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LONDON

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

**COAL MINING INDUSTRY (LONG SERVICE LEAVE)
PAYROLL LEVY COLLECTION BILL 1992**

EXPLANATORY MEMORANDUM

(Circulated on the authority of the Minister for Industrial
Relations, Senator Peter Cook)

Coal Mining Industry (Long Service Leave) Payroll Levy Collection Bill 1992

Outline

The Coal Mining Industry (Long Service Leave) Payroll Levy Collection Bill 1992 (the "Bill") is introduced in conjunction with the Coal Mining Industry (Long Service Leave) Payroll Levy Bill 1992, the States Grants (Coal Mining Industry Long Service Leave) Amendment Bill 1992 and the Coal Mining Industry (Long Service Leave Funding) Bill 1992 (collectively referred to as the "bills"). The bills give effect to the Government's proposals to reform the funding of long service leave in the black coal mining industry in New South Wales, Queensland, Western Australia and Tasmania. The reforms are in response of the Willett Inquiry Report entitled, "Review of Funding Arrangements: Coal Mining Industry Long Service Leave", commissioned by the Minister for Industrial Relations, Senator Peter Cook, in August 1990.

Under the existing legislative scheme comprising the States Grants (Coal Mining Industry Long Service Leave) Act 1949, the Coal Excise Act 1949, the Excise Tariff Act 1921 and the complementary legislation in the four participating states money collected from an excise on the production of black coal is paid into consolidated revenue. Amounts equal to these collections are appropriated for payment into the trust fund established and maintained pursuant the States Grants (Coal Mining Industry Long Service Leave) Act 1949. Under the present scheme, long service leave payments made to employees by participating employers are reimbursed by the relevant State which is in turn reimbursed from the trust fund.

Projected excise collections under the existing scheme will be sufficient to meet current long service leave liabilities. The Willett Report, however, identified a number of deficiencies in the existing scheme including:

- the subsidisation by highly mechanised mining operations of labour intensive operations; and
- a net accrued unfunded liability for untaken long service leave estimated as at 30 June 1990 at \$250.2 million.

The Government aims to establish a compulsory, national industry scheme, to fully fund, on an accrual basis, the long service leave entitlements of persons employed in the black coal mining industry by firms participating in the scheme.

The Bill provides for the collection of a levy on wages pursuant to the Coal Mining Industry (Long Service Leave) Payroll Levy Bill 1992. Participating companies are required to submit returns to the Corporation or its agents.

Financial Impact Statement

The Bill and the Government's overall reform package will not involve significant outlays by the Commonwealth. In particular, it is noted that the Coal Mining Industry (Long Service Leave Funding) Bill 1992 provides for recovery by the Commonwealth of costs incurred in connection with the development and administration of the scheme.

Importantly, the objective of the reforms is to ensure that the currently unfunded liability for long service leave becomes fully funded without imposing an unreasonable burden on the industry.

When the accrued liability is fully funded, it is intended that the scheme will be wound up and responsibility for provision of long service leave entitlements will be returned to the industry.

Notes on Clauses

Clause 1 – Short title

The short title of the Act is given.

Clause 2 – Commencement

The Act is to commence on the same day as the Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992. As noted in the explanatory memorandum to that Bill, the commencement date is dependent upon amendments to State legislation. It is anticipated that both bills will come into effect on or about 1 January 1993. It is noted that if the Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992 has not come into effect beforehand, it will commence on the day after the end of the first 12 month period after it has received Royal Assent.

Clause 3 – Interpretation

Terms defined in this clause include:

"Board" means the board of the Corporation.

"Corporation" means the Coal Mining Industry (Long Service Leave Fund) Corporation to be established by the Coal Mining Industry (Long Service Leave Funding) Act 1992.

"Eligible Employee" has the same meaning as the term in the Coal Mining Industry (Long Service Leave Funding) Act 1992, that is:

- (a) employees under a relevant black coal mining industry industrial award, determination or agreement including an enterprise or workplace agreement whose duties are carried out at or about a place where black coal is mined;
- (b) a person employed by a company that mines black coal, whose duties are directly concerned with day to day mining operations whether or not that person works at or about the place the mining operations occur;
- (c) a person employed on a full-time and permanent basis in connection with rescue operations within the black coal mining industry whose duties are carried out from a mines rescue station;
- (d) any person or class of person prescribed to be an eligible employee;

but does not include:

- (e) an employee whose duties are performed in South Australia; or
- (f) any person or class of person prescribed not to be an eligible employee.

"Eligible Wages" means all remuneration or allowances (including production related bonuses) paid to an eligible employee, whether under a relevant industrial instrument or not, but does not include penalty rates or other allowances that an eligible employee would not be entitled to during a period of long service leave.

"Levy" means the levy on payroll to be imposed by the Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992.

Clause 4 – Due date for payment

Subject to extensions granted under clause 6 the Levy is payable at the end of the period within which a return is required to be made under clause 5 of this Bill.

Clause 5 – Returns by employers

Subclause 5(1) requires a return to be made, by a participating employer who employs an eligible employee during any month ending after the commencement of the Bill, within 28 days of the end of that month, and provides for a \$1000 penalty for failure to comply.

Subclause 5(2) requires a return to be made either to the Corporation or to another person who has been authorised to receive the returns in lieu of the Corporation. Relevant employers must be given written notice of such delegation of authority. Returns are to be made in a manner specified by the regulations or in the absence of any regulations in a manner specified by the Corporation or the authorised person, (as the case may be), and must be in accordance with a form approved by the Board.

Subclause 5(3) establishes the defence to prosecutions under subclause 5(1) of reasonable excuse.

Clause 6 – Extension of time and payment by instalments

Subclause 6(1) entitles the Corporation to extend the time for payment of the levy.

Subclause 6(2) entitles the Corporation to permit the amounts of levy to be paid by instalments.

Subclause 6(3) requires that if an instalment payable under subclause 6(2) is overdue, the whole amount of the levy is due and payable.

Subclause 6(4) deems "levy" in this clause to include additional levy under

clause 7.

Clause 7 – Additional levy

Subclause 7(1) entitles the Corporation, by way of penalty, to charge interest at the rate determined by subclause 7(2), (called "additional levy") on any amount of levy (including additional levy) that remains outstanding on any day after it became payable. Provided that, where the Corporation has allowed an extension or has allowed payment by instalment, under clause 6, interest is payable from such date as the Corporation determines, not being a date before the date on which the levy was originally payable.

Subclause 7(2) provides that interest is payable at two (2) percent above the maximum indicator rate which is defined to be the highest overdraft rate quoted by the major trading banks to the Reserve Bank on any day on amounts in excess of \$100,000.

Subclause 7(3) provides that even where judgment is entered for payment of the levy (or a sum which includes the amount of levy), interest, at the rate charged in subclause 7(2) will be charged. Providing that, if the judgment debt carries interest, the additional levy payable is reduced by the amount of the judgment interest that is attributable to the outstanding levy.

Clause 8 – Remission of additional levy

Subclause 8(1) entitles a person who is liable to pay additional levy to request the Corporation in writing to remit the additional levy or part thereof.

Subclause 8(2) entitles the Corporation to remit the additional levy or part thereof if it is satisfied that one of the following three conditions is met:

- . the delay was caused by circumstances that were beyond the control of the person liable for the levy and that person has taken reasonable action to mitigate the effects of the those circumstances;
- . the delay was caused by an act or omission of the person liable for the levy and the person has taken steps to mitigate the effects of the circumstances and it would be fair to remit the levy or part thereof;
- . special circumstances exist that make it fair to remit the additional levy or part thereof.

Subclause 8(3) requires the Corporation to give written notice of its decision on the request under this clause.

Subclause 8(4) deems the Corporation to have refused a request if no decision is made within 30 days of receipt of a request.

Subclause 8(5) requires a notice of the Corporations decision to include a statement complying with the requirements of the Administrative Appeals Tribunal Act 1975.

Subclause 8(6) provides that failure to comply with subclause 8(5) does not affect the validity of the decision.

Subclause 8(7) entitles any person that make a request under subclause 8(1) to apply to the Administrative Appeals Tribunal for a review of the decision.

Subclause 8(8) gives the word "decision" the same meaning as in the Administrative Appeals Tribunal Act 1975.

Clause 9 – Recovery of levy or additional levy

Subclause 9(1) provides that the amount of levy or additional levy, is a debt due to the Commonwealth and payable either to the Corporation or to another person authorised pursuant to subclause 5(2). The amounts must be paid in a manner prescribed by regulations, or if there are no regulations, as the Board or authorised person directs, as the case may be.

Subclause 9(2) provides that the Corporation or authorised person may sue to recover the amount of levy or additional levy due.

Subclause 9(3) obliges the Board to notify the Minister before commencing proceedings under subclause 9(2).

Subclause 9(4) entitles the Minister to give directions as to how amounts paid under this clause are to be dealt with before they are paid into the Consolidated Revenue Fund.

Clause 10 – Audited accounts and certificates to be provided to Corporation

Subclause 10(1) requires a company employing eligible employees to provide an auditor's statement certifying that the company paid all amounts of levy or additional levy required to be paid for that financial year and provides for a penalty of \$1000 for failing to do so.

Subclause 10(2) allows the Board to request, in writing, the auditor of a company employing eligible employees, during a period stated in that request, to certify that all amounts of levy or additional levy have been paid and provides for a penalty of \$1000 for failing to comply with such request.

Subclause 10(3) requires an auditor providing a certificate under subclause 10(1) or (2) which states that the auditor believes that not all the amounts of levy or additional levy have been paid, to detail the extent of the non-payment and provides for a \$1000 penalty for failing to do so.

Subclause 10(4) provides for the company to be liable for the cost of obtaining a certificate referred to in subclauses 10(1) & 10(2).

Subclause 10(5) requires the Corporation to reimburse a company for the cost of obtaining an auditor's report under subclause 10(2) where the report states that all amounts due to the Commonwealth have been paid.

Subclause 10(6) provides for the defence of reasonable excuse for failing to comply with this clause.

Clause 11 - Functions of Corporation under this Act

Subclause 11(1) gives the Corporation the following functions to be exercised on behalf of the Commonwealth:

- to receive returns, financial statements or certificates required to be given under this Bill;
- to receive payments of levy required to be made under this Bill;
- to receive payments of the additional levy; and
- to sue for amounts of unpaid levy or additional levy.

Subclause 11(2) allows the Corporation to delegate one or more of the functions in subclause 11(1).

Subclause 11(3) entitles the Commissioner of Taxation to enter into agreements with the Corporation for the performance of a function referred to in this clause and the Corporation is liable to pay the Commissioner in accordance with the agreement.

Clause 12 - Access to premises and books

Subclause 12(1) operates, if the Corporation contracts any of its powers under subclause 11(2) to the Australian Taxation Office, to confer upon the Australian Taxation Office a number of its usual powers (similar to those conferred by clause 263 of the Income Tax Assessment Act 1936) relating to access to books and records. Similar powers are not to be conferred on any other person or body engaged by the Corporation for the purposes of this Act.

Subclause 12(2) entitles the Commissioner of Taxation (or his or her delegate authorised in writing) to full and free access to premises and all books of account for the purpose of performing the functions in subclause 11(1) at all reasonable times and such a person is entitled to take copies of relevant documents. It is intended that the expression "reasonable times" carries with it an obligation to give reasonable notice.

Subclause 12(3) requires an officer to leave premises entered pursuant to subclause 12(2) if upon request he or she is unable to produce his or her written authority.

Subclause 12(4) requires the occupier of premises entered, or to be entered, to provide the Commissioner of Taxation or an authorised officer all reasonable facilities and assistance for the effective exercise of the powers in this clause and provides for a \$3000 penalty.

Clause 13 – Power to obtain information and evidence

Subclause 13(1) provides that if the Corporation delegates any of its powers to the Australian Taxation Office under subclause 11(2) that office will have certain of the usual powers (similar to those conferred by clause 264 of the Income Tax Assessment Act 1936) relating to obtaining information and evidence. Similar powers are not conferred upon other persons or bodies engaged by the Corporation for the purposes of this Act.

Subclause 13(2) entitles the Commissioner or any officer with written authority under this clause, to require any person to provide information or attend before the Commissioner or officer and give evidence or produce books relating to any matters connected with the performance of a function listed in subclause 11(1).

Subclause 13(3) provides that the information required in subclause 13(2) may be given under oath and entitles the Commissioner or the authorised officer to administer the oath.

Subclause 13(4) allows any person examined under subclause 13(2) to be paid a prescribed allowance and reimbursed reasonable expenses.

Subclause 13(5) requires any person claiming reimbursement under subclause 13(4) to prove the expenses.

Subclause 13(6) provides that in each instance, the first \$500 of expenses incurred by a person under this clause are to be met by that person and may not be reimbursed by the Commissioner.

Subclause 13(7) entitles the Commissioner of Taxation to be reimbursed from the Fund for any amount paid out under the provisions of this clause.

Clause 14 – Secrecy

This clause incorporates into the Act, secrecy provisions consistent with section 3C of the Taxation Administration Act 1953.

Subsection 14(1) defines "officer" for the purposes of this clause to mean a person who is appointed or employed by the Commonwealth (including a person who

performs services for the Commonwealth – subclause 14(2)) or to whom powers of the Commissioner of Taxation have been delegated and who has, or may have, acquired knowledge of the affairs of another person disclosed or obtained under or for the purposes of this Bill.

Subclause 14(3) prohibits a person who is or has been an officer (except in the course of his or her duties):

- . making a record of the affairs of a second person;
- . divulging any information about the affairs of a second person to a third person;

where that information was acquired by that officer by virtue of his or her position as an officer and was disclosed to or obtained by him or her for the purposes of this Act. The clause imposes a penalty of \$10,000 and/or 2 years imprisonment.

Subclause 14(4) provides that a person who is or has been an officer is not required to produce documents or divulge any information to a court where the information or documents were obtained as a result of the person's position as an officer except where the disclosure of the information or document is necessary for the purposes of a "taxation law"; which term is defined to have the same meaning as in the Taxation Administration Act 1953.

Subclause 14(5) exempts the Commissioner, a Deputy Commissioner, a Second Commissioner of Taxation or a person authorised by any of them from the operation of subclause 14(3) and allows such persons to disclose information to an officer for the purposes of enabling such an officer to perform his or her duties in relation to a taxation law.

Subclause 14(6) deems an officer to have communicated information to another person in contravention of subclause 14(3) in circumstances where:

- . the officer communicates that information to any Minister of State of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; and
- . the information was acquired by the officer otherwise than for the purposes of Part II of the Taxation Administration Act 1953.

Subclause 14(7) entitles the Commissioner, a Deputy Commissioner, or a Second Commissioner of Taxation to require an officer to take an oath of secrecy in accordance with this subclause in the form and manner specified by the Commissioner of Taxation.

Claus 15 – Regulations

The Governor-General is entitled to make regulations about all matters required, prescribed, necessary or convenient to give effect to this Act and in particular :

- providing for the means of payment of amounts of levy and additional levy

- requiring employers to keep records;
- requiring employers to provide information to prescribed persons relating to employment of eligible employees;
- prescribing penalties (not to exceed \$1000) for offences against the regulations.



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