long service leave**

- (1) If an eligible employee takes a period of long service leave, the employer must pay the employee for the long service leave:
- (a) at the same time as the employer would have paid the employee during the period if the employee had not taken the leave; or
  - (b) if the employee requests to be paid in advance for the whole period and an industrial instrument that covers the employee expressly allows the employee to be paid in advance for long service leave—in accordance with the employee's request.
- (2) Subsection (1) is a *civil penalty provision*.

Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

**39AE Public holidays etc. not to count as long service leave**

- (1) If the period during which an eligible employee takes long service leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes:
- (a) the employee is taken not to be on long service leave on that whole day; and
  - (b) the public holiday is taken not to break the continuity of the period of long service leave.

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- (2) If the period during which an eligible employee takes long service leave includes a period of absence from employment under Division 8 of Part 2-2 of the *Fair Work Act 2009* (which deals with community service leave):
- (a) the employee is taken not to be on long service leave for the period of absence; and
  - (b) the period of absence is taken not to break the continuity of the period of long service leave.

## **Division 2—Waiver agreements**

### **39B Waiver agreements may be made with certain employees**

- (1) An eligible employee of a kind prescribed by the regulations may make an agreement (a ***waiver agreement***) with his or her employer that provides for the employer to do either or both of the following:

- (a) pay additional remuneration to the employee or as directed by the employee;
- (b) make additional contributions, for the employee's benefit, to a superannuation fund nominated by the employee;

in lieu of long service leave that the employee would be entitled to under this Part in respect of qualifying service that the employee would have otherwise completed.

Note 1: A period of qualifying service by an employee does not include any period during which a waiver agreement is in effect between the employee and an employer (see paragraph 39A(2)(d)).

Note 2: An employer is not required to pay payroll levy in respect of eligible wages paid to an employee for any period during which a waiver agreement is in effect between the employee and an employer (see section 39BD).

- (2) The value of the additional remuneration, contributions, or both, must be equal to, or greater than, the amount of payroll levy that would have been payable by the employer in respect of eligible wages paid to the employee had the waiver agreement not been in effect.
- (3) The waiver agreement must:
- (a) be in writing; and
  - (b) include terms dealing with the matters set out in subsection (4); and
  - (c) be signed by both the employee and employer; and
  - (d) specify the date on which the agreement is made; and
  - (e) specify the date on which the agreement takes effect (being a date after the agreement is lodged with the Corporation under subsection (5)).

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- (4) For the purposes of paragraph (3)(b), the matters are:
  - (a) the frequency of the additional payments, contributions or both; and
  - (b) if, because of a change in circumstances, the agreement no longer complies with subsection (2)—how the agreement is to be varied under section 39BA.
- (5) As soon as practicable after the waiver agreement is made, the employer must lodge it with the Corporation.
- (6) A waiver agreement between an employee and an employer ceases to have effect if:
  - (a) the Corporation refuses to approve it (see subsection 39BC(5)); or
  - (b) it is terminated under section 39BB; or
  - (c) the employee ceases to be an eligible employee of a kind mentioned in subsection (1).

**39BA Variation of waiver agreements**

- (1) If a waiver agreement is in effect between an employee and an employer, the employee and employer may agree to vary the agreement.
- (2) The variation must:
  - (a) be in writing; and
  - (b) be signed by both the employee and employer; and
  - (c) specify the date on which the variation is made; and
  - (d) specify the date on which the variation takes effect (being a date after the variation is lodged with the Corporation under subsection (3)).
- (3) As soon as practicable after the variation is made, the employer must lodge the varied waiver agreement with the Corporation.

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**39BB Termination of waiver agreements**

- (1) If a waiver agreement is in effect between an employee and an employer, the employee and employer may agree to terminate the agreement.
- (2) The employer may only refuse to terminate a waiver agreement if the employer has reasonable grounds to do so.
- (3) The agreement to terminate must:
  - (a) be in writing; and
  - (b) be signed by both the employee and employer; and
  - (c) specify the date on which the waiver agreement terminates.
- (4) As soon as practicable after the agreement to terminate is made, the employer must give the Corporation written notice of the termination, including the date on which the waiver agreement terminates.

**39BC Approval of waiver agreements and variations by the Corporation**

- (1) Within 30 days after a waiver agreement, or a varied waiver agreement, is lodged with the Corporation, the Board must:
  - (a) decide to approve or refuse to approve the agreement or variation; and
  - (b) give the parties to the agreement or varied agreement written notice of the decision.
- (2) If the Board does not make a decision within the 30 day period mentioned in subsection (1), the Board is taken to have approved the waiver agreement or variation (as the case may be).
- (3) The Board may only decide to approve a waiver agreement or variation if the Board is satisfied that:
  - (a) the employee to whom the agreement or variation relates is an eligible employee of a kind mentioned in subsection 39B(1); and

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- (b) there are no reasonable grounds for believing that the agreement or variation has not been genuinely agreed to by the parties; and
    - (c) the terms of the agreement, or varied agreement:
      - (i) do not contravene subsection 39B(2); and
      - (ii) adequately deal with the matters set out in subsection 39B(4).
  - (4) If the Board refuses to approve a waiver agreement or a variation, the notice given under paragraph (1)(b) must:
    - (a) set out the reasons for the refusal; and
    - (b) include a statement that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the Board's decision.
- Note: Section 52B provides that an application may be made to the Administrative Appeals Tribunal for review of a decision of the Board to refuse to approve a waiver agreement or a variation.
- (5) If the Board refuses to approve a waiver agreement, the agreement ceases to have effect on the day the parties to the agreement are notified of the refusal under paragraph (1)(b).
  - (6) If the Board refuses to approve a variation of a waiver agreement, the variation ceases to have effect on the day the parties to the variation are notified of the refusal under paragraph (1)(b).

**39BD Effect of waiver agreements on payroll levy**

For any period during which a waiver agreement is in effect between an eligible employee and an employer, the employee is taken not to be an eligible employee for the purposes of sections 4 and 6 of the Payroll Levy Act.

Note: This means that an employer of an eligible employee is not required to pay payroll levy in respect of eligible wages paid to the employee while the waiver agreement is in effect. However, returns made by the employer under section 5 of the Payroll Levy Collection Act while the waiver agreement is in effect will still need to include information in relation to the employee.



**39BE Employer must comply with waiver agreement**

- (1) If a waiver agreement is in effect between an employee and an employer, the employer must pay the additional remuneration or make the additional contributions or both pay the additional remuneration and make the additional contributions (as the case may be) in accordance with the terms of the agreement.

- (2) Subsection (1) is a ***civil penalty provision***.

Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

## **Division 3—Payments on cessation of employment as an eligible employee**

### **39C Payment on cessation—general**

#### *Payment to employee*

- (1) If:
- (a) an employee ceases to be an eligible employee (other than by death); and
  - (b) at the time of so ceasing, the employee has a period of untaken long service leave under this Part; and
  - (c) at any time after so ceasing, the employee requests the employer, in writing, to make a payment under this section;
- the employer must, within 30 days after the request is made, pay the employee no less than the amount that would have been payable to the employee under this Part had the employee taken that period of long service leave immediately before ceasing to be an eligible employee, less any amount previously paid to the employee under this section.

#### *Payment to legal personal representative*

- (2) If:
- (a) the employee dies without making a request under subsection (1) in respect of a period of untaken long service leave; and
  - (b) at any time after the employee's death, the employee's legal personal representative requests the employer, in writing, to make a payment under this section;
- the employer must, within 30 days after the request is made, pay the employee's legal personal representative no less than the amount that would have been payable to the employee under subsection (1) as if the employee had made a request under that subsection in respect of all the untaken long service leave.

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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- Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.
- Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

**39CA Payment on cessation—ill health and retirement**

- (1) This section applies if:
- (a) an employee ceases to be an eligible employee:
    - (i) because of ill health; or
    - (ii) because he or she retires from the black coal mining industry on or after reaching the age of 60 years; and
  - (b) at the time of so ceasing, the employee has completed a period, or periods, of qualifying service in respect of which the employee is not entitled to long service leave under this Part; and
  - (c) at any time after so ceasing, the employee requests the employer, in writing, to make a payment under this section.
- (2) The employer must, within 30 days after the request is made, pay the employee no less than the amount that would have been payable to the employee under this Part had the employee:
- (a) been entitled to long service leave for the period, or periods, of qualifying service; and
  - (b) taken that long service leave immediately before ceasing to be an eligible employee;
- less any amount previously paid to the employee under this section.
- (3) Subsection (2) is a *civil penalty provision*.

- Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.
- Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

**39CB Payment on cessation—redundancy**

- (1) This section applies if:
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- (a) an employee ceases to be an eligible employee because he or she is made redundant; and
  - (b) at the time of so ceasing, the employee has completed a period, or periods, of qualifying service (being a period that is, or periods that add up to, at least 6 years) in respect of which the employee is not entitled to long service leave under this Part; and
  - (c) at any time after so ceasing, the employee requests the employer, in writing, to make a payment under this section.
- (2) The employer must, within 30 days after the request is made, pay the employee no less than the amount that would have been payable to the employee under this Part had the employee:
  - (a) been entitled to long service leave for the period, or periods, of qualifying service; and
  - (b) taken that long service leave immediately before ceasing to be an eligible employee;less any amount previously paid to the employee under this section.
- (3) Subsection (2) is a ***civil penalty provision***.
  - Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.
  - Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

**39CC Payment on death**

- (1) This section applies if:
  - (a) an eligible employee dies; and
  - (b) at the time of the employee's death, either of the following apply:
    - (i) the employee has a period of untaken long service leave under this Part;
    - (ii) the employee has completed a period, or periods, of qualifying service in respect of which the employee is not entitled to long service leave under this Part; and

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- (c) at any time after the employee's death, the employee's legal personal representative requests the employer, in writing, to make a payment under this section.
- (2) The employer must, within 30 days after the request is made, pay the employee's legal personal representative no less than:
  - (a) if subparagraph (1)(b)(i) applies—the amount that would have been payable to the employee under this Part had the employee taken all the untaken long service leave immediately before the employee died; and
  - (b) if subparagraph (1)(b)(ii) applies—the amount that would have been payable to the employee under this Part had the employee:
    - (i) been entitled to long service leave for the period, or periods, of qualifying service; and
    - (ii) taken all that long service leave immediately before the employee died.
- (3) Subsection (2) is a ***civil penalty provision***.

Note 1: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

**39CD Effect of payment in respect of untaken long service leave**

If an employee, or the legal personal representative of an employee, is paid an amount under section 39C or 39CC in respect of a period of untaken long service leave, the payment extinguishes the employee's entitlement under this Part to the period of untaken long service leave.

**39CE Effect of payment in respect of qualifying service**

- (1) This section applies in relation to a period of qualifying service completed by an employee if, on ceasing to be an eligible employee, the employee is paid an amount under section 39CA or 39CB in respect of the period of qualifying service.

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- (2) If the employee becomes an eligible employee again, the period of qualifying service continues to be a period of qualifying service for the purposes of subsection 39A(1) unless the employee ceased to be an eligible employee for a continuous period of 8 years or more.
- (3) If the employee becomes entitled to long service leave under this Part in respect of the period of qualifying service, the number of hours of long service leave that the employee is entitled to under section 39AA for the period of qualifying service is taken to be nil.
- (4) Nothing in this section requires more than 1 payment to be made under this Division in respect of the period of qualifying service.

## **Division 4—Remedies relating to long service leave**

### **Subdivision A—The Fair Work Commission**

#### **39D FWC may deal with disputes relating to long service leave**

- (1) Despite subsection 595(1) of the *Fair Work Act 2009*, the FWC may deal with a dispute (an ***LSL dispute***) about matters in relation to long service leave under this Part.
- (2) For the purposes of the FWC dealing with an LSL dispute, the *Fair Work Act 2009* applies as if:
  - (a) the dispute were a dispute in relation to the National Employment Standards; and
  - (b) subsection (1) of this section were a term referred to in section 738 of that Act; and
  - (c) a reference in subsection 739(5) of that Act to “this Act” were a reference to “the *Coal Mining Industry (Long Service Leave) Administration Act 1992*”.

### **Subdivision B—Court orders**

#### **39DA Employees etc. may apply to court in respect of certain contraventions**

##### *Employees*

- (1) A person who is or was an eligible employee may apply to the Federal Court or the Federal Circuit Court for an order under section 39DB in relation to a contravention or proposed contravention of a civil penalty provision of this Part if the person:
  - (a) is affected by the contravention; or
  - (b) will be affected by the proposed contravention.

##### *Employee organisations*

- (2) An employee organisation may apply to the Federal Court or the Federal Circuit Court for an order under section 39DB in relation

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to a contravention or proposed contravention of a civil penalty provision of this Part if:

- (a) the organisation has a member who:
  - (i) is affected by the contravention; or
  - (ii) will be affected by the proposed contravention; or
- (b) the organisation is entitled to represent the industrial interests of a person who:
  - (i) is affected by the contravention; or
  - (ii) will be affected by the proposed contravention.

*Industrial associations*

- (3) An industrial association may apply to the Federal Court or the Federal Circuit Court for an order under section 39DB in relation to a contravention or proposed contravention of a civil penalty provision of this Part if:
  - (a) the industrial association:
    - (i) is affected by the contravention; or
    - (ii) will be affected by the proposed contravention; or
  - (b) the industrial association is entitled to represent the industrial interests of a person who:
    - (i) is affected by the contravention; or
    - (ii) will be affected by the proposed contravention.

**39DB Orders that can be made by the court**

The Federal Court or the Federal Circuit Court may, on application under section 39DA, make one or more of the following orders in relation to a person who has contravened or proposes to contravene a civil penalty provision of this Part:

- (a) an order awarding compensation for loss that a person has suffered because of the contravention or proposed contravention;
- (b) an order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of the contravention or proposed contravention;



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- (c) any other order that the court considers necessary to stop, or rectify the effects of, the contravention or proposed contravention.

## **Division 5—Relationship with other laws and industrial instruments**

### **39E Relationship with the National Employment Standards**

Despite section 61 of the *Fair Work Act 2009*, this Part applies in relation to eligible employees and their employers to the exclusion of Division 9 of Part 2-2 of that Act.

### **39EA Relationship with State and Territory long service leave laws**

This Part applies in relation to eligible employees and their employers to the exclusion of a State or Territory law that deals with long service leave.

### **39EB Relationship with industrial instruments**

This Part establishes minimum entitlements and rights in respect of long service leave for an eligible employee and is not intended to override entitlements or rights in respect of long service leave under an industrial instrument that covers the employee.

## **Division 6—Miscellaneous**

### **39F Entitlements and rights in respect of long service leave subject to alteration, cancellation etc.**

- (1) A person has an entitlement to long service leave under this Part on the basis that:
  - (a) the entitlement may be cancelled, revoked, terminated or varied by or under later legislation; and
  - (b) no compensation is payable if the entitlement is cancelled, revoked, terminated or varied.
- (2) A person has a right to receive a payment in respect of long service leave under this Part on the basis that:
  - (a) the right may be cancelled, revoked, terminated or varied by or under later legislation; and
  - (b) no compensation is payable if the right is so cancelled, revoked, terminated or varied.

## **Part 6—The Coal Mining Industry (Long Service Leave) Fund**

### **40 Establishment of the Fund**

- (1) The Corporation must establish and maintain in its books of account a fund to be known as the Coal Mining Industry (Long Service Leave) Fund.
- (2) All money received by the Corporation other than payments made by employers in respect of payroll levy is to be paid into, and is taken to be part of, the Fund.
- (3) Payment of money into a bank account maintained by the Corporation constitutes payment into the Fund.
- (4) The Corporation may create separate notional accounts within the Fund to reflect payroll levy paid by employers before 1 January 2012 and such levy paid on or after 1 January 2012.

### **41 Application of the Fund**

The Fund is to be applied only in making payments that are required or permitted by this Act or the Payroll Levy Collection Act to be made out of the Fund.

### **42 Investment of the Fund**

- (1) The Minister may, by written notice to the Board, set out principles or guidelines to be followed in respect of the investment of the Fund.
- (2) As soon as practicable after the commencement of this section the Board must prepare a plan for the investment of the Fund.
- (3) The Board must revise the plan prepared under subsection (2), or that plan as previously revised under this subsection, not later than 12 months after the plan was prepared or last revised, as the case may be.

- (4) Any plan for the investment of the Fund must:
  - (a) conform with any principles or guidelines referred to in subsection (1); and
  - (b) subject to those principles or guidelines, be directed towards maximising the return on the money invested consistently with prudent financial management practices.
- (5) As soon as practicable after the Board has prepared, or revised, a plan for the investment of the Fund the Board must send a copy of the plan, or of the revised plan, to the Minister.
- (6) If the Minister is of the opinion that a plan or revised plan prepared under this section does not comply with subsection (4), the Minister may return the plan to the Board for reconsideration in accordance with any directions given by the Minister.
- (7) Where a plan is so returned by the Minister, the Board must revise the plan in accordance with the Minister's directions and send a copy of the revised plan to the Minister.
- (8) Any asset in which money included in the Fund is invested forms part of the Fund.

#### **43 Sufficiency of the Fund**

- (1) The Board must seek advice from an actuary as to:
  - (a) whether the rate of payroll levy imposed (at the time the advice is given) would be adequate to ensure that the Fund will be sufficient to reimburse employers in accordance with the Employer Reimbursement Rules; and
  - (b) if not, the rate that would be so adequate.
- (2) The Board must seek such advice at least once every 3 years.
- (5) When the Board obtains advice from an actuary, 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.

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- (6) If the Board forms the opinion, having regard to any advice obtained by it under this section, that the Fund is likely within the ensuing 12 months to be sufficient to reimburse employers in accordance with the Employer Reimbursement Rules, the Board must give to the Minister a written report stating that it has formed that opinion and setting out the reasons for that opinion.
- (7) If at any time the Board considers that the amount standing to the credit of the Fund exceeds the amount required to be retained in the Fund to make any payments that will need to be made out of the Fund, the Board may distribute the excess among such persons who have paid payroll levy, and in such amounts, as the Board considers equitable.

## **Part 7—Payments out of the Fund**

### **44 Reimbursement for payments relating to long service leave**

- (1) If an employer makes a payment under Part 5A to a person who is or was an eligible employee, the Corporation must pay the employer out of the Fund the reimbursable amount the Board decides in accordance with the Employer Reimbursement Rules.
- (2) If an employer makes a payment under Part 5A to the legal personal representative of a deceased person who is or was an eligible employee, the Corporation must pay the employer out of the Fund the reimbursable amount the Board decides in accordance with the Employer Reimbursement Rules.

Note: Section 52B provides that an application may be made to the Administrative Appeals Tribunal for review of a decision of the Board under subsection (1) or (2).

### **45 Employer Reimbursement Rules**

- (1) The Board must, by legislative instrument, make rules relating to:
  - (a) the amount that an employer is to be reimbursed for a payment by the employer under Part 5A to a person who is or was an eligible employee; and
  - (b) the amount that an employer is to be reimbursed for a payment by the employer under Part 5A to the legal personal representative of a deceased person who is or was an eligible employee; and
  - (c) the creation of a notional account for each person who is or was an eligible employee representing his or her share of payments into the Fund on or after 1 January 2012, whether or not the relevant employer actually receives any of that share.
- (2) Rules relating to amounts mentioned in paragraph (1)(a) or (b) may be different on the basis of:
  - (a) employment as an eligible employee before 1 January 2012; and

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(b) employment as an eligible employee on or after 1 January 2012.

(3) The rules are to be known as the *Employer Reimbursement Rules*.

**47 Reimbursement of overpayment of payroll levy**

If an employer makes an overpayment of payroll levy, an amount equal to the overpayment is payable to the employer out of the Fund.

**48 Payments to employees if employer insolvent etc.**

- (1) An eligible employee, or a former eligible employee, may apply, in writing, to the Corporation for a payment in respect of a period of untaken long service leave under Part 5A if the employee's employer is insolvent, is being wound up or has ceased to exist.
- (2) If the Board verifies that the employer is insolvent, is being wound up or has ceased to exist, the Corporation must pay the employee in respect of the employee's untaken long service leave the amount that would have been payable by the employer under Part 5A had the employee taken the period of long service leave immediately before the relevant circumstance.
- (3) The payment is payable to the employee out of the Fund.
- (4) A payment by the Corporation under this section:
  - (a) discharges the liability of the employer to make the payment; and
  - (b) extinguishes the employee's entitlement under Part 5A to the period of untaken long service leave.
- (5) In this section:

*employer* means:

  - (a) in relation to an eligible employee—a current employer of the employee; and
  - (b) in relation to a former eligible employee—an employer of the employee immediately before the employee ceased to be an eligible employee.



**49 Board may determine claims for payment**

When a question arises as to whether an amount is payable to a person out of the Fund, the Board may determine any matter of fact relevant to that question.

## **Part 7A—Civil penalty orders**

### **Division 1—Obtaining a civil penalty order**

#### **49A Civil penalty orders**

##### *Application for order*

- (1) The Corporation may, on behalf of the Commonwealth, apply to the Federal Court or the Federal Circuit Court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Corporation must make the application within 6 years of the alleged contravention.

##### *Court may order person to pay pecuniary penalty*

- (3) If the court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Subsections (5) and (6) set out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

##### *Determining pecuniary penalty*

- (5) If the civil penalty provision is a provision of this Act, the pecuniary penalty must not be more than:
  - (a) in the case of a body corporate—300 penalty units for each contravention; and
  - (b) in any other case—60 penalty units for each contravention.
- (6) If the civil penalty provision is a provision of the Payroll Levy Collection Act, the pecuniary penalty must not be more than:
  - (a) in the case of a body corporate—200 penalty units for each contravention; and

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- (b) in any other case—40 penalty units for each contravention.
- (7) In determining the pecuniary penalty, the court may take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court to have engaged in any similar conduct; and
  - (e) if the person is a body corporate:
    - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
    - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
    - (iii) whether the body corporate had a corporate culture conducive to compliance.

**49AA Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against a person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

**49AB Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under a law of the Commonwealth in relation to the same conduct.

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**49AC Multiple contraventions**

- (1) A court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 49CA.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

**49AD Proceedings may be heard together**

A court may direct that 2 or more proceedings relating to a contravention, or proposed contravention, of a civil penalty provision be heard together.

**49AE Civil evidence and procedure rules to apply**

A court must apply the rules of evidence and procedure for civil matters when hearing and determining an application relating to a contravention, or proposed contravention, of a civil penalty provision.

**49AF Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

## **Division 2—Civil proceedings and criminal proceedings**

### **49B Civil proceedings after criminal proceedings**

A court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### **49BA Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise, the civil proceedings are dismissed.

### **49BB Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

### **49BC Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual for an offence if:

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- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## **Division 3—Miscellaneous**

### **49C Ancillary contravention of civil penalty provisions**

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 49CC (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to this subsection.

#### *Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

### **49CA Continuing contraventions of civil penalty provisions**

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
- (a) within a particular period; or
  - (b) before a particular time;

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commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

**49CB Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.
- (4) In this section:

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.



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**49CC State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 49C(1)), it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) of this section does not affect the operation of section 49CB (which is about mistake of fact).

**49CD Civil penalty provisions contravened by employees, agents or officers**

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

**49CE Civil penalty provisions contravened by executive officers**

- (1) An executive officer of a body corporate contravenes this subsection if:
  - (a) the body corporate contravenes a civil penalty provision; and
  - (b) the officer knew that the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.
- (2) Subsection (1) is a *civil penalty provision*.

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**49CF Establishing whether an executive officer took reasonable steps to prevent the contravention of a civil penalty provision**

- (1) For the purposes of section 49CE, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the contravention of a civil penalty provision, a court is to have regard to:
  - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the Payroll Levy Collection Act, in so far as those requirements affect the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the body was contravening this Act or the Payroll Levy Collection Act.
- (2) This section does not, by implication, limit the generality of section 49CE.

## **Part 8—Miscellaneous**

### **50 Delegation**

- (1) Subject to subsection (1A), the Corporation may, by writing under its seal, delegate to:
  - (a) a Director; or
  - (b) a person employed by the Corporation; or
  - (c) a person engaged by the Corporation under a contract; or
  - (d) a person employed by a person referred to in paragraph (c);any of the Corporation's powers and functions under this Act or the Payroll Levy Collection Act.
- (1A) The Corporation's power under section 52A may only be delegated to an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the Corporation.
- (2) The Board may, by signed writing, delegate to:
  - (a) a Director; or
  - (b) a person employed by the Corporation; or
  - (c) a person engaged by the Corporation under a contract; or
  - (d) a person employed by a person referred to in paragraph (c);any of the Board's powers under this Act or the Payroll Levy Collection Act other than the power to revoke or vary a decision made by the Board.
- (3) The Minister may, by signed writing, delegate to a person performing the duties of an office in the Department, the Minister's powers under this Act other than the Minister's powers under section 13, 14, 31 or 32.

### **51 Expenses of Corporation**

The expenses incurred by the Corporation are to be paid out of the Fund.

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**52 Remuneration and allowances of Directors**

The remuneration and allowances of Directors are to be paid out of the Fund.

**52A Power to require persons to produce information or documents**

- (1) This section applies if the Corporation believes on reasonable grounds that a person has information, or a document containing information, of any of the following kinds:
  - (a) information relating to the employment of an eligible employee;
  - (b) information relating to an employer of an eligible employee;
  - (c) information that is reasonably necessary to enable the Corporation to perform its functions under section 7.
- (2) The Corporation may, by written notice, require the person to:
  - (a) give the information to the Corporation by the time, and in the manner and form, specified in the notice; or
  - (b) produce the document, or a certified copy of the document, to the Corporation by the time, and in the manner, specified in the notice.
- (3) The notice must set out the effect of:
  - (a) subsections (6) and (7) of this section; and
  - (b) sections 137.1 and 137.2 of the *Criminal Code* (about giving false or misleading information or documents); and
  - (c) section 149.1 of the *Criminal Code* (about obstructing Commonwealth public officials).
- (4) The time specified under paragraph (2)(a) or (b) must be at least 28 days after the day the notice is given to the person.
- (5) If a person is given a notice under subsection (2), the person must comply with the notice.
- (6) A person commits an offence of strict liability if the person contravenes subsection (5). The physical elements of the offence are set out in that subsection.

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Penalty: 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(7) Subsection (5) is a ***civil penalty provision***.

Note: Part 7A provides for pecuniary penalties for contraventions of civil penalty provisions.

**52B Review by the Administrative Appeals Tribunal**

- (1) An application may be made to the Administrative Appeals Tribunal for review of any of the following decisions:
  - (a) a decision by the Board to refuse to approve a waiver agreement under section 39BC;
  - (b) a decision by the Board to refuse to approve a variation of a waiver agreement under section 39BC;
  - (c) a decision by the Board under subsection 44(1) or (2).
- (2) An application under subsection (1) may only be made by the employee or employer to whom the decision relates.

**52C Conferral of jurisdiction on the Federal Court and the Federal Circuit Court**

- (1) Jurisdiction is conferred on the Federal Court and the Federal Circuit Court in relation to any civil matter arising under this Act or the Payroll Levy Collection Act.
- (2) The jurisdiction conferred on the Federal Court under subsection (1) is to be exercised in the Fair Work Division of the Federal Court if:
  - (a) an application is made to the Federal Court under this Act or the Payroll Levy Collection Act; or
  - (b) a writ of mandamus or prohibition or an injunction is sought in the Federal Court against a person holding office under this Act; or
  - (c) a declaration is sought under section 21 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act or the Payroll Levy Collection Act; or

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- (d) an injunction is sought under section 23 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act or the Payroll Levy Collection Act; or
  - (e) an appeal is instituted in the Federal Court from a judgement of the Federal Circuit Court in a matter arising under this Act or the Payroll Levy Collection Act; or
  - (f) proceedings in relation to a matter arising under this Act or the Payroll Levy Collection Act are transferred to the Federal Court from the Federal Circuit Court; or
  - (g) the Federal Circuit Court states a case or reserves a question for the consideration of the Federal Court in a matter arising under this Act or the Payroll Levy Collection Act; or
  - (h) the President of the FWC refers, under section 608 of the *Fair Work Act 2009*, a question of law arising from an LSL dispute to the Federal Court; or
  - (i) the High Court remits a matter arising under this Act or the Payroll Levy Collection Act to the Federal Court.
- (3) Jurisdiction conferred on the Federal Circuit Court under subsection (1) is to be exercised in the Fair Work Division of the Federal Circuit Court if:
- (a) an application is made to the Federal Circuit Court under this Act or the Payroll Levy Collection Act; or
  - (b) an injunction is sought under section 15 of the *Federal Circuit Court of Australia Act 1999* in relation to a matter arising under this Act or the Payroll Levy Collection Act; or
  - (c) a declaration is sought under section 16 of the *Federal Circuit Court of Australia Act 1999* in relation to a matter arising under this Act or the Payroll Levy Collection Act; or
  - (d) proceedings in relation to a matter arising under this Act or the Payroll Levy Collection Act are transferred to the Federal Circuit Court from the Federal Court; or
  - (e) the High Court remits a matter arising under this Act or the Payroll Levy Collection Act to the Federal Circuit Court.

**52D Powers of courts**

The powers conferred on the Federal Court and the Federal Circuit Court by a provision of this Act are in addition to, and not instead of, any other powers of the court, whether conferred by another provision of this Act or otherwise.

**54 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
  - (a) require an employer of eligible employees to maintain records relating to the following matters:
    - (i) the employment of those employees;
    - (ii) the qualifying service completed by, and the long service leave entitlement of, those employees; and
  - (b) provide for penalties, not exceeding 50 penalty units, for offences against the regulations.

**55 Review of Act**

The Minister is to arrange for the carrying out of an independent review of the operation of this Act as soon as possible after the Minister receives a report from the Board under subsection 43(6).

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes  
Endnote 2—Abbreviation key  
Endnote 3—Legislation history  
Endnote 4—Amendment history  
Endnote 5—Uncommenced amendments  
Endnote 6—Modifications  
Endnote 7—Misdescribed amendments  
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.



**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent or FRLI registration	Commencement	Application, saving and transitional provisions
Coal Mining Industry (Long Service Leave Funding) Act 1992	60, 1992	26 June 1992	ss. 1 and 2: 26 June 1992 ss. 3–34, 36–43 and 50–55: 4 Sept 1992 (see <i>Gazette</i> 1992, No. S254) Remainder: 26 June 1993	
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (items 624–632): 1 Jan 1998 ( <i>Gazette</i> 1997, No. GN49) (a)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (items 32, 33): 1 July 1998 ( <i>Gazette</i> 1998, No. S316) (b)	—
Coal Mining Legislation Amendment (Oakdale Collieries and others) Act 1999	113, 1999	22 Sept 1999	22 Sept 1999	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Sch 10 (item 70): 13 Mar 2000 ( <i>Gazette</i> 2000, No. S114) (c)	—
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Sch 3 (item 100): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (d)	ss. 4–14
Workplace Relations Amendment (A Stronger Safety Net) Act 2007	107, 2007	28 June 2007	Sch 2 (items 30, 32, 33): 1 July 2007 (F2007L01879)	Sch 2 (items 32, 33)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent or FRLI registration	Commencement	Application, saving and transitional provisions
Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008	8, 2008	20 Mar 2008	Sch 1–7: 28 Mar 2008 (F2008L00959) Remainder: Royal Assent	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 8 (items 85–90): 1 July 2009 (2(1) item 24)	Sch 8 (item 158A) (ad. by SLI 2009 No. 165, Sch. 2 (item 5))
<b>as amended by</b>				
Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009	SLI 2009 No. 165	30 June 2009 (F2009L02568)	1 July 2009	—
<b>as amended by</b>				
Fair Work Legislation Amendment Regulations 2009 (No. 2)	SLI 2009 No. 364	16 Dec 2009 (F2009L04520)	Sch 1: 1 July 2009	—
Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009	127, 2009	10 Dec 2009	1 Jan 2010	Sch 1 (item 7) Sch 2 (item 1) (am. by 142, 2011, Sch 4 (item 1); rep. by 142, 2011, Sch 4 (item 2))
<b>as amended by</b>				
Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011	142, 2011	29 Nov 2011	Sch 4 (item 1): 1 Jan 2010 Schedule 4 (item 2): 1 Jan 2012	—

## Endnote 3—Legislation history

Act	Number and year	Assent or FRLI registration	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 5 (items 50, 51) and Schedule 6 (item 22): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 371–375) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011	142, 2011	29 Nov 2011	Sch 1 (items 1–49) and Schedule 2: 1 Jan 2012	Sch 2 (item 14)
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Sch 9 (items 1262–1267): 1 Jan 2013	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	12 Apr 2013	Sch 1 (items 82–84): 12 Apr 2013 (s 2(1)) Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 48–54) and Sch 4 (items 1–4): 1 July 2014 (s 2(1) items 6, 14)	Sch 4 (items 1–4)
Number and year	FRLI registration	Commencement	Application, saving and transitional provisions	
2006 No. 50	17 Mar 2006 ( <i>see</i> F2006L00820)	Sch 4: 27 Mar 2006 (r 2(b))	—	

## Endnotes

### Endnote 3—Legislation history

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- (a) The *Coal Mining Industry (Long Service Leave) Administration Act 1992* was amended by Schedule 2 (items 624–632) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (b) The *Coal Mining Industry (Long Service Leave) Administration Act 1992* was amended by Schedule 1 (items 32 and 33) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (c) The *Coal Mining Industry (Long Service Leave) Administration Act 1992* was amended by Schedule 10 (item 70) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.
- (d) The *Coal Mining Industry (Long Service Leave) Administration Act 1992* was amended by Schedule 3 (item 100) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
Title .....	am. No. 113, 1999; No. 142, 2011
<b>Part 1</b>	
s. 1 .....	am. No. 142, 2011
s. 3 .....	am. No. 113, 1999; No. 142, 2011
s. 4 .....	am. No. 48, 1998; SLI 2006 No. 50; No. 107, 2007; No. 8, 2008; Nos. 54 and 127, 2009; Nos. 5 and 142, 2011; No. 174, 2012; No. 13, 2013; No 62, 2014
<b>Part 2</b>	
Note to s. 6(2) .....	ad. No. 152, 1997 rs No 62, 2014
s. 7 .....	am. No. 142, 2011
<b>Part 3</b>	
<b>Division 1</b>	
s. 11 .....	am. No. 142, 2011
ss. 13, 14 .....	am. No. 142, 2011
<b>Division 2</b>	
s. 17 .....	am. No. 142, 2011; No 62, 2014
s. 18 .....	am. No. 142, 2011
s. 20 .....	am. No. 152, 1997
s. 22 .....	rep. No. 152, 1997
<b>Division 3</b>	
s. 23 .....	am. No. 142, 2011
s. 28 .....	am. No. 152, 1997; No. 156, 1999; No 62, 2014
Note to 28(2).....	ad No 62, 2014
s. 30 .....	rep. No. 152, 1997
s. 31 .....	am. No. 46, 2011
Notes to s. 31(1), (2) .....	ad. No. 46, 2011
s. 32 .....	am. No. 46, 2011
Note to s. 32(1) .....	ad. No. 46, 2011

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 5</b>	
ss. 35, 36 .....	am. No. 5, 2011
Heading to s. 39 .....	am. No. 152, 1997
s. 39 .....	am. No. 152, 1997
	rs No 62, 2014
<b>Part 5A</b>	
Part 5A .....	ad. No. 142, 2011
<b>Division 1</b>	
s. 39A .....	ad. No. 142, 2011
ss. 39AA–39AE .....	ad. No. 142, 2011
<b>Division 2</b>	
s. 39B .....	ad. No. 142, 2011
ss. 39BA–39BE .....	ad. No. 142, 2011
<b>Division 3</b>	
s. 39C .....	ad. No. 142, 2011
ss. 39CA–39CE .....	ad. No. 142, 2011
<b>Division 4</b>	
<b>Subdivision A</b>	
Heading to Subdiv. A of .....	am. No. 174, 2012
Div. 4 of Part 5A	
Heading to s. 39D .....	am. No. 174, 2012
s. 39D .....	ad. No. 142, 2011
	am. No. 174, 2012
<b>Subdivision B</b>	
s. 39DA .....	ad. No. 142, 2011
	am. No. 13, 2013
s. 39DB .....	ad. No. 142, 2011
	am. No. 13, 2013
<b>Division 5</b>	
s. 39E .....	ad. No. 142, 2011
ss. 39EA, 39EB .....	ad. No. 142, 2011

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## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 6</b>	
s. 39F .....	ad. No. 142, 2011
<b>Part 6</b>	
s. 40 .....	am. No. 142, 2011
s. 43 .....	am. No. 142, 2011
<b>Part 7</b>	
s. 44 .....	am. No. 127, 2009
	rs. No. 142, 2011
s. 45 .....	rs. No. 142, 2011
s. 46 .....	rep. No. 142, 2011
s. 48 .....	rs. No. 142, 2011
s. 48A.....	ad. No. 113, 1999
	rep. No. 142, 2011
s. 48B.....	ad. No. 113, 1999
	am. No. 55, 2001
	rep. No. 142, 2011
<b>Part 7A</b>	
Part 7A.....	ad. No. 142, 2011
<b>Division 1</b>	
s. 49A.....	ad. No. 142, 2011
	am. No. 13, 2013
ss. 49AA–49AF .....	ad. No. 142, 2011
<b>Division 2</b>	
s. 49B.....	ad. No. 142, 2011
ss. 49BA–49BC .....	ad. No. 142, 2011
<b>Division 3</b>	
s. 49C.....	ad. No. 142, 2011
ss. 49CA–49CF.....	ad. No. 142, 2011
<b>Part 8</b>	
s. 50 .....	am. Nos. 5 and 142, 2011; No 62, 2014
ss. 51, 52 .....	am. No. 142, 2011
s. 52A.....	ad. No. 142, 2011

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s. 52B.....	ad. No. 142, 2011
Heading to s. 52C.....	rs. No. 13, 2013
s. 52C.....	ad. No. 142, 2011
	am. No. 174, 2012; No. 13, 2013
s. 52D.....	ad. No. 142, 2011
	am. No. 13, 2013
s. 53 .....	rep. No. 142, 2011
s. 54 .....	am. No. 142, 2011

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Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**