



Employer Reimbursement Rules 2011¹

The Board of the Coal Mining Industry (Long Service Leave Funding) Corporation makes the following Rules under subsection 45(1) of the *Coal Mining Industry (Long Service Leave) Administration Act 1992*.

Dated 7 December 2011

Ross Hamilton
Secretary to the Board

Part 1 Preliminary

1 Name of Rules

These Rules are the *Employer Reimbursement Rules 2011*.

2 Commencement

These Rules commence on 1 January 2012.

3 Definitions

In these Rules:

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

inactive account means an account that is inactive under rule 16;

industrial authority means each of the following:

- (a) the Coal Industry Tribunal;
- (b) Fair Work Australia;
- (c) the New South Wales Industrial Relations Commission;
- (d) the Industrial Relations Commission of Queensland;
- (e) the Western Australian Coal Industry Tribunal;
- (f) the Western Australian Industrial Relations Commission;
- (g) the Tasmanian Industrial Commission;
- (h) a predecessor of, or successor to, any of those Tribunals or Commissions.

post-2012 entitlement, for an eligible employee, means the amount of LSL credit (in hours) accrued by the eligible employee in respect of the period starting on 1 January 2012.

pre-2012 entitlement, for an eligible employee, means the amount of long service leave (in hours) accrued by the eligible employee in respect of the period before 1 January 2012.

Note See also item 8 of Schedule 5 to the *Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011*.

relevant industrial instrument means:

- (a) an award made by, or registered with, an industrial authority; or
- (b) a determination made by, or registered with, an industrial authority; or
- (c) an order given by, or registered with, an industrial authority; or
- (d) an agreement approved by, or registered with, an industrial authority;

that conferred on employees in the black coal mining industry to whom the award, determination, order or agreement applied an entitlement to long service leave in circumstances set out in the award, determination, order or agreement, being an entitlement that continued to exist and accrue so long as the employee continued to be employed by any employer in that industry.

Note Several other words and expressions used in these Rules have the meaning given by section 4 of the Act, for example:

- eligible employee
- employee
- employer
- Fund
- LSL credit.

Part 2 Notional accounts

4 Creation of notional accounts

- (1) The Corporation must establish in the Fund a notional account for:
 - (a) each person who, on the commencement of these Rules, is an eligible employee; and
 - (b) each person who becomes an eligible employee after the commencement of these Rules.
- (2) Subrule (1) does not require the Corporation to establish a notional account for a person unless the Corporation is aware that the person is an eligible employee.

5 Allocation and crediting of receipts to notional accounts

- (1) For the purposes of calculating reimbursable amounts, for each month, the Corporation must allocate and credit to the notional account for an eligible employee the amount paid for the month by an employer in respect of the employee as levy under the Payroll Levy Collection Act, less the amount determined by the Board in respect of the costs of the Corporation.
- (2) Subrule (1) does not apply to an inactive account.

6 Crediting of other amounts to notional accounts

- (1) If the Board determines a crediting rate in relation to the interest, profits and other returns from investments or assets acquired with money or other property of the Fund, then, for the purposes of calculating reimbursable amounts, the Corporation must credit to each notional account the amount calculated as follows:

crediting rate x the amount standing to the credit of the account when the crediting rate is determined.

- (2) Subrule (1) does not apply to an inactive account.
- (3) For the purposes of calculating reimbursable amounts, the Corporation must credit to each notional account any amount transferred to the account under rule 8.
- (4) In this rule, *crediting rate* includes an interim crediting rate.

7 Debiting of amounts from notional accounts

For the purposes of calculating reimbursable amounts, the Corporation must debit from a notional account for an eligible employee only the following amounts:

- (a) so much of the reimbursable amount for the eligible employee as represents the post-2012 service component;
- (b) amounts determined by the Board to be debited from the account because of movements in the value of investments of the Fund;
- (c) amounts transferred from the account under rule 8.

8 Transferring amounts from notional accounts

For the purposes of calculating reimbursable amounts, the Corporation may transfer an amount from a notional account to another notional account, or to the Fund, if:

- (a) the amount was incorrectly credited to the first account; or
- (b) an order of a Court requires that to occur; or
- (c) the first account is an inactive account.

Part 3 Calculation of reimbursable amounts (Part 5A of the Act)

9 How is the reimbursable amount for an employer calculated?

- (1) The reimbursable amount for an employer in respect of long service leave taken by an eligible employee of the employer is the total of amounts payable in respect of pre-2012 entitlements (*the pre-2012 service component*) and in respect of post-2012 entitlements (*the post-2012 service component*).
- (2) If the Corporation receives a claim from an employer for reimbursement under section 44 of the Act, the Board must determine which part (if any) of the claim is for reimbursement for payments made by the employer in respect of pre-2012 entitlements and which part is for reimbursement for payments made by the employer in respect of post-2012 entitlements.
- (3) The Board must deal separately with any part of a claim that relates to pre-2012 entitlements and any part of a claim relating to post-2012 entitlements.

Note 1 See rules 10 and 11.

Note 2 See also subrule 12(2).

10 How is the pre-2012 service component calculated?

- (1) If an employer makes a payment to an eligible employee that includes an amount in respect of a pre-2012 entitlement, the *pre-2012 service component* of the reimbursable amount is the amount worked out in accordance with the formula:

eligible service x rate of accrual of long service leave x eligible weekly wage

where:

eligible service means:

- (a) if the payment was made to the employee on the termination of his or her employment as an eligible employee—the number of years before 1 January 2012

(including any fraction of a year) in respect of which the employee was entitled to be paid for accrued long service leave; or

- (b) otherwise—the number of years before 1 January 2012 (including any fraction of a year) in the period of long service leave that the employee took under his or her entitlement to long service leave.

rate of accrual of long service leave means the number of weeks of long service leave to which the eligible employee was entitled for each year of employment before 1 January 2012 in respect of which the employee was entitled to be paid for, or to take, long service leave.

eligible weekly wage means the amount per week of the employee's eligible wages (within the meaning of the Payroll Levy Collection Act):

- (a) if the employee is employed by the employer at the time the payment is made – immediately before he or she was paid for, or commenced to take, the long service leave, or
- (b) if the employee is not employed by the employer at the time the payment is made – immediately before he or she left their employment with that employer;

including any production-related bonuses that were included in that amount.

- (2) A reference in subrule (1) to an employee's entitlement to long service leave, or to an employee's entitlement to be paid for, or to take, long service leave, is a reference to the employee's entitlement under any of the following:
- (a) section 113 of the *Fair Work Act 2009*;
- (b) a relevant industrial instrument;
- (c) a contract of employment.

- (3) When calculating an amount under subrule (1), only legislation as in force on or before 31 December 2011 is to be considered.

Note The reimbursable amount for the pre-2012 service component is payable out of the Fund and is not debited from any notional account.

11 How is the post-2012 service component calculated?

- (1) Subject to subrule (2), the *post-2012 service component* in respect of an eligible employee is calculated as follows:

$$\frac{A}{B} \times C$$

where:

- A is the number of accrued hours of LSL credit:
- (a) in respect of which a payment has been made under Part 5A of the Act and claimed by an employer; and
 - (b) in respect of which an amount is not to be debited from the Fund as *pre-2012 service component* under rule 10; and
 - (c) disregarding any number of hours that exceeds B.
- B is the number of hours of LSL credit:
- (a) accrued by an eligible employee after 1 January 2012; and
 - (b) in respect of which no reimbursement has yet been made.
- C is the amount standing to the credit of the notional account of the related employee at the date the post-2012 service component is calculated.
- (2) If the amount calculated under subrule (1) is more than the amount actually paid to the eligible employee in respect of the employee's post-2012 entitlements, the *post-2012 service component* is taken to be the amount paid to the eligible employee.

Part 4

Calculation of reimbursable amounts (legal personal representatives)

12 How is the reimbursable amount for a payment to a legal personal representative calculated?

- (1) The reimbursable amount for an employer in respect of a payment made by the employer to an eligible employee's legal personal representative under either section 39C or 39CC of the Act is the amount that would have been the reimbursable amount for the employer if the payment had been made to the eligible employee.

Note See Part 3 for the calculation of reimbursable amounts when payments are made to eligible employees.

- (2) For the purposes of rule 9, any part of a long service leave entitlement which is paid to a legal personal representative under paragraph 39CC(2)(b) and which accrued as a result of qualifying service occurring before 1 January 2012 is a pre-2012 entitlement.

Part 5 Miscellaneous

13 Notice to be given

The Corporation must notify the employer of an eligible employee in respect of whom a notional account has been created when:

- (a) the account is created; and
- (b) an amount is debited or transferred from the account.

14 Correction of notional accounts

The Corporation may make corrections to a notional account if it determines that the balance or details of that account are incorrect.

15 Records to be made

The Corporation must make a record of:

- (a) all amounts credited to a notional account; and
- (b) all amounts debited from a notional account; and
- (c) if an amount was debited from a notional account under paragraph 7(b) — the reasons why the amount was debited; and
- (d) all amounts transferred to or from a notional account or the Fund under rule 8 and the reasons for that transfer; and
- (e) any correction made to a notional account and the reasons why the correction was made.

16 Inactive accounts

- (1) The Corporation may determine to treat a notional account for an eligible employee as inactive if:
 - (a) a reimbursement from the account is made under Part 4 and there is no LSL credit remaining in respect of the deceased employee; or

- (b) the Corporation becomes aware that the eligible employee has died and the Corporation is satisfied that there is no obligation on an employer to make a payment to the personal legal representative of that person under subsection 39C(2) or section 39CC of the Act; or
 - (c) no returns have been made in respect of the eligible employee for a continuous period of 8 years and:
 - (i) there is no LSL credit recorded by the Corporation in respect of the eligible employee; or
 - (ii) all the following apply:
 - (A) an amount of LSL credit is recorded by the Corporation in respect of the eligible employee; and
 - (B) the person has not completed a period of qualifying service that adds up to at least 8 years; and
 - (C) the Corporation is satisfied that there is no obligation on an employer to make a payment to that person under section 39CA or 39CB of the Act.
- (2) The Corporation must make a record of the reasons why it determines to treat an account as inactive.
- (3) If the Corporation determines to treat a notional account for an eligible employee as inactive and, after that determination:
- (a) an employer satisfies an obligation to make a payment under Division 3 of Part 5A of the Act to the eligible employee; and
 - (b) makes a claim for reimbursement of that payment under section 44 of the Act;
- the Corporation must:
- (c) cease treating the account as inactive for the purposes of calculating reimbursable amounts; and
 - (d) ensure that the account has the balance that it would reasonably be expected to have had if it had not been treated as inactive.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.