

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 243**

Issued by the authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Subject - *Coal Mining Industry (Long Service Leave Funding) Act 1992*

*Coal Mining Industry (Long Service Leave Funding) Amendment Regulations 2011 (No. 1)*

Section 54 of the *Coal Mining Industry (Long Service Leave Funding) Act 1992* (the Funding Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Funding Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Funding Act.

The *Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011* (the Amendment Act) will commence on 1 January 2012. The Amendment Act will reform the long service leave arrangements in the black coal mining industry by amending the following legislation:

- the Funding Act;
- *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992*;
- *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*; and
- *Coal Mining Industry (Long Service Leave Funding) Amendment Act 2009*.

This legislation, together with the *Coal Mining Industry (Long Service Leave Funding) Regulations 1993* (the Principal Regulations) and the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Regulations 1993*, establishes a statutory scheme for portable long service leave in the black coal mining industry.

These regulations rename the Principal Regulations as the *Coal Mining Industry (Long Service Leave) Administration Regulations 1993* in line with the renaming of the Funding Act as the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (the Administration Act). These regulations also amend the Principal Regulations to update references to the names of the Administration Act and Principal Regulations.

These regulations also amend the Principal Regulations to prescribe the categories of employees who are able to enter into a waiver agreement.

The Administration Act provides that qualifying service is a period when an employee is an eligible employee of one or more employers, although subsection 39A(2) of the Administration Act provides that certain specified periods will not count as qualifying service. Under 39A(2)(d), a period in which a waiver agreement is in effect between the employee and an employer is not a period of qualifying service.

Section 39B of the Administration Act provides that, in lieu of accumulating an entitlement to long service leave, a prescribed employee may make a waiver agreement with their employer which will entitle the employee to additional remuneration or superannuation (or a combination of both) in lieu of an entitlement to long service leave.

These regulations prescribe the following categories of employees as able to make a waiver agreement for the purposes of section 39B of the Act:

- an eligible employee who is at least 55 and has no qualifying service for the purposes of section 39A of the Administration Act;
- an eligible employee who is at least 55 and has at least 8 years of qualifying service for the purposes of section 39A of the Administration Act;
- an eligible employee who is a manager of a corporation that is an employer of eligible employees in the black coal mining industry;
- an eligible employee who is a senior professional employee engaged in the management of a corporation that is an employer of eligible employees in the black coal mining industry;
- an eligible employee whose annual salary (including allowances) in 2012 is at least \$162,000 and in a subsequent year, \$162,000 as adjusted by the annual rate of the Consumer Price Index for 2012 and then for each completed year (if any) after 2012; or
- an eligible employee who is employed under an under-graduate placement or work training placement.

We have undertaken extensive consultations on the preparation of the Act and these Regulations with the Industry Working Party, which is comprised of the NSW Minerals Council Limited, the Queensland Resources Council, the Construction, Forestry, Mining and Energy Union – Mining and Energy Division, the Electrical Trades Union, the Australian Manufacturing Workers Union, the Association of Professional Engineers, Scientists and Managers Australia, the NSW Colliery Officials Association and the Mine Managers Association of Australia.

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

The Regulations are 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.

The Regulations commence 1 January 2012.