

Act 1994 No. 85

**COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) FURTHER AMENDMENT BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 (“the Principal Act”) so as:

- to amalgamate into a single fund the Coal and Oil Shale Mine Workers Superannuation Fund (a defined benefits fund established under the Principal Act) and the COSAF Superannuation Fund (a private accumulation fund established under a trust deed) under the name COALSUPER Retirement Income Fund (the Amalgamated Fund); and
- to empower the Coal and Oil Shale Mine Workers’ Superannuation Tribunal (the Tribunal) to make arrangements for the preparation of a trust deed for the administration of coal and oil shale mine workers superannuation and for the incorporation of a body as a corporate trustee for that purpose; and
- to abolish the Tribunal and to provide for certain of its functions relating to the Amalgamated Fund and the Coal and Oil Shale Mine Workers Compensation Subsidy Fund to be transferred to that trustee; and
- to make other changes of a minor or consequential nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the provisions of the proposed Act to be commenced in stages. Proposed sections 1–4 and Schedule 1 will commence on assent. Proposed Schedules 2 and 3 will commence on later dates to be fixed by proclamation. Proposed section 5 and proposed Schedule 4 will commence on the same date as proposed Schedule 3 commences. If Schedules 2 and 3 are to commence on the same date, the amendments in Schedule 2 are to be taken to have commenced immediately before the commencement of the amendments in Schedule 3.

Clause 3 is a formal provision giving effect to the amendments set out in Schedules 1–3.

Clause 4 will require arrangements to be made for COSAF Superannuation Fund to be merged with the Coal and Oil Shale Mine Workers Superannuation Fund established under the Principal Act. Arrangements are also to be made for the preparation of a trust deed under which the existing Coal and Oil Shale Mine Workers Superannuation scheme and the scheme established under the COSAF Superannuation Fund trust deed are to be reconstituted and for the incorporation of a body to administer those schemes as corporate trustee. The proposed trust deed will be required to include rules that will govern those schemes. The arrangements under the clause are to be made by the Coal and Oil Shale Mine Workers Superannuation Tribunal. However, should the Tribunal fail to carry out its responsibilities under the clause, the Minister will be empowered to carry out those responsibilities. An application has been made to the Australian Securities Commission to reserve the name COALSUPER Pty Limited for the proposed body corporate.

Clause 5 gives effect to proposed Schedule 4, which contains consequential amendments to other legislation.

SCHEDULE 1—AMENDMENTS THAT COMMENCE ON ASSENT

The amendments to be made by Schedule 1 are to commence when the Governor assents to the proposed Act.

Sections 14J and 14K of the Principal Act provide for the payment of a death benefit to the spouse and other dependants of a deceased mine worker. Proposed section 14KA will enable the Tribunal, in the case of a deceased mine worker who was lawfully married and who also had a de facto spouse at the time of his or her death, to apportion between the spouses the death benefit payable to a spouse. (See Schedule 1 (7) and (8).)

Further amendments will enable certain functions of the Registrar of the Tribunal to be exercised by a person (a manager) with whom the Tribunal has entered into a contract or an arrangement in accordance with the existing provisions of section 16B of the Act (Tribunal may appoint Manager). (See Schedule 1 (1)–(6), (11), (14) and (17) (a).)

Proposed section 17A will enable the Tribunal to appoint its own auditor. If such an appointment is made, the Auditor-General will, because of section 39 (2A) of the Public Finance and Audit Act 1983, cease to be responsible for auditing the Tribunal's accounts. (See Schedule 1 (12).)

An amendment to section 19 of the Principal Act (Contributions to Fund) will restore the effect of subsection (3) of the section to what it was before Schedule 2 (10) to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992 took effect. Previously, contributions for a full week had to be made for each mine worker who worked during any part of the week. After the substitution of section 19 by the 1992 Act, contributions were required to be made in respect of a mine worker on a proportional basis for each day on which the mine worker worked during a week. This method of calculating contributions would, if implemented, have had the effect of

reducing the total amount of contributions paid to the Coal and Oil Shale Mine Workers Superannuation Fund. However, coal mine owners have continued to make contributions in accordance with the section as it operated before Schedule 2 (10) to the 1992 Act took effect. The payment of those contributions therefore needs to be validated. The validation is made by an amendment to Schedule 2 to the Principal Act (Savings and transitional provisions). (See Schedule 1 (13) and (18).)

An amendment to section 14L of the Principal Act (Lump sum benefit payable for incapacity of mine worker) will enable an incapacity benefit payable to a mine worker to be paid to a mine worker's personal representatives where the mine worker dies after his or her employment is terminated as a result of a disability but before the benefit has been paid. (See Schedule 1 (9).) A further amendment will validate payments of incapacity benefits already paid to deceased mine workers' personal representatives. (See Schedule 1 (18).)

The other amendments to the Principal Act to be made by Schedule 1 are of a minor or consequential nature. (See Schedule 1 (10), (15), (16) and (17) (b) and (c).)

SCHEDULE 2—AMENDMENTS RELATING TO COALSUPER RETIREMENT INCOME FUND

The amendments to be made by Schedule 2 provide for the COALSUPER Retirement Income Fund. The fund is to consist of the existing Coal and Oil Shale Mine Workers Superannuation Fund, the COSAF superannuation Fund and amounts required or authorised to be paid into the fund by or under the Principal Act or any other Act or the COSAF Superannuation Fund trust deed.

The major amendments are contained in proposed sections 18–18C and 19. Proposed section 18 will provide for the COSAF Superannuation Fund to be merged with the Coal and Oil Shale Mine Workers Superannuation Fund, which is to be continued under the name COALSUPER Retirement Income Fund (the Amalgamated Fund). Proposed sections 18A and 18B provide for the payments that are to be made into and from the Amalgamated Fund. Proposed section 18C (which replaces the existing section 18A of the Principal Act) contains special provisions applicable to the Pension Account (from which the pensions of former mine workers and their dependants are paid). Proposed section 19 (which replaces the existing section 19 of the Principal Act) specifies the contributions that coal mine owners will be required to pay to the Amalgamated Fund. The proposed section also specifies how and when those contributions are to be made. (See Schedule 2 (19) and (20).)

The other amendments to be made to Schedule 2 are consequential on the amendments made by Schedule 2 (19) and (20).

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

The amendments to be made by Schedule 3 (52) have the effect of abolishing the Coal and Oil Shale Mine Workers Superannuation Tribunal and transferring responsibility for administering the COALSUPER Retirement Income Fund (i.e. the Amalgamated Fund) to the body incorporated in consequence of arrangements made under proposed section 4. The incorporated body is to be the Corporate Trustee for the

purposes of the Principal Act. The Corporate Trustee will be required to ensure that the COALSUPER Trust Deed (including the COALSUPER Rules) does not restrict or remove a right that a mine worker or dormant member, a dependant of a mine worker or dormant worker, or a pensioner has immediately before those Rules, or any amendment to those Rules or any substituted Rules, are to take effect. (See proposed section 15C to be inserted by Schedule 3 (17).) Other amendments provide for the responsibility for administering the Coal and Oil Shale Mine Workers Compensation Subsidy Fund to be transferred to the Corporate Trustee and will require coal owners to pay their contributions to that Fund to the Corporate Trustee instead of the Tribunal. (See Schedule 3 (31)–(39).) The other amendments made by Schedule 3 are consequential on the abolition of the Tribunal and the transfer to the Corporate Trustee of its responsibilities relating to the Amalgamated Fund and the Subsidy Fund.

SCHEDULE 4—CONSEQUENTIAL AMENDMENT OF OTHER LEGISLATION

Schedule 4 removes the Coal and Oil Shale Mine Workers Superannuation Tribunal from the operation of the Public Finance and Audit Act 1983. The Tribunal is to be abolished as a result of an amendment to be made by Schedule 3. The Schedule also makes amendments to the Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983 that are consequential on amendments to the Principal Act made by Schedule 3.
