

COAL MINING INDUSTRY
(LONG SERVICE LEAVE FUNDING) CORPORATION

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The Secretary
Economics Legislation Committee
Department of the Senate
Suite SG.64
Parliament House
CANBERRA ACT 2600

Dear Committee Members

Submission on the Taxation Laws Amendment Bill (No.4) 2003

1 Summary

The Coal Mining Industry (Long Service Leave Funding) Corporation (the **Corporation**) is a body established under an Act of the Commonwealth for the purpose of establishing and maintaining a fund to which employers in the coal mining industry are obliged to make payments and from which payments are made to employers in that industry to reimburse them for the long service leave payments which they make to employees.

The Coal Mining Industry (Long Service Leave) Fund (**Fund**) is an approved entitlement fund for the purposes of the *Taxation Laws Amendment Bill (No.4) 2003* (the Bill). Therefore, employers who contribute to the Fund are potentially entitled to the Fringe Benefits Tax exemption on payments into the Fund, as provided by the Bill. However, a drafting anomaly may potentially exclude the Fund from the scope of the exemption, notwithstanding that it is a fund which is clearly intended to be covered by the Bill.

Section 58PA of the Bill appears to require that the same "industrial instrument" impose the obligation to make contributions to the approved entitlement fund and to make leave payments to employees, in order for those contributions to be "exempt benefits". In the case of the Fund, different instruments impose these obligations, potentially placing the Fund outside the scope of the exemption.

The Corporation requests that the Committee recommend that section 58PA be amended to ensure that contributions are made to the Fund by employers for the purposes set out in section 58PA, those contributions will satisfy the requirements set out in that section, notwithstanding that the obligations to contribute to the Fund and to pay leave entitlements are contained in more than one industrial instrument.

2 The Coal Mining Industry (Long Service Leave Funding) Corporation

The Corporation was established under the *Coal Mining Industry (Long Service Leave Funding) Act 1992* (Cth). The object of the Act is to establish a long service leave funding corporation for the coal mining industry whose function is to establish and administer the Fund for the purposes set out in the legislation and referred to above. Section 3 of the Act requires the Corporation to make payments out of the Fund to employers in the coal mining industry to reimburse them for long service leave payments made to employees.

A separate Act, the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (Cth), imposes a levy on industry employers requiring them to make the contribution to the Corporation. The *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (Cth) governs the collection of this levy and the Coal Mining Industry (Production and Engineering) Consolidated Award 1987 imposes the obligation on employers to pay an employee his or her leave entitlement.

3 Submission to amend the Bill

The Fund appears to be exactly the kind of organisation that the Bill is intended to apply to. It meets all the necessary requirements set out in the Bill regarding obligations imposed by industrial instruments. However, these obligations are imposed under various instruments rather than a single instrument. It is not unusual for the obligation to make a contribution and the obligation to pay a worker entitlement to be imposed under different instruments and it would be both inequitable and contrary to the purposes of the Bill if the Fund and other bodies like it were to be excluded from the scope of the exemption due to this technicality.

Therefore, the Corporation requests that the Committee consider amending section 58PA(c)(i) of the Bill to read as follows:

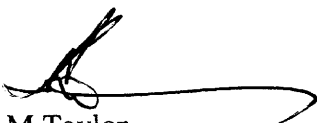
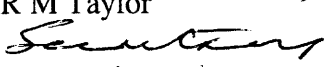
- (i) required for the purposes of ensuring that an obligation under *an* industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met;

This change simply involves changing “the” to “an” to encompass benefits paid to a worker entitlement fund that are in satisfaction of obligations imposed under several industrial instruments.

If you have any further questions please contact Ross Taylor, Secretary of the Coal Mining Industry (long Service Leave Funding) Corporation on (02 4948 6944 or at:

PO Box 734, Warners Bay NSW 2282

Yours faithfully


R M Taylor

5/05/03