EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 217

Issued by the authority of the Minister for Employment and Workplace Relations

Subject - Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011

Coal Mining Industry (Long Service Leave) Legislation Amendment Regulation 2012

The Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011 (the Act) commenced on 1 January 2012. In part, the Act legislated entitlements under the portable long service leave scheme in the black coal mining industry which had previously been covered by awards or other industrial instruments. Schedule 5 to the Act (the transitional provisions) provides that certain periods of service undertaken by eligible employees and former eligible employees between 1 January 2000 and 31 December 2011 may be counted towards their long service leave accrual.

Schedule 5 to the Act provides for some timelines and dates by which certain administrative obligations are to be met. These dates may be changed by regulation. This Regulation changes these dates to better reflect the current workload and responsibilities of the Coal Mining Industry (Long Service Leave Funding) Corporation (‘the Corporation’), the extent of which were not known at the time the Act commenced.

Subitem 3 (3) of Schedule 5 to the Act provides that where a former eligible employee wishes the Corporation to recognise service before 1 January 2012, the person must provide the Corporation with certain information in writing on or before 30 September 2012 (or later date prescribed by the regulations). Regulation 4 prescribes that such information must be provided on or before 31 March 2013. This is to accommodate the fact that the extensive process enabling former eligible employees to apply for recognition in respect of the coal mining industry long service leave scheme was only recently rolled out.

Subitem 6 (2) of Schedule 5 to the Act provides that the Corporation must notify certain eligible employees about the records it has relating to the person’s employment and qualifying service as calculated under item 2 of the Schedule. The Corporation is to notify the person on or before 30 September 2012 (or such later date prescribed by the regulations). Regulation 5 prescribes that the Corporation must provide the notification on or before 31 March 2013. The employer monthly returns in respect of December 2012 will not become due until 28 January 2013. These returns will be used to determine which eligible employees were employed during the 2012 calendar year, and allowing for the Corporation to provide the notification under subitem 6 (2) by 31 March 2013 will ensure that the relevant data will have been collated.

Subitem 7 (2) of Schedule 5 to the Act provides that where the Corporation has made a calculation under item 3 of the Schedule (relating to the recognition of long service leave for former eligible employees), the Corporation must notify the person about the records it has relating to that person’s employment and qualifying service. The Corporation is to notify the person on or before
31 December 2012 (or such later date prescribed by the regulations). Regulation 6 prescribes that the Corporation must provide the notification on or before 30 June 2013. This is to align with the later date prescribed in Regulation 4.

Subitem 10 (1) of Schedule 5 to the Act provides that the Board of the Corporation must seek advice from an actuary as to the sufficiency of the Coal Mining Industry (Long Service Leave) Fund. This advice must be sought in January 2013 or such later month before 1 January 2015 prescribed by the regulations. Regulation 7 prescribes that the Corporation must seek the advice in September 2013. This will allow time for the data that will be contained in the employer returns due 28 July 2013 to be provided to the actuary as part of the request for advice.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011. The Statement’s assessment is that the measures in the Regulation are compatible with human rights. A copy of the Statement is at Attachment A.

Consultation has been undertaken with the Coal Mining Industry (Long Service Leave Funding) Corporation.

The Act does not impose any conditions that need to be satisfied before the power to make the Regulation may be exercised.

This Regulation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required.

This Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.
Statement of Compatibility with Human Rights
Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Coal Mining Industry (Long Service Leave) Legislation Amendment Regulation 2012

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

The Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011 (‘the Act’) commenced on 1 January 2012. In part, the Act legislated entitlements under the portable long service leave scheme in the black coal mining industry which had previously been covered by awards or other industrial instruments. Schedule 5 to the Act (the transitional provisions) provides that certain periods of service undertaken by eligible employees and former eligible employees between 1 January 2000 and 31 December 2011 may be counted towards their long service leave accrual.

Schedule 5 to the Act provides for some timelines and dates by which certain obligations are to be met. These dates may be changed by regulation. This Regulation changes these dates to better reflect the current responsibilities of the Coal Mining Industry (Long Service Leave Funding) Corporation (‘the Corporation’).

The dates changed are:

- former eligible employees will now have until 31 March 2013 (previously 30 September 2012) to provide information to the Corporation for the purposes of having periods of service recognised as qualifying service;
- subsequently, the Corporation will now have until 30 June 2013 (previously 31 December 2012) to notify former eligible employees about records that the Corporation has in relation to them;
- the Corporation will now have until 31 March 2013 (previously 30 September 2012) to notify eligible employees about records that the Corporation has in relation to them; and
- the Corporation will now be required to seek advice from an actuary in September 2013 (previously January 2013).

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

William Richard Shorten, Minister for Employment and Workplace Relations