

**COAL AND OIL SHALE MINE WORKERS  
(SUPERANNUATION) AMENDMENT ACT 1994 No. 1**

NEW SOUTH WALES



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**COAL AND OIL SHALE MINE WORKERS  
(SUPERANNUATION) AMENDMENT ACT 1994 No. 1**

NEW SOUTH WALES



**Act No. 1,1994**

An Act to amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 for the purpose of making further provision for the payment of benefits to or in respect of mine workers who, on 2 January 1993, were contributors to the Coal and Oil Shale Mine Workers Superannuation Fund; and for other purposes. [Assented to 2 May 1994]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1994.

**Commencement**

2 (1) This Act is taken to have commenced on 3 January 1993, except as otherwise provided by this section.

(2) Schedule 1 (4) (e), and section 3 in its application to that provision, are taken to have commenced on 1 July 1990.

(3) Schedule 2 (3), and section 3 in its application to that provision, are taken to have commenced on 3 July 1988.

(4) The provisions of Schedules 2 (9) (b) and (d), 2 (13), 3 (2)–(7) and 4, and section 3 in its application to those provisions, commence on the date of assent.

**Amendment of Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45**

3. The Coal and Oil Shale Mine Workers (Superannuation) Act 1941 is amended as set out in Schedules 1–4.

**Revocation of certain proclamations**

4 The following proclamations made under section 4 of the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 are revoked:

- (a) the proclamation appearing on page 380 of Gazette No. 14 of 1962;
- (b) the proclamation appearing on page 863 of Gazette No. 35 of 1983;
- (c) the proclamation appearing on page 3227 of Gazette No. 98 of 1984.

**Explanatory notes**

5. Matter appearing under the heading “Explanatory note” in the Schedules to this Act does not form part of this Act.

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**SCHEDULE 1—AMENDMENTS RELATING TO THE  
SERVICE OF MINE WORKERS EMPLOYED IN  
RECIPROCATING STATES**

(Sec. 3)

**Amendment**

(1) Section 2 (**Definitions**):

In section 2 (1), after the definition of “**Quarter**”, insert:

“**Reciprocating State**” means Queensland, Tasmania or  
Western Australia.

**Explanatory note**

The amendment defines the expression “Reciprocating State” for the purposes of the Principal Act. The reciprocating States are Queensland, Tasmania and Western Australia.

**Amendment**

(2) Section 4 (**Reciprocating States**):

Omit the section.

**Explanatory note**

The amendment repeals section 4 (**Reciprocating States**). This section is no longer needed because the “Reciprocating States” will be defined in section 2 (1). (See item (1)).

**Amendment**

(3) Section 4A (**Special provisions for persons engaged in the coal mining industry in a reciprocating State**):

Omit “Queensland” wherever occurring, insert instead “a reciprocating State”.

**Explanatory note**

As a result of the amendment, the special provisions in section 4A (which enable industry service outside New South Wales to be taken into account in determining an entitlement to a New South Wales benefit) will apply to persons engaged in the coal mining industries in all reciprocating States and not just Queensland.

SCHEDULE 1—AMENDMENTS RELATING TO THE SERVICE  
OF MINE WORKERS EMPLOYED IN RECIPROCATING  
STATES—continued

**Amendments**(4) Schedule 2 (**Savings and transitional provisions**):

- (a) In clause 2 (1), after “Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992”, insert:

Coal and Oil Shale Mine Workers (Superannuation)  
Amendment Act 1994

- (b) After clause 2 (2) (b), insert

; or

- (c) take effect on 1 July 1990 or a later date, if it is a provision consequent on the enactment of the provisions of Schedule 1 to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1994, and section 3 of that Act, in its application to those provisions.

- (c) In clause 3, after “worker who,”, insert “on or after 4 December 1989 and”.

- (d) In clause 3, after “disabled,” insert “had been retrenched”.

- (e) After clause 3, insert:

**Western Australian mine worker who, before 3 January 1993, retired, was disabled, retrenched or died**

4. (1) Section 4A, as in force before its repeal on 3 January 1993, is taken, from and including 1 July 1990 until its repeal, to have applied to a person employed in the coal mining industry in Western Australia in the same way as it applied to a person employed in the coal mining industry in Queensland.

(2) Despite its repeal on 3 January 1993, that section, as so in force, is taken to continue to apply to and in respect of a person employed in the coal mining industry in Western Australia if, before the repeal, the person had retired, had become disabled, had been retrenched or had died.

**Explanatory note**

The amendments are consequential on the other amendments made by this Schedule.

**SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS**

(Sec. 3)

**Amendments**(1) Section 2 (**Definitions**):

(a) In section 2 (1), insert in alphabetical order:

**“Approved deposit fund”** has the same meaning as in the Commonwealth Occupational Superannuation Standards Regulations.

**“Deferred annuity”** means a deferred annuity to which regulation 11 of the Commonwealth Occupational Superannuation Standards Regulations applies.

**“Superannuation fund”** means a scheme, fund or arrangement (whether or not established by an Act) under which any superannuation or retirement benefits are provided by an employer.

(b) After section 2 (8), insert:

(8A) On and after the relevant date (as defined in section 14PA (7)), subsection (7) of this section ceases to apply to a mine worker who is an officer of the Department of Mineral Resources (or its successor) and to a person who is a member of or employed by the Joint Coal Board.

**Explanatory note**

The first amendment inserts into section 2 (1) definitions of the expressions “Approved deposit fund”, “Deferred annuity” and “Superannuation fund”. These definitions are similar to the definitions of similar expressions in other superannuation legislation.

The second amendment inserts into section 2 proposed subsection (8A). Section 2 (7) provides that, for the purposes of sections 19 and 19D, the employer of a mine worker who is not an employee of an “owner” (as defined in section 2 (1)) is to be the person who actually employs the mine worker. (Sections 19 and 19D respectively provide for owners of mines to make contributions to the Coal and Oil Shale Mine Workers Superannuation Fund and the Coal and Oil Shale Mine Workers Compensation Subsidy Fund.) Proposed subsection (8A) provides that section 2 (7) is to cease to apply in respect of a mine worker who is an officer of the Department of Mineral Resources or a member or employee of the Joint Coal Board. The new subsection is consequential on the amendment made by item (10).

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

**Amendments****(2) Section 3 (Special provisions as to calculation of periods of employment):**

(a) Omit section 3 (6) (d), insert instead:

(d) an officer of the Department of Mineral Resources:

(i) who, on or after 16 October 1949 but before 1 July 1994 was the holder of a first class certificate of competency, and who was performing inspectorial duties, under the Coal Mines Regulation Act 1982; and

(ii) who became an officer of a predecessor of that Department on or before 9 December 1957.

(b) In section 3 (6) (k), after “on or after 9 December 1957”, insert “but before 1 July 1994”.

**Explanatory note**

The amendments are consequential on the amendment made by item (10).

**Amendment****(3) Section 14D (Lump sum benefit payment on death of mine worker on or after 26 March 1978 and before 3 January 1993):**

In section 14D (2), after “paragraph (a)” wherever occurring, insert “or (a1)”.

**Explanatory note**

The amendment makes it clear that benefits under the section are payable to a deceased mine worker’s dependent children where the mine worker died on or after 3 July 1988 and before 3 January 1993.

**Amendments****(4) Section 14I (Lump sum benefits for mine workers on retirement or retrenchment and for certain retrenched dormant members):**

(a) After section 14I (1) (a), insert:

(a1) a person who on 2 January 1993 was a dormant member but who, having become a mine worker after that date, later retires at the age of 55 or more; and

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

- (b) From section 14I (1) (b) (i), omit “as a result of retrenchment as a mine worker”, insert instead “whose latest period of service as a mine worker was terminated by retrenchment after 25 March 1978”.
- (c) After section 14I (1) (b), insert:
  - ; and
  - (c) a person to whom section 4A applies:
    - (i) who at any time after 25 March 1978 has been retrenched while employed in the coal mining industry in a reciprocating State; and
    - (ii) who, having reached the age of 55, applies for the benefit after 2 January 1993.
- (d) Omit section 14I (2), insert instead:
  - (2) A person to whom this section applies is entitled to payment from the Fund of a lump sum benefit equal to the benefit provided by subsection (3). However, the person is entitled to payment from the Fund of a lump sum benefit provided by subsection (4) if:
    - (a) the person was at least 40 years of age on 2 January 1993; and
    - (b) contributions were being paid to the person’s Special Account (if any) immediately before the person’s retirement or retrenchment as a mine worker; and
    - (c) the benefit under subsection (4) would provide the person with a greater amount than the benefit under subsection (3).
- (e) From the definition of the symbol “B” in section 14I (3) and (4), omit “the mine worker retired or the retrenched dormant member”, insert instead “the person retired as a mine worker or, being a retrenched dormant member,”.
- (f) From the definition of the symbol “D” in section 14I (3), omit “the mine worker or retrenched dormant member”, insert instead “the person”.
- (g) From the definition of the symbol “E” in section 14I (4), omit “the mine worker or retrenched dormant member”, insert instead “the person”.



**SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued***

- (h) From the definition of the symbol “E” in section 14I (4), omit “the mine worker’s Special Account”, insert instead “the person’s Special Account (if any)”.
- (i) From the definition of the symbol “F” in section 14I (4), omit “the mine worker’s or retrenched dormant member’s”, insert instead “the person’s”.
- (j) Omit section 14I (5), insert instead:
  - (5) If a person dies before a benefit to which the person would otherwise have been entitled under this section has been paid, the Tribunal must, on application being made to it by the person’s personal representatives, pay the benefit to those representatives.

**Explanatory note**

The first amendment will enable a person’s previous period of employment in the New South Wales coal or oil shale mining industries to be taken into account in determining the person’s entitlement to a benefit under the section in a case where the person, having ceased to be employed in those industries before 3 January 1993, has been subsequently re-employed in those industries and retires as a mine worker at or above the age of 55. (Item (4) (a).)

The second amendment will ensure that only those retrenched former mine workers (referred to as retrenched dormant members) whose latest period of employment in those industries was terminated after 25 March 1978 will be able to have their previous employment taken into account for the purpose of calculating their benefits under that section. (Item (4) (b).)

The third amendment is intended to ensure that a person over 55 years of age who was formerly employed in the New South Wales coal or oil shale mining industries and who is retrenched from employment in the coal industry in a reciprocating State (i.e. Queensland, Tasmania or Western Australia) will be entitled to have the period of employment outside New South Wales taken into account for the purpose of determining the entitlement of the person to a benefit for that period of service. (Item (4) (c).)

The other amendments to the section are consequential on the amendments made by items (4) (a)–(c).

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

**Amendments**

(5) Section 14J (**Lump sum benefit payable on death of certain mine workers and former mine workers**):

(a) Omit section 14J (1)–(3), insert instead:

(1) If no other benefit is payable or has been paid under this Division, a lump sum benefit, determined in accordance with this section, is payable as provided by section 14K on the death after 2 January 1993 of:

- (a) a mine worker who on that date was a contributor to the Fund; or
- (b) a person who on that date was a dormant member but who became a mine worker after that date,

and who in either case was a mine worker at the time of death.

(2) If no other benefit is payable or has been paid under this Division, then, at the discretion of the Tribunal, a lump sum benefit, determined in accordance with this section, is payable as provided by section 14K on the death after 2 January 1993 of a person who, not having reached the age of 60 at the time of death, was on that date:

- (a) a mine worker who was a contributor to the Fund but who subsequently became a dormant member as a result of retrenchment; or
- (b) a dormant member whose latest period of service as a mine worker was terminated by retrenchment after 25 March 1978,

and who in neither case was a mine worker at the time of death.

(3) The lump sum benefit payable under this section on the death after 2 January 1993 of:

- (a) a person referred to in subsection (1) (a) or (b) who, immediately before death, was a mine worker in respect of whom contributions were being paid to the person's Special Account (if any); or

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

(b) a person referred to in subsection (2) (a) who, immediately before ceasing to be a mine worker, was a mine worker in respect of whom contributions were being paid to the person's Special Account (if any), is the greater of the amounts determined in accordance with subsections (5) and (6).

(3A) The lump sum benefit payable under this section on the death after 2 January 1993 of a person referred to in subsection (2) (b), or a person referred to in subsection (1) (a) or (b) or (2) (a) in respect of whom there is no Special Account, is the amount determined in accordance with subsection (5) or, if the Tribunal in its discretion so decides, subsection (6).

(b) From section 14J (4), omit “(2) and (3)”, insert instead “(3) and (3A)”.

(c) From section 14J (5) and (6), omit “the mine worker or retrenched dormant member” wherever occurring, insert instead “the person”.

(d) From the definition of the symbol “F” in section 14J (6), omit “deceased mine worker or retrenched dormant member”; insert instead “deceased person”.

(e) Omit the definition of the symbol “G” in section 14J (6), insert instead:

G is 240 multiplied by the total number of benefit units determined in respect of the deceased person in accordance with section 14K.

(f) From the definition of the symbol “H” in section 14J (6), omit “a mine worker or a retrenched dormant member”, insert instead “the person”.

(g) From the definition of the symbol “H” in section 14J (6), omit “the mine worker's or dormant member's”, insert instead “the person's”.

**Explanatory note**

Section 14J currently provides for the payment of a lump sum benefit on the death of a mine worker or a person who was a dormant member of the Coal and Oil Shale Mine Workers Superannuation Fund on 2 January 1993.

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

As a result of the amendment made by item (5) (a), a benefit under the section will also be payable in respect of a deceased person who was a dormant member of the Fund on 2 January 1993 and who, having again become a mine worker after that date, was a mine worker at the time of death. The section will also extend to a deceased person who was retrenched as a mine worker after that date, but in that case and the case of a person who was a retrenched dormant member of the Fund before that date (but after 25 March 1978), the Tribunal will have a discretion whether or not a benefit under the section should be paid.

The amendments made by item (5) (b)–(d) and (f) and (g) are consequential on the amendments made by item (5) (a).

The amendment made by item (5) (e) redefines the symbol “G” so as to represent the total benefit units determined in respect of the deceased person under the substituted section 14K. (See item (6).) The symbol represents the multiplier that enables the total benefit payable in respect of that person to be determined.

**Amendment**

(6) Section 14K:

Omit the section, insert instead:

**Payment of benefit on death of a person to whom section 14J applies**

14K. (1) For the purposes of this section and section 14J, a benefit unit is 1.

(2) A dependant of a deceased person in respect of whom a benefit is payable under section 14J is entitled to:

(a) such proportion of the benefit as the dependant’s entitlement under this section bears to the sum of all the entitlements under this section that relate to the benefit; or

(b) if the Tribunal makes a special determination in respect of the benefit—such proportion of the benefit as the Tribunal specifies in the determination.

(3) The entitlement of the deceased person’s spouse is:

(a) 1 benefit unit; or

(b) if the deceased person’s actual service exceeds 240 months—the number of benefit units calculated by dividing the number of months of that service by 240.

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
continued

(4) If the deceased person is survived by a spouse and dependent children, the entitlement of each child is:

- (a) one-third of a benefit unit if there are no more than 3 dependent children; or
- (b) 1 benefit unit divided by the number of children if there are more than 3 dependent children.

(5) If the deceased person is not survived by a spouse but is survived by no more than 3 dependent children, the entitlement of each child is the greater of the following:

- (a) two-thirds of a benefit unit;
- (b) the number of benefit units determined in accordance with the following calculation:

$$\text{BU} = \frac{\text{NM}}{240} \times \frac{1}{\text{DC}}$$

where:

BU represents the number of benefit units to be determined;

NM represents the number of months of the deceased person's actual service;

DC represents the number of surviving dependent children.

(6) If the deceased person is not survived by a spouse but is survived by more than 3 dependent children, the entitlement of each child is 2 benefit units divided by the number of dependent children.

(7) If the deceased person is survived by fewer than 3 dependent children and is also survived by dependent parents, dependent relatives or other dependants, then whether or not there is a surviving spouse:

- (a) the entitlement of each of the dependent parents is three-quarters of a benefit unit; and
- (b) the entitlement of each of the dependent relatives is one-half of a benefit unit; and
- (c) the entitlement of each of the other dependants is one-quarter of a benefit unit (except where the dependant is entitled to a benefit unit or a fraction of a benefit unit under another provision of this section).

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

(8) For the purposes of this section and section 14J, a person (including a parent or relative) is a dependant of the deceased person only if the Tribunal is satisfied:

- (a) that the person was totally or mainly dependent on the deceased person for financial support when the deceased person died; or
- (b) where the person is a child of the deceased person—that the child was under 16 years of age when the deceased person died.

(9) If the spouse of the deceased person dies either:

- (a) at the same time as the deceased person or in such circumstances as to make it uncertain which of them survived the other; or
- (b) within 48 hours before the death of the deceased person,

the spouse is, for the purposes of this section, taken to have been alive at the time of the deceased person's death.

(10) The entitlement under this section of a child who has not reached 18 years of age is for the support and education of the child and is payable:

- (a) to a parent or guardian of the child (as determined by the Tribunal); or
- (b) if the Tribunal decides that the entitlement should be paid to some other person—to that other person.

The entitlement under this section of a child who has reached 18 years of age is payable to the child.

(11) The spouse of the deceased person is entitled to an additional three-eighths of a benefit unit if:

- (a) after 2 January 1993, the deceased person:
  - (i) sustained an injury that was wholly or partly the result of an accident (including an event, act or omission resulting from the negligence or misconduct of any person, including the deceased person) that occurred while the deceased person was actually engaged in performing work as a mine worker; and

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
continued

(ii) within 6 months after the date on which the injury was sustained, died directly or indirectly as a result of the injury; and

(b) the spouse has survived the deceased person.

(12) The number of benefit units applicable to a deceased person under this section cannot exceed 2 except when subsection (11) applies.

(13) The entitlements under subsection (7) are to be reduced proportionally or eliminated if the total number of benefit units (excluding any entitlement under subsection (11)) would otherwise exceed 2.

(14) If no person has an entitlement under this section, the benefit under section 14J:

(a) must be paid to the personal representatives of the deceased person; and

(b) in that case, is to be the amount calculated in accordance with section 14I as if the deceased person had retired on the date of death with an entitlement to a benefit payable under that section.

(15) In this section:

**“child”** means a child or step-child under 18 years of age;

**“relative”** means a brother, sister, step-brother, step-sister, grandfather, grandmother, grandson or grand-daughter;

**“spouse”** (of a deceased person in respect of whom a benefit is payable under section 145) means the widow or widower who survives that person or:

(a) if that person was a man, is not survived by a widow and at the time of his death was living with a woman as her husband on a bona fide domestic basis—the woman with whom he was so living; or

(b) if that person was a woman, is not survived by a widower and at the time of her death was living with a man as his wife on a bona fide domestic basis—the man with whom she was so living.

**SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—**  
*continued***Explanatory note**

The amendment substitutes a new section for the existing section 14K. The substituted section not only defines the shares to which the spouse and other dependants of a deceased person to whom section 14J applies (such as a deceased mine worker) are entitled but also determines the number of benefit units applicable to the deceased person and thus enables the total benefit payable under section 14J to be calculated in respect of that person. The substituted section changes only the method of calculating benefit units. It does not change the actual apportionment of the benefit. However, it does remove an anomaly that arises when the deceased person is survived by one or two dependent children but no spouse. In that case, there is currently no provision for increasing the benefit payable under the section when the person's actual service in the coal or oil shale mining industries exceeds the number of months of notional service calculated in accordance with the existing section 14K.

**Amendments**

- (7) Section 14L (**Lump sum benefit payable for incapacity of mine worker**):
- (a) From section 14L (1)–(3), omit “retrenched” wherever occurring.
  - (b) Omit section 14L (8), insert instead:
    - (8) If the Tribunal is not satisfied that the incapacity or illness of a person referred to in subsection (2) was caused by injury sustained while engaged in performing work as a mine worker, then, instead of the amount applicable under subsection (5), the amount of the lump sum benefit payable to the person is the greater of
      - (a) the amount that would have been payable to the person under subsection (3) if the person had qualified for a benefit of the kind referred to in that subsection; and
      - (b) 10 per cent of the amount that would have been payable to the person under subsection (5) if the person had been a mine worker to whom subsection (6) (a) applied, together with a further 10 per cent of that amount for each completed year of the person's engagement in the coal or oil shale mining industries that has elapsed before the person's date of disability (up to a maximum of 100 per cent of that amount).



SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

**Explanatory note**

Section 14L provides for an incapacity benefit to be paid to a person who was a mine worker on 2 January 1993 or who is a mine worker but was a “retrenched dormant member” of the Coal and Oil Shale Mine Workers Superannuation Fund on that date. The first amendment removes the limitation that a mine worker who was a “dormant member” had to have been retrenched on that date in order to qualify for an incapacity benefit.

The other amendment is designed to ensure that, if an injury that has totally and permanently incapacitated a mine worker is not work-related and the incapacity has resulted in the termination of a mine worker’s employment after 2 January 1993, the incapacity benefit payable to the worker under the section is the greater of:

- the benefit that would have been payable to a mine worker under subsection (3) of the section; and
- 10% of the amount that would have been payable to a mine worker for a work-related injury under subsection (5) of the section, together with a further 10% of that amount for each completed year of the mine worker’s engagement in the coal or oil shale mining industries, up to a maximum of 100 per cent.

**Amendments**

- (8) Section 14N (**Benefits for mine workers who resign before age 55 and for certain persons who became dormant members by resignation or dismissal**):

(a) Omit section 14N (1), insert instead:

(1) This section applies to the following persons:

(a) a mine worker:

(i) who on 2 January 1993 was contributing to the Fund; and

(ii) who ceases to be a mine worker before reaching the age of 55 because of resignation or dismissal or in any other circumstances determined by the Tribunal for the purposes of this section;

(b) a person:

(i) who on 2 January 1993 was a dormant member; and

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

- (ii) who, having become a mine worker after that date, later ceased to be a mine worker before reaching the age of 55 because of resignation or dismissal or in any other circumstances determined by the Tribunal for the purposes of this section;
  - (c) a dormant member whose last period of service as a mine worker ceased because of resignation or dismissal or in any other circumstances determined by the Tribunal for the purposes of this section.
- (1A) However, this section does not apply to a person referred to in subsection (1) if the person has previously received a benefit from the Fund in respect of service in the coal or oil shale mining industries.
- (b) From section 14N, omit “a mine worker, or a dormant member,” wherever occurring, insert instead “a person to whom this section applies”.
  - (c) From section 14N, omit “the mine worker or dormant member” wherever occurring, insert instead “the person”.
  - (d) From section 14N (7), omit “by a mine worker or dormant member”, insert instead “made by a person to whom this section applies”.
  - (e) From section 14N (8), omit “section 19J”, insert instead “this section or section 19J or 19L”.

**Explanatory note**

The amendment made by item (8) (a) is similar to those made in items (4) (a) and (b). However, in addition to the benefit already provided for a dormant member who resigns or has been dismissed, such a member will also become entitled to a benefit under the section in other circumstances determined by the Tribunal. The other amendments to the section are consequential on the amendment made by item (8) (a). (It should also be noted that section 14N will be subject to proposed sections 14T–14V. See item (13).)

**Amendments**

- (9) Section 14P (**Retrenchment before age 55**):
  - (a) After section 14P (1) (a), insert:
    - (a1) a person who:
      - (i) on 2 January 1993 was a dormant member; and

**SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued***

- (ii) having become a mine worker after that date, is later retrenched before attaining the age of 55; and
  - (iii) elects to take a benefit under this section; and
- (b) After section 14P (2), insert:
- (2A) A benefit under this section may be paid to an affected person on the occurrence of any of the following events or circumstances:
    - (a) if the Tribunal is satisfied that the person, having attained the age of 55, has permanently retired from all employment;
    - (b) if the Tribunal is satisfied that the person, although not having attained the age of 55, has permanently ceased to be employed in any capacity because of the person's physical or mental incapacity;
    - (c) if the Tribunal is satisfied that the Insurance and Superannuation Commissioner has approved payment of the benefit;
    - (d) if the Tribunal approves payment of the benefit in accordance with guidelines laid down by that Commissioner;
    - (e) if the Tribunal is satisfied that the person has left or is about to leave Australia permanently;
    - (f) if the Commonwealth Occupational Superannuation Standards Regulations prescribe any other event or circumstance when a preserved benefit can be paid—on the occurrence of that event or circumstance.
  - (2B) If a person to whom a benefit is payable under this section has died, the benefit is payable to the person's personal representatives.
- (c) Omit section 14P (3), insert instead:
- (3) If, in the case of a benefit other than a benefit payable to an affected person as provided by subsection (2A), the amount of the benefit exceeds the amount calculated in accordance with section 14N (4) and (5), the excess may, at the request or with the agreement of the person:

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

- (a) be transferred to an approved deposit fund or to another superannuation fund; or
  - (b) be used to purchase a deferred annuity,
- but only if the Tribunal is satisfied that the fund or annuity complies with the Commonwealth Occupational Superannuation Standards Regulations.
- (d) After section 14P (6), insert:
- (7) If the amount by which a benefit payable under this section exceeds the amount calculated in accordance with section 14N (4) and (5) is less than the amount prescribed by the Commonwealth Occupational Superannuation Standards Regulations as the amount below which the preservation standards set out in those Regulations do not apply, then:
    - (a) subsections (2A) and (3) do not apply to the benefit; and
    - (b) the benefit is payable on the application of the person entitled to it.

**Explanatory note**

The amendment made by item (9) (a) is similar to the amendment made by item (4) (a).

The amendment made by item (9) (b) defines the occasions on which a benefit under the section is to become payable and brings the section into accord with the relevant provisions of the Occupational Superannuation Standards Act 1987 of the Commonwealth.

The amendment made by item (9) (c) is consequential on the amendment made by item (9) (b).

The amendment made by item (9) (d) provides that, if the amount of a benefit under the section funded by the mine worker's employer is less than the amount prescribed by the Commonwealth Occupational Superannuation Standards Regulations as being the amount below which the preservation standards set out in those Regulations do not apply, the benefit under the section is payable on the application of the person entitled. (The amount prescribed under those Regulations is currently \$500.)

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

**Amendment**

(10) Section 14PA:

After section 14P, insert:

**Special provisions applicable to certain personnel of the Department of Mineral Resources and Joint Coal Board**

14PA. (1) This section applies to those mine workers:

- (a) who were employed in the Department of Mineral Resources, or were members of or employed by the Joint Coal Board, on 2 January 1993; and
- (b) who were also contributors to the Fund on that date.

(2) A benefit under this section is payable in respect of a mine worker to whom this section applies and may be dealt with in accordance with subsection (5) and not otherwise.

(3) A person to whom this section applies is entitled to payment from the Fund of a lump sum benefit equal to the benefit provided by subsection (4).

(4) The benefit provided by this subsection is the amount calculated in accordance with the following formula:

$$AB = RR \times \frac{LF}{EF} \times NM$$

where:

AB represents the amount of the benefit;

RR represents an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250;

LF represents the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before the relevant date;

EF represents the CPI figure for the quarter that ended on 31 December 1992;

**SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
continued**

NM represents the number of months of industry service:

- that the mine worker completed before 3 January 1993; and
- in respect of which contributions have been paid to the Fund or are taken by the Tribunal to have been paid to the Fund.

(5) A benefit payable under this section:

- (a) is to be transferred to an approved deposit fund, or to another superannuation fund, nominated by the mine worker concerned; or
- (b) if that mine worker so requires—is to be used to purchase a deferred annuity.

(6) If a mine worker to whom this section applies dies after making an application for a benefit under this section but before the benefit has been paid, the Tribunal must, on application being made to it by the mine worker's personal representatives, pay the benefit to those representatives.

(7) For the purposes of this section, the relevant date in relation to a benefit payable under this section is:

- (a) the date on which the mine worker concerned applies to have the benefit dealt with in accordance with subsection (5); or
- (b) if no application for the benefit to be dealt with in accordance with that subsection is made before 1 July 1994—1 July 1994.

**Explanatory note**

The section provides for a lump sum benefit to be paid in respect of certain mine workers who are employed in the Department of Mineral Resources or are members of or employed by the Joint Coal Board. The benefit will be similar to that payable under section 14I (3) but, unless the mine worker dies after an application has been made for payment of the benefit, will be required either to be transferred to an approved deposit fund or superannuation fund nominated by the mine worker or to be used to purchase a deferred annuity.

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

**Amendment**

- (11) Division 5 of Part 2, heading:  
Omit the heading, insert instead:

**Division 5—Supplementary provisions relating to  
benefits**

**Explanatory note**

This item renames the heading to Division 5 of Part 2 of the Act. The amendment is consequential on the amendments made by item (13).

**Amendment**

- (12) Section 14S (**Application for lump sum benefit**):  
From section 14S (1), omit “this Part”, insert instead “this Act”.

**Explanatory note**

The amendment has the effect of making section 14S apply to all applications for lump sum benefits under the Principal Act and not just to applications for lump sum benefits under Part 2 of that Act.

**Amendment**

- (13) Sections 14T–14V:  
After section 14S, insert:

**Only one payment to be made for one period of  
engagement**

14T. A lump sum benefit payable to or in respect of a person under this Part must not include an amount attributable to any period of engagement in the coal or oil shale mining industries for which:

- (a) a pension or an addition to a pension is payable or has been paid under this Part; or
- (b) another lump sum benefit is payable or has been paid under this Part; or
- (c) a refund of contributions is payable or has been paid under this Part or Part 4B,

SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

or to any such period that occurred before the period for which such a pension, addition, benefit or refund has been paid.

**No refund for person whose engagement in the coal or oil shale mining industries ceased before 25 May 1971**

14U. A person whose engagement in the coal and oil shale mining industries was terminated before 25 May 1971 is not, and has never been, entitled to a refund of contributions paid by the person to the Fund.

**Refund of contributions under this Part and Part 4B to be reduced in certain cases**

14V. (1) An amount that, but for this subsection, would be payable as a refund of contributions under section 14N, 19J or 19L to or in respect of a person is to be reduced by an amount equal to all contributions made to the Fund by the person in respect of the period during which the person was engaged in the coal or oil shale mining industries before 25 May 1971, except as provided by subsection (2).

- (2) Such a reduction is not to be made in the case of
- (a) a person whose application for a refund of contributions to which the person was entitled on 1 July 1990 (irrespective of whether the person's engagement in the coal or oil shale mining industries has previously been terminated before the application was made) was made on or after 1 July 1990 but before the relevant date; or
  - (b) a person whose engagement in those industries was first terminated on or after 1 July 1990 and whose application for a refund of contributions to which the person was entitled on 1 July 1990 was made on or after the relevant date.

(3) For the purposes of subsection (2), the relevant date is the date on which the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1994 is assented to.



SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—  
*continued*

(4) An amount that, but for this subsection, would be payable as a refund under section 14N, 19J or 19L to or in respect of a person is to be reduced:

- (a) by an amount equal to so much of the person's contributions to the Fund as has been refunded to the person under any of those sections and has not since been repaid to the Fund; and
- (b) by the amount of any pension or addition to a pension paid to the person under this Act for any period after the commencement of section 10 of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1971.

**Explanatory note**

The amendment inserts into the Principal Act proposed sections 14T–14V.

Proposed section 14T is designed to ensure that only one benefit is paid under the Principal Act in respect of a particular period of employment in the coal or oil shale mining industries.

Proposed section 14U is intended to make it clear that a person who ceased to be a mine worker before 25 May 1971 is not and never has been entitled to a refund of contributions to the Fund.

Proposed section 14V replaces sections 19K and 19M, which provide for the reduction of refunds of contributions payable under sections 19J and 19L. The proposed section provides for reductions that are to be made to refunds of contributions made under section 14N as well as sections 19J and 19L. In addition to restating existing reduction provisions that are currently applicable to the last two mentioned sections, the proposed section is intended to clarify the cases in which employment in the coal or oil shale mining industries before 25 May 1971 is or is not to be taken into account in calculating a refund of contributions payable under sections 14N, 19J and 19L. Generally speaking, a refund of contributions payable to or in respect of a person whose employment in those industries was terminated before 1 July 1990 is to be reduced by the amount of any contributions attributable to a period before 25 May 1971. In the case of a person whose employment in those industries is first terminated on or after 1 July 1990 there will be no reduction in the amount of contributions refunded. Nor will there be a reduction in the case of a person whose employment in those industries may have been broken at some time before the proposed Act is assented to so long as the person's application for a refund is made before that date of assent but on or after 1 July 1990. (The relevance of 1 July 1990 is that, on and from that date, regulation 6 of the Commonwealth Occupational Superannuation Standards Regulations requires all members' contributions to a public sector superannuation fund to be vested in the members.)

**SCHEDULE 2—AMENDMENTS RELATING TO BENEFITS—**  
*continued*

The proposed section will also make it clear that a refund of contributions under section 19L is to be reduced not only by the amount of contributions previously refunded under section 19J but also by any amount of contributions previously refunded under section 14N or 19L.

**Amendment**

(14) Section 19 (**Contributions to Fund**):

After section 19 (2), insert:

(2A) Subsection (2) does not apply in respect of a mine worker to whom section 14PA applies after a benefit payable under that section has been dealt with in accordance with section 14PA (5) or has been paid in accordance with section 14PA(6).

**Explanatory note**

The amendment is consequential on the amendment made by item (10).

**SCHEDULE 3—AMENDMENTS RELATING TO CERTAIN  
REFUNDS OF CONTRIBUTIONS**

(Sec. 3)

**Amendment**

(1) Section 19HA (**Part applies if application made before 3 January 1993**):

Omit “Division”, insert instead “Part”.

**Explanatory note**

The amendment will allow a refund of contributions to be made in accordance with the whole of Part 4B of the Principal Act (**Refund of mine workers’ contributions before 3 January 1993**).

**Amendments**

(2) Section 19J (**Refund of contributions where mine worker ceases to be employed on or after 25 May 1971 and before 26 March 1978**):

(a) In section 19J (1), after “has been terminated”, insert “on or after 25 May 1971 but”.

**SCHEDULE 3—AMENDMENTS RELATING TO CERTAIN  
REFUNDS OF CONTRIBUTIONS—*continued***

- (b) In section 19J (1), after “Tribunal shall”, insert “, subject to section 14V,”.
- (c) Omit section 19J (1A), insert instead:  
 (1A) There is to be added to a refund of contributions under this section the total amounts of interest calculated in accordance with Schedule 4. This subsection does not apply to a refund made before the commencement of Schedule 3 (2) to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1994.

**Explanatory note**

The amendment will make it clear that section 19J applies only to a mine worker whose engagement in the coal or oil shale mining industries was terminated on or after 25 May 1971 (but before 26 March 1978). The section is also amended to change the method for determining interest payable on refunds made under the section.

**Amendment**

- (3) Section 19K (**Reduction of amount of refund**):  
 Omit the section.

**Explanatory note**

The amendment repeals section 19K. The substance of the section is being transferred to proposed section 14V, which is to provide for the amount of a refund of contributions under section 19J or 19L to be reduced in certain circumstances. (Section 19J provides for a refund of contributions to be made where a mine worker ceased to be employed on or after 25 May 1971 and before 26 March 1978. Section 19L provides for a refund of contributions to be made where a mine worker ceased to be employed on or after 26 March 1978 and before 3 January 1993.)

**Amendments**

- (4) Section 19L (**Refund of contributions where mine worker ceases to be employed on or after 26 March 1978 and before 3 January 1993**):
- (a) In section 19L (1), before “the Tribunal shall”, insert “then subject to section 14V,”.

**SCHEDULE 3—AMENDMENTS RELATING TO CERTAIN  
REFUNDS OF CONTRIBUTIONS—*continued*****(b) Omit section 19L (6), insert instead:**

(6) There is to be added to a refund of contributions under this section the total amount of interest calculated in accordance with Schedule 4. This subsection does not apply to a refund made before the commencement of Schedule 3 (4) to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1994.

**Explanatory note**

The amendment changes the method for determining interest payable on refunds made under the section.

**Amendment****(5) Section 19M (Reduction of amount of refund under section 19L):**

Omit the section.

**Explanatory note**

Section 19M is being repealed because the substance of the section will be included in proposed section 14V. (See Schedule 2 (13).)

**Amendment****(6) Schedule 2 (Savings and transitional provisions):**

After clause 4, insert:

**Validation of interest payment**

5. If the interest paid in respect of a refund of contributions made under section 19J (as in force before the commencement of Schedule 3 (6) to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1994) exceeds the interest allowed by subsection (1A) of that section (as so in force), but did not exceed the interest that would have been payable in respect of the refund if the provisions of Schedule 4 had been applicable to the refund at the time of its payment, the payment of interest is validated and taken to have been lawfully made.

**SCHEDULE 3—AMENDMENTS RELATING TO CERTAIN  
REFUNDS OF CONTRIBUTIONS— *continued***

**Explanatory note**

The amendment validates payments that were made on the basis that Schedule 4 to the Act (Interest on refund of contributions) was applicable to refunds of contributions made under section 19J when in fact that was not the case.

**Amendment**

(7) Schedule 4 (**Interest on refund of contributions**):

Omit “Sec. 14N (5)”, insert instead “Secs. 14N (5), 19J (1A), 19L (6)”.

**Explanatory note**

The amendment is consequential on the amendments made by items (2) (c) and (4) (b).

**SCHEDULE 4—MISCELLANEOUS AMENDMENTS**

(Sec. 3)

**Amendments**

(1) Section 15 (**The Tribunal**):

(a) From section 15 (3) (d), omit “United Mineworkers Federation of Australia”, insert instead “United Mine Workers (a division of the Construction, Forestry, Mining and Energy Union)”.

(b) From section 15 (3) (e) and (f), omit “Federation” wherever occurring, insert instead “division”.

**Explanatory note**

Section 15 is being amended in order to reflect the fact that the United Mineworkers Federation of Australia is now a division of the Construction, Forestry, Mining and Energy Union. (Two of the members of the Tribunal are appointed on the nomination of the Federation.)

SCHEDULE 4—MISCELLANEOUS AMENDMENTS—*continued*

**Amendment**

(2) Section 27B:

Omit the section, insert instead:

**What information must be disclosed to mine workers**

27B. The Tribunal must, as and when required by the Commonwealth Occupational Superannuation Standards Regulations:

- (a) disclose to each mine worker who, immediately before 3 January 1993 was a contributor to the Fund and is or will become entitled to receive a benefit from the Fund, the information required by those Regulations to be disclosed to a member of a superannuation fund; and
- (b) give, or arrange to be given, to each person who ceases to be a mine worker referred to in paragraph (a), or the person's personal representatives, the information required by those Regulations to be given to a person who ceases to be a member of a superannuation fund.

**Explanatory note**

The substituted section is intended to ensure that the requirements prescribed by the Commonwealth Occupational Superannuation Standards Regulations with respect to the provision of information concerning the Fund are complied with without the need to make consequential amendments to the section whenever those requirements are changed.

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*[Minister's second reading speech made in—  
Legislative Assembly on 17 March 1994  
Legislative Council on 13 April 1994]*