



New South Wales

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

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* (**the Act**) so as to permit the implementation of a renegotiated agreement relating to a superannuation scheme covering coal and oil shale mine workers, former workers and their dependants.

The Amalgamated Fund, a superannuation fund that relates to the superannuation scheme concerned, is governed by the Act and the COALSUPER Trust Deed.

The COALSUPER Trust Deed includes provisions for the operation, management and investment of the Amalgamated Fund. It also prescribes the functions of the Corporate Trustee in relation to that Fund.

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The Amalgamated Fund consists of an accumulation benefit fund (*Part 2 of the Fund*) and a defined benefit fund (*Part 3 of the Fund*). Part 3 of the Fund was closed to new members in January 1993.

The provisions of the Act and the COALSUPER Trust Deed that are currently in force reflect an agreement (the *Restructuring Agreement*) made in 1992 between representatives of coal mine owners and representatives of coal mine employees.

This Bill amends the Act so as to permit the implementation of a renegotiated agreement (the *1999 Superannuation Agreement*) relating to the Amalgamated Fund. That Agreement was made between the same parties (or their successors) as the Restructuring Agreement.

The 1999 Superannuation Agreement provides, among other things, for the following:

- (a) an option for certain mine workers to elect to convert their entitlement to a defined benefit in Part 3 of the Fund to an accumulation benefit in Part 2 of the Fund,
- (b) a reduction in the amount that mine owners are currently required to contribute to Part 3 of the Fund to reduce the unfunded liability of that Part (because that unfunded liability has been significantly reduced by contributions to date),
- (c) increases in certain mine workers' pensions (*Column 5 pensions*), to be funded by employer contributions to Part 3 of the Fund,
- (d) the future indexation of those pensions in accordance with the Consumer Price Index, to be funded by part of the salary sacrifice contributions of certain mine workers,
- (e) changes to other rates at which payments are currently made to the Fund in respect of mine workers who are not members of Part 3 of the Fund (including those who exercise the option referred to in paragraph (a)),
- (f) changes to the accounts and reserves into which payments to the Amalgamated Fund are made (including, in the case of mine workers who direct that their salary sacrifice contributions be made to a superannuation fund other than Part 2 of the Fund, a new requirement that payments be made to that other fund),
- (g) provision for the distribution of any surplus that might arise in Part 3 of the Fund,
- (h) variation of the Restructuring Agreement.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on 1 July 2000.

**Clause 3** is a formal provision giving effect to the amendments to the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* set out in Schedule 1.

## Schedule 1 Amendments

### Definitions

**Schedule 1 [1], [2] and [3]** amend section 2 (Definitions) of the Act. Schedule 1 [1] inserts definitions of certain terms for the purposes of the proposed new provisions of the Act. Schedule 1 [2] omits a definition that is no longer required and Schedule 1 [3] amends the definition of *Restructuring Agreement* in consequence of the 1999 Superannuation Agreement.

### COALSUPER Trust Deed

**Schedule 1 [4]** inserts proposed subsection (4A) in section 15C (Corporate Trustee to maintain trust deed and governing rules) of the Act. The proposed subsection requires the COALSUPER Trust Deed to empower the Corporate Trustee:

- (a) to determine the priority of claims on the Amalgamated Fund on the winding-up of that Fund or on the occurrence of any event that, in the opinion of the Corporate Trustee, makes such a determination necessary or appropriate, and
- (b) to distribute any surplus that arises in Part 3 of the Fund.

**Schedule 1 [5]** inserts a further subsection in section 15C to make it clear that a conversion of a defined benefit in Part 3 of the Fund to an accumulation benefit in Part 2 of the Fund (as contemplated by clause 4.1 of the 1999 Superannuation Agreement) does not contravene the provision of the Act that requires the Corporate Trustee to ensure that the COALSUPER Trust Deed does not in any way restrict or remove a right that a mine worker had when that Deed (or any amendment to, or substitution of, that Deed) took effect.

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### **Amalgamated Fund**

**Schedule 1 [6]** inserts proposed subsection (3) in section 18 (COALSUPER Retirement Income Fund (the Amalgamated Fund)) of the Act. The proposed subsection specifies certain reserves and accounts (including the pension account) that are to be established in the Amalgamated Fund.

**Schedule 1 [8]** repeals section 18C (1) and (2) of the Act. Section 18C is concerned with the pension account, which is used to fund the payment of benefits under Part 3 of the Fund. Schedule 1 [8] inserts a new section 18C (1), which provides for the pension account to be divided into the following 2 sub-accounts:

- (a) the Joint Coal Board sub-account (which is to fund all Part 3 liability under the current provisions of the Act and the COALSUPER Trust Deed), and
- (b) the Column 5 pensions increase and indexation sub-account (which is to fund the new increases in, and indexation of, the Column 5 pensions).

**Schedule 1 [7]** and **[9]–[13]** make amendments consequential on Schedule 1 [6] and [8].

**Schedule 1 [14]** amends section 19 of the Act (Contributions required to be paid to Amalgamated Fund) to give effect to the changes to the rates at which certain payments are currently made to the Fund, and changes to the accounts and reserves into which those payments are made, in respect of mine workers who elect to convert their entitlement in Part 3 of the Fund to an entitlement in Part 2 of the Fund or who are otherwise not members of Part 3 of the Fund.

### **Unfunded liability of Part 3 of Fund**

Employer contributions to the Amalgamated Fund at a weekly rate equal to the *special rate* reduce the unfunded liability of Part 3 of the Fund.

Currently, section 19 (7) of the Act sets the special rate at:

- (a) 5.5% of the Reference Rate, or
- (b) such other rate as may be fixed by the Corporate Trustee by determination published in the Gazette:
  - (i) after considering a report of an actuary, and
  - (ii) with the agreement of the parties to the Restructuring Agreement.

**Schedule 1 [16]** repeals and re-enacts section 19 (7) so as to provide that the special rate is such rate as may be fixed from time to time by the Corporate Trustee by determination published in the Gazette after considering a report of the actuary and with the agreement of the shareholders of the Corporate Trustee.

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**Schedule 1 [21]** inserts a savings and transitional provision that deems the rate specified in section 19 (7) as in force immediately before the repeal and re-enactment of that subsection by the proposed Act to be the special rate for the purposes of section 19 until a rate is fixed by the Corporate Trustee in accordance with the subsection as re-enacted.

**Schedule 1 [15]** inserts proposed subsections (4A) and (4B) in section 19 to allow the Corporate Trustee to suspend the obligation of owners to make contributions at the special rate.

#### **Indexation of Column 5 pensions**

**Schedule 1 [17]** inserts proposed section 19AD in the Act. The proposed section requires the Corporate Trustee to determine the rate required from time to time to fund the indexation of Column 5 pensions by reference to the Consumer Price Index, in accordance with clause 11 of the 1999 Superannuation Agreement.

#### **Restructuring Agreement**

Clause 2 of Part 2 of Schedule 3 (Accumulation Fund and Restructuring Agreement) to the Act sets out the text of clause 10 of the Restructuring Agreement. Clause 10 (b) of that Agreement has been amended by the 1999 Superannuation Agreement.

To reflect that amendment in the Act:

- (a) **Schedule 1 [18]** amends a reference in section 32A (Temporary modification of Act) of the Act to clause 10 (b) of the Restructuring Agreement, and
- (b) **Schedule 1 [22]** repeals and re-enacts so much of clause 2 of Part 2 of Schedule 3 to the Act as contains clause 10 (b) of the Restructuring Agreement.

**Schedule 1 [19]** replaces an outdated reference to the organisations who are parties to the Restructuring Agreement with a reference to the shareholders of the Corporate Trustee.

**Schedule 1 [23]** inserts a new Part 3 in Schedule 3 to the Act. Part 3 sets out the parties to the 1999 Superannuation Agreement.

#### **Regulations**

**Schedule 1 [20]** amends clause 2 (1) of Schedule 2 (Savings and transitional provisions) to the Act to enable the making of regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.