



New South Wales

Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000 No 17

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New South Wales

Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000 No 17

Act No 17, 2000

An Act to amend the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* so as to permit the implementation of a restructured superannuation funding agreement made between representatives of coal mine owners and representatives of coal mine employees, and for other purposes. [Assented to 30 May 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000*.

2 Commencement

This Act commences on 1 July 2000.

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

The *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

actuary means a person, appointed by the Corporate Trustee, who is a member of the Institute of Actuaries of Australia.

Column 5 pension means a pension payable under the COALSUPER Rules at the rate specified (as at 31 December 1999) in Column 5 of Appendix 3A to those Rules.

complying fund means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

member of Part 3 of the Fund means a person who is a Member of Part 3 of the Fund within the meaning of the COALSUPER Trust Deed.

1999 Superannuation Agreement means the 1999 Superannuation Agreement made on 23 December 1999 between the parties set out in Part 3 of Schedule 3.

Part 2 of the Fund means Part 2 of the Amalgamated Fund.

Part 3 of the Fund means Part 3 of the Amalgamated Fund.

pension CPI contribution means a contribution calculated at the pension CPI rate.

pension CPI rate means the rate determined under section 19AD.

transferee means a mine worker who has made the election, referred to in clause 4.1 of the 1999 Superannuation Agreement, to convert his or her defined benefit in Part 3 of the Fund to an accumulation benefit in Part 2 of the Fund.

[2] Section 2 (1), definition of “Pension Account”

Omit the definition.

[3] Section 2 (1), definition of “Restructuring Agreement”

Omit “made on 25 June 1992 between the parties set out in Part 1 of Schedule 3”.

Insert instead “originally made on 25 June 1992 between the parties set out in Part 1 of Schedule 3, as varied by the 1999 Superannuation Agreement”.

[4] Section 15C Corporate Trustee to maintain trust deed and governing rules

Insert after section 15C (4):

(4A) The COALSUPER Trust Deed must also empower the Corporate Trustee:

- (a) to determine the priority of claims for payment out of the Amalgamated Fund, on the winding-up of the Amalgamated Fund (or on the occurrence of any event that, in the opinion of the Corporate Trustee, makes a determination of the priority of claims on that Fund necessary or appropriate), of pensions, lump sum benefits, refunds of contributions and any other benefits required or authorised to be paid under this Act or under the COALSUPER Trust Deed, and
- (b) in accordance with clause 13 of the 1999 Superannuation Agreement, to distribute any surplus (determined by the actuary) that arises in Part 3 of the Fund to employers and mine workers (being employers and mine workers who are contributing to the Amalgamated Fund at the time the actuary makes the determination) on an equitable basis in proportion to their contributions to Part 3 of the Fund.

[5] Section 15C (8)

Insert at the end of section 15C (7):

- (8) A conversion of a mine worker’s defined benefit in Part 3 of the Fund to an accumulation benefit in Part 2 of the Fund pursuant to the election referred to in clause 4.1 of the 1999 Superannuation Agreement is taken not to contravene subsection (7).

[6] Section 18 COALSUPER Retirement Income Fund (the Amalgamated Fund)

Insert at the end of the section:

- (3) The following reserves and accounts are to be established in the Amalgamated Fund:
 - (a) a reserve in respect of Part 2 of the Fund, comprising:
 - (i) the mine workers' special accounts, and
 - (ii) the mine workers' transferred benefits account, and
 - (iii) the mine workers' special salary sacrifice account,
 - (b) a reserve in respect of Part 3 of the Fund, including (but not limited to):
 - (i) the pension account, and
 - (ii) the dormant members' account,
 - (c) such other accounts and reserves as may be established by the Corporate Trustee for the efficient management of the Fund.

[7] Section 18A Payments into Amalgamated Fund

Omit "Pension Account" from section 18A (c).

Insert instead "pension account".

[8] Section 18C Special provisions applicable to pension account

Omit section 18C (1) and (2). Insert instead:

- (1) The pension account referred to in section 18 (3) (b) (i) is to be divided into the following sub-accounts:
 - (a) the Joint Coal Board sub-account,
 - (b) the Column 5 pensions increase and indexation sub-account.

[9] Section 18C (3)

Omit “Credits to the Pension Account”.

Insert instead “Credits to the Joint Coal Board sub-account (which is a continuation of the account kept under this section as in force immediately before 1 July 2000, being the date on which Schedule 1 [9] to the *Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000* commenced)”.

[10] Section 18C (4) (a)

Omit “the account”. Insert instead “the Joint Coal Board sub-account”.

[11] Section 18C (4) (b)

Omit “Pension Account to be credited to that Account”.

Insert instead “Joint Coal Board sub-account to be credited to that sub-account”.

[12] Section 18C (4) (c)

Omit “that Account”. Insert instead “that sub-account”.

[13] Section 18C (5)

Omit “Pension Account”. Insert instead “pension account”.

[14] Section 19 Contributions required to be paid to Amalgamated Fund

Omit section 19 (1), (2) and (3). Insert instead:

- (1) An owner must pay contributions in accordance with this section for each mine worker employed by the owner.
- (2) Except for contributions paid to a complying fund other than Part 2 of the Fund, the contributions are to be paid to the Corporate Trustee for crediting to the Amalgamated Fund in accordance with this section.
- (2A) The owner must pay both of the following for crediting to Part 3 of the Fund:
 - (a) for each mine worker—contributions at a weekly rate equal to the special rate,

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- (b) for each transferee or other mine worker who is not a member of Part 3 of the Fund—the pension CPI contribution.
- (2B) The owner must pay contributions at a weekly rate equal to 4 per cent of the Reference Rate for crediting to Part 3 of the Fund for each mine worker who is a member of Part 3 of the Fund and is:
- (a) a mine worker to whom group A of the *Coal Mining Industry (Supervision and Administration) Consent Award 1999, New South Wales and Tasmania* (or any award that succeeds or supersedes that Award) applies, or
 - (b) a youth or a junior, or
 - (c) a first, second or third year apprentice.
- (2C) For each other mine worker who is a member of Part 3 of the Fund, the owner must pay contributions at a weekly rate equal to 5 per cent of the Reference Rate (in accordance with clause 12.1 of the 1999 Superannuation Agreement) for crediting to that Part of the Fund.
- (2D) For each transferee or other mine worker who is not a member of Part 3 of the Fund and is:
- (a) a mine worker to whom group A of the *Coal Mining Industry (Supervision and Administration) Consent Award 1999, New South Wales and Tasmania* (or any award that succeeds or supersedes that Award) applies, or
 - (b) a youth or a junior, or
 - (c) a first, second or third year apprentice,
- the owner must pay contributions at a weekly rate equal to 4 per cent of the Reference Rate (less the pension CPI contribution), for crediting to:
- (d) Part 2 of the Fund, or
 - (e) if the mine worker has elected to contribute to a complying fund other than Part 2 of the Fund—to that fund.

- (2E) For each other transferee or other mine worker who is not a member of Part 3 of the Fund, the owner must pay contributions at a weekly rate equal to 5 per cent of the Reference Rate (less the pension CPI contribution) (in accordance with clauses 12.2 and 12.3 of the 1999 Superannuation Agreement), for crediting to:
- (a) Part 2 of the Fund, or
 - (b) if the mine worker has elected to contribute to a complying fund other than Part 2 of the Fund—to that fund.
- (3) For each eligible mine worker the owner must also pay contributions at a weekly rate, in accordance with the COALSUPER Trust Deed:
- (a) in the case of a mine worker who contributes to Part 2 of the Fund—to the Corporate Trustee for crediting to the mine worker's special account in that Part of the Fund, and
 - (b) in the case of a mine worker who has elected to contribute to a complying fund other than Part 2 of the Fund—to that fund.

A mine worker is an *eligible mine worker* for the purposes of this subsection if the mine worker is an *eligible employee* within the meaning of Part 2 of the COALSUPER Trust Deed.

[15] Section 19 (4A) and (4B)

Insert after section 19 (4):

- (4A) Despite the other provisions of this section, the Corporate Trustee may, by notice published in the Gazette, suspend (for a time specified in the notice or until publication of a further notice under this subsection) owners' obligations under subsection (2A) to pay contributions at a weekly rate equal to the special rate.
- (4B) A notice referred to in subsection (4A) may be published only:
- (a) after considering a relevant report of the actuary, and
 - (b) with the agreement of the shareholders of the Corporate Trustee.

[16] Section 19 (7)

Omit the subsection. Insert instead:

- (7) In this section, *special rate* means such rate as may be fixed from time to time by the Corporate Trustee by determination published in the Gazette:
 - (a) after considering a relevant report of the actuary, and
 - (b) with the agreement of the shareholders of the Corporate Trustee.

[17] Section 19AD

Insert after section 19AC:

19AD Corporate Trustee to set pension CPI rate

- (1) The Corporate Trustee is to determine the rate required from time to time to fund the indexation, by reference to the Consumer Price Index in accordance with clause 11 of the 1999 Superannuation Agreement, of Column 5 pensions.
- (2) Any such determination:
 - (a) is to be made after considering a relevant report of the actuary, and
 - (b) is to have effect for a period specified in the determination, and
 - (c) may be varied by the Corporate Trustee following an annual assessment by an actuary.
- (3) In this section, *Consumer Price Index* means the Consumer Price Index (All Groups—Weighted Average of eight capital cities) issued by the Australian Statistician.

[18] Section 32A Temporary modification of Act

Insert “, as varied by the 1999 Superannuation Agreement,” after “provisions of which” in section 32A (1) (a).

[19] Section 32A (1) (b)

Omit “representatives of such of the organisations set out in Part 1 of Schedule 3 as are in existence when the certificate is given”.

Insert instead “the shareholders of the Corporate Trustee”.

[20] Schedule 2 Savings and transitional provisions

Insert at the end of clause 2 (1):

*Coal and Oil Shale Mine Workers (Superannuation)
Amendment (1999 Superannuation Agreement) Act 2000*

[21] Schedule 2, Part 7

Insert after clause 31:

**Part 7 Provisions consequent on enactment of Coal
and Oil Shale Mine Workers
(Superannuation) Amendment (1999
Superannuation Agreement) Act 2000**

32 Special rate

The rate specified in section 19 (7) (a), as that paragraph was in force immediately before 1 July 2000 (being the date of the repeal and re-enactment of section 19 (7) by Schedule 1 [16] to the *Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000*), is taken to be the special rate for the purposes of section 19 until a rate is fixed by the Corporate Trustee in accordance with section 19 (7) as so re-enacted.

[22] Schedule 3 Accumulation Fund and Restructuring Agreement

Omit the text of clause 10 (b) of the Restructuring Agreement from clause 2 of Part 2.

Insert instead:

- (b) Changed circumstances which would necessitate a renegotiation of the 1992 Restructuring Agreement and the 1999 Superannuation Agreement include, but are not limited to:
- (i) changes in marginal tax rates which reduce the benefit of salary sacrifice;
 - (ii) a judicial decision or interpretation, legislation or a Tax Office ruling, that the methods adopted to fund CoalSuper are no longer available, or are significantly less effective, or unenforceable;
 - (iii) amendment to the MP Act, or other legislative change, the result of which makes the 1992 Restructuring Agreement or the 1999 Superannuation Agreement, significantly less effective;
 - (iv) legislation which invalidates or impairs the operation of the Salary Sacrifice Agreement.

[23] Schedule 3, Part 3

Insert after Part 2:

Part 3 1999 Superannuation Agreement

3 Parties

For the purpose of the definition of *1999 Superannuation Agreement* in section 2 (1), the parties to the Agreement are:

- NEW SOUTH WALES MINERALS COUNCIL LIMITED, a Company limited by guarantee whose registered office is situated at 13th Floor, 227 Elizabeth Street, Sydney, New South Wales, 2000.

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- CONSTRUCTION FORESTRY MINING AND ENERGY UNION, MINING AND ENERGY DIVISION, an organisation registered under the Workplace Relations Act, 1996 Commonwealth whose registered office is situated at 13–15 Wentworth Avenue, East Sydney, New South Wales, 2011.
- AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION, NEW SOUTH WALES BRANCH, an organisation of employees registered under the Industrial Relations Act, 1996 New South Wales whose registered office is situated at 133 Parramatta Road, Granville, New South Wales, 2142.
- ELECTRICAL TRADES UNION OF AUSTRALIA, NEW SOUTH WALES BRANCH, an organisation of employees registered under the Industrial Relations Act, 1996, New South Wales whose registered office is situated at Level 5, 370 Pitt Street, Sydney, New South Wales, 2000.
- AUSTRALIAN COLLIERIES' STAFF ASSOCIATION an organisation registered under the Workplace Relations Act, 1996, Commonwealth whose registered office is situated at 91 Frederick Street, Merewether, New South Wales, 2291.
- THE COLLIERY OFFICIALS ASSOCIATION OF NEW SOUTH WALES, an organisation of employees registered under the Industrial Relations Act, 1996, New South Wales whose registered office is situated at Unit 7, 50 Medcalf Street, Warners Bay, New South Wales, 2282.

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Schedule 1

- **NEW SOUTH WALES COAL MINE MANAGERS' ASSOCIATION**, an unregistered association whose office is situated at 10 Hallet Place, Singleton Heights, New South Wales, 2330.

[Minister's second reading speech made in—
Legislative Council on 12 April 2000
Legislative Assembly on 24 May 2000]

BY AUTHORITY
