SUBMISSION TO THE COAL LONG SERVICE LEAVE REVIEW JULY 2021

Mining & Energy Union

Abbreviations used in this submission

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

'BCMI Award' the *Black Coal Mining Industry Award 2010*.

'Coal LSL' the long service leave scheme applying to the black coal mining industry and unless otherwise indicated, including the Corporation and LSL Legislation.

'Collection Act' the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*.

'Corporation' the Coal Mining Industry (Long Service Leave Funding) Corporation, the body that administers Coal LSL.

'Federation' the Australian Coal and Shale Employees' Federation, the predecessor to the ME Union.

'LSL Legislation' collectively, the Administration Act, the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*, the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* and associated regulations.

'LSL Reform Proposals' the legislative reform package put forward by the Corporation for the consideration of Government contained in a document dated 17 March 2020.

'Mining & Energy Union' or 'M&E Union' the Mining and Energy Division of the Construction, Forestry, Maritime, Mining and Energy Union.

'Opt-In Proposal' the proposed 'opt-in' arrangement for currently non-complying employers proposed by the industry parties, including the Australian Industry Group and the ME Union contained in the briefing paper to the Industrial Relations Minister dated 12 June 2020.

Executive Summary

Australian coal miners fought for and won long service leave entitlements over 70 years ago.

The Coal Industry Long Service Leave scheme was born out of the bitter seven-week coal strike of 1949. It was the first such scheme in Australia for blue collar workers and remains one of the most comprehensive in the world.

COAL MINERS ARE AWARDED LONG SERVICE LEAVE

Sydney.—The Coal Industry Tribunal (Mr. Gallagher) today granted long-service leave to the coal miners on the basis of 13 weeks on full pay after 10 years' service; but imposed a provision which penalises the miners who took part in the recent strike.

The miners who ignored Mr. Gallagher's order on July 15 to return to work will lose one day's leave for each week they remained on strike.

The leave will begin in 1954, but provision is made for payment in lieu of leave to the relatives of persons who die before or to those who retire before that date.

Long-service leave was one of the major issues in the recent strike.

Today's decision is similar to a draft award Mr. Gallagher would have issued if a strike had not occurred with the exception of the sanctions he has imposed.

Mr. Gallagher said that the award would be suspended in any district where the collieries were idle because of a strike.

"I think it has been made clear to all men in the industry that the strike secured no benefits for them. "On the contrary," he added, "it has reduced the value of their long-service leave and has resulted in a loss of pay for a period, in most cases, of seven weeks.

COAL INDUSTRY COMMENT

Sydney.—The general secretary of the Miners' Federation (Mr. G. W. S. Grant) complained to the Coal Industry Tribunal (Mr. Gallagher) about an article in this morning's "Daily Telegraph."

Mr. Grant said that the article, which was headed "Only the Miners Ask a Ransom For It," prejudiced their claims.

Mr. Gallagher told Mr. Grant that he had not the power to punish for contempt of court, and suggested that he refer the matter to the Attorney-General.

Mr. Gallagher added that he had already referred to the Attorney-General an article which appeared in the "Daily Telegraph" last Tuesday.

Mr. Grant said that he would take the action suggested.

Unions have won significant improvements over the years, including reducing the qualifying period for 13 weeks leave from 10 to eight years, recognition of breaks in continuity of service and inclusion of contractors and labour hire workers in the scheme.

However, there are further important improvements needed to strengthen the scheme and remove barriers to all coal miners receiving industry entitlements.

The Mining & Energy Union has strongly advocated for changes in recent years through government and industry working groups, to address the concerns raised in this submission.

While feedback from our members shows the scheme works largely as intended, there is a significant minority experiencing difficulties accessing the entitlements due to them as coal mineworkers.

These include 'stranded' workers who are recognised as coal mineworkers under the Coal LSL scheme but whose employers refuse to participate; casual mineworkers who don't have all their work hours counted; and mineworkers struggling to have previous coal industry service recognised.

Some of these issues have been exacerbated by the rapid growth of casualisation and labour hire and decline of direct permanent employment in the coal industry.

We will continue to advocate strongly for improvements to the scheme through legislative change and stronger compliance and enforcement measures.

This submission is intended to outline the issues as we see them and put forward workable solutions. We will always stand up for a long service leave scheme that is national, portable and accessible to all workers in coal mines.

Introduction

1. The Mining & Energy Union represents almost 20,000 members in the coal mining industry. The M&E Union is the legal successor to the Federation. The Federation was the driving force behind the establishment of Coal LSL in 1949.[1]

2. Since 1949, the M&E Union has played a key role in the development of Coal LSL. The Union has been involved in every significant step in the evolution of Coal LSL from its initial manifestation as an award of the Coal Industry Tribunal through to its current form as an industry wide statutory entitlement funded by a levy administered by a Commonwealth statutory corporation.

3. The M&E Union places a very high priority on the effective and fair operation of Coal LSL because it is a key entitlement of the workers we represent. Long service leave is highly valued by our members because it provides an opportunity to recharge and refresh in the context of a demanding work environment; but also, it provides employees with an important financial buffer during the cyclic downturns that periodically afflict the industry.[2]

4. Importantly, given the dramatic growth of 'casual' employment in the coal mining industry, long service leave represents the *only form of paid leave* available for up to half the workforce.[3] This fact reinforces the determination of the Union to protect and enhance the operation and scope of Coal LSL.

5. This submission deals with a number of matters under the sub-headings that follow. In preparing this submission, the Union sought input from members and officials via a survey and by other means. The priority given to those matters is reflected in these submissions.

[1] See the decision of the Coal Industry Tribunal in the *Australian Coal and Shale Employees' Federation v J & A Brown and Abermain Seaham Collieries Limited* C.R.B. 599 (7 September 1949).

[2] The availability of accrued long service leave assists in keeping workers connected to the coal mining industry during periodic industry downturns by helping them 'ride out' periods of unemployment between jobs, without the need to seek employment outside of the industry.

[3] See for example the findings of the *Queensland Coal Mining Board of Inquiry Report, Part II* (May 2021) at [11.29] that show that a majority of employees in the Queensland coal mining industry are currently employed by contractors including labour hire contractors. In 1996, a mere 5.9% of employees were employed by contractors.

Scope and coverage of Coal LSL

6. Central to the long-term viability of Coal LSL is its operation as a scheme with universal application within the black coal mining industry as defined.

7. Whilst this objective has been substantially achieved due to the tranche of legislative reforms enacted between 2009 and 2011,[4] there remain some issues of concern in respect to the effective coverage of the scheme. These issues of concern are:

    a. First, the existence of a significant minority of maintenance and mining services companies that operate in the coal mining industry but refuse to accept that their employees are covered by the scheme.

    b. Second, the deliberate conduct by certain employers who are incontestably covered by Coal LSL, but who calculate that the risk of being penalised or prosecuted for non-compliance or partial compliance with the scheme is minimal.

    c. Third, the anomalous exclusion of certain employees from the scheme due to deficiencies in the current definition of 'black coal mining industry' contained in the BCMI Award, most notably in respect to shotfirer employees.

Some maintenance and mining services companies are not compliant

8. Since 2010 the legislation governing Coal LSL has provided both the legal entitlement to long service leave, as well as defining the scope of the scheme. One effect of these legislative changes has been to render irrelevant, the hitherto threshold question of whether a particular employer is respondent to a coal industry award.

9. Despite this change, there remains a sub-set of employers who operate within the coal mining industry who have insisted that they do not fall within the scope Coal LSL and have failed to pay a levy or record their employees' service in the coal mining industry. In the main, these employers are maintenance or mine services contractors operating on coal mines who, prior to the implementation of the modern award system, were respondent to non-coal mining awards.[5] A significant number of these employers are also members of the Australian Industry Group.

10. This sub-set of employers have relied upon the *substantial character* of the employer's business or undertaking as the determinative question in determining the coverage of Coal LSL, at the

[4] *Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009* and the *Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011*.

[5] Primarily the *Metal, Engineering and Associated Industries Award 1998* and the *Vehicle Industry – Repair, Services and Retail Award 2002*.

expense of considering the nature of the work or functions undertaken by their employees. This approach relies on historical legal cases in which the 'industry' of the employee is determined by reference to the substantial character of the employer's business.[6]

> *"Previous employer didn't pay into LSL as he said he was a construction company although I was employed as a coal mine operator."*
> - *Queensland coal mineworker*

11. Whatever validity this approach had prior to 2009, it is no longer determinative of the scope of Coal LSL. This is because the 'substantial character of the employer's business' approach does not properly recognise that both the BCMI Award and the Administration Act provide for *alternate bases* in determining whether an employer is covered by the scheme. The substantial character of the employer's business is one basis. The other basis relates to the location and nature of the work undertaken by the relevant employee and the degree of connection that work has to the day-to-day operations of a coal mine.[7]

12. It is noted that both Coal LSL and the coal industry unions hold the view that the sub-set of employers referred to in paragraph 7.a above, are non-compliant with their legal obligations.[8] This has resulted in a large number of employee claims for recognition of service in the industry being recognised by Coal LSL. In turn, these claims have resulted in the 'stranded employee' phenomena, whereby employees have their service and entitlements recognised by Coal LSL, but not by their employer. The employee is 'stranded' because their employer refuses to recognise their service or entitlements under Coal LSL and the Corporation has no power to pay the employee directly. [9]

13. Given Coal LSL's obligation to ensure compliance with the scheme, the existing stand-off in respect of this class of employers is untenable. It is threatening to lead to expensive and complicated litigation involving multiple parties, with the potential for huge back-payment liabilities on the part of non-complying employers.[10] It is also depriving eligible employees from accessing the benefits associated with Coal LSL. This is the context in which the Fair Work Commission hearings and negotiations leading to the Opt-In Proposal have occurred.

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[6] See for example: *R v Hibble; ex parte Broken Hill Proprietary Co Ltd* (1921) 29 CLR 290; *R v Central Reference Board; ex parte Thiess (Repairs) Pty Ltd* [1948] 77 CLR 123.

[7] Refer to s.4 of the Administration Act and clause 4.1(b)(i) and 4.1(b)(ii) of the BCMI Award.

[8] *Briefing Paper for The Hon Christian Porter MP, Attorney-General and Minister for Industrial Relations Proposed Amendments to the Coal Mining Industry Long Service Leave Legislation* 12 June 2020 at page 3.

[9] See Coal LSL Proposals at page 4.

[10] For its part, the M&E Union has also considered initiating litigation against non-compliant employers on behalf of affected members but has delayed initiating such action pending Government's consideration of the range of measures put forward in the Coal LSL Proposals and the Industry Proposals.

14. Similarly, in 2018, the industry parties that are represented on the Coal LSL Board also undertook a consultation process concerning measures that could be taken to improve the operation of the scheme. Under the auspices of the Board of Coal LSL, there was established an Industry Working Group (**'IWG'**) to consider a range of issues affecting the operation of the scheme. Included in these discussions was consideration of various anomalies and limitations present in the LSL Legislation that were impeding Coal LSL from achieving its mandate. These discussions led to a series of agreed measures contained in the LSL Reform Proposals that were presented to the Industrial Relations Minister on 17 March 2020.

15. The M&E Union strongly endorses both the LSL Reform Proposals as well as the Opt-In Proposal. Copies of the two documents are attached to this submission as **Attachment 1** and **Attachment 2** respectively.

The Opt-In Proposal

16. Turning first to the Opt-In Proposal, the M&E Union believes that the measures sought in the briefing paper represent a sensible approach to consolidating and strengthening the scope of Coal LSL whilst limiting the potential impact on affected employers.

17. At its heart, the Opt-In Proposal involves a voluntary process with a strong financial and risk minimisation incentive for currently non-complying employers to participate. For these employers, the Opt-In proposal represents a means by which current non-compliance can be regularised without the risk of an enormous back-pay bill and a complex reconciliation process stretching back over a decade.

18. The Opt-In proposal is also a fair proposal. It is fair because it involves the imposition of an ongoing additional levy paid by currently non-compliant employers above the standard levy paid by complying employers. The result of this ongoing levy premium will limit the financial impact on Coal LSL. The Opt-In process is also fair to affected employees because it will immediately recognise past service in the coal mining industry (notwithstanding the past non-compliance of the employer) and will effectively resolve the 'stranded employee' situation for this particular class of employees.

19. The Union believes that the Opt-In Proposal will lead to a high level of compliance by currently non-complying employers who belong to the sub-class described in paragraph 7.a of these submissions. We urge the Government to endorse the Opt-In proposal and to enact the necessary legislative measures required to facilitate the arrangement described in the briefing paper of 12 June 2020.

The LSL Reform Proposals

20. In relation to the category of non-complying employers described in 7.b of these submissions, we support the measures sought in the LSL Reform Proposals. These measures are squarely aimed at a small minority of employers who are intentionally 'gaming' the system to avoid or delay compliance with their legal obligations.

21. In particular, the proposed amendments address circumstances where complying employers fail to provide accurate payroll levy return information by the required time. Inaccurate and/or delayed payroll levy return information has a direct impact on eligible employees. This is because Coal LSL is unable to recognise the service for the employee due to errors in the information received or because the information has not been received in a timely manner, which delays the recognition of the entitlement. The M&E Union is aware that as a result of Coal LSL's inability to compel complying employers to provide accurate information in a timely manner (other than to impose interest), some eligible employees have not had their service history updated for up to two (2) years.

22. The particular measures in the Coal LSL Proposals that will assist in maintaining employer compliance and the integrity of the scheme are the following:

    a. The proposed amendment to s.44 of the Administration Act to allow the Corporation to withhold reimbursement payments to employers who are not complying with their obligations under LSL legislation. We note that the effect of current legislation is to require the Corporation to reimburse an employer *even if* the Corporation is aware, or strongly suspects, the employer is non-compliant.

    b. The proposed amendments to ss.39CA, 39CC and 48 of the Administration Act to allow employees in certain defined circumstances to apply for and obtain payment of their entitlements directly from the Corporation, including in circumstances where a previous employer was non-compliant.

    c. The proposed amendments to ss.7 and 9 of the Collection Act to enable the Corporation to impose appropriate additional levies in order to discourage non-compliance practices such as the deliberate late payment of long service leave levy.

    d. The proposed amendments to part 7A of the Administration Act to enable the Corporation to issue compliance notices in respect of audit reports and payroll levy returns. These changes would enable the Corporation to increase pressure on non-complying employers without the need to first initiate formal legal proceedings.

e. The proposed amendments to ss.39CA, 39CB and 39CC of the Administration Act to prevent an employer from paying accrued long service leave to an employee on cessation of employment at a rate less than had the employee taken the leave whilst still in employment.

23. We urge the Commonwealth Government to adopt and implement each of the proposed changes in the LSL Reform Proposals.

Anomalous treatment of shotfirers

24. Finally, there is one anomalous situation that deserves consideration in relation to the coverage of Coal LSL and that is in respect to shotfirers and related classification employees operating on coal mines. This anomalous situation arises from the interaction of the section 4 definition in the Administration Act and the specific exclusion contained in clause 4.3(g) of the BCMI Award. The exclusion is in the following terms:

> "*the supply of shotfiring or other explosive services by an employer not otherwise engaged in the black coal mining industry*".

25. The purported effect of this sub-clause is to exclude a specific type of employee from coverage of the black coal mining industry and hence, coverage by Coal LSL (or at least, arguably so). The exclusion clearly relates to a decision of the Australian Industrial Relations Commission in *Dyno Nobel*[11] that predates the introduction of the legislative changes in 2009 and 2011 mentioned earlier. The purported effect of the exclusion is that employees of chemicals or explosive manufacturing companies (such as Dyno Nobel) who provide services to coal mines are not deemed to be in the black coal mining industry even if those employees work exclusively on a coal mine and their work is integral to the operation of the mine.

26. The existence of this exclusion has resulted in an arbitrary and unfair application of Coal LSL to employees performing similar or identical roles on coal mines, depending on their employer.[12] For example, a direct employee of BHP Coal Pty Ltd performing the duties of a shotfirer would be covered by Coal LSL. Similarly, an employee of a labour hire company performing the duties of a shotfirer would also be covered by the scheme. In addition, an employee of an explosives company that was substantially based in the coal mining industry would also be covered. The one category of shotfirer that would not be covered is an employee of one of the major explosives or chemical manufacturing companies that provides services to coal mines.

[11] *Appeal by Dyno Nobel Asia Pacific Limited* PR956868, Australian Industrial Relations Commission, 14 July 2005.

[12] See for example the individual comments from ME Union members in **Annexure A** drawn from the June 2021 member survey on Coal LSL.

> *"I work for an explosive company in a coal mine full-time as a shotfirer and the company claims it is a chemical company and doesn't pay into CLS. I have a prior 16 years in the industry and have just been employed by this company so can't get CLS through them."*
>
> - *Queensland coal mineworker*

27. Whilst the Mining & Energy Union contends that clause 4.3(g) of the BCMI Award is ineffectual in that it is inconsistent with the operation of clauses 4.1 of the BCMI Award, this is not the view of certain employers in the sector. Accordingly, there continues to be an area of dispute and potential legal controversy in the coverage of this sub-category of shotfirers.

28. One solution to this matter would appear to be a variation to the BCMI Award to excise the existing sub-clause 4.3(g). The Union believes that such a variation is best undertaken as a joint position of the industrial parties, noting that the Opt-In Proposal would be available to the employers of relevant shotfirer employees, assuming the Government was prepared to support the measures contained in the Industry Proposal.

Accrual and payment of employee entitlements

29. Many members of the M&E Union have raised concerns about how workers accrue and are paid their entitlements under Coal LSL.[13] These issues primarily affect employees of labour hire companies, particularly those that are employed as 'casuals'.

30. The first issue concerns the under-reporting of hours worked by casual employees, due to how the provisions of the Administration Act are applied by labour hire companies. That is, under s.39AA(2)(c) an employer is required to record the lesser of 35 hours or the actual worked by a casual employee in a 7-day period. This becomes problematic when a casual employee is on a roster that compresses work hours in one particular week, but has few or any hours, in a subsequent week. These roster arrangement results in the under-reporting of actual hours worked (and therefore accrued) by casual employees because there is no capacity to average out the 35 ordinary hours over the roster cycle, as is the case for permanent employees.

31. It is undoubtedly the case that the benign intent of s.39AA(2)(c)[14] has resulted in the unintended consequence that not all of the ordinary hours worked by a casual employee over a roster cycle are being recognised. These rosters (which also apply to directly employed, permanent employees) incorporate the standard 35 ordinary hours per week mandated by the BCMI Award but average the ordinary hours over the term of the roster cycle. In doing so, this 'averaging' does

[13] Refer to the Survey Results contained at the end of this submission and the selected comments contained in Annexure A.

[14] Which is to recognise every hour worked by a casual employee up to 35 hours each week.

not breach the 35 hours cap on weekly accruals under the Administration Act and employees accrue 35 hours during each week they are employed. There is no reason why the same approach should not be applied to casual employees working the same types of rosters.

32. For this reason, the Mining & Energy Union strongly supports the LSL Reform Proposal:

> "To provide for a method of calculating the number of all hours worked by casual employees in a week to be averaged across the month, with the average weekly working hours for the month then applied against each week of qualifying service accrued during the month."

33. Another concern conveyed by members is the practice engaged in by certain employers of paying long service leave claimed on cessation of employment at a rate less than what would have been the case if the long service leave was taken in the course of employment. Again, this issue is particularly associated with employees of labour hire companies.

34. The problem arises due to an employee's enterprise agreement specifying a rate for the payment of long service leave on cessation of employment which is less than the rate at which long service leave is paid whilst in employment. This practice is enabled by the appearance of the words "*under this Part*" in ss.39C, 39CA, 39CB and 39CC of the Administration Act, which allows for an interpretation that the amount payable to an employee on cessation of employment is the 'safety net' minima of the base rate of pay.[15]

35. This interpretation is inconsistent with the purposes of the Administration Act and with the way that paid leave is treated in other relevant analagous contexts, such as the payment of annual leave on cessation of employment under the *Fair Work Act 2009*.[16] Moreover, the practice does not lead to any appreciable benefit to the employer because the existing Employer Reimbursement Rules provide that the Corporation will reimburse an employer for the entirety of any long service leave payment of eligible wages made to an employee.

36. Accordingly, the Union strongly supports the proposed amendments to the Administration Act proposed by Coal LSL to remove this obvious anomaly.

37. A further area of concern in relation to employee payments concerns the differential treatment of employees whose employment comes to an end as a result of the cessation of an employment contract, compared to employees whose employment ends as a result of redundancy, ill health, retirement or death.

38. The current provisions entitle the latter category of employees to claim entitlements after at least 6 years industry service but does not provide a similar facility to employees who have attained

[15] Refer to Schedule 4.13 of the LSL Reform Proposals.

[16] Section 90(2).

that minimum level of service but whose employment came to an end as a result of the cessation of a contract. In effect, the current provisions treat casual and fixed term employees less favourably than permanent employees in terms of access to accrued entitlements. This outcome is generally not consistent with the approach of the Administration Act of treating each type of employment equally based on the accrual of qualifying service.

> *"Worked underground for just under eight years, lost job with [name of company redacted] as a redundancy however they reported it as end of commercial contract … Currently working in the belt splicing industry and our company does not contribute to the scheme even tho 95% of my work is done underground or in washery."*
>
> - *NSW coal mineworker*

39. The Mining & Energy Union supports the proposed amendments to the Administration Act proposed by Coal LSL that are designed to rectify this differential treatment.

40. Another area of concern is in relation to the deduction of accruals for employees who have accessed their entitlement. Some members have raised the complaint that their employer is deducting hours to cover the entire shift length that employees would had off and not the ordinary hours component. The M&E Union's view is that this practice is not consistent with Coal LSL legislation. Where an employee accesses their entitlement, which includes a period of rostered days off, the employer should only deduct the ordinary hours for the shifts they would have worked and not the entire shift length.

41. We believe that Corporation should implement measures to ensure employers are properly applying LSL legislation in this regard by means of information sessions and material targeting labour hire companies in particular. In addition, the Corporation should conduct random audits to ensure compliance with the intended operation of Coal LSL legislation.

42. The final two areas relating to employee accrual and payment that the Union wishes to comment on concern situations where an employee is on workers' compensation or is on unpaid parental leave.

43. In relation to workers' compensation, the Union notes and supports the proposed changes to s.39AA of the Administration Act to allow the Corporation to assess the qualifying service of an employee not at work, on the basis of the average hours worked by the injured employee in the three months immediately prior to commencing workers' compensation. This is necessary because the wording of the current provisions dealing with workers' compensation contains a lacuna in relation to how the Corporation is to calculate qualifying service where the employee is, at that point in time, effectively 'working' zero hours due to being off work injured.

> *"I was off work on workers comp over 7 months and I'm 100% sure I didn't get LSL added on during this time."*
> - *Western Australian coal mineworker*

44. The amendment proposed by Coal LSL is consistent with the definition of 'qualifying service' contained in s.39A of the Administration Act which explicitly recognises a period of workers' compensation as entitling a worker to continue accruing long service leave. The amendments proposed represent a common-sense solution that will achieve the intended operation of the Administration Act in relation to employees in receipt of workers' compensation.

45. Finally, on the question of employee accruals, the Union believes that one further reform that is not contained in the LSL Reform Proposals is justified and that is allowing for the accrual of long service leave whilst employees are on unpaid parental leave.

46. The Union understands the fact that unpaid parental leave does not meet the definition of qualifying service under s.39A of the Administration Act. Nor does unpaid parental leave count as service for the purposes of s.22 of the *Fair Work Act 2009* and accordingly does not result in accruals for the purposes of annual leave or personal leave under the National Employment Standards.

47. However, the Union submits that there is a strong case for amendments to the Administration Act to provide that long service accrues during a period of unpaid parental leave, subject to an appropriate time limit.

48. This submission is based on the need support the increasing number of women in the industry and remove barriers to them accessing long service leave as a key industry entitlement. Whilst the Government paid parental scheme, some company policies and enterprise agreements provide for paid leave entitlements to various degrees, there is room for greater recognition of the financial impact on women of the disruption to paid work they face due to unpaid caring responsibilities. The current strong financial position of the fund (which, it should be remembered, is based in part on the unrealised accruals of workers who never qualify to be paid long service leave) means that there is room for the provision of this incentive without compromising the fundamentals of Coal LSL.

49. From the perspective of Government, the provision of long service leave accruals for periods of parental leave in the coal mining industry would represent a strong gesture of support for gender equality and increased female participation in a historically heavily male-dominated industry.

Latest data from the Workplace Gender Equality Agency shows women account for 15.5% of employees in the coal mining industry and the full-time gender pay gap is 14.3%[17].

Waiver agreements

50. Coal LSL provides some employees and their employers with the ability to make waiver agreements depending on the nature and duration of their role in the black coal mining industry. Under a waiver agreement instead of accruing leave, the employee can be paid or salary sacrifice into superannuation the amount of levy which the employer would otherwise pay for them. The eligible employees who are able to enter into waiver agreements must meet strict criteria.

51. The intention behind the introduction of waiver agreements was to provide an alternative cash or superannuation benefit to a select group of eligible employees who are either senior managers/professional employees; employees nearing retirement; or employees who are not likely not to be in the coal mining industry for a sufficient period of time to meet the qualifying service to access the entitlement. In other words, waiver agreements were always intended to have a very limited and specific operation.

52. The Mining & Energy Union strongly opposes expanding the eligibility criteria for waiver agreements so that all or most employees are able to enter into waiver agreements. In our view, expanding the group of eligible employees who can enter into a waiver agreement is not aligned with the limited purpose of waiver agreements. It could also lead to significant numbers o employers seeking to opt-out of the scheme altogether, thereby undermining the integrity and universality of Coal LSL. The expansion of access to waiver agreements would also undoubtedly result in casual coal miners, who are already in vulnerable and insecure work arrangements, losing the only form of paid leave they are currently entitled to.

Governance issues

53. The existing governance structure applying to Coal LSL consisting of an industry representative Board ultimately under the oversight of the Minister, has served the coal mining industry well. The Board and the management team of Coal LSL enjoy strong industry support and there is no basis for suggesting that the existing governance structures have not operated effectively, transparently and in accordance with legislative requirements.

54. However, there is always room for enhancement in any organisation. In this regard, the industry parties that are presently represented on the Board believe that the already excellent reputation and standing of Coal LSL can be enhanced via the expansion of the existing Board to provide for

[17] Workplace Gender Equality Agency Data Explorer data.wgea.gov.au

the appointment of two additional directors, independent of the groups already represented on the Board, to further diversify the Board and to assist with meeting increased demands.

55. In this regard, the M&E Union supports the proposals put forward by Coal LSL to facilitate the expansion of the Board to include two new independent directors.[18]

56. The Union is of the view that the current arrangements of Coal LSL regarding the management of conflicts of interests are adequate. The Coal LSL Directors have statutory duties to not sign a document containing a statement in favour of a resolution if the resolution concerns a matter in which the Director has a material personal interest and must not engage in any paid employment, that in the Minister's opinion, conflicts with the proper performance of the Director's functions. Coal LSL supports the Directors by providing each Director with the ability to receive advice from outside advisers and auditors regarding possible conflicts of interests. If a conflict exists, it must be declared and managed in the best interests of Coal LSL. The Directors are required to declare any interest in relation to any matter on the Board of Directors meeting agenda, even if it has previously been declared. Declared conflicts are recorded in the minutes of the meeting, together with details of how the Board dealt with the conflict. The Chair has the power to instruct that papers relating to a particular matter be withheld from a Board member to ensure the appropriate management of conflicts of interest. Further, Directors complete a Declaration of Interests form as part of their induction process, and update the Declaration annually, or as circumstances change, which are maintained on the Coal LSL Register of Interests. The arrangements for managing conflicts on interests are documented in the Board Charter.

57. The Mining & Energy Union believes Coal LSL should continue to be able to arrange and convene discussions with the nominal industry working group ('**IWG'**) and ad hoc discussions with stakeholders to address issues in an effective and efficient manner. In 2018, Coal LSL reconvened the IWG that was first established in 2008 to discuss the various matters associated with the Black Coal Long Service Leave Scheme at that time, and which lead to the legislative amendments introduced in 2011. The major mining companies and the M&E Union were participants.

58. In 2018, the IWG was consulted over a number of meetings on the various issues now addressed by the LSL Reform Proposals. Since insourcing the administration of the scheme, Coal LSL has actively engaged with industry stakeholders, as a trusted regulator. As a result, Coal LSL has established a strong presence in the industry and based on the M&E Union's experience has demonstrated an efficient manner in liaising with the relevant industry stakeholders.

59. In reference to the Opt-In Proposal the M&E Union believes there is some utility in having a representative of the Australian Industry Group (**Ai Group**) on the Board of Coal LSL provided

[18] Coal LSL Proposals, Schedule 4.1.

that representation it does not diminish the equal industry representative balance that exists. To this end would propose two options to progress this outcome:

a. The first option would be to increase the board by two directors, one nominated by Ai Group and another nominated by the Mining & Energy Union, thereby maintaining the industry representative balance without making the board overly large (ten in total, assuming the proposal for two independent directors is implemented); or alternatively

b. The second option would be to put the Ai Group representative position in a rotation with the Western Australian Black Coal Industry Employers. This proposal would be justified given the relative size of both employer groups to other employer interests within the Coal LSL Scheme, and would be consistent with the approach taken to the smaller Union representatives who similarly rotate their representation on the Board. This proposal would also not increase the Board's current size.

Coal LSL investment strategy

60. The Mining & Energy Union recognises the importance of a prudent investment strategy that will ensure that Coal LSL is able to meet all financial liabilities as and when they fall due. In this regard, Coal LSL is in a strong financial position, with funds held currently exceeding the Board's target level of 115% (+/5% tolerance).[19]

61. Given the strong financial position of the fund, the Union believes that none of the measures proposed by the LSL Reform Proposals or the Opt-in Proposal significantly impact the financial position or investment objectives of Coal LSL. However, it is of course appropriate that the Board and staff of Coal LSL continuously monitor the financial settings of the fund in light of the historic volatility of the coal mining industry as well as emergent challenges such as the world-wide COVID-19 pandemic.

62. The Union commends the existing investment strategy of Coal LSL and submits that the existing settings are appropriate given the current economic context.

Mutual recognition arrangements

63. It is disappointing that there is little in the way of mutual recognition arrangements between Coal LSL and other long service leave funds, particularly the portable industry schemes applying to construction workers.

[19] *Coal LSL Annual Report 2019/20* p.26.

> *"When initially completing my current role, which has not changed in the time I have worked here at this coal mine, my initial service was not recognised because the mine was deemed to be a construction site, not an operational coal mine. Employees of the company who own and operate the mine are eligible from the when they initially started, but as is always the case, contractors are not. So for more than a year of working here at this mine, my service is not recognised."*
>
> *-Queensland coal mineworker*

64. The M&E Union accepts that there are major obstacles to obtaining mutual recognition arrangements, not the least of which is that both the construction industry portable schemes and Coal LSL are predicated upon service within the respective industries they cover. In turn, these industries are meant to be mutually exclusive, such that service in the coal mining industry can never constitute service in the construction industry and vice-versa.

65. However, the reality is not so straightforward. It is sometimes difficult to separate out 'construction work' from work falling within the black coal mining industry. This is particularly the case when the same employer and employees might be engaged in both the development or construction of a new coal mine as well as subsequent work clearly falling within accepted definitions of the coal mining industry. In fact, there have been cases where employee service in or around a coal mine has been refused by both Coal LSL as well the relevant portable construction industry scheme, when clearly the work in question had to be covered by one or other of the schemes. This type of outcome is regrettable and should be avoided as far as possible.

66. Similarly, there are cases where employees who have a significant accrual under State long service leave schemes effectively forfeit their accrued entitlement upon their employer becoming covered by Coal LSL. For example, take the case of an employee of a mine maintenance contractor based in a workshop in Mackay who might have 8 years' service with his employer in the town workshop and then permanently relocates to a workshop based within a coal mine with the same employer. Under the existing legislative provisions, this worker's service reverts to zero under Coal LSL and the employee would have to work an additional 8 years in the coal mining industry to be able to access long service leave under the scheme.

67. Both scenarios described above, the first being the non-accrual in either long service leave jurisdiction; and the second, an effective forfeiture of accrued long service leave, are anomalous and unfair. Both arise from the unsatisfactory demarcation lines drawn between different long service leave jurisdictions that are meant to operate beneficially for employees.

68. The solution to both types of problems is different. In the first case, there must be protocols in place between the respective long service leave schemes in order to ensure that an employee is not left in limbo. That is, there must be a process whereby an employee must be allocated service

in either the applicable construction industry long service leave scheme, or Coal LSL. There should be no gap in coverage.

69. In the second case, the arrangement proposed at pages 5 and 6 of the briefing paper containing the Opt-In proposal commends itself. The proposed arrangement allows an employer to claim partial reimbursement from Coal LSL in circumstances where the employee does not yet have a crystallised entitlement to long service leave in the coal mining industry. In other words, the situation described above of the maintenance worker who becomes covered by Coal LSL when they already have a significant accrual under a State long service leave scheme would be ameliorated under the proposal because the employer could recognise the former State legislation long service and join that with Coal LSL in order to provide the employee with leave.

Dispute settlement under s.39D of the Administration Act

70. Section 39D of the Administration Act was introduced as part of the 2011 amendments and was intended to mirror the dispute settlement procedure under the *Fair Work Act 2009* in respect to disputes relating to the National Employment Standards.[20] Accordingly, the powers of the Fair Work Commission to deal with a dispute coming under s.39D are subject to the same limitations as a dispute brought under ss.738 and 739 in respect of the National Employment Standards.

71. Fundamentally, the limitations applying to this type of dispute limit the Commission's role to mediation and conciliation only. There is no capacity to arbitrate in respect of a dispute brought under s.39D of the Administration Act.

72. It is not clear from the terms of s.39D exactly what types of 'disputes' over long service leave the provision was designed to cover. However, it is apparent that given the limited powers conferred on the Fair Work Commission, it was never intended that s.39D apply to disputes about whether an employee was entitled or otherwise to the provisions of Coal LSL. In fact, these matters concerning legal 'rights' would properly fall within the jurisdiction of applicable Courts under s.39DA and 39DB of the Administration Act.

73. Nonetheless, there have been several disputes brought under s.39D that seek to agitate rights or entitlements under the Administration Act, where there is no capacity for the Fair Work Commission to determine those issues.[21]

74. The one area where s.39D does appear to have a role to play is in respect to a refusal by an employer to grant a period of long service leave sought by an employee. Under s.39AB(4) an

[20] *Coal Mining Industry (Long Service Leave) Amendment Bill 2011 Explanatory Memorandum* at paragraph 97.

[21] See for example, *Leighton Cowley v Dust-A-Side Australia Pty Ltd* [2016] FWCFB 3220

employer may only refuse a written request to take long service leave on 'reasonable business grounds'. In this particular situation, there is justification for a quick , cheap and effective dispute resolution process involving the Fair Work Commission due to the time sensitive character of the dispute. A mediation conference held at short notice in which a member of the Commission could express an opinion about the reasonableness of an employer's refusal to grant long service would certainly be of value.

> "*Employer never lets us take LSL when we want to eg. school holidays etc as they say they're always short on stat officials. It's extremely frustrating and needs to be addressed. At [name of mine redacted] I don't think I'll ever be approved by [company name redacted] to take LSL."*
>
> - *Mine Deputy*

75. The operation of s.39D can be improved and clarified by amendments confining it to disputes about the taking of long service leave (where the entitlement to leave is not in dispute) and by providing that the Commission must deal with the matter as quickly as possible. The continuation of s.39D in its current form simply causes confusion as to its purpose and operation.

Missing service reviews and internal appeal processes

76. Since the passage of the 2011 amendments, the Corporation has had the power to assess claims seeking the crediting of qualifying service to eligible employees on a retrospective basis back to the year 2000. This 'missing service review' process has been a massive undertaking that has led to around eleven thousand individual employee being claims reviewed, resulting in almost 70% of those reviewed having periods of qualifying service credited to their employee account. The missing service review process has been a successful and beneficial process that has resulted in a significant proportion of the coal industry workforce receiving long service leave entitlements that they otherwise would not have had.

77. The missing service review process is ongoing and has been facilitated by a high degree of cooperation and agreement amongst the industry representatives represented on the Board of Coal LSL. This level of agreement as to what constitutes qualifying service in a particular case is assisted by initiatives such as the *Guidance Note*[22] approved by the Board of Coal LSL.

78. The vast majority of missing service review claims by employees are first considered at the administrative level, by Coal LSL's internal review team, referred to as the Technical Compliance Team (**'TCT'**). The Technical Compliance Committee (**'TCC'**) which is comprised of one

[22] *Guidance Note on the Assessment of Employee Eligibility under the Coal Mining Industry (Long Service Leave) Administration 1992*

employee representative board director, one employer representative board director, and an independent adviser, makes a determination on each missing service application. Both the TCT and TCC are provided with clear guidance as to the nature of evidence that employees are required to provide and the work activities undertaken by employees that are considered to be within the black coal mining industry.[23] Similarly, prospective applicants have access to a *Service Review Handbook* that describes in simple terms the process for claiming missing service.[24]

79. However, there are always grey areas at the fringes of the coverage of the scheme that sometimes make it difficult to determine whether a given period of service falls within the the scope of Coal LSL. In addition, the retrospective aspect of the missing service review poses serious challenges in providing probative evidence concerning the nature of work that may have been undertaken ten or even twenty years ago.

80. It is in this context that Coal LSL provides for two levels of appeal in relation to a person's claim for missing service. The appeal process can be initiated by an affected employee or employer. The first level of internal appeal is determined by the TCC, which can take into account further evidence provided by the employee and/or employer. Both parties to the appeal are provided with the opportunity to provide further evidence. In circumstances were the TCC is unable to make a unanimous determination, the matter is referred for determination to the Board. The Board is entitled to accept or over-rule the opinion of TCC. The next level of appeal is to the Independent Review Panel (**'IRP'**) consisting of a senior representative of employers and employees that is not a member of the Board or employee of Coal LSL.[25] The IRP has access to the same documents and evidence as presented to the TCC.

81. Members of the TCC and IRP have in-depth industry knowledge. It is vital for the decision-makers regarding eligibility to have in-depth industry knowledge. In this regard, the accumulated industry knowledge of the TCC and IRP, which has been obtained from representing employers and employees in the industry for decades, cannot be underestimated. This is particularly important for claims that fall within the grey areas at the fringe of coverage.

> *"When I began in the coal mining industry I was working with smaller labour hire companies, I was not aware at the time that my time was not lodged with coal LSL, I have looked into this at a much later date and do not have the records to prove my service and the companies have also dissolved."*
>
> - *Queensland coal mineworker*

[23] This includes a detailed checklist dealing with nature of work and evidence provided.

[24] *Missing Service Handbook* Coal LSL November 2019.

[25] Currently Warwick Jones, Head of Human Resouces at AngloAmerican and Alex Bukarica, Director, Legal & Industrial with the Mining & Energy Union.

82. The Union considers that the eligibility decisions and appeal processes have functioned well, with almost all appeal decisions being arrived on a consensus basis, which is in part a reflection of the extensive industry knowledge from both employer and employee representatives coming together. However, we do have a concern that the evidence requirements in certain circumstances does put some employees at a disadvantage because of the poor record keeping, or non-existence of their former employers. Whilst the missing service review and appeal processes have a consistent approach to evaluating evidence, with a hierarchical approach from the most to least probative evidence, this approach does not always operate fairly in individual cases.

83. We believe that in certain circumstances, the TCC or the IRP should have the discretion to accept evidence at the lower end of the hierarchy of value in cases where an employee is not able (despite best endeavours) to provide better evidence. This could be in cases, for example, where the former employer no longer trades, or where due to the passage of time, first-hand witnesses such as supervisors or managers are no longer able to be located. In these cases, the TCC or IRP should be able to make a judgment call based on a combination of relevant lower-value evidence and sworn evidence by the employee (affidavit or statutory declaration). The number of cases where such a discretion would be exercised would be small and would not impact on the integrity or viability of Coal LSL.

How Mining & Energy Union members view Coal LSL

84. In preparing this submission, the M&E Union undertook a brief survey of members, using Survey Monkey software. Notwithstanding the short notice provided to members, 1401 individual responses have been received from coal mineworkers in Queensland, NSW, Western Australia and Tasmania.

85. The survey asked members a number of questions (some with a specific prompt) in order to understand our members' general level of satisfaction with the scheme, but also to verify whether the Union's particular concerns about the operation of Coal LSL were reflective of our members' views.

86. The relevant responses to the Survey are as follows:

    a. About half - 51% - of respondents said that they had taken some long service leave and 49% said they had not.

    b. Most are satisfied with the scheme. 55% of respondents said that they were satisfied with the scheme, 38% were neutral and 7% were dissatisfied.

c. A significant proportion of respondents indicated that they had personally experienced issues or problems with Coal LSL, with almost a quarter raising the issue of prior service not being recognised.

- Prior industry service not recognised – 24%
- Inadequate assistance with enquiries about my entitlements – 17%
- Employer not complying with the scheme – 15%
- Employer under-reporting hours worked – 10%
- Couldn't access entitlements because of the way job was lost – 3%

87. Whilst the survey results should be treated with appropriate caution given its limited parameters, the results generally do reflect what the M&E Union has been hearing from its members in relation to their interaction with Coal LSL. Also, given the size of the black coal mining industry the receipt of over 1400 responses is significant.[26]

88. Overall, the survey provides a useful snapshot that supports the conclusion that members of the Union are *generally satisfied* with the operation of Coal LSL, but that there are some serious issues affecting a significant minority of workers and companies operating in the coal mining industry. This is clear from the percentage of respondents indicating specific problems with the scheme.

89. Many of the issues identified have been discussed in this submission and are the focus of the LSL Reform Proposals and the Opt-In Proposal. It is clear that the issues identified warrant action in order to secure the integrity and long-term viability of Coal LSL.

90. Some of the issues raised by members relate to Coal LSL administration and service provision, such as timely response to enquiries and access to information via the website. Some workers also raised the issue of having their leave applications to utilise long service leave knocked back by their employer.

91. **Annexure A** to this submission contains a selection of employee generated comments in response to the question "*If you answered 'Yes' to any of the above, or would like to raise another matter that has affected you personally, please provide details*". The comments have been collated under headings that relate to the issues identified in this submission.

[26] Australian Bureau of Statistics report *81550DO005_201819 Australian Industry, 2018-19* estimates the coal mining industry workforce at about 37,000. Coal LSL in its 2019/20 Annual Report claims to have 53,230 'active' employees covered in the scheme.

Annexure A

Selected comments from the Mining & Energy Union survey

***Employer does not recognise Coal LSL*:**

"I once worked [*company name redacted*] for 1 year my position was on a mine site but he didn't add to my long service as he says he's not mining company. Yet many of his workers are working in the mines doing jobs and the long hours and shifts."

"I worked for a contract company for several years in an operating coal mine working in field maintenance servicing coal mining machinery and my long service was put into a construction LSL despite never working in any construction and unable to get it added to my current LSL couldn't get help from anybody."

"Previous companies have denied we were working on coal mines. (drilling blast holes)."

"Companies hide behind their own internal Long service and not recognizing Coal LSL (eg. [*company names redacted*] to name just a few) even tho you have permanent employment to a mine site (eg. Goonyella, Peak Downs, Hail Creek, Newlands to name a couple as well) and assist with their day to day maintenance and operation. Apply with the foundation to investigate and it falls on deaf ears and you talk to your employer and they laugh at you."

"Current employer not recognising coal industry workers."

"I worked for [*company name redacted*] and they said that they are an engineering business and not required to pay into the LSL even though I spend 75 % of my time on a mine site and had to get a coal board medical for my job??? I never understood that."

"Contractor employer paying my entitlements into Q Leave (building and construction) for the whole time I was working at a coal mine as a diesel fitter in the field maintenance".

"One of the contract companies I worked wasn't recognised so I lost 2 years of leave. Only found out when I went to take LSL and then was told."

"As a embedded Labour hirer contractor at Saraji South mine for 8 years (old Norwich park mine) our employer doesn't think he has to pay us our long service leave. He thinks he only has to pay LSL for the one year after the Amalgamation on 1/7/2020 to now".

"The company not wanting to pay into it, they said they didn't have to".

“I worked for two years for national mine maintenance out at Saraji mine and none of my hours were recognised”.

Deliberate non-compliance

“Company didn't acknowledge they had to pay CLSL, however I was able to get my entitlements by lodging a complaint.”

“I worked for a contractor company back in 2012 and they did not contribute.”

“[*Company name redacted*] not paying into long service in previous job No luck redeeming it”.

“Been in industry since 2008 still haven’t received any LSL.”

“Employers not paying and Government doing nothing.”

“[*Company name redacted*] mining service never paid”.

“I've seen too many labour hire people complaining about their company not complying with the coal LSL requirements.”

“I'm not sure... I'm labour hire, do I count?”

“Labour hire company was not paying into long service”.

“My employer at the time did not pay into it for 2 years and only found out after I left that employer so tried your get it back but the employer went bankrupt and no longer is around”.

“The company I work for does not pay lsl entitlements to us”.

Shotfirers not being recognised

“I work for [*company name redacted*] and they refuse to recognise our service in the black coal industry, even though we are in the direct involvement in the black coal industry. I think what they are doing is illegal. Also have previous service with global product search who never payed into the scheme for me. I have 8 yrs coal lsl due but can’t use it due to [*company*] not recognise.”

“Work for an explosive company in a coal mine full time as a shotfirer and the company claims it is a chemical company and doesn’t pay into CLS. I have a prior 16 years in the industry and have just been employed by this company so can’t get CLS through them.”

“I work for [*company name redacted*] Peak Downs as a maintenance fitter & am inducted on numerous sites, have current coal board medical & standard 11 for breakdown & maintenance purposes on site, however [*company*] does not recognise that I work in & around coal mines & classes us as manufacturing.”

“I work for [*company name redacted*] in the Bowen basin. I go home from work every day covered in coal dust yet they somehow get away with having us under the manufacturing award. Every other person on site is in the coal lsl scheme bar us. Very frustrating.”

“[*Company name redacted*] don’t recognise us as coal mine workers”.

“I work for [*company name redacted*] and they don’t believe we work in the coal industry so they don’t believe they need to pay.”

“My employer says. Lawyers advice is that they don’t have to pay into LSL because they only provide a service to the Blast Crew”.

Demarcation with portable construction industry schemes

“Shutdown companies using Qleave instead of Coal LSL despite working on coal mines, meaning my father doesn't have adequate accruals in either scheme, to be able to access his entitlement. I can't access my balance because the admin team at Coal LSL is so far behind…. that is ridiculous. How is it not something you can access simply by logging into the website or an app.”

“As I was a contractor working in the belt splicing sector which was under building but I worked mostly at coal mines I was getting Qleave and I couldn’t transfer those years to the coal long service leave”.

“Worked for a contractor in a coal mine, but they had to pay into construction LSL and not coal LSL”.

“People working under civil construction and doing mine site work, not recognised as black coal.”

“Previous employer didn’t pay into lsl as he said he was a construction company although I was employed as a coal mine operator”.

"I worked for a contract company for several years in an operating coal mine working in field maintenance servicing coal mining machinery and my long service was put into a construction LSL despite never working in any construction and unable to get it added to my current LSL couldn't get help from anybody and nobody was interested the system was too complicated and hard to navigate through. My LSL should have been going into the Coal mine worker LSL not construction but that's what the contracting company was in and a few of my work colleagues have had the same thing happen to them as well so we have resigned ourselves to losing it. We are no longer contractors we are all working for a mining company and I've been told you have to be careful how you apply for your LSL as the company have messed it up and deducted more hours than you have taken the whole system needs overhauling."

Problems with claiming missing service

"Still trying to gather past information/evidence to apply for previous long service leave".

"One employer ([*company name redacted*]) did not comply with the LSL and when I enquired about it, I then, over the next 12 months, had to locate people I had worked with who could corroborate my claim despite the fact that it had taken place some 10 years previously and I had no idea where workmates/supervisors/OCEs had moved on to."

"Incorrect forms provided by employer, then not followed up so was dragged out. Would not confirm dates. All good in the end."

"Provide information to coal lsl about a previous employer and they didn't recognise it cause apparently I didn't apply enough information to the claim which I did. Lost 12months worth of long service".

"In 2009 and 2010 I was working for a labour hire company when I reviewed my long service leave. I did not have any entitlements. When I questioned the labour hire company they informed me it was accruing under the wrong scheme and they would fix it. It was corrected and transferred into the Coal LSL however it was broken down into separate employment periods and not a continuous period. This is still reflected on my LSL entitlements today".

"When I began in the coal mining industry I was working with smaller labour hire companies, I was not aware at the time that my time was not lodged with coal LSL, I have looked into this at a much later date and do not have the records to prove my service and the companies have also dissolved. I am not happy that current employers contact coal LSL and lodge new employees to the system but coal LSL take 3 months to add to the system."

“My employer at the time did not pay into it for 2 years and only found out after I left that employer so o trued your get it back but the employer went bankrupt and no longer is around”.

“Former employer not willing to help in any way”.

“No because I worked at more than 13 different mine sites over a 5 year period multiple times at different sites with the same company. It was hard to provide accurate evidence. All got a bit too hard I was contacted by lsl asking for that evidence so I'm not disgruntled with the union just better educated about my entitlements.”

“I lost all the time I worked for [*company name redacted*] as the company changed hands and the review committee was no help”.

“Even after providing pay slips and group certificates I couldn’t get my long service leave recognised from previous employers. Surely this proves I worked there. There was nothing else I could do to prove my employment and lost over 3 yrs service.”

Administrative issues/interface with Corporation

“Cannot get a detailed hours amount of lsl which is very disappointing for a service.”

“Only having an estimated guess on hours earned since there is apparently a backlog from 2019. Why is there not an accurate counter like annual leave is with companies?”
“No information about how much entitlements I have accrued has ever been sent to me and when I’m allowed to start taking it”.

“Have enquired on several different occasions regarding eligibility date, with mixed responses. One instance I was given a date for eligibility, second instance I wasn't found in the system, third was a different eligibility date”.

“I would like to just access my account and see hour many hours I’ve accrued instead of emailing or calling coal long service leave PLEASE PUT MY ACCRUED HOURS UP so I can access it. Thank you [*name redacted*].”

“Web site down when making enquiries.”

“Can't access hours owed online.”

Leave requests not accommodated

"Employer never lets us take LSL when we want to eg. school holidays etc as they say they're always short on stat officials. It's extremely frustrating and needs to be addressed. At [*name of mine redacted*] I don't think I'll ever be approved by [*company name redacted*] to take LSL."

"Just the manner in which I gave plenty of notice to take lsl through work but it's been taken out of my annual leave with work saying that coal lsl haven't approved it yet I have plenty of leave and gave plenty of notice."

"The companies/ contractors do not like you taking them. They don't even like you taking annual leave."