Australian Government
Coal Mining Industry
(Long Service Leave Funding) Corporation

GUIDANCE NOTE
UNPAID LEVY PAYMENT ARRANGEMENT (ULPA)

DETERMINING THE BASE AMOUNT FOR UNPAID LEVY PAYMENT ARRANGEMENTS

The information in this Guidance Note applies to the calculation of the levy liability owing (base amount) for an Unpaid Levy Payment Arrangement (ULPA) only.

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Purpose of this Guidance Note

The information in this Guidance Note applies to the calculation of the levy liability owing (base amount) for an Unpaid Levy Payment Arrangement (**ULPA**) only.

The purpose of this Guidance Note is to assist employers[1] to understand Coal LSL's views on determining the base amount for an ULPA. It is not intended as legal advice and cannot be used for calculations outside of the ULPA.

Employers participating in the ULPA process will be required to review historic records to determine the base amount. If historical records are insufficient or incomplete, employers should seek to use any available information to complete their draft ULPA.

During its review of the draft ULPA, Coal LSL will engage with employers to understand the information used and logic applied to assist the employers in resolving the final ULPA submission.

The *Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2026* inserts:

- Section 9A Payment Arrangements for historical arrears of levy after section 9 of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* (**Collection Act**); and
- Schedule 1 – Payment arrangements for historical arrears of levy (**ULPA schedule**) into the Collection Act, at the end of section 15 - Regulations; and
- Section 39G Employment relating to unpaid levy payment arrangements at the end of Division 6 of Part 5A of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (**Administration Act**).

[1] 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*.

Which employees are included in the ULPA?

The intention of the ULPA Schedule is to connect all eligible employees to their long service leave entitlements from 1 January 2010 to 1 September 2026.

Employers should assess the eligibility of their employees based on available records. For more information on employee eligibility, see the Guidance Note on Scheme Coverage.

What is the base amount?

To satisfy the requirements of the ULPA schedule, an employer must determine how much levy is owing. This is the **base amount**:

Base amount = subclause 10(8) amount – relevant long service leave payments

Where:

subclause 10(8) amount = the levy owing for all eligible employees, calculated by determining the eligible wages of those employees, including assumptions under clause 11 of the ULPA schedule, and applying the applicable levy rate.

Relevant long service leave payments = a payment for long service leave made to an employee covered by the arrangement by an employer that was made:

a. at or after the time at which the levy first became payable for the employee[2]; and

b. before the time the employer gave the arrangement to Coal LSL under clause 9.

Guidance on how to determine each of these components is set out below.

[2] This refers to levy payable on eligible wages paid to the employee and covered by the ULPA and worked out on the assumptions described in Clause 11 of the ULPA Schedule, where paragraph (c) of Clause 11 describes reasonable assumptions made by the employer in the absence of sufficient specified or included employment information. See the section 'Assumptions used in eligible wage calculations' for more information.

Calculating the subclause 10(8) amount

Applicable period for an ULPA

The ULPA schedule allows employers to resolve historic debts from their first employment of eligible employees on or after 1 January 2010 to the commencement day of the Amendment Act. For most employers, this means ULPAs may cover any unpaid levy liability for the period:

1 January 2010 to 1 September 2026

What are eligible wages and how are they calculated?

To assist employers, both the draft and final ULPA forms provided by Coal LSL include automated fields that calculate the eligible wages of employees, based on the data entered by the employer.

Employers are required to establish which eligible wage calculation applies to their employee(s) and input the components as required by the forms. This section outlines the various eligible wage calculations that apply to different employee work statuses.

The Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992 imposes a payroll levy on the wages of 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. The amount of levy payable depends on the amount of eligible wages paid to eligible employees.

The ULPA form will calculate the eligible wages of individual employees, based on the data input by the employer. Employers must ensure that they provide the correct inputs for their employees' eligible wages in accordance with the applicable meaning in section 3B of the Collection Act, subject to the assumptions prescribed in the ULPA schedule, and summarised in the table below.

Employers must establish which definition of 'eligible wages' is relevant for each of their eligible employees, based on whether their employee is:

Paid a base rate of pay and is not a casual employee (Paragraph 3B(1)(a) of the Collection Act)	**The employee's base rate of pay** (before any amounts are deducted under any salary sacrifice arrangement) + **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)
Paid an annual salary (Paragraph 3B(2) of the Collection Act)	**The annual salary paid to the employee, 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). The calculation of eligible wages excludes overtime or penalty rates and shift loading.
A casual employee (Paragraph 3B(3)(a) and 3B(3)(b) of the Collection Act)	**Either:** a. This calculation should be used if the employee's industrial instrument states that the employee is to be paid a casual loading and the <u>casual loading can be quantified</u>. **The total of:** **the employee's base rate of pay** (before any amounts are deducted under any salary sacrifice arrangement) + **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) + **the casual loading** **Or:** b. This calculation should be used if the casual employee's <u>casual loading rate is not able to be quantified.</u> **The total of:** **the employee's ordinary rate of pay** (before any amounts are deducted under any salary sacrifice arrangement) + **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)

For any employees paid a base rate of pay who are not casual employees, under the ULPA schedule, eligible wages must be calculated using paragraph 3B(1)(a) of the Collection Act only. The two calculations that are usually required cannot be used. For further information see the below section on assumptions used in eligible wages calculations.

For the purpose of calculating eligible wages, 'base rate of pay' has the same meaning as in section 16 of the *Fair Work Act 2009*.

Supporting information and materials

When determining historical liabilities, employers must assess the historical information available and give preference to relying on primary sources of evidence. Examples of primary sources of evidence include, but are not limited to:

- pay slips;
- employee payroll register data;
- payroll reconciliation reports;
- time and attendance data or timesheets;
- letters or correspondence confirming commencement or cessation of employment; and
- general ledger entries and financial statements related to payroll expenses.

In the absence of primary evidence, an employer may use secondary evidence to inform their assumptions. Examples of secondary sources of evidence include, but are not limited to:

- letters of offer that identify employment classification;
- enterprise agreements;
- data about production and bonuses;
- bank statements; and
- tax records such as PAYG, payroll tax and superannuation.

EXAMPLE 1

ABC Pty Ltd has limited records of Oliver's employment from 1 March 2011 to 30 June 2015 and does not have pay slips or timesheets to confirm Oliver's hours worked or eligible wages paid. However, ABC Pty Ltd does have a copy of Oliver's letter of offer for full-time employment and the applicable Enterprise Agreement as evidence of the wages earned and Oliver's roster pattern during his employment.

ABC Pty Ltd includes Oliver in the ULPA and calculates the eligible wages using the secondary sources of evidence about Oliver's wages and roster cycle. During its review of the draft ULPA submission, CLSL requests, and ABC Pty Ltd provides, the Enterprise Agreement and letter of offer of employment as supporting material for its ULPA.

Conclusion:

Coal LSL relies on the information ABC Pty Ltd provides in the ULPA and its supporting material to assume that Oliver was a full-time eligible employee for the period 1 March 2011 to 30 June 2015 earning wages in accordance with the Enterprise Agreement and letter of offer. Coal LSL assumes that Oliver did not have any breaks in qualifying service during the period of eligible employment.

EXAMPLE 2

123 Pty Ltd has records that Jason was employed from 1 March 2011 to 30 June 2015 as a full-time employee but does not have pay slips or timesheets to confirm Jason's hours worked or eligible wages paid. However, 123 Pty Ltd does have records of Jason's annualised pay in the form of PAYG payment summaries (group certificates).

123 Pty Ltd includes Jason in the ULPA and calculates the eligible wages using secondary sources of evidence about Jason's wages. 123 Pty Ltd provides the PAYG payment summaries as supporting material for its ULPA.

Conclusion:

Coal LSL relies on the information 123 Pty Ltd provides in the ULPA and its supporting material to assume that Jason was a full-time eligible employee for the period 1 March 2011 to 30 June 2015 and was paid eligible wages calculated based on the annualised evidence provided.

Assumptions used in eligible wage calculations

This section identifies the explicit assumptions the ULPA schedule allows employers to make in relation to the information provided in the ULPA. However, as noted in previous sections employers should seek to use any available information to complete their draft ULPA form.

During its review, Coal LSL will engage with employers to understand the information used and assumptions made and assist the employer in resolving the final ULPA submission.

Clause 11 of the ULPA schedule prescribes assumptions for the purposes of specifying or including information in the ULPA:

1. The employer must assume that the eligible wage calculation remains unchanged from the current definition, as described in the previous section, noting that the calculation described in section 3B(1)(b) must not be applied; and
2. Where an employer does not have sufficient information due to limited historical records about a matter relevant to the employment of an employee or class of employees, an employer may make 'reasonable assumptions' to comply with the requirements of the ULPA.

A reasonable assumption will have regard to any available information and the applicable context to determine the information required to be reported for that employee (e.g. a date of employment, rate of pay or incentive-based payment amount).

Employers must identify in the ULPA any assumptions that have been made. Employers may be required to demonstrate how and why those assumptions were made, including providing supporting evidence.

Coal LSL will undertake a case-by-case assessment of any assumptions made by an employer. Coal LSL expects that the employer's audit report will provide comment on any assumptions made by the employer and will express an opinion on the reasonableness of any assumptions that have been made.

EXAMPLE

DEF Pty Ltd has knowledge that a monthly production bonus of $100 per 1M tonnes of coal produced was paid to all production workers for the 2012-13 FY. However, DEF Pty Ltd does not have records of the bonus being paid to individual employees. DEF Pty Ltd has coal production data available for the period.

Conclusion:

DEF Pty Ltd assumes that an eligible employee included in that cohort was paid that bonus. DEF Pty Ltd assumes the amount of the production bonus based on coal production data.

Workers compensation or other income protection payments and eligible wages

If an eligible employee was receiving workers compensation or other income protection payments directly from an insurer or other source during a period of employment included in an ULPA, the employer is not required to include those amounts when calculating the eligible wages (if any) paid to the employee. These periods should be reported in the relevant section of the ULPA form for the purpose of recording the employee's service.

However, if the employer was receiving a compensatory payment that resulted in the employee being paid in the ordinary way by the employer, these amounts are considered eligible wages and should be identified in the ULPA form wage data information.

Periods of unpaid or unauthorised leave

Periods of unpaid or unauthorised leave should be included in the relevant section of the ULPA form. These periods do not contribute to the base amount calculation for the ULPA, but are relevant to the record of eligible service for employees.

In the absence of any identified periods of unpaid or unauthorised leave, CLSL will assume eligible service at the identified full time or part time hours.

Levy rates applied to eligible wages

Regulation 6 of the Coal Mining Industry (Long Service Leave) Payroll Levy Regulations prescribes the applicable levy rate/s. Eligible wages included in the ULPA are charged at the levy rate that applied at the time the wages were originally paid. This means historical levy rates may apply. The table below outlines the levy rate since 1 January 2010:

Time period	Levy rate on all eligible wages
1 July 2023 to current	2.7%
1 July 2018 – 30 June 2023	2.0%
1 January 2010 – 30 June 2018	2.7%

The appropriate levy rate will be applied automatically by the ULPA form, based on the remuneration period.

Relevant long service leave payments

Where an Employer has, during the period covered by the ULPA form, made a relevant long service leave payment to an employee, the Employer may offset some or all of that relevant long service leave payment against its levy liability for that employee.

Relevant long service leave (**LSL**) payments made to employees may be offset against the unpaid levy amount to reduce the amount the employer must pay to comply with the ULPA. Any reduction of levy payable in respect of relevant long service leave payments is limited to the amount of unpaid levy in respect of that employee.

A relevant long service leave payment must have been made:

- to the employee, or the employee's legal representative for a period of long service; and
- for leave taken during their employment or in lieu of untaken long service leave;
- in pursuance (or purported pursuance) of:
  - a law of a State or Territory; or
  - an industrial instrument; or
  - the National Employment Standards (within the meaning of the Fair Work Act 2009);
- at or after the time the levy became payable for that employee; and
- before the time the employer submits their final ULPA form to Coal LSL.

To offset the relevant long service leave payment, employers are required to provide information about the payments. Employers must provide Coal LSL evidence of the existence and amount of the relevant long service leave payment.

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Record keeping

Employers must retain records of how the amounts entered on the ULPA form were derived along with contemporaneous supporting documents.

During its review, Coal LSL will engage with employers to understand the information used and may request copies of this information.

An employer's calculations in the ULPA will be the subject of consultation and enquiries by Coal LSL during the consultation period, and by the auditor for the purposes of completing the audit report. Employers must ensure they keep accurate records of the calculation of eligible wages for each eligible employee and that the eligible wages in the ULPA are correctly calculated in accordance with section 3B of the Collection Act, and the assumptions in clause 11 of the ULPA schedule.

Employers should retain and make available when required any supporting information or materials that have been used in the completion of the ULPA.