



CONTENTS

1. Purpose of this Guidance Note	02
2. The levy collection scheme	02
3. No exemptions	02
4. When must an audit report be provided?	02
5. Who qualifies as an auditor?	03
6. Requirements for a complying audit report	03
7. Auditing and Assurance Standards Board auditing standards	04
8. Audit template	04
9. Requested details for audit reports	04
10. Coal LSL's power to require a report	05
11. Non-compliance with audit requirements – penalties and offences	05



1. Purpose of this Guidance Note

This information aims to assist employers* to understand Coal LSL's views as to how employers can meet the audit report requirements of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (the *Collection Act*).

While this information represents the opinion of Coal LSL, it is not intended as legal advice and is not determinative of legal rights or obligations.

*The definition of 'employer' in Coal LSL's legislation refers only to a national system employer as defined in section 14 of the *Fair Work Act 2009*.

2. The levy collection scheme

The *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* imposes a payroll levy on the wages of employees in the black coal mining industry (eligible employees) and the employer of those employees is liable to pay the levy. Under the *Collection Act*, Coal LSL is responsible for collecting payroll levy from the employers of eligible employees.

An integral part of the payroll levy collection scheme is the requirement, set out in section 10 of the *Collection Act*, for employers to provide an annual audit report to Coal LSL. The report is to include the auditor's opinion as to whether an employer has paid the correct amount of payroll levy.

Audit reports are used by Coal LSL as the principal source of information to ensure payroll levies are correctly paid. Section 10 of the *Collection Act* states it is compulsory for employers of eligible employees to submit an audit report.

3. No exemptions

The *Collection Act* does not provide any discretion for Coal LSL to exempt, waive or excuse an employer from their obligation to provide an audit report annually.

4. When must an audit report be provided?

An employer must give to Coal LSL an audit report that complies with the *Collection Act* no later than 6 months after the end of the financial year.

For example, for the financial year ending 30 June, the audit report must be submitted no later than 31 December of the same year.

Any employer who operates using a financial year other than one ending on 30 June should formally notify Coal LSL.



5. Who qualifies as an auditor?

For the purposes of the *Collection Act*, Coal LSL will accept as an audit report a report from a person who:

- is the auditor for the employer for the purposes of the *Corporations Act 2001*;
- or, otherwise;
- is independent from the employer being audited; and meets the following criteria:
 - has obtained an accounting degree from a prescribed university under the *Corporations Regulations 2001*; and
 - holds a professional membership with any of: the Institute of Chartered Accountants; the Australian Society of Certified Practising Accountants; the National Institute of Accountants; the Association of Taxation and Management Accountants; and
 - holds current professional indemnity insurance in compliance with membership of the above professional organisations or independently of those organisations.

Employers should, prior to engaging a prospective auditor to confirm they meet these requirements.

The auditor should, in satisfying itself that it is independent of the employer, apply the conceptual framework to independence for audit and review engagements, as set out in the Accounting Professional & Ethical Standards Board published *APES 110 Code of Ethics for Professional Standards (including Independence Standards)*.

Coal LSL will review the capacity of the auditor to issue the audit report, if it is aware of any matter which gives rise to an inference of a lack of independence. These may include any commercial arrangement between the auditor and the employer outside the scope of the audit retainer, any involvement of the auditor or its key personnel in the provision of services to the employer, whether relating to, the preparation of the financial records or statements, the performance of obligations under the Coal LSL scheme, or otherwise.

6. Requirements for a complying audit report

An audit report must state the auditor's opinion on whether an employer has paid all amounts of levy that the employer was required to pay in respect of the financial year and must include the auditor's reasons for their opinion.

If, in the opinion of the auditor, the employer has not paid all amounts of levy due, the report should specify in what respect and to what extent, the employer has not paid those amounts.

The report must also include the auditor's opinion on whether any amount paid to an employer under Part 7 of the *Coal Mining Industry (Long Service Leave) Administration Act 1992 (Admin Act)* during the financial year was correct.



7. Auditing and Assurance Standards Board auditing standards

The Auditing and Assurance Standards Board (AUASB) is an independent, non-corporate Commonwealth entity of the Australian Government, responsible for developing, issuing and maintaining auditing and assurance standards.

Whilst not mandatory, Coal LSL is supportive of auditors utilising the auditing standard ASA 805 *Special Considerations—Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement* in the preparation of audit reports required under the *Collections Act*.

8. Audit template

Coal LSL has developed an [audit report template](#) which can be utilised by auditors for audit reports under section 10 of the *Collections Act*. Use of this template is not mandatory.

9. Requested details for audit reports

If you choose not to use the template audit report, we request that your audit report:

1. state that it is an audit report pursuant to Section 10 of the *Collection Act*; and
2. be presented on the audit firm's letterhead; and
3. state the legal name and ACN of the employer subject to the audit; and
4. address the specific requirements of Section 10(1)(a)-(b):
 - states whether, in the opinion of the auditor, the person has paid all amounts of levy, or amounts of additional levy under section 7, that the person was required to pay in respect of the financial year; and
 - if, in the opinion of the auditor, the person has not paid all amounts of such levy or additional levy—specifies in what respect and to what extent, in the opinion of the auditor, the person has not paid those amounts; and
 - if, during the financial year, the person was paid an amount under Part 7 of the *Administration Act*—states whether, in the opinion of the auditor, the amount paid is correct; and
 - includes reasons for the opinions contained in the report.

If you have utilised auditing standard ASA 805 or any other audit standard in the preparation of the audit report this should be referenced in the report.

10. Coal LSL's power to require a report

Section 10A of the *Collection Act* provides that Coal LSL may, if it considers it necessary to do so, require an employer's auditor to provide directly to Coal LSL, a report on the employer's payment of payroll levy.

If the Section 10A audit report identifies that all levies and reimbursements have been calculated correctly then Coal LSL will pay for the audit report. If the audit report identifies a failure to pay a levy, the employer will be liable to pay the auditor's fees for the report.

11. Non-compliance with audit requirements – penalties and offences

There are **civil** and **criminal** penalties for failing to provide an audit report as required by the *Collection Act*:

- For failing to provide a report, Coal LSL can pursue *civil* penalties against an employer, currently up to the value of 40 penalty units for an individual or up to 200 penalty units for a body corporate.
- An employer who fails to provide a report within 6 months of the end of the financial year commits a strict liability offence and may be subject to a **criminal** penalty, currently of up to the value of 30 penalty units for an individual.

The number of penalty units applied is dependent on the offence. Penalties are imposed by the courts in civil and criminal proceedings and are calculated by multiplying the value of one penalty unit by the number of units that the offence carries.

Penalty units are defined by legislation under subsection 4AA(1A) of the [Crimes Act 1914 \(Cth\)](#) and are subject to change.

[Visit the ASIC website](#) for more information.

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