



GUIDANCE NOTE ON THE ASSESSMENT OF EMPLOYEE ELIGIBILITY UNDER THE COAL MINING INDUSTRY (LONG SERVICE LEAVE) ADMINISTRATION ACT (1992) Cth (Admin Act)

THE PURPOSE AND NATURE OF THIS GUIDANCE NOTE

Coal LSL is the statutory corporation responsible for regulating and administering the Long Service Leave Scheme in the Black Coal Mining Industry (Scheme). Part of this role includes educating employees and employers on the operation of the Scheme and assessing the eligibility of employees in accordance with the definition of eligibility contained in the Admin Act.

The Scheme applies to employees who are 'eligible employees' under the Admin Act, and to their employers.

This Guidance Note is intended to assist employees and employers to understand who is covered by the Scheme. The examples given in this Guidance Note are indicative only and intended as high-level illustrations of how the relevant definitions in the Admin Act are to be applied.

If after considering this Guidance Note:

- An employee remains uncertain whether they are an eligible employee for the purpose of the Admin Act; or
- An employer remains unsure whether any of its employees are eligible employees for the purposes of the Admin Act;

we recommend that they contact Coal LSL to discuss the specific circumstances that apply to the employee/employees in question.

**In this Guidance Note any reference to a "mine" or "coal mine" is a reference to a black coal mine.*

WHAT IS THE DEFINITION OF AN ELIGIBLE EMPLOYEE?

To be considered an eligible employee, an individual must satisfy one of the definitions contained in Section 4 of the Admin Act.

Eligible employee means:

- (a) an employee who is employed in the black coal mining industry by an employer engaged in the black coal mining industry, whose duties are directly connected with the day to day operation of a black coal mine; or
- (b) an employee who is employed in the black coal mining industry, whose duties are carried out at or about a place where black coal is mined and are directly connected with the day to day operation of a black coal mine; or
- (c) an employee permanently employed with a mine rescue service for the purposes of the black coal mining industry; or
- (d) a prescribed person who is employed in the black coal mining industry; but does not include a person declared by the regulations not to be an eligible employee for the purposes of this Act.

Note: For prescription or declaration by class, see subsection 13(3) of the *Legislation Act* 2003.

In most circumstances, eligibility of an employee is established under either the definition in subsection (a) or the definition in subsection (b).

When assessing an employee's eligibility, the specific circumstances of each case must be considered. An employee will only be considered eligible if all aspects of one of the relevant definitions are satisfied.

Elements: Definition under Subsection (a) of the Admin Act	OR Elements: Definition under Subsection (b) of the Admin Act
<ol style="list-style-type: none"> 1. Employed in the black coal mining industry; 2. Employed by an employer engaged in the black coal mining industry; and 3. Completes duties that are directly connected with the day to day operation of a black coal mine. 	<ol style="list-style-type: none"> 1. Employed in the black coal mining industry; 2. Carries out their duties at or about a place where black coal is mined; and 3. Completes duties that are directly connected with the day to day operation of a black coal mine.

This Guidance Note considers a series of scenarios specific to the definitions in subsections (a) and (b).

WHEN MAY THE DUTIES OF AN EMPLOYEE BE DIRECTLY CONNECTED WITH THE DAY TO DAY OPERATION OF A BLACK COAL MINE?

A range of matters are considered when determining whether an employee's duties are directly connected with the day to day operation of a black coal mine, such as:

Nature of duties/work performed

Work must be connected to the mining operation. This applies regardless of work status e.g. full time, part time, casual, contract or skill/labour hire.

Work pattern

Work must be performed regularly and may be scheduled or embedded in the ongoing operation of the mine rosters and other work arrangements.

Location of work

The location of work is where duties are performed e.g. a mine site, an industrial park, or complex. The majority of time working must be at or about the place where black coal is mined.

In brief, we assess the circumstances in which the employee is employed to do their work.

NO SINGLE FACTOR IS DETERMINATIVE. ALL FACTORS ARE VIEWED IN TOTALITY.

WHAT IS THE MEANING OF BLACK COAL MINING INDUSTRY?

Section 4 of the Admin Act says:

black coal mining industry has the same meaning as in the Black Coal Mining Industry Award 2010 as in force on 1 January 2010.

The following examples are considered employees of contracting companies whose predominant business is outside the black coal mining industry (i.e. not employers engaged in the black coal mining industry). As such, all scenarios are considered in relation to the definition in subsection (b).

Machinery Maintenance

Example 1

ABZ Contracting Pty Ltd (ABZ) is contracted to perform maintenance tasks on a specific make of vehicles as detailed in the contract with the operator of a black coal mine.

ABZ is the maintenance subsidiary of a major manufacturer of mining and quarrying equipment.

Under this arrangement:

- The employees commence work at the mine site or may drop into the ABZ's workshop on the way to the mine site to pick up a vehicle.
- The employees will work on the mine site for the duration of the working day.
- Periodically, some may briefly return to the workshop to pick up a particular tool or part.
- Upon the completion of their shift, the employees leave the mine and do not regularly return to ABZ workshop.
- The employees perform the same work as maintenance employees of the mine operator, though they often work on different makes of vehicle. ABZ's employees and the mine operator's employees often work alongside each other.
- Whilst ABZ provides "supervision" through a leading hand arrangement, the employees are subject to decisions of the mine operator regarding work priority and other requirements of the mine as determined by the supervisors of the mine operator.
- Some employees work the same rosters as the mine operator's employees and others work a different configuration of hours.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, and in light of the balance of information, the location of sign-on /off, provision of tools, manner of supervision was not sufficient to alter the determination of eligibility.

Example 2

BCY Contracting Pty Ltd (BCY) performs exactly the same work as in example 1 except that its employees may be required to work on more than one black coal mine site on any one day or over a period of time.

The employees of BCY work permanently on black coal mine sites, subject to the minor variation in work patterns of the type described in example 1.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, the completion of work at several black coal mine sites is not determinative.

Example 3

DXW Pty Ltd (DXW) performs exactly the same work as in example 1, however one or more employees of DXW occasionally do not work a full week on the coal mine site, instead working one to two days at the company workshop or another client site.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, the variation in work patterns described above only involves a marginal change to the predominant work pattern of employees, such that their work is still substantially in the black coal mining industry.

Example 4

EUV Contracting Pty Ltd (EUV) performs exactly the same work as in example 1, however as a matter of company practice, the employees are required to report to EUV's workshop on each shift prior to commencing work at the black coal mine site.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, the location of sign-on /off, provision of tools, manner of supervision is not persuasive in the determination of eligibility.

Example 5

MUV Contracting Pty Ltd (MUV) is a general mechanical contractor that employs a small number of employees who work exclusively on black coal mines performing continuous maintenance and general routine break down work on mining equipment.

Under this arrangement:

- MUV employees work their own roster consisting of regular 10-hour shifts, however they are also subject to frequent call-backs outside of normal hours.
- MUV employees are not subject to the direct supervision of the mine operator and work autonomously to the maintenance employees of the mine operator.
- MUV employees work predominantly on three black coal mines within a mining district. The employees will work across the three mines as required but over a given period will spend the greatest amount of time on the largest of the three mines.
- MUV employees drive their work Utes directly from their own homes to their assigned mine site at the beginning of each shift and will drive home again from the mine site at the conclusion of the shift.
- Administrative work for MUV is performed out of the proprietor's domestic property.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, the proportion of time spent at each of the mine sites, location of the administration office and nature of the supervision are not determinative.

Example 6

LZI Contracting Pty Ltd (LZI) enters into a contract with a coal company to provide maintenance work on a conveyor belt. The conveyor belt transports coal from the mine through the CHPP to a rail head or power station located several kilometres from the mine lease.

Under the arrangement:

- Maintenance work on the conveyor is also performed by employees of the mine operator. A single employee of LZI can perform work on any part of the conveyor belt but the substantial nature, circumstances and principal purpose of each employee's work is to maintain the conveyor belt within the mine site.
- Generally, the employees of LZI will commence work on the mine site, finish work on the mine site and spend the majority of time on the site.

- Whilst the employees of the contractor may have their own supervision, it is the mine operator that ultimately determines the work priority and workplace rules, and the employees of the contractor can be directed by the mine operator's supervisor.
- The employees of the mine operator and contractor can work together, and the rosters are built around that occurrence.
- Whilst the contractor provides its own tools and equipment, the employees utilise the coal mine operator's facilities and amenities.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this example, the requirement to spend some time off the mine site to undertake the maintenance of this equipment does not alter the conclusion.

Machinery Construction / Machinery Maintenance

Example 7

FTS Contracting Pty Ltd (FTS) is contracted to supply and assemble a large piece of mining equipment on a black coal mine. This could be, for example, the construction of a drag line. FTS also holds the contract for ongoing maintenance of the equipment, once constructed:

1. **Group 1 (Machinery Construction)** – the work is performed solely or largely by employees of FTS (albeit FTS may sub-contract). The assembly may take some months. Whilst the assembly occurs on the mine lease it is in an area that is separate from the ongoing production area of the mine. Upon completion of the project, the employees of FTS leave the site and return to its workshop.
2. **Group 2 (Machinery Maintenance)** – following the assembly of the dragline, FTS leaves a crew in place at the mine on a permanent basis. The employees' role is to monitor and maintain the operation of the dragline.

Conclusion:

Group 1 (Machinery Construction) – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✗ Work is in the construction of new equipment and it is not part of the day to day operation of the mine.

Group 2 (Machinery Maintenance) – Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.

- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, an employee of FTS Contracting Pty Ltd who commenced work during the construction of the machinery, but remained on site for the ongoing maintenance, would only be eligible from the time they commenced their maintenance duties.

Example 8

DEF Pty Ltd (DEF) is engaged in the business of manufacturing, transporting and servicing heavy earthmoving and mine haulage equipment that is used in open cut mines. DEF has a contract with a black coal mine operator that includes two main components:

1. The supply and assembly of the heavy machinery on the mine site.
2. The provision of a permanent onsite maintenance crew consisting of diesel fitters, welders, mechanics and auto-electricians to repair and maintain the equipment it has supplied.

In this example, employees would be engaged in group 1 or 2 in isolation, not completing works from both categories.

Conclusion:

Group 1 – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✗ Work is in the construction of new equipment and it is not part of the day to day operation of the mine.

Group 2 – Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The duties are part of the routine ongoing operation, maintenance or servicing of plant or equipment (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

If employees who are involved in both group 1 and group 2 of the work, eligible service would be limited to work completed under group 2.

Shutdown of Mining Production

Example 9

WYZ Contracting Pty Ltd (WYZ) is contracted to overhaul a drag line during a production shutdown period. It provides its own tools and equipment and supervision. The shutdown is for a period of 4 weeks and WYZ employees will leave the site upon completion of the work.

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b) as:

- ✗ Employees only performing activities during total production shutdown are not performing duties that are part of the routine, ongoing operation, maintenance or

servicing of the plant or equipment (i.e. not part of the day to day operation of a black coal mine).

Off Site Machinery Maintenance

Example 10

A black coal mining company enters into a contractual arrangement with MNO Contracting Pty Ltd (MNO), a general engineering company that provides engineering and maintenance services to a range of industries, including the black coal mining industry.

The contract:

- Identifies the actual work to be performed, i.e. the overhaul of certain haul trucks used on the mine site.
- Has a fixed two-year term.
- Requires work to be performed off the mine site and at the workshop of MNO.
- Requires work to be performed solely by employees of MNO employees (albeit MNO may subcontract).
- Requires that at completion of the work, the vehicle or part of the vehicle (e.g. engine) is returned to the mine site.

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ The work is performed off the mine site (i.e. not at or about a place where black coal is mined).

In this case, whether the work was part of an ongoing contract or a one-off job is not a determining factor.

Intermittent Machinery Maintenance / Work in Mixed Industries

Example 11

STV Contracting Pty Ltd (STV) is engaged for a discrete project on identified work that consists of the overhaul of a number of haul trucks.

The contract:

- Provides for the trucks to be taken out of service and completely overhauled.
- Is performed on the black coal mine site in the mine operator's workshop.
- Requires that work is performed by STV employees.
- Requires that STV employees provide their own tools and equipment.
- Requires that work is supervised by STV employees.
- Provides that work is performed for a three-week period.
- States that upon completion, STV employees leave the mine site and perform work in other industries.

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ When considering the totality of their employment, employees work briefly on a job before returning to work outside the black coal mining industry (i.e. the substantial industry of the employee is not the black coal mining industry).

Example 12

456 Pty Ltd is an electrical contractor based in a major regional centre, working predominantly in the manufacturing and construction industry. However, the company is also undertaking an increasing amount of work in the black coal mining industry on an intermittent basis.

One such contract involves electrical repairs to a coal handling and preparation plant located on a coal mine and operated by the mine owner. The contract involves approximately five weeks of work for six employees. When all facts are taken into account, the employees concerned are not employed in the black coal mining industry.

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ When considering the totality of their employment, employees work briefly on a job before returning to their usual work. These employees are not employed in the black coal mining industry.

The predominant industry of the employer and location of their operations is not a determinative factor.

Example 13

JPR Pty Ltd (JPR) is contracted through an individual work order from the black coal mine operator to perform a specific maintenance task at the mine. This occurs on an ad hoc basis and the task is usually of a short duration i.e. up to a day.

JPR employees are based at the contractor's premises and travel from there to the mine site and return to the contractor's depot at the end of each job.

JPR can allocate any of its employees to perform the work. It is not necessarily the same employee on each occasion.

When considering the totality of their employment, employees work briefly on a job before returning to work outside the black coal mining industry i.e. the substantial industry of the employee is not the black coal mining industry.

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b).

Example 14

UVX Contracting Pty Ltd (UVX) is contracted to perform specific maintenance work on plant and equipment on an ongoing basis, subject to the renewal/termination of the contract after a minimum set period.

Under this arrangement:

- The work is performed by UVX employees on a periodic basis.
- The work is performed on the black coal mine site.
- UVX employees provide the tools and equipment to undertake the work.
- UVX employees undertake the work on 1–2 days per week, on average.
- UVX provides supervision of its employees.
- The UVX employees leave site upon completion of the work and return to UVX's workshop and perform other work at the direction of UVX.

When considering the totality of their employment, employees work briefly on a job before returning to work outside the black coal mining industry (i.e. the substantial industry of the employee is not the black coal mining industry).

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b).

Tyre Maintenance and Change-outs

Example 15

GRQ Contracting Pty Ltd (GRQ) is contracted to undertake the work of changing tyres on various vehicles used on a black coal mine site, for example water trucks, haul truck vehicles and loaders.

The work is performed on an ongoing basis by GRQ employees at a designated bay area adjacent to the main maintenance workshop on the mine site.

GRQ employees work under their own supervision and according to their own roster. There is limited contact with mine operator employees.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ Tyre maintenance and change out work is required for continued operation of the mine (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, the nature of employee supervision and roster arrangement is not determinative.

Diagnostics

Example 16

HON Contracting Pty Ltd (HON) is contracted to provide and perform diagnostic work on the black coal mine site vehicles. The diagnostic work is used to plan the maintenance process.

The contract has an ongoing duration. The contract covers mine site vehicles on a number of black coal mine sites and HON employees are engaged in this work on a full-time basis on these coal mines. The employees will only periodically visit HON's office located off site to pick up equipment or to update software.

The company provides its own supervision subject to the terms of the contract.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The diagnostic work is a part of the routine maintenance or servicing of plant or equipment is (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

Example 17

DEF Pty Ltd (DEF) is engaged in the business of manufacturing, transporting and servicing heavy earthmoving and mine haulage equipment that is used in open cut mines. DEF Pty Ltd has a contract with a black coal mine operator.

DEF employees perform remote diagnostics that is conducted out of its regional headquarters located some distance from the coal mine. DEF's employees engaged in providing this service are predominantly based in the regional headquarters, with intermittent site visits.

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b) as:

- ✗ The work is predominantly performed off the mine (i.e. not at or about a place where black coal is mined).

Haulage

Example 18

JKL Pty Ltd (JKL) is a transport company that provides trucks and drivers to a number of customers in industries including stone quarrying, shipping and mining.

JKL has two types of employees:

1. Those who are based on a coal mine, solely transporting coal from the mine to a stockpile located on the mine lease.
2. Those who are engaged in transporting coal from the same mine stockpile to a power station or major manufacturing operation 60 kilometres away that utilise the coal as part of their production processes.

Conclusion:

Group 1 – Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.

- ✓ Hauling coal within the mine lease is part of the day to day operation of a black coal mine (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

Group 2 – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✗ They are hauling coal to a destination that is not at or about a place where black coal is mined.

If employees work in both group 1 and group 2, the employer would be required to assess the predominant work of the employees.

In this case, the predominant industry of the employer and location of their operations is not determinative.

Example 19

ABC Pty Ltd (ABC) is an earthmoving and haulage contractor whose employees have been solely engaged in removing overburden, maintaining and repairing access roads and hauling coal on an open cut black coal mine in central Queensland. ABC employees work in close cooperation with employees of the mine operator and other contractors and are under the ultimate supervision of employees of the mine operator.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ Removal of overburden, hauling coal within the mine lease and maintaining access roads are part of the day to day operation of a black coal mine.
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, the ultimate supervision of the employees by the mine operator is not determinative in the assessment.

Cleaning

Example 20

KOS Pty Ltd (KOS) is contracted by a black coal mine operator to provide cleaning services at a mine site.

KOS supplies two cleaning services (working on different rosters):

1. Cleaners that attend to the site office and amenities. These cleaners work a part-time work roster of 4 hours a day and are solely supervised by KOS.
2. Industrial cleaners whose duties primarily involve using high pressure hoses to clean plant and equipment. This work is performed on a regular basis, either in the pit itself or in the workshop located on the mine site. These employees work a full-time roster of 10 hours per day. Whilst KOS provides supervision of the industrial cleaners by allocating work, the mine company supervisors are able to change the allocation of work and instruct employees in the operational and other requirements of the mine on a daily basis.

Conclusion:

Group 1 – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✗ Work is not required for the continuing operation of the mine (i.e. not directly connected to the day to day operation of a black coal mine).

Group 2 ('industrial') – Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The cleaning of equipment is part of the routine maintenance or servicing of plant or equipment is (i.e. directly connected to the day to day operation of a black coal mine).
- ✓ Duties are completed at or about a place where black coal is mined.

Labour Hire

Example 21

123 Pty Ltd (123) provides supplementary labour services to a number of host companies in a range of industries, including black coal mining. 123's employees who are assigned to black coal mines work as an integrated part of the mine operator's workforce. The employees work similar rosters to employees of the mine site and are subject to the supervision of the mine operator's employees.

123's employees are classified as 'casuals' by their employer and are paid a loaded hourly rate in lieu of a number of award conditions. The normal pattern of employment of 123's employees assigned to coal mines is to work a weekly roster of 44 hours per week on a regular basis.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ They are an integrated part of the mine site workforce and are therefore part of the day to day operation of a black coal mine.
- ✓ Duties are completed at or about a place where black coal is mined.

The levy will be payable by the employer for all hours worked by these employees.

Professional, administrative and technical staff

Example 22

727 Pty Ltd (727) is a major international company, providing heavy vehicles and support to several industries. 727 has a large number of operational, administrative, technical and professional employees, based in several locations:

1. 727 has its Asia-Pacific head office in Sydney which contains administrative, technical and managerial employees whose duties relate to the operation of 727 without direct involvement in the black coal mines it operates.
2. Regional office in Mackay which contain administrative, technical and managerial employees who only visit coal mines periodically.

3. Town offices in Moranbah and Tieri which contain professional, technical and administrative employees whose duties are solely concerned with the day to day operation of three local black coal mines operated by 727. Employees in these offices also only visit coal mines periodically.

Conclusion:

Group 1 – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ Their duties not completed at or about a black coal mine.

Group 2 – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ Their duties not completed at or about a black coal mine.

Group 3 – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ Their duties not completed at or about a black coal mine.

The following example considers employees of companies whose predominant business is the black coal mining industry (i.e. employers engaged in the black coal mining industry). As such, all scenarios are considered in relation to the definition in subsection (a).

Professional, administrative and technical staff

Example 23

GHI Pty Ltd (GHI) is a major international mining company with a large number of operational, administrative, technical and professional employees, based in several locations:

1. GHI has its Asia-Pacific head office in Brisbane which contains administrative, technical and managerial employees whose duties relate to the operation of GHI without direct involvement in the black coal mines it operates.
2. Regional offices in Mackay and Rockhampton which contain administrative, technical and managerial employees who only visit coal mines periodically.
3. Town offices in Moranbah and Tieri which contain professional, technical and administrative employees whose duties are solely concerned with the day to day operation of three local black coal mines operated by GHI.

Conclusion:

Group 1 – Employees are **not** eligible employees under the definition in subsection (a) as:

- ✘ Their duties are not directly connected to the day to day operation of a black coal mine.
- ✘ Completion of administrative duties in the corporate office of an employer engaged in the black coal mining industry is specifically excluded under clause 4.3(b) of the definition of the “black coal mining industry” in the Black Coal Mining Industry Award 2010.

Group 2 – Employees are **not** eligible employees under the definition in subsection (a) as:

- ✘ Their duties are not directly connected to the day to day operation of a black coal mine.
- ✘ Completion of administrative duties in the corporate office of an employer engaged in the black coal mining industry is specifically excluded from the definition of the black coal mining industry.

Group 3 – Employees **are** eligible employees under the definition in subsection (a) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ They are employed by an employer engaged in the black coal mining industry.
- ✓ They complete duties that are solely concerned with the day to day operation of a black coal mine.

Emergency Services

Example 24

ZBY Services Pty Ltd (ZBY) is a company providing security and emergency response services to a broad range of industries, including the black coal mining industry.

ZBY is contracted to provide both security and emergency response personnel to a black coal mine site. In both cases, ZBY employees attend the mine site on rotating 10-hour shifts, such that at least two employees are on site at any one time. The employees allocated to the black coal mine site do not perform work in any other industries.

1. **Group 1 – Security Personnel** are responsible for controlling site access ('gatehouse' attendance), drug and alcohol testing, speed and traffic management and general site security surveillance. In the event of a site emergency (e.g. medical incident), these employees do not have a key role in emergency response – they are required to follow the same procedures as any other person on the site.
2. **Group 2 – Emergency Services Personnel** are responsible for the immediate medical and rescue response on the mine site and may (or may not) be qualified paramedics. On a daily basis, these employees may also assist with other site tasks such as drug and alcohol testing, speed and traffic management, maintenance of site safety equipment etc. In the event of a site emergency, these employees would immediately cease all other tasks to respond to the emergent situation.

Conclusion:

Group 1 (Security Personnel) – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ Security services including (but not limited to) controlling site access ('gatehouse' attendance), drug and alcohol testing, speed and traffic management and general site security surveillance are not directly connected to, the day to day operation of a black coal mine.

Group 2 (Emergency Services Personnel) – Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ Duties are completed at or about a place where black coal is mined.

- ✓ The substantial nature, circumstances and principal purpose of the Emergency Services Personnel's work is to provide emergency response. The emergency response duties are required to allow the mine to continue to operate, and as such are directly connected to the day to day operation of a black coal mine.

For Group 2 employees, the fact that employees are occupied with other duties when not responding to emergencies does not alter the principle purpose of their employment as emergency respondents.

IT Services

Example 25

H26 Services Pty Ltd (H26) is an international IT services company providing personnel and services to a range of industries. H26 holds a contract to provide IT personnel to a black coal mine site, these personnel fall into two categories:

1. **Group 1 (Administrative IT support)** – employees provide IT support to the mine site's staff on an 'as needs' basis. This support primarily includes hardware and software configuration, troubleshooting and maintenance for desktop computers, laptops and other administrative technology. These employees are based at the H26 head office in Brisbane and provide most of the support remotely. They may, on occasion, visit the site to set up new infrastructure.
2. **Group 2 (Operational IT support)** – employees are rostered to work on the mine site on a seven-day rotating roster. Their duties include hardware and software configuration, troubleshooting and maintenance of computer monitoring systems for the operating longwall, site control room facilities and two-way radio systems. These employees may, from time to time, provide IT support for the administrative technology on site, as a matter of convenience.

Conclusion:

Group 1 (Administrative IT support) – Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ The work is predominantly performed off the mine and as such not performed at or about a place where black coal is mined.

Group 2 (Operational IT support) – Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The work is related to the maintenance or monitoring of mining equipment and/or are connected to essential monitoring of mine operations and is therefore, directly connected to the day to day operation of the mine.
- ✓ Duties are completed at or about a place where black coal is mined.

Geological Services

Example 26

EDS Ltd (EDS) is an international company that provides contract drilling services to companies across several industries. EDS has a contract with a black coal mining company to complete an exploration program for a resource estimation in a currently mined part of their mining lease.

Once the work is completed, the EDS employees will leave the site to complete work on other exploration contracts both in the black coal mining industry and in other areas.

The contract:

- Includes drilling of cored holes and geological and geotechnical logging of the core.
- Requires that EDS supply drill rig operators and geologists to complete the work.
- Requires completion of the work on the mining lease, but separate to the area of active mining.

Conclusion:

Employees are **not** eligible employees under the definition in subsection (b) as:

- ✘ The work is related to exploration and resource estimation for future mining and is not directly connected to the day to day operation of a black coal mine.

In this case, the completion of the work on the mine lease is not persuasive.

Example 27

TUB Geological Services Pty Ltd (TUB) is a geological consultancy firm that holds a contract to provide geological services to a black coal mining company. The employees of TUB are required to work full time on the relevant mine site on a Monday to Friday roster.

The contract includes:

- Geological mapping of the active mining face, at least once a week.
- Maintenance of geological databases.
- Supervision of the drilling of cored holes and geological and geotechnical logging of the core in the active mining area, as required.

Conclusion:

Employees **are** eligible employees under the definition in subsection (b) as:

- ✓ The employees are employed in the black coal mining industry.
- ✓ The work is required for the planning and safety monitoring of ongoing mining and is therefore directly connected to the day to day operation of the mine.
- ✓ Duties are completed at or about a place where black coal is mined.

In this case, completion of duties that may otherwise be considered 'exploration' (e.g. geological logging of core) is completed in the active mining area as part of the day to day operation of the mine.