



GUIDANCE NOTE ON AUDIT REPORT REQUIREMENTS

PURPOSE AND NATURE OF THIS GUIDANCE NOTE

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 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**).

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 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 10A of the Collection Act states it is compulsory for employers of eligible employees to submit an audit report.

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.

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.

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 that:

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

Employers should contact their auditors to confirm they meet the above criteria, prior to engaging the person to prepare a report for Coal LSL for the purposes of the Collection Act.

Coal LSL will consider an auditor to be independent from an employer if there is no relationship between the auditor and the employer such that a reasonable person would conclude that the auditor is not capable of exercising objective and impartial judgement when preparing the report.

As a starting point, Coal LSL would rarely regard an auditor as independent where the auditor is providing an opinion on an employer's financial records or statements, in relation to which the auditor has, in some other capacity (such as when providing accounting services to the employer), been involved in the preparation or calculation of those records or statements for the financial year for which the opinion is to be given.

REQUIREMENTS FOR A COMPLYING AUDIT REPORT

An audit report must state the auditor's opinion on whether an employer has or has not paid a proper amount of levy and must include the auditor's reasons for their opinion.

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 (Administration Act)* during the financial year was correct.

In providing the report, the auditor must do more than merely certify that the information provided by an employer is correct. Coal LSL considers that a statement of opinion by an auditor that simply supports an employer's own assessment of whether they have paid the right amount of levy is insufficient to meet the requirements of the Collection Act.

Coal LSL expects that the process undertaken by an auditor for the purposes of providing an opinion will be sufficient to identify any significant matters in respect of the payment of levy by an employer that might have resulted in the employer not paying the proper amount.

Coal LSL will accept a report from an auditor that includes the following form of opinion:

In my opinion, [insert name of employer] has paid all amounts of levy and amounts of additional levy (if any), that [insert name of employer] was required to pay in respect of the financial year [insert relevant financial year period].

In my opinion, [insert name of employer] has correctly calculated their claims for reimbursements under Part 7 of the Administration Act.

If the auditor is unable to provide the above opinion, then the auditor should provide the alternative opinion set out in the Collection Act, namely that the employer has not paid all amounts of levy or additional levy required of them and the extent to which those amounts have not been paid.

The auditor is also to include in the report their reasons for the opinion given. Coal LSL expects those reasons would include references to the material and facts particular to an employer, and considered by the auditor, and the basis of any conclusions drawn by the auditor and upon which the opinion is based.

COAL LSL'S POWER TO REQUIRE A REPORT

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 audit report identifies a failure to pay a levy, the employer will be liable to pay the auditor's fees for the report.

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.

An employer who fails to provide the report within 6 months of the end of financial year commits an offence and may be subject to a criminal penalty, currently of up to the value of 30 penalty units (\$6,300*) for an individual.

Alternatively, Coal LSL may choose to pursue civil penalties against an employer, currently of up to the value of 40 penalty units (\$8,400*) for an individual or 200 penalty units (\$42,000*) for a body corporate, for failing to provide the report.

** As at March 2018*