



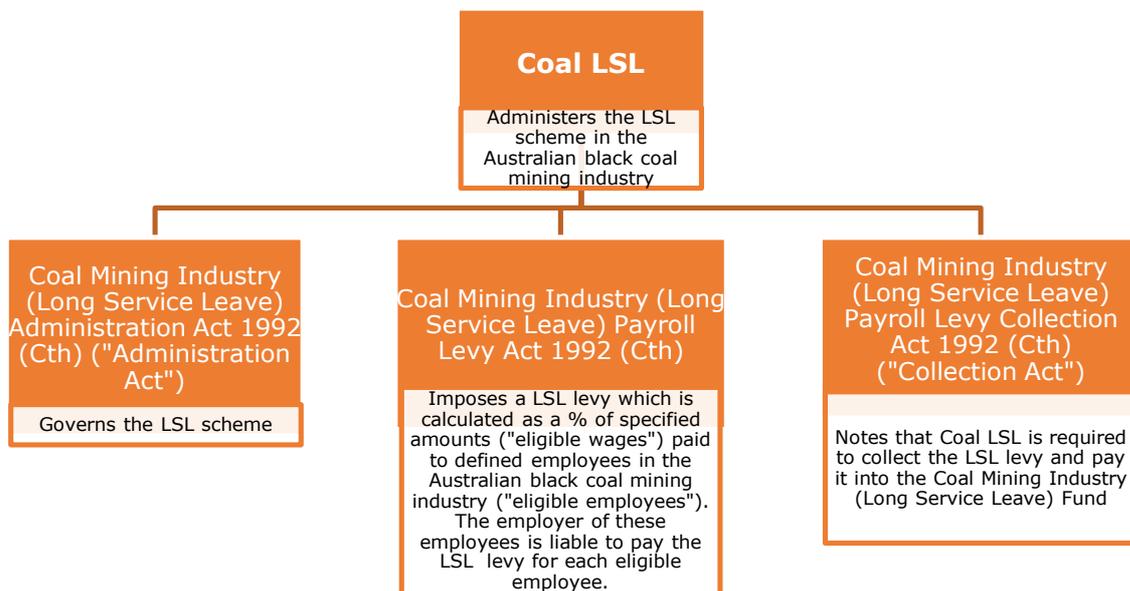
GUIDANCE NOTE

DETERMINING "ELIGIBLE WAGES" FOR THE PURPOSES OF CALCULATING LSL LEVY

PURPOSE

This Guidance Note is provided by the Coal Mining Industry (Long Service Leave Funding) Corporation ("Coal LSL") to assist employers to understand Coal LSL's views on what eligible wages are for the purposes of calculating long service leave ("LSL") levy.

OVERVIEW OF THE LONG SERVICE LEAVE SCHEME



WHAT ARE ELIGIBLE WAGES AND HOW ARE THEY CALCULATED?

As shown in the overview above, and, as outlined in the Coal LSL Guidance Note on Coverage of the Coal Mining Industry Long Service Leave Scheme, certain employers are required to make payments of LSL levy to Coal LSL for employees deemed eligible under the LSL scheme.

The amount of LSL levy to be paid depends on the amount of eligible wages paid to the eligible employee - employers are currently¹ required to pay 2.0% of an employee's eligible wages to Coal LSL each month as a levy. Therefore, each month, employers must ensure that they properly calculate each of their employee's eligible wages for that month in accordance with the Collection Act, which defines what is considered 'eligible wages'².

¹ As at 1 July 2018

² Employers should review the Collection Act (particularly section 3B) before calculating eligible wages

This Guidance Notice sets out information on the way Coal LSL determines what "eligible wages" means for the purposes of calculating LSL levy. Whilst this Guidance Note represents the opinion of Coal LSL, it is not intended as legal advice and is not determinative of legal rights or obligations.

The employer must establish which of the three relevant definitions of eligible wages in section 3B of the Collection Act applies to the eligible employee, based on whether the employee is:

- paid a base rate of pay and is not a casual employee;
- paid an annual salary; or
- a casual employee.

Employee who is paid a base rate of pay and is **not** a casual employee

For these employees, 'eligible wages' are the **greater** of the following (either Formula A or Formula B):

Formula A	Formula B
Collection Act, section 3B(1)(a)	Collection Act, section 3B(1)(b)
<p>The total of:</p> <ul style="list-style-type: none"> • the employee's base rate of pay (before any amounts are deducted under any salary sacrifice arrangement) <p style="text-align: center;">+</p> <ul style="list-style-type: none"> • incentive-based payments and bonuses (but only those that are paid at least once per month i.e. this does not include those paid quarterly, half yearly or annually) 	<p>75% of:</p> <ul style="list-style-type: none"> • the employee's base rate of pay (before any amounts are deducted under any salary sacrifice arrangement) <p style="text-align: center;">+</p> <ul style="list-style-type: none"> • incentive-based payments and bonuses (but only those that are paid at least once per month i.e. this does not include those paid quarterly, half yearly or annually) <p style="text-align: center;">+</p> <ul style="list-style-type: none"> • overtime or penalty rates <p style="text-align: center;">+</p> <ul style="list-style-type: none"> • allowances (other than for reimbursement of expenses)

Employers should not simply set in place an "automatic" LSL levy payment, based on one or other of the Formula A or Formula B amounts, as this may lead to an underpayment or overpayment of levy. The calculation must be applied to each employee, each month.

For an eligible employee that is paid an annual salary

Calculate 2.0% of the annual salary of the employee, with this salary including any incentive-based payments and bonuses which are paid at least once per month (not including those which are only paid quarterly, half yearly or annually) but **excluding** overtime or penalty rates and shift loadings.

For an eligible employee that is a casual employee

Apply Formula A above to calculate 2.0% of the amount paid to the casual employee **for all hours worked** for the applicable month. For example, if a casual employee works 45 hours in a week, then the employer must calculate the eligible wages on the total base rate of pay paid for those 45 hours, with this base rate of pay including any incentive-based payments and bonuses for that month, but **excluding** overtime or penalty rates and shift loadings.

WHEN ARE ELIGIBLE WAGES CALCULATED?

The Collection Act requires an employer to make a payment of LSL levy to Coal LSL no later than 28 days after the end of a month in which an eligible employee is employed.

As the calculation of eligible wages must take into account the amounts of base pay (and other amounts as outlined above) which are actually **paid** to the employee in a month, an employer should only calculate those wages at the end of the month, or, if no further payments are due to be paid to the employee before the end of the month, at that time.

Please note: The proper calculation of LSL levy by an employer may be the subject of enquiries by Coal LSL, including after the receipt of the employer's audit report following the end of the financial year. Please ensure that you are correctly calculating the LSL levy for each eligible employee on a **monthly** basis, as outlined above and in the Collection Act.

Workers compensation or other income protection payments

If an eligible employee of an employer is receiving workers compensation or other income protection payments directly from an insurer or other source, the employer is not required to include those amounts when calculating the eligible wages (if any) paid to the employee during a month.

However, if the employer receives a compensatory payment in respect of the employee and the receipt of that payment results in the employee being paid in the ordinary way by the employer, then the employee's eligible wages are to be calculated as described in this Guidance Note.

"Base rate of pay" in the definition of eligible wages has the same meaning it has in the *Fair Work Act 2009* (Cth):

***Fair Work Act 2009* (Cth)**

16 Meaning of *base rate of pay*

General meaning

(1) The base rate of pay of a national system employee is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.