

**COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) FURTHER AMENDMENT ACT
1994 No. 85**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45
4. Arrangements to be made for amalgamating superannuation funds
5. Consequential amendment of other legislation

SCHEDULE 1—AMENDMENTS THAT COMMENCE ON ASSENT
SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER RETIREMENT
INCOME FUND

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL'S
FUNCTIONS

SCHEDULE 4—CONSEQUENTIAL AMENDMENT OF OTHER LEGISLATION

**COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) FURTHER AMENDMENT ACT
1994 No. 85**

NEW SOUTH WALES



Act No. 85, 1994

An Act to amend the Coal and Oil Shale Mine Workers (superannuation) Act 1941 for the purposes of providing for the amalgamation of the Coal and Oil Shale Mine Workers Superannuation Fund and the COSAF Superannuation Fund and for the abolition of the Coal and Oil Shale Mine Workers' Superannuation Tribunal and the transfer of certain of its functions to a corporate trustee; and for other purposes. [Assented to 12 December 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) Further Amendment Act 1994.

Commencement

2. (1) This Act commences on the date of assent, except as provided by this section.

(2) Schedules 2 and 3 commence on a day or days to be appointed by proclamation.

(3) Section 5 and Schedule 4 commence when Schedule 3 commences.

(4) A proclamation commencing Schedule 3 may be made only on the production by the Minister of a certificate certifying that the New South Wales Coal Association and United Mine Workers (a division of the Construction, Forestry, Mining and Energy Union) have both recommended that those provisions be commenced.

(5) If a proclamation provides for Schedules 2 and 3 to commence on the same date, the amendments contained in Schedule 2 are taken to have commenced immediately before those contained in Schedule 3.

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 1–3.

Arrangements to be made for amalgamating superannuation funds

4. (1) In this section, “Principal Act” means the Coal and Oil Shale Mine Workers (Superannuation) Act 1941.

(2) As soon as practicable after the commencement of this section, arrangements are to be made for the COSAF Fund to be amalgamated with the Coal and Oil Shale Mine Workers Superannuation Fund.

(3) Arrangements are also to be made for the preparation of a trust deed providing for the reconstitution of the occupational superannuation schemes established by the Principal Act and by the COSAF Trust Deed for the benefit of:

- (a) mine workers and dormant members; and
- (b) the members of the COSAF Fund; and

- (c) the dependants of mine workers, dormant members and members of the COSAF Fund; and
 - (d) persons receiving or entitled to receive pensions under the Principal Act.
- (4) Further arrangements are to be made for the incorporation of a body to be the corporate trustee of the amalgamated fund.
- (5) The proposed trust deed must be prepared so that:
- (a) it will comply with section 15C of the Principal Act when that section (as inserted by Schedule 3 (17)) commences; and
 - (b) it includes rules governing the operation of the reconstituted schemes.

Those rules must also be prepared so that they comply with that section.

(6) The proposed trust deed must also include a declaration to the effect that the deed is subject to the Principal Act.

(7) The proposed trust deed must also include provisions to ensure that a right that:

- (a) a mine worker or a dormant member; or
- (b) a dependant of a mine worker or dormant member; or
- (c) a person receiving or entitled to receive a pension under the Principal Act,

has immediately before that deed takes effect is not removed or restricted. The rules included in that deed may, however, confer additional rights on such a mine worker, dormant member, dependant or person.

(8) The proposed trust deed must be consistent with the requirements of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth for a regulated superannuation fund within the meaning of that Act and the proposed body corporate must satisfy the requirements of that Act for a corporate trustee of such a fund.

(9) The Coal and Oil Shale Mine Workers' Superannuation Tribunal is responsible for making the arrangements required by this section. However, the Minister is required to make those arrangements if the Tribunal has failed to make them.

(10) In this section:

“COSAF Fund” means the superannuation fund referred to in clause 2.1 of the COSAF Trust Deed;

“COSAF Trust Deed” means the trust deed establishing the COSAF Superannuation Fund, made on 6 October 1988 by COSAF Pty Limited (ACN 003 566 989) and as amended from time to time, and includes the rules contained in the Schedule to that deed.

(11) Expressions used in this section that are defined in the Principal Act have the same meanings as they have in that Act.

(12) This section expires on the commencement of Schedule 3.

Consequential amendment of other legislation

5. Schedule 4 has effect.

SCHEDULE 1—AMENDMENTS THAT COMMENCE ON ASSENT

(Sec. 3)

(1) Section 2 (Definitions):

- (a) In section 2 (1) insert in alphabetical order the following definition:

“Manager” of the Tribunal means a person with whom the Tribunal has entered into a contract or an arrangement in accordance with section 16B.

- (b) In section 2 (2) (c), after “Registrar”, insert “or a manager of the Tribunal”.

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

In section 3 (6) (k) (iii), after “Registrar”, insert “or a manager of the Tribunal”.

(3) Section 9 (Pensions—additional payments in respect of dependants):

In section 9 (5) and (5A), after “Registrar” wherever occurring, insert “, a manager of the Tribunal”.

(4) Section 10 (Pension payable to dependants):

In section 10 (1E), after “Registrar”, insert “, a manager of the Tribunal”.

(5) Section 10A (De facto wife):

In section 10A (5), after “Registrar”, insert “, a manager of the Tribunal”.

(6) Section 14 (Applications for pensions):

- (a) In section 14(1) (d), after “Registrar”, insert “or to a manager of the Tribunal”.
- (b) In section 14 (2) and (3), after “Registrar” wherever occurring, insert “or manager”.
- (c) In section 14 (10), after “Registrar”, insert “or a manager of the Tribunal”.

SCHEDULE 1—AMENDMENTS THAT COMMENCE ON
ASSENT—*continued*

(7) Section 14K (**Payment of benefit on death of certain mine workers and former mine workers**):

From section 14K (15), omit the definition of “spouse”, insert instead:

“**spouse**” of a deceased person means any of the following:

- (a) a widow or widower who survives the deceased person;
- (b) if the deceased person was a man—any woman with whom the man was, at the time of his death, living as her husband on a bona fide domestic basis;
- (c) if the deceased person was a woman—any man with whom the woman was, at the time of her death, living as his wife on a bona fide domestic basis.

(8) Section 14KA:

After section 14K, insert:

Competing claims for spouses’ benefits

14KA. (1) This section applies to a benefit that is payable under section 14J to the spouse of a deceased person.

(2) If a benefit under section 14J would be payable to more than one person because the deceased person has left more than one spouse, then, despite any other provision of this Act:

- (a) the benefit is payable in accordance with a determination made by the Tribunal and not otherwise; and
- (b) the total amount of benefit payable to the spouses at any time must not exceed the amount of benefit that would be payable if there were only one spouse.

SCHEDULE 1—AMENDMENTS THAT COMMENCE ON
ASSENT—*continued*

(3) For the purposes of subsection (2) (a), the Tribunal may determine in relation to a benefit:

- (a) that the benefit is not payable to such of the spouses concerned as it specifies; or
- (b) that the benefit is to be apportioned between those spouses in such manner as it specifies.

(4) The Tribunal may withhold the payment of any part of a benefit payable under section 14J:

- (a) until 30 days after the death of the person in respect of whom the benefit is payable; or
- (b) if an application for the benefit has been made by more than one person, until it is satisfied that only one of those persons is entitled to the benefit or until the Tribunal has made a determination under this section in relation to the matter.

(5) If, after 30 days from the death of a person in respect of whom a benefit under section 14J is payable, the whole or a part of the benefit is paid to a spouse of the deceased person, the following provisions apply:

- (a) if the whole of the benefit has been paid—no benefit is payable under that section to any other spouse of the deceased person;
- (b) if a part of the benefit has been paid—no more than the balance of the benefit is payable to any other spouse of the deceased person.

(6) For the purposes of subsection (5), an amount paid in good faith by the Tribunal to a person purporting to be a spouse of the deceased person is taken to have been paid to a spouse of the deceased person.

(7) If, after 30 days from the death of a person in respect of whom a benefit under section 14J is payable, an amount is so paid:

- (a) to the deceased person's personal representatives; or
- (b) to such other persons as the Tribunal may determine,

SCHEDULE 1—AMENDMENTS THAT COMMENCE ON
ASSENT—*continued*

any benefit that is payable under that section to the spouse of the deceased person is to be reduced by the amount paid.

(9) Section 14L (**Lump sum benefit payable for incapacity of mine worker**):

After section 14L (13), insert:

(14) 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 may, on application being made to it by the mine worker's personal representatives, pay the benefit to those representatives. This subsection applies in respect of a mine worker even though the mine worker's application may have been made before the commencement of this subsection.

(10) Section 14P (**Retrenchment before age 55**):

Omit section 14P (2B).

(11) Section 16A (**Delegation**):

In section 16A (1), (2), (5) and (6), after "Registrar" wherever occurring, insert "or a manager of the Tribunal".

(12) Section 17A:

After section 17, insert:

Tribunal may appoint its own auditor

17A. (1) The Tribunal may appoint a person to be the sole auditor of the Tribunal.

(2) An auditor so appointed must be an approved auditor within the meaning of the Commonwealth Act that for the time being prescribes operating standards for superannuation funds and other entities.

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

Omit section 19 (3), insert instead:

(3) An owner:

(a) must pay a contribution under this section in respect of a mine worker for each week for which the mine worker is an employee of the owner; and

**SCHEDULE 1—AMENDMENTS THAT COMMENCE ON
ASSENT—*continued***

- (b) must pay that contribution immediately after the end of the pay period to which the employment relates.
- (14) Section 19F (**Conditions attaching to and suspension of weekly payments of subsidy**):
- (a) In section 19F (1), after “Registrar”, insert “or a manager of the Tribunal”.
- (b) In section 19F (2), after “Registrar”, insert “or manager”.
- (15) Section 23 (**References to Industrial Court of New South Wales**):
- (a) Omit “Industrial Commission” wherever occurring, insert instead “Industrial Court”.
- (b) Omit section 23 (3).
- (16) Section 23A (**Appeals**):
- (a) From section 23A (2), omit “Industrial Commission”, insert instead “Industrial Court”.
- (b) From section 23A (3), omit “Commission”, insert instead “Industrial Court”.
- (17) Section 29 (**Offences**):
- (a) In section 29 (1), after “Registrar”, insert “, a manager of the Tribunal”.
- (b) From section 29 (1), omit “Industrial Commission”, insert instead “Industrial Court”.
- (c) From section 29 (2), omit “Court”, insert instead “convicting court”.
- (18) Schedule 2 (**Savings and transitional provisions**):
- (a) Before clause 1, insert:
- PART 1—PRELIMINARY**
- (b) At the end of clause 2 (1), insert:
Coal and Oil Shale Mine Workers (Superannuation)
Further Amendment Act 1994.

SCHEDULE 1—AMENDMENTS THAT COMMENCE ON
ASSENT—*continued*

(c) Before clause 3, insert:

**PART 2—PROVISIONS CONSEQUENT ON
ENACTMENT OF COAL AND OIL SHALE MINE
WORKERS (SUPERANNUATION) AMENDMENT
ACT 1992**

(d) Before clause 5, insert:

**PART 3—PROVISION CONSEQUENT ON
ENACTMENT OF COAL AND OIL SHALE MINE
WORKERS (SUPERANNUATION) AMENDMENT
ACT 1994**

(e) After clause 5, insert:

**PART 4—PROVISIONS CONSEQUENT ON
SCHEDULE 1 TO COAL AND OIL SHALE
MINE WORKERS (SUPERANNUATION)
FURTHER AMENDMENT ACT 1994**

**Certain payments taken to comply with section 14L
(Lump sum benefit payable for incapacity of mine
worker)**

6. If a person to whom a lump sum benefit was payable under section 14L of this Act has died, the payment of the benefit to the person's personal representatives before the commencement of this Part is taken to have been lawfully made even though the amendment made to that section by the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994 was not in force at the time of payment.

**Certain payments taken to comply with section 19
(Contributions)**

7. Any contribution paid by an owner under section 19 of this Act (as in force during the period beginning with the commencement of Schedule 2 (10) to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992 and ending with the commencement of this Part) is taken to have been paid on the basis that it was paid in

**SCHEDULE 1—AMENDMENTS THAT COMMENCE ON
ASSENT—*continued***

respect of the mine worker concerned for each week during which the mine worker was an employee of the owner and not as provided by subsection (3) of that section (as so in force).

**SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND**

(Sec. 3)

(1) **Section 1A (Contributions and benefits payable on and after 3 January 1993):**

- (a) From section 1A (1), omit “Fund”, insert instead “Old Fund or the Amalgamated Fund”.
- (b) After section 1A (1), insert:
 - (1A) Subsection (1) does not prevent a mine worker from making voluntary contributions to the Amalgamated Fund as provided by the COSAF Trust Deed.

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

- (a) In section 2 (1), insert in alphabetical order the following definitions:
 - “**Amalgamated Fund**” means the COALSUPER Retirement Income Fund referred to in section 18.
 - “**COSAF Fund**” means the superannuation fund referred to in clause 2.1 of the COSAF Trust Deed.
 - “**COSAF Trust Deed**” means the trust deed establishing the COSAF Superannuation Fund, made on 6 October 1988 by COSAF Pty Limited (ACN 003 566 989) and as amended from time to time, and includes the rules contained in the Schedule to that deed.
 - “**Old Fund**” means the Coal and Oil Shale Mine Workers Superannuation Fund established under section 18 of this Act (as in force before the commencement of Schedule 2 to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994).

**SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued***

- (b) In section 2 (1), from the definition of “Dormant member”, omit “Fund” where firstly occurring, insert instead “Old Fund”.
 - (c) In section 2 (1), from the definition of “Dormant member”, omit “Fund” where secondly occurring, insert instead “Old Fund or the Amalgamated Fund”.
 - (d) In section 2 (1), from the definition of “Dormant member”, omit “Fund” where thirdly and fourthly occurring, insert instead “Amalgamated Fund”.
 - (e) From section 2 (1), omit the definition of “Fund”.
 - (f) In section 2 (1), from the definition of “Mine Worker”, omit “Fund”, insert instead “Old Fund”.
 - (g) From section 2 (1), omit the definition of “Pension Account”, insert instead:
 - “**Pension Account**” means the account referred to in section 18C (1).
 - (h) In section 2 (1), from the definition of “Reference Rate”, omit “Minister”, insert instead “Tribunal”.
 - (i) In section 2 (1), from paragraph (b) of the definition of “Retrenched”, omit “Fund”, insert instead “Amalgamated Fund”.
 - (j) From section 2 (5), omit “Minister, on the recommendation of the Tribunal”, insert instead “Tribunal”.
- (3) **Section 2E (Extension of definition of “Mine worker” to cavelled out mine workers etc.):**
- (a) From section 2E (3) (a), omit “has contributed to the Fund”, insert instead “contributed to the Old Fund”.
 - (b) Omit section 2E (5) and (6).
- (4) **Section 3 (Special provisions as to calculation of periods of employment):**
- Omit section 3 (6) (k).

SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued*

(5) Section 10AA (**Payment of pension where contributions refunded**):

Omit “Fund” wherever occurring, insert instead “Amalgamated Fund”.

(6) Section 10EA (**Appropriate amounts of pensions and additions to pensions**):

From section 10AA (2A), omit “is first made from the Fund”, insert instead “was first made from the Old Fund or the Amalgamated Fund”.

(7) Section 14A (**Lump sum benefit payments to certain mine workers who retired on or after 26 March 1978 and before 3 January 1993**):

From section 14A (5), omit “Fund”, insert instead “Old Fund”.

(8) Section 14AA (**Lump sum benefit payments to certain other mine workers who retired on or after 3 July 1988 and before 3 January 1993**):

From section 14AA (4), omit “Fund”, insert instead “Old Fund”.

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

(a) From section 14I (1) (a), omit “Fund”, insert instead “Old Fund”.

(b) From section 14I (2), omit “Fund” wherever occurring, insert instead “Amalgamated Fund”.

(c) From section 14I (3), omit “Fund” where firstly occurring, insert instead “Old Fund”.

(d) From section 14I (3), omit “the Fund” where secondly occurring, insert instead “that Fund”.

(e) From section 14I (4), omit “the Fund”, insert instead “the Old Fund or the Amalgamated Fund”.

SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued*

- (10) Section 14J (**Lump sum benefit payable on death of certain mine workers and former mine workers**):
- (a) From section 14J (1) and (2), omit “Fund” wherever occurring, insert instead “Old Fund”.
 - (b) From section 14J (5), omit “Fund” where firstly occurring, insert instead “Old Fund or the Amalgamated Fund”.
 - (c) From section 14J (5), omit “the Fund” where secondly occurring, insert instead “either of those Funds”.
- (11) Section 14L (**Lump sum benefit payable for incapacity of mine worker**):
- Omit “the Fund” wherever occurring, insert instead “the Old Fund”.
- (12) Section 14M (**Definition**):
- Omit “Fund”, insert instead “Old Fund”.
- (13) Section 14N (**Benefits for mine workers who resign before age 55 and for certain persons who became dormant members by resignation or dismissal**):
- (a) From section 14N (1) and (2), omit “Fund” wherever occurring, insert instead “Old Fund”.
 - (b) From section 14N (1A), omit “Fund”, insert instead “Old Fund or the Amalgamated Fund”.
 - (c) From section 14N (8), omit “Fund” where firstly occurring, insert instead “Old Fund”.
 - (d) From section 14N (8), omit “Fund under section 10AA”, insert instead “Old Fund or the Amalgamated Fund under section 10AA (including that section as in force before the commencement of Schedule 2 to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994)”.
 - (e) From section 14N (9), omit “Fund”, insert instead “Amalgamated Fund”.

**SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued***

(14) Section 14P (**Retrenchment before age 55**):

From section 14P (1) (a) (i), omit “Fund”, insert instead “Old Fund”.

(15) Section 14PA (**Special provisions applicable to certain personnel of the Department of Mineral Resources and Joint Coal Board**):

(a) From section 14PA (1) (b), omit “Fund”, insert instead “Old Fund”.

(b) From section 14PA (3), omit “Fund”, insert instead “Amalgamated Fund”.

(c) From section 14PA (4), omit “Fund” where firstly occurring, insert instead “Old Fund or the Amalgamated Fund”.

(d) From section 14PA (4), omit “the Fund” where secondly occurring, insert instead “either of those Funds”.

(16) Section 14U (**No refund for person whose engagement in the coal or oil shale mining industries ceased before 25 May 1971**):

Omit “Fund”, insert instead “Old Fund”.

(17) Section 14V (**Refund of contributions under this Part and Part 4B to be reduced in certain cases**):

(a) From section 14V, omit “Fund” where firstly and secondly occurring, insert instead “Old Fund”.

(b) From section 14V, omit “Fund” where thirdly occurring, insert instead “Old Fund or the Amalgamated Fund”.

(18) Section 16B (**Tribunal may appoint manager**):

From section 16B (1) (a) (i), omit “Coal and Oil Shale Mine Workers Superannuation Fund”, insert instead “Amalgamated Fund”.

SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued*

(19) Sections 18–18C:

Omit sections 18 and 18A, insert instead:

COALSUPER Retirement Income Fund (the Amalgamated Fund)

18. (1) On the commencement of Schedule 2 to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994:

- (a) the COSAF Fund is amalgamated with the Coal and Oil Shale Mine Workers Superannuation Fund (as established under this section as in force before that commencement); and
- (b) the fund so established is continued with the name COALSUPER Retirement Income Fund (“the Amalgamated Fund”).

(2) The Amalgamated Fund is to consist of

- (a) all money that, immediately before the commencement of Schedule 2 to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994, was credited to the Coal and Oil Shale Mine Workers Superannuation Fund and the COSAF Fund; and
- (b) money that is required or authorised to be paid to the Amalgamated Fund by or under this or any other Act or by the COSAF Trust Deed.

Payments into Amalgamated Fund

18A. There is payable into the Amalgamated Fund:

- (a) all contributions required to be paid by employers under this Act; and
- (b) all contributions required to be paid under Part 4 of the COSAF Trust Deed; and
- (c) money paid to the Amalgamated Fund by the Joint Coal Board for crediting to the Pension Account; and
- (d) money borrowed for the purposes of the Amalgamated Fund; and

**SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued***

- (e) income derived from the investment of money belonging to the Amalgamated Fund; and
- (f) other money received by or on account of the Amalgamated Fund.

Payments from Amalgamated Fund

18B. There is payable from the Amalgamated Fund:

- (a) all pensions, additions to pensions, lump sum benefits, refunds of contributions and other benefits required or authorised to be paid under this Act or under the COSAF Trust Deed; and
- (b) all expenses incurred by the Tribunal in the administration of this Act; and
- (c) all other money required by or under this or any other Act or law to be paid from the Amalgamated Fund.

Special provisions applicable to Pension Account

18C. (1) In this section, “Pension Account” means the account kept under subsection (2).

(2) A separate account is to be kept of all money paid to the Amalgamated Fund by the Joint Coal Board. The account is a continuation of the account kept under section 18A (1) (as in force before the commencement of this section).

(3) Credits to the Pension Account are to be in the form of an imprest account maintained at:

- (a) \$10,000,000 (unless the Joint Coal Board gives approval for a larger amount or paragraph (b) or (c) applies); or
- (b) an amount less than \$10,000,000 that is approved by the Tribunal (unless paragraph (c) applies); or
- (c) an amount less than \$10,000,000 that is approved by the Tribunal on the advice of an actuary as being sufficient to fund the payment of future pensions payable under this Act.

In paragraph (c), “**actuary**” means an actuary that the Tribunal has appointed for the purpose of advising it in relation to that paragraph.

SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued*

(4) The Tribunal must ensure that administrative arrangements are established that include the following:

- (a) an arrangement requiring the Tribunal to submit to the Joint Coal Board each month a statement certifying the amount of pensions and redemptions paid from money in the account during the period to which the statement relates;
- (b) an arrangement for interest earned on money held in the Pension Account to be credited to that Account and included in each monthly statement submitted to the Joint Coal Board by the Tribunal;
- (c) an arrangement providing for the Joint Coal Board to pay to the Tribunal each month an amount for crediting to that Account.

The amount of the payment under paragraph (c) is to be determined by the Joint Coal Board after consideration of the statement submitted by the Tribunal for the preceding month.

(5) The Tribunal must ensure that all pensions and commuted pensions are paid from the Amalgamated Fund and are debited to the Pension Account.

(20) Section 19:

Omit the section, insert instead:

Contributions required to be paid to Amalgamated Fund

19. (1) An owner must pay to the Tribunal for crediting to the Amalgamated Fund:

- (a) contributions at a weekly rate equal to 4 per cent of the Reference Rate for each mine worker employed by the owner who is:
 - (i) a mine worker to whom group A of the Coal Mining Industry (Supervision and Administration) Interim Consent Award 1990 (New South Wales and Tasmania) applies; or

SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued*

- (ii) a youth or a junior; or
 - (iii) a first, second or third year apprentice; and
 - (b) contributions at a weekly rate equal to the special rate.
- (2) For each other mine worker employed by an owner, the owner must pay to the Tribunal for crediting to the Amalgamated Fund:
- (a) contributions at a weekly rate equal to 5 per cent of the Reference Rate; and
 - (b) contributions at a weekly rate equal to the special rate.
- (3) For each eligible mine worker employed by an owner, the owner must also pay to the Tribunal for crediting to the Amalgamated Fund contributions at a weekly rate equal to that prescribed by the COSAF Trust Deed for crediting to the mine worker's special account. A mine worker is an eligible mine worker for the purposes of this subsection if the mine worker is eligible in terms of the COSAF Trust Deed.
- (4) An owner:
- (a) must pay a contribution under this section in respect of a mine worker for each week for which the mine worker is an employee of the owner; and
 - (b) must pay that contribution immediately after the end of the pay period to which the employment relates.
- (5) If a contribution required to be paid under this section' is overdue for more than 14 days, the Tribunal may charge interest on the overdue amount at the rate of interest that, at the time when the interest first becomes payable, is advertised as the overdraft reference rate of the Commonwealth Bank for amounts in excess of \$100,000.
- (6) Interest payable under this section is recoverable in the same way as unpaid contributions and any interest paid or recovered under this section is to be credited to the Amalgamated Fund.

**SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued***

(7) In this section, “**special rate**” means a rate equal to:

- (a) 5.5 per cent of the Reference Rate; or
- (b) such other rate as may be fixed by the Tribunal by order published in the Gazette:
 - (i) after consideration of an actuarial report provided under section 27; and
 - (ii) with the agreement of the parties to the Restructuring Agreement.

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

(21) Section 19I (**Definition**):

Omit “Fund”, insert instead “Old Fund”.

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

From section 19J (1), omit “paid to the Fund”, insert instead “held in the Amalgamated Fund”.

(23) Section 19L (**Refund of contributions where mine worker ceases to be employed on or after 26 March 1978 and before 3 January 1993**):

Omit “to the Fund” wherever occurring, insert instead “held in the Amalgamated Fund”.

(24) Section 19N (**Definitions**):

In section 19N (1), from the definition of “Fund”, omit “Coal and Oil Shale Mine Workers Superannuation Fund”, insert instead “COALSUPER Retirement Income Fund”.

(25) Section 19O (**Investment of Fund**):

From section 19O (4), omit “Coal and Oil Shale Mine Workers Superannuation Fund”, insert instead “COALSUPER Retirement Income Fund”.

**SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued***

(26) Section 27 (Actuarial investigation and report):

- (a) From section 27 (1), omit “the Fund”, insert instead “the Amalgamated Fund”.
- (b) From section 27 (3), omit “the Fund” where firstly occurring, insert instead “the relevant Fund”.
- (c) From section 27 (3), omit “the Fund” where secondly, thirdly, fourthly, fifthly and sixthly occurring, insert instead “that Fund”.
- (d) From section 27 (3AB) and (4), omit “the Fund” wherever occurring, insert instead “the relevant Fund”.

(27) Section 27B (What information must be disclosed to mine workers):

- (a) From section 27B (a), omit “Fund” where firstly occurring, insert instead “Old Fund”.
- (b) From section 27B (a), omit “Fund” where secondly occurring, insert instead “Amalgamated Fund”.

(28) Schedule 2 (Savings and transitional provisions):

After clause 7, insert:

**PART 5—PROVISIONS CONSEQUENTIAL ON
SCHEDULE 2 TO COAL AND OIL SHALE
MINE WORKERS (SUPERANNUATION)
FURTHER AMENDMENT ACT 1994**

Power to make orders fixing Reference Rate

8. An order of the Minister fixing a Reference Rate for the purposes of section 2 (5) and in force immediately before the commencement of this Part is, after that commencement, taken to be an order made by the Tribunal for those purposes.

Tribunal’s functions relating to Pension Account

9. (1) An approval or arrangement given or entered into by the Tribunal in relation to the Pension Account under section 18A (as in force immediately before the commencement of this Part) is taken to be an approval or

**SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER
RETIREMENT INCOME FUND—*continued***

arrangement given or entered into by the Tribunal in relation to the Pension Account under section 18C.

(2) An agreement entered into by the Tribunal in relation to the Pension Account under section 18A (as in force immediately before the commencement of this Part) is taken to be an approval given by the Tribunal in relation to the Pension Account under section 18C.

Orders fixing “special rate” for the purposes of section 19

10. An order of the Minister fixing a special rate for the purposes of section 19 and in force immediately before the commencement of this Part is, after that commencement, taken to be an order made by the Tribunal for those purposes.

**SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER
OF TRIBUNAL’S FUNCTIONS**

(Sec. 3)

(1) Section 1A (**Contributions and benefits payable on and after 3 January 1993**):

- (a) From section 1A (1A), omit “COSAF Trust Deed”, insert instead “COALSUPER Trust Deed”.
- (b) Omit section 1A (2)–(4).

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

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

“**COALSUPER Rules**” means the rules (as amended or substituted from time to time) included in the COALSUPER Trust Deed that govern the occupational superannuation schemes to which the COALSUPER Trust Deed relates.

“**COALSUPER Trust Deed**” means the trust deed (as amended or substituted from time to time) for the reconstitution of the occupational superannuation schemes referred to in section 15C (1).

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

“Corporate Trustee” means the body incorporated as a result of arrangements made under section 4 of the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994.

“Exercise” a function includes perform a duty.

“Function” includes a power, duty or authority.

- (b) From section 2 (1), omit the definitions of “Approved deposit fund”, “Authorised period”, “CPI figure”, “Deferred annuity”, “Injury”, “Insurance and Superannuation Commissioner”, “Manager”, “Pension”, “Quarter”, “Registrar”, “Retrenched” and “Tribunal”.
- (c) In section 2 (1), from paragraph (c) of the definition of “Mine worker”, omit “the Tribunal has made an order”, insert instead “the Corporate Trustee has made a determination”.
- (d) In section 2 (1), after “section 2E” in paragraph (d) of the definition of “Mine worker”, insert “(as in force before the commencement of Schedule 3 to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994)”.
- (e) In section 2 (1), from paragraph (e) of the definition of “Mine worker”, omit “an order”, insert instead “a determination”.
- (f) In section 2 (1), from the definition of “Reference Rate”, omit “Tribunal”, insert instead “Corporate Trustee”.
- (g) In section 2 (1), from the definition of “Reference Rate”, omit “an order”, insert instead “a determination”.
- (h) From the first proviso to section 2 (2) (b), omit “Tribunal”, insert instead “Corporate Trustee”.
- (i) From section 2 (2) (c), omit “Registrar or a manager of the Tribunal”, insert instead “Corporate Trustee”.
- (i) From the proviso to section 2 (3), omit “Tribunal”, insert instead “Corporate Trustee”.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

- (k) From section 2 (5), omit “Tribunal”, insert instead “Corporate Trustee”.
 - (l) From section 2 (5), omit “an order”, insert instead “a determination”.
 - (m) From section 2 (5) (a), omit “the order” wherever occurring, insert instead “the determination”.
 - (n) From section 2 (5) (b), omit “previous order”, insert instead “previous determination”.
 - (o) Omit section 2 (6).
- (3) Section 2E (**Extension of definition of “Mine worker” to cavilled out mine workers etc.**):
 Omit the section.
- (4) Section 2J (**Further extension of the definition of “Mine worker”**):
- (a) Omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.
 - (b) Omit “order” where firstly and secondly occurring, insert instead “determination”.
 - (c) Omit “the order” wherever occurring, insert instead “the determination”.
 - (d) From section 2J (4), omit “The order”, insert instead “A determination”.
 - (e) From section 2J (14), omit “an order”, insert instead “a determination”.
- (5) Section 2K (**Notices under section 2J**):
 From section 2K (1), omit “Tribunal”, insert instead “Corporate Trustee”.
- (6) Section 3 (**Special provisions as to calculation of periods of employment**):
 Omit the section.
- (7) Section 3A (**Authorised periods before 3 January 1993**):
 Omit the section.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

- (8) Heading to Part 2:
From the heading, omit “AND BENEFITS”.
- (9) Heading to Division 1 of Part 2:
Omit the heading.
- (10) Section 5 (**Employment after 60 years of age prohibited**):
From section 5 (4), omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.
- (11) Section 5A (**Extension of compulsory retiring age**):
- (a) From section 5A (2), omit “an order of the Tribunal”, insert instead “a determination of the Corporate Trustee”.
 - (b) From section 5A (2), omit “the order”, insert instead “the determination”.
- (12) Part 2, Divisions 2–5 (sections 5B–14V):
Omit the Divisions.
- (13) Heading to Part 3:
Omit “THE TRIBUNAL”, insert instead “THE CORPORATE TRUSTEE”.
- (14) Section 15:
Omit the section, insert instead:
Functions of Corporate Trustee
15. The Corporate Trustee has the functions conferred or imposed on it by and under this or any other Act.
- (15) Section 15A (**Disclosure of pecuniary interests**):
Omit the section.
- (16) Section 15B (**Power of Corporate Trustee to make determinations declaring certain persons to be mine workers for the purposes of this Act**):

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

- (a) Omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.
- (b) From section 15B (1), omit “orders” wherever occurring, insert instead “determinations”.
- (c) Omit “an order” wherever occurring, insert instead “a determination”.
- (d) Omit “the order” wherever occurring, insert instead “the determination”.
- (e) From section 15B (4), omit “An order”, insert instead “A determination”.

(17) Section 15C:

After section 15B, insert:

Corporate Trustee to maintain trust deed and governing rules

15C. (1) On the dissolution of the Coal and Oil Shale Mine Workers' Superannuation Tribunal:

- (a) the COALSUPER Trust Deed (including the COALSUPER Rules) takes effect as the trust deed and rules of the Corporate Trustee as if it had been executed by the parties named in the Deed; and
- (b) the occupational superannuation schemes established by this Act and by the COSAF Trust Deed are reconstituted under the COALSUPER Trust Deed for the benefit of:
 - (i) mine workers and dormant members; and
 - (ii) the members of the COSAF Fund; and
 - (iii) the dependants of mine workers, dormant members and members of the COSAF Fund; and
 - (iv) persons who, immediately before the dissolution of the Tribunal, were receiving or entitled to receive pensions under this Act.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

(2) The Corporate Trustee must at all times ensure:

- (a) that the COALSUPER Trust Deed (including the COALSUPER Rules) is consistent with the requirements of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth for a regulated superannuation fund within the meaning of that Act; and
- (b) that that Deed is consistent with the requirements of that Act relating to a corporate trustee of such a fund.

(3) The Corporate Trustee must also ensure that the COALSUPER Trust Deed, if amended or substituted, continues to comply with this section.

(4) The COALSUPER Trust Deed must:

- (a) prescribe the functions of the Corporate Trustee in relation to the reconstituted superannuation schemes; and
- (b) provide for the operation, management and investment of the Amalgamated Fund; and
- (c) include the COALSUPER Rules; and
- (d) provide for such other matters as may be necessary for the effective and efficient operation of those schemes.

(5) The COALSUPER Rules must:

- (a) provide for determining which persons are eligible for membership of a reconstituted superannuation scheme to which those Rules apply; and
- (b) prescribe the procedure for eligible persons to become members of such a scheme; and
- (c) determine the liability for payment of contributions to such a scheme; and
- (d) provide for the payment of those contributions; and

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

- (e) prescribe benefits that are payable under the Rules on the retirement of members of such a scheme (including retirement on the grounds of physical or mental incapacity) and provide for the payment of those benefits; and
- (f) prescribe the procedure for retirement of mine workers on the grounds of physical or mental incapacity (including the assessment of incapacity); and
- (g) prescribe benefits that are to be payable under such a scheme to members who are retrenched from their employment as mine workers and provide for the payment of those benefits; and
- (h) prescribe benefits that are to be payable to dependants of members and former members of such a scheme on the death of those members or former members and provide for the payment of those benefits; and
- (i) in the case of persons who are not entitled to a retirement or other benefit on ceasing to be members of such a scheme—prescribe circumstances in which those persons' contributions (if any) are refundable; and
- (i) provide for a benefit under such a scheme to be preserved until a contingency arises on which the benefit is payable; and
- (k) provide for a preserved benefit under such a scheme to be transferred to another superannuation fund in circumstances specified in the Rules; and
- (l) provide for a benefit in another superannuation fund to be transferred to such a scheme in specified circumstances; and
- (m) prescribe the procedure for making a claim for a benefit under the Rules and for meeting such a claim; and
- (n) include such other provisions as the Corporate Trustee thinks necessary for the effective and efficient operation of the reconstituted schemes and the Amalgamated Fund.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL'S FUNCTIONS—*continued*

(6) The COALSUPER Trust Deed is invalid to the extent that it is inconsistent with this Act.

(7) The Corporate Trustee must ensure that the COALSUPER Trust Deed does not in any way restrict or remove a right that:

- (a) a mine worker or a dormant member; or
- (b) a dependant of a mine worker or dormant member; or
- (c) a person entitled to a pension under this Act or the COALSUPER Rules,

had when that Deed, or any amendment to or substitution of that Deed, took effect. The COALSUPER Rules may, however, confer additional rights on such a mine worker, dormant member, dependant or person.

(18) Section 16 (**Registrar, officers and employees**):

Omit the section.

(19) Section 16A:

Omit the section, insert instead:

Corporate Trustee may delegate its functions

16A. The Corporate Trustee may delegate to:

- (a) a member of its board of directors; or
- (b) a committee comprising members that include members of its board of directors; or
- (c) a member of its staff; or
- (d) a person employed by it under a contract for the performance of services,

any of its functions under this Act, other than this power of delegation.

(20) Section 16B (**Tribunal may appoint Manager**):

Omit the section.

(21) Section 17 (**Powers of Tribunal in respect of inquiries and investigations**):

Omit the section.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

- (22) Section 17A (**Tribunal may appoint its own auditor**):
 Omit the section.
- (23) Section 18 (**COALSUPER Retirement Income Fund (the Amalgamated Fund)**):
 From section 18 (2) (b), omit “COSAF Trust Deed”, insert instead “COALSUPER Trust Deed”.
- (24) Section 18A (**Payments into Amalgamated Fund**):
 From section 18A (b), omit “Part 4 of the COSAF Trust Deed”, insert instead “COALSUPER Trust Deed”.
- (25) Section 18B (**Payments from Amalgamated Fund**):
- (a) From section 18B (a), omit “COSAF Trust Deed”, insert instead “COALSUPER Rules”.
 - (b) From section 18B (b), omit “Tribunal”, insert instead “Corporate Trustee”.
 - (c) Omit section 18B (c), insert instead:
 - (c) all money paid towards any other benefits to be provided to mine workers and their dependants, and former mine workers and their dependants, under the COALSUPER Rules; and
 - (d) administrative expenses arising under the COALSUPER Trust Deed; and
 - (e) any other payments approved by the Corporate Trustee under the COALSUPER Trust Deed; and
 - (f) all other money required by or under this or any other Act or law to be paid from the Amalgamated Fund.
- (26) Section 18C (**Special provisions applicable to Pension Account**):
- (a) Omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.
 - (b) From section 18C (3) (c), omit “under this Act”, insert instead “under the COALSUPER Rules”.

**SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL’S FUNCTIONS—*continued***

(27) Section 19 (Contributions required to be paid to Amalgamated Fund):

- (a) Omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.
- (b) From paragraph (b) of the definition of “special rate” in section 19 (7), omit “order”, insert instead “determination”.
- (c) Omit paragraph (b) (i) of the definition of “special rate” in section 19 (7), insert instead:
 - (i) after considering a relevant report of an actuary;
and
- (d) Omit section 19 (8).

(28) Section 19AA (Records and notices relating to employment of mine worker):

Omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.

(29) Section 19AB (Returns to be provided by owners):

Omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.

(30) Section 19AC (Information to be provided to Corporate Trustee):

Omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.

(31) Section 19A (Eligibility of mine workers for subsidies):

From section 19A (3), omit “section 6, 7, 8 or 9”, insert instead “the COALSUPER Rules relating to the payment of pensions”.

(32) Section 19B (Amount of subsidy):

- (a) Omit section 19B (1) (b) and (c), insert instead:
 - (b) an amount equivalent to the pension that the mine worker would have been entitled to receive per week under the relevant provisions of the COALSUPER Rules had the mine worker been

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

under 65 years of age and eligible to receive that pension, together with such additions as the mine worker would be entitled to receive per week under the relevant provisions of those Rules had the mine worker been eligible to receive that pension; or

- (c) in the case of a mine worker who would not be entitled to a pension at the married person's rate if eligible to receive a pension under the relevant provisions of those Rules—the amount prescribed by those Rules for such a mine worker,
- (b) Omit section 19B (2) (a), insert instead:
 - (a) except where the amount of the subsidy is determined under subsection (1) (c), an amount equal to the amount by which (if the mine worker were receiving a pension under the relevant provisions of the COALSUPER Rules) that pension and any additions to that pension that the mine worker would be receiving under the relevant provisions of those Rules, would have been reduced, having regard to the relevant provisions of those Rules;
 - (c) Omit the proviso to section 19B (2).
 - (d) After section 19B (2), insert:
 - (2AA) However, in the case of a mine worker who is of or over 60 years of age, subsection (2) (b) does not operate so as to reduce the subsidy payable to the mine worker to an amount less than that to which the mine worker would have been entitled if the mine worker were receiving:
 - (a) a pension under the COALSUPER Rules; and
 - (b) any additions to the pension that the mine worker would have been receiving under those Rules.
 - (e) From section 19B (3), omit “Tribunal”, insert instead “Corporate Trustee”.
 - (f) From section 19B (6), omit “under Division 3 of Part 2”, insert instead “under the COALSUPER Rules”.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL’S FUNCTIONS—*continued***(33) Section 19BA (Conversion of subsidy payments into lump sum):**

(a) Omit section 19BA (2), insert instead:

(2) As soon as practicable after awarding a subsidy to a mine worker, the Corporate Trustee must send to the mine worker a notice in writing advising the mine worker of

(a) the mine worker’s right to elect to be paid a lump sum; and

(b) the amount of the lump sum; and

(c) the conditions applicable to its payment.

(b) From section 19BA (3), (4), (5), (6) and (8), omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.

(c) From section 19BA (6) (a), omit “the Government Actuary”, insert instead “an actuary appointed for the purpose by the Corporate Trustee”.

(d) Omit section 19BA (7) (b), insert instead:

(b) a pension is not payable under the COALSUPER Rules on the death of the mine worker.

(34) Section 19C (Coal and Oil Shale Mine Workers Compensation Subsidy Fund):

Omit section 19C (4), insert instead:

(4) The Corporate Trustee is responsible for administering the Subsidy Fund in accordance with this Part.

(35) Section 19CA:

After section 19C, insert:

Corporate Trustee may invest Subsidy Fund

19CA. (1) The Corporate Trustee may invest the money held in the Subsidy Fund in any manner authorised for the investment of trust funds.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

(2) The Corporate Trustee may also invest that money in any manner in which it is authorised by the COALSUPER Trust Deed to invest money held in the Amalgamated Fund.

(36) Section 19D:

Omit the section, insert instead:

Owners to pay contributions to Subsidy Fund when required

19D. (1) The Corporate Trustee must:

- (a) for the period of 12 months beginning on 1 July on or after which Schedule 3 to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994 commences; and
- (b) for each subsequent period of 12 months beginning on 1 July,

make an estimate of the amount required by the Subsidy Fund for the payment of subsidies and other amounts payable from the Subsidy Fund and for the provision of a reserve in connection with that Fund.

(2) The amount to be set aside for the reserve is to be determined by the Corporate Trustee at the end of each period of 12 months referred to in subsection (1).

(3) An estimate for the purposes of this section must be made not later than 31 March preceding the period to which the estimate relates.

(4) The Corporate Trustee may, as and when necessary:

- (a) determine the basis on which the amount estimated is to be distributed among the owners; and
- (b) assess, on the basis of that determination, the amount that each owner must pay; and
- (c) serve on each owner a notice specifying the amount assessed in respect of the owner.

The Corporate Trustee must publish its determination in a publication accessible to owners. The Corporate Trustee

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

can determine different amounts and different criteria for assessing the contributions of different owners.

(5) An owner must pay to the Corporate Trustee the amount specified in a notice served on the owner in accordance with subsection (4). The amount must be paid by such date as is specified in the notice. The date must not be less than 14 days after service of the notice.

(6) If, in a period of 12 months beginning on 1 July, the amount of subsidy per week payable to mine workers is increased, the estimate made by the Corporate Trustee in accordance with this section is taken to be varied to the extent necessary to include the amount required for payment of the increased subsidies. The estimate as varied is, for the purposes of this Act, taken to be the estimate of the amount required by the Subsidy Fund for that period:

- (a) for the payment of subsidies and other amounts payable from that Fund; and
- (b) for the provision of a reserve in relation to that Fund.

(7) If an amount payable by an owner under this section is overdue for more than 14 days, the Corporate Trustee may charge interest on the amount at the rate of interest that, at the time when the interest first becomes payable, is advertised as the overdraft reference rate of the Commonwealth Bank for amounts in excess of \$100,000.

(8) The Corporate Trustee may recover interest charged under subsection (7) in the same way as it can recover contributions.

(9) The Corporate Trustee must pay any interest that it receives under this section to the Subsidy Fund.

(10) In this section, “owner” does not include:

- (a) a manufacturer of coke; or
- (b) the South Maitland Railways Proprietary Limited; or
- (c) the New Redhead Estate and Coal Company Limited.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

(37) Section 19F (**Conditions attaching to and suspension of weekly payments of subsidy**):

- (a) From section 19F (1), omit “Registrar or a manager of the Tribunal”, insert instead “Corporate Trustee”.
- (b) From section 19F (2), omit “Registrar or manager”, insert instead “Corporate Trustee”.
- (c) From section 19F (3), omit “Tribunal” wherever occurring, insert instead “Corporate Trustee”.

(38) Section 19G:

Omit the section, insert instead:

Application of certain provisions of this Act to subsidies

19G. (1) Sections 20, 22 and 29 apply with appropriate modifications to and in respect of subsidies under this Part.

(2) The Corporate Trustee may cancel a subsidy payable to a mine worker if it is satisfied that the payment of the subsidy was improperly obtained or that the award of the subsidy was contrary to this Act.

(3) The provisions of the COALSUPER Rules providing for the making of an application for a pension under those Rules apply to an application ~~for~~ a subsidy in the same way as they apply to an application for such a pension.

(39) Section 19H (**Suspension of weekly payments of subsidy in certain cases**):

Omit section 19H (2), insert instead:

(2) While a mine worker who is eligible for, or who has been awarded, a subsidy under this Part is a mentally incapacitated person, the mine worker's subsidy rights under this Part are suspended if the Corporate Trustee so determines. While such a determination is in force, any person who would, if the mine worker were dead, have been eligible for a pension under the COALSUPER Rules:

- (a) is eligible for such a pension as if the mine worker were dead; and
- (b) is entitled to retain the whole of the pension for the person's own use.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
 TRIBUNAL'S FUNCTIONS—*continued*

- (40) Part 4B (**Refund of mine workers' contributions before 3 January 1993**) (sections 19HA–19MA):

Omit the Part.

- (41) Part 4C (**Investment of superannuation and subsidy funds**) (sections 19N–19T):

Omit the Part.

- (42) Section 20:

Omit the section, insert instead:

Pensions to be inalienable

20. (1) A pension payable under the COALSUPER Rules is not capable of being alienated.

(2) However, subsection (1) does not prevent the Corporate Trustee, either with or without the consent of the pensioner, from paying such a pension or part of such a pension to a person for the benefit of the pensioner.

(3) A person must not demand or accept from another person who is entitled to a pension under the COALSUPER Rules a document, or an acknowledgment or undertaking, that would constitute a legal or equitable assignment of, or a charge on, the pension had the pension been capable of being lawfully assigned or charged.

Maximum penalty: 10 penalty units.

- (43) Section 21 (**Suspension of pensions in certain events—alternative pensions to dependants**):

Omit the section.

- (44) Sections 22, 23:

Omit the sections, insert instead:

Appointment of person to receive pension or lump sum benefit payment

22. (1) If a person who is entitled to a pension payment or a lump sum benefit payment under the COALSUPER

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL'S FUNCTIONS—*continued*

Rules is for any reason unable to give a receipt for the payment, the Corporate Trustee may determine that the payment is to be made to another person on the person's behalf.

(2) The receipt of the other person for any such payment is a valid discharge.

Questions may be referred to Industrial Court

23. (1) The Corporate Trustee may refer any question arising under this Act or the COALSUPER Trust Deed to the Industrial Court of New South Wales for determination.

(2) The Industrial Court is, for the purpose of hearing and determining a question referred to it under this section, to be constituted by a full bench of 3 judges.

(3) All persons interested and appearing before the Industrial Court at the hearing of a reference under this section are entitled to be heard.

(45) Section 23A (Appeals):

Omit the section.

(46) Section 24 (Unpaid contributions recoverable as debt):

Omit section 24 (1), insert instead:

(1) The Corporate Trustee may, by proceedings brought in a court of competent jurisdiction, recover as a debt owing to that Trustee all contributions and other money payable by owners to the Amalgamated Fund or the Subsidy Fund that has not been paid by the due date.

(47) Sections 25–28B:

Omit the sections.

(48) Section 29 (Offences relating to benefit payments):

Omit section 29 (1), insert instead:

(1) A person who, for the purpose of obtaining a pension, lump sum benefit or other payment under this Act or the COALSUPER Rules, either for himself or herself or for another person:

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL’S FUNCTIONS—*continued*

- (a) makes a statement knowing it to be false or misleading in a material respect; or
- (b) attempts to mislead the Corporate Trustee or any of its officers or employees or the Industrial Court or any other person; or
- (c) engages in any other kind of fraudulent conduct, is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(49) Section 31 (Fines and penalties to be paid into appropriate Fund):

Omit the section.

(50) Section 32 (Regulations):

- (a) Omit section 32 (2).
- (b) From section 32 (3), omit all the words after “the regulation”.

(51) Schedule 1:

Omit the Schedule.

(52) Schedule 2 (Savings and transitional provisions):

- (a) Omit clause 1.
- (b) After clause 10, insert:

**PART 6—PROVISIONS CONSEQUENT ON
SCHEDULE 3 TO COAL AND OIL SHALE
MINE WORKERS (SUPERANNUATION)
FURTHER AMENDMENT ACT 1994**

Definition of “Tribunal”

11. In this Part, “**Tribunal**” means the Coal and Oil Shale Mine Workers’ Superannuation Tribunal.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

Dissolution of Tribunal

12. (1) The Tribunal is dissolved on the commencement of this Part.

(2) On the dissolution of the Tribunal, the following provisions have effect:

(a) by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance, the assets vested in the Tribunal vest in the Corporate Trustee as trustee for:

(i) those mine workers and dormant workers who are or may become entitled to receive benefits under the COALSUPER Rules; and

(ii) the dependants of mine workers and dormant members who are or may become entitled to receive benefits under those Rules; and

(iii) those persons who, immediately before the dissolution of the Tribunal, were receiving or entitled to receive pensions under this Act;

(b) the rights and liabilities of the Tribunal become, by virtue of this clause, the rights and liabilities of the Corporate Trustee;

(c) all proceedings pending before, by or against the Tribunal are taken to be proceedings pending before, by or against the Corporate Trustee;

(d) any act, matter or thing done or omitted to be done in relation to the Tribunal is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of the Corporate Trustee.

(3) Subject to this Act:

(a) mine workers and dormant members; and

(b) the dependants of mine workers and dormant members; and

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL'S FUNCTIONS—*continued*

(c) persons who were, immediately before the dissolution of the Tribunal, receiving or entitled to receive pensions under this Act, have the same rights and obligations in relation to the Amalgamated Fund after that Fund has become vested in the Corporate Trustee as they had before that dissolution.

(4) Subject to this Act, an owner has the same obligations and liabilities in relation to the COALSUPER Retirement Income Fund after it has become vested in the Corporate Trustee as the owner had before the dissolution of the Tribunal.

(5) The operation of this clause is subject to such modifications as may, from time to time, be made by regulations made under clause 2 of this Schedule.

Special provisions with respect to transfer of assets and other matters

13. (1) The operation of this Part is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(2) The operation of this Part is not to be regarded as an event of default under any contract or other instrument.

Tribunal members to vacate office

14. A person who, immediately before the dissolution of the Tribunal, held office as a member of the Tribunal:

- (a) ceases to hold office as such on that dissolution; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

Orders and directions of Tribunal

15. If an order or direction of the Tribunal made for a purpose of a provision of this Act is in force immediately before the commencement of this Part and the Corporate Trustee is, after that commencement, required or authorised to make a determination for that purpose under that provision (as in force after the commencement of this Part), the order or direction is taken to be a determination of the Corporate Trustee made for that purpose under that provision.

Notices given to Tribunal under section 2K (Notices under section 2J)

16. A notice given to the Tribunal under section 2K in relation to a person (other than a mine worker) who has not commenced work in or about, or in connection with, a coal or oil shale mine in New South Wales before the commencement of this Part is taken to have been given to the Corporate Trustee under that section (as in force after that commencement).

Power of Tribunal to suspend operation of provisions of section 5 (Employment after 60 years of age prohibited)

17. (1) If the operation of section 5 (1) and (2) is suspended in their application to and in respect of any specified employment of a specified mine worker when this Part commences, then, until revoked, the suspension continues to have effect as if it had been made by the Corporate Trustee.

(2) If such a suspension is subject to conditions imposed by the Tribunal, those conditions are taken to have been imposed by the Corporate Trustee.

(3) Any certificate of exemption issued by the Tribunal in relation to any such suspension is taken to have been issued by the Corporate Trustee.

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL’S FUNCTIONS—*continued*

Applications for lump sum benefit under section 14S

18. Despite the repeal of Divisions 3–5 of Part 2 of this Act by Schedule 3 (12) to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994, the Corporate Trustee may dispose of an application for a lump sum benefit that has not been disposed of by the Tribunal before the commencement of this Part. For that purpose, the Corporate Trustee has the same functions that the Tribunal would have had under those Divisions if they had not been repealed.

Contracts and arrangements entered into by the Tribunal

19. (1) Any contract or arrangement entered into by the Tribunal under this Act is, if not completed or terminated before the commencement of this Part, taken to be a contract or an arrangement entered into by the Corporate Trustee.

(2) This clause does not apply to an arrangement under section 18C.

Powers of Tribunal in respect of inquiries and investigations

20. If any inquiry or investigation undertaken by the Tribunal under section 17 (as in force immediately before the commencement of this Part) has not been completed, the Corporate Trustee may complete the inquiry or investigation despite the repeal of that section.

Tribunal’s functions relating to Pension Account

21. An approval or arrangement given or entered into by the Tribunal under section 18C and in force immediately before the commencement of this Part is taken to be an approval or arrangement given or entered into by the Corporate Trustee under that section (as in force after that commencement).

Tribunal’s functions relating to contributions payable under section 19

22. (1) A payment required to be made to the Tribunal under section 19 and not paid before the commencement

**SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued***

of this Part is taken to be a payment required to be made to the Corporate Trustee under that section (as in force after that commencement).

(2) An order made or taken to be made by the Tribunal fixing a special rate for the purposes of section 19 and in force immediately before the commencement of this Part is, after that commencement, taken to be a determination made by the Corporate Trustee for those purposes.

Approval and notices under sections 19AA and 19AB

23. (1) An approval given by the Tribunal for the purposes of section 19AA or 19AB (as in force before the commencement of this Part) is taken to be an approval given by the Corporate Trustee for the purposes of that section (as in force after that commencement) until the approval is revoked by that Trustee.

(2) A notice given by an owner for the purposes of section 19AA (as in force before the commencement of this Part) is taken to be a notice given by the owner for the purposes of that section (as in force after that commencement).

Requirements under section 19AC (Information to be provided to Tribunal)

24. A requirement made under section 19AC (as in force before the commencement of this Part) is, to the extent that it has not been complied with before that commencement, taken to be a requirement made by the Corporate Trustee under that section (as in force after that commencement).

**Notices sent by Tribunal under section 19BA
(Conversion of subsidy payments into lump sum)**

25. A notice sent by the Tribunal in accordance with section 19BA within 4 months before the commencement of this Part is taken to be a notice sent by the Corporate Trustee under that section (as in force after that commencement).

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL'S FUNCTIONS—*continued***Estimates under section 19D (Contributions to Subsidy Fund)**

26. An estimate made by the Tribunal under section 19D (as in force immediately before the commencement of this Part) and not implemented under that section in relation to the period for which it was made is taken to be an estimate made by the Corporate Trustee for that period.

Suspension of pensions in certain cases

27. (1) If a person who has been awarded a pension in accordance with this Act or the COALSUPER Rules is sentenced to imprisonment for more than 1 month, the person's pension rights are suspended for the period of imprisonment. Any person who would, if the pensioner were dead, have been eligible for a pension in accordance with those Rules, is eligible for such a pension during the period of imprisonment.

(2) While a mine worker who is eligible for, or who has been awarded, a pension in accordance with this Act or the COALSUPER Rules is a mentally incapacitated person, the person's pension rights are, if the Corporate Trustee so determines, suspended. While such a determination is in force, any person who would, if the mine worker were dead, have been eligible for a pension in accordance with the COALSUPER Rules:

- (a) is eligible for such a pension as if the mine worker were dead; and
- (b) is entitled to retain the whole of the pension for the person's own use.

(3) While a person who is eligible for, or who has been awarded, a pension in accordance with this Act or the COALSUPER Rules (either because of the death of a mine worker or because of the operation of section 19H (2) or this clause) is a mentally incapacitated person, the person's pension rights are, if the Corporate Trustee so determines, suspended.

(4) The period for which the pension rights of an incapacitated person are suspended under this clause does not, if the Corporate Trustee so determines, include a

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

period while the person is on leave from a hospital (being a hospital within the meaning of the Mental Health Act 1990) before the person's discharge.

(5) The eligibility of a person for a pension in accordance with this Act or the COALSUPER Rules (either because of the death of a mine worker or because of the operation of section 19H (2) or this clause), and the rights conferred on the person by this clause, cease on a determination of the Corporate Trustee under subclause (4).

(6) The spouse of a mine worker who is eligible for a pension under the COALSUPER Rules who has been deserted by the mine worker or has been left by the mine worker without support and who satisfies the Corporate Trustee:

- (a) that the spouse has taken proceedings against the mine worker for an order for the payment of maintenance under the Family Law Act 1975 of the Commonwealth and either:
 - (i) that the spouse has failed to obtain such an order; or
 - (ii) that the spouse has obtained such an order but the order has not been complied with; and
- (b) that the whereabouts of the mine worker are unknown,

is, while deserted or left without support, eligible for a pension in accordance with those Rules as if the mine worker were dead.

(7) The spouse of a mine worker who is receiving a pension under this Act or the COALSUPER Rules who has been deserted by the mine worker or who has been left by the mine worker without support and who satisfies the Corporate Trustee:

- (a) that the spouse has taken proceedings against the mine worker for an order for the payment of maintenance under the Family Law Act 1975 of the

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL’S FUNCTIONS—*continued*

Commonwealth and that any order under that Act as a result of the proceedings has not been complied with; and

- (b) that the whereabouts of the mine worker are unknown,

is, while deserted or left without support, eligible for a pension of the appropriate amount prescribed by the COALSUPER Rules.

(8) If a pension is awarded to the spouse of a mine worker under subclause (6) or (7), the Corporate Trustee may suspend the pension payable to the mine worker.

(9) In this clause, “spouse”, in relation to a mine worker, includes any person of the opposite sex with whom the mine worker is living as the mine worker’s spouse on a bona fide domestic basis.

(10) Despite section 15C, this clause is subject to any provision of the COALSUPER Rules to the contrary.

Suspension of benefits under section 19H or 21

28. If:

- (a) a subsidy right is suspended by order of the Tribunal in accordance with section 19H of this Act (as in force immediately before the commencement of this Part); or
- (b) a pension is suspended by order of the Tribunal in accordance with section 21 of this Act (as so in force),

the right or pension is taken to be suspended by a determination of the Corporate Trustee made under section 19H of this Act or clause 27 of this Schedule (as in force after that commencement).

References to Industrial Court

29. The Industrial Court of New South Wales may continue to hear and determine a question referred under section 23 (as in force immediately before the commencement of this Part) after that commencement as if the question had been referred to that Court under that section (as in force after that commencement).

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF
TRIBUNAL'S FUNCTIONS—*continued*

Appeals relating to disputes

30. (1) Despite the repeal of section 23A by Schedule 3 (45) to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994, the Corporate Trustee may determine a dispute that had arisen under this Act before the commencement of that repeal but had not been determined by the Tribunal under that section before its repeal.

(2) Any person aggrieved by a determination of the Corporate Trustee under subclause (1) may appeal against the determination to the Industrial Court of New South Wales. Such an appeal must be made within 6 months after the date of the Corporate Trustee's determination, or within such further period as that Court may allow.

(3) Any person aggrieved by a determination of the Tribunal under section 23A (as in force before the repeal of that section by Schedule 3 (45) to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994) may, if the determination was made within the 6 months preceding that repeal, appeal against the determination to the Industrial Court of New South Wales. Such an appeal must be made within 6 months after the date of the Tribunal's determination, or within such further period as that Court may allow.

(4) The Industrial Court may continue to hear and determine an appeal made under section 23A before the repeal of that section by Schedule 3 (45) to the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994 as if that repeal had not taken effect.

Applications under Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983

31. An application lodged with, or a notice forwarded to the Registrar in accordance with the Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983 (as in force before the commencement of this Part) is taken to have been lodged with, or forwarded to, the Corporate Trustee in accordance with that Regulation (as in force after that commencement).

SCHEDULE 3—AMENDMENTS RELATING TO TRANSFER OF TRIBUNAL'S FUNCTIONS—*continued***(53) Schedule 4 (Interest on refund of contributions):**

Omit the Schedule.

SCHEDULE 4—CONSEQUENTIAL AMENDMENT OF OTHER LEGISLATION

(Sec. 5)

Consequential amendment of Public Finance and Audit Act 1983 No. 152

The Public Finance and Audit Act 1983 is amended by omitting from Schedule 2 to that Act the following matter:

superannuation Tribunal constituted under the Coal and Oil Shale Mine Workers (Superannuation) Act 1941.

Consequential amendment of Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983

The Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983 is amended:

- (a) by omitting clause 3 and Parts II, III and IV,
- (b) by omitting from clause 4 (1) the definitions of "Fund", "mining union", "Registrar" and "Subsidy Fund";
- (c) by omitting from clauses 26 and 29 "Registrar" wherever occurring, and by inserting instead "Corporate Trustee";
- (d) by omitting from clause 32 the figure "15,".

*[Minister's second reading speech made in—
Legislative Assembly on 30 November 1994
Legislative Council on 2 December 1994]*