



# Coal Mining Industry (Long Service Leave) Administration Act 1992

## Waiver Agreement – Additional Remuneration

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**[Name of employer]**  
[ABN/ACN/ARBN] [number]  
**[Name of employee]**

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FORM

EWA2-17-01

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# Coal Mining Industry (Long Service Leave) Administration Act 1992

## Waiver Agreement – Additional Remuneration

DATE OF AGREEMENT

PARTIES

**[Insert name of employer]**  
ABN/ACN/ARBN [number] **(the employer)**

**[Insert name of employee]** of [address] **(the employee)**

RECITALS

A. The parties acknowledge that:

- (1) the value of the benefits provided under this Agreement must be equal to, or greater than, the levy amount;
- (2) during the period in which this Agreement is in effect:
  - (i) the employer will not pay a levy amount in respect of the employee;
  - (ii) the employee will not accrue qualifying service for the purposes of their long service leave entitlement;
  - (iii) the employer must still make returns for the employee under section 5 of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* during the period of this Agreement; and
- (3) the Agreement is subject to the approval of Coal LSL in accordance with the Act.

## 1. INTERPRETATION

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### 1.1 Definitions

The following definitions apply in this Agreement.

**the Act** means the *Coal Mining Industry (Long Service Leave) Administration Act 1992*.

**Agreement** means this waiver agreement, including any schedules, attachments or annexures.

**benefit** means the total monetary value of the additional remuneration paid by the employer under this Agreement.

**Coal LSL** means the Coal Mining Industry (Long Service Leave Funding) Corporation established under the Act.

**eligible employee** has the same meaning as in the Act.

**levy amount** means the amount of payroll levy that is payable by the employer in respect of the eligible wages of the employee under the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*.

**long service leave entitlement** means the entitlement an employee has under Part 5A of the Act.

**the Regulations** means the *Coal Mining Industry (Long Service Leave) Administration Regulations 2018*.

## 2. OPERATIVE PROVISIONS

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### 2.1 Category of Employee

The employer and employee agree that the employee is an eligible employee of a kind set out below as at the date of this Agreement and is eligible to enter into a waiver agreement with the employer.

- [ ] An eligible employee who is at least 55 and has no qualifying service for the purposes of section 39A of the Act
- [ ] An eligible employee who is at least 55 and has at least 8 years of qualifying service for the purposes of section 39A of the Act
- [ ] An eligible employee who is a manager of a corporation that is an employer of eligible employees in the black coal mining industry
- [ ] An eligible employee who is a senior professional employee engaged in the management of a corporation that is an employer of eligible employees in the black coal mining industry
- [ ] An eligible employee whose annual salary (including allowances) is:
  - (a) in 2017 — at least \$174,700; and
  - (b) in a subsequent year — \$174,700, as adjusted by the annual rate of the Consumer Price Index for 2017 and then for each completed year (if any) after 2017
- [ ] An eligible employee who is employed under an under-graduate placement or a work training placement

### 2.2 Date of effect

This Agreement takes effect immediately after it is lodged with Coal LSL.

### 2.3 Lodgement

- (a) The employer agrees to lodge this Agreement and any variation agreement with Coal LSL as soon as practicable after the parties have executed the Agreement.
- (b) The employer agrees to notify the employee when this Agreement and any variation agreement have been lodged with Coal LSL.

### 2.4 Benefits

The employer and employee agree that, instead of paying a levy amount in respect of the employee and while this Agreement is in effect, the employer will pay additional remuneration to the employee (or as directed by the employee) in accordance with clause 2.5.

Additional remuneration

The employer agrees to pay additional remuneration:

(a) of the following amount:

- an amount equal to the levy amount
- ..... *insert dollar amount*

(b) every:

- pay day
- fortnight
- month
- ..... *insert desired frequency of*

(c) to:

- the employee; or
- insert name of employee nominee and bank account*

Name		Account number	
Bank name		BSB	

Note: Subsection 39B(2) of the Act requires that in this Agreement, the value of the additional remuneration paid under this clause must be equal to, or greater than, the levy amount.

**2.5 Variation**

(d) This Agreement may be varied in writing (**a variation agreement**), if:

- (i) the variation agreement is signed by both the employee and employer;
- (ii) specifies a date on which the variation agreement is made; and
- (iii) specifies a date on which the variation agreement takes effect that is after the date the variation is lodged with Coal LSL.

(e) If, due to a change in circumstances, the value of the additional remuneration paid under clause 2.5 is less than the levy amount that would otherwise be payable by the employer, the employer and the employee must vary this Agreement in accordance with this clause, so that the value of the additional remuneration is at least equal to the levy amount.

(f) A variation agreement takes effect on the date specified in it.

## 2.6 Termination

- (g) This Agreement may be terminated in writing by the employer and employee (**a termination agreement**).
- (h) Agreement to enter into a termination agreement must not be unreasonably withheld by the employer.
- (i) The termination agreement must be signed by the employer and employee and takes effect on the date specified in it.
- (j) The employer agrees to notify Coal LSL of the termination agreement as soon as practicable after the parties have executed the agreement.

## 2.7 Cessation

This Agreement (and any variation agreement) cease to have effect:

- (k) on the day the Board of Coal LSL notifies the parties to the Agreement of a refusal to approve it;
- (l) on the date specified in any termination agreement made under clause 2.7; or
- (m) when the employee ceases to be an eligible employee of a kind prescribed by the Regulations for the purposes of subsection 39B(1) of the Act.

Note: Clause 2.1 of this Agreement sets out the kinds of eligible employees prescribed by the Regulations for the purposes of subsection 39B(1) of the Act.

## 2.8 Relevant information

The parties agree that information relevant to Coal LSL's consideration of this Agreement and as provided at Schedule 1 is to their knowledge, true and correct.

Note: Giving false or misleading information is a serious offence.

**EXECUTED** as an Agreement.

**SIGNED** by [name of  
employee] in the presence  
of:

Signature of party

Signature of witness

Name

**SIGNED** for [name of employer] by its duly authorised officer,  
in the presence of:

Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

## **Schedule 1**

(clause 2.9)

### **RELEVANT INFORMATION**

1. For the purposes of Coal LSL's consideration of this Agreement under section 39BC of the Act, the following information is included below or attached as an Annexure to this Agreement:
  - (a) Evidence that the employee is an eligible employee of a kind prescribed in the Regulations for the purposes of subsection 39B(1) of the Act and as indicated in clause 2.1 of this Agreement.
  - (b) Evidence that the value of the benefits provided under this Agreement are equal to or greater than the levy amount that would otherwise be payable by the employer.