

# Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45

[1941-45]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Coal and Oil Shale Mine Workers (Pensions) Act 1941
- **Does not include amendments by**  
[Industrial Relations Amendment Act 2023 No 41](#) (not commenced)

### Responsible Minister

- Treasurer

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45



New South Wales

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# Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45



New South Wales

An Act to prohibit the employment and the continuance in employment in the coal or oil shale mining industries, and in certain callings related thereto, of certain persons of or above the age of sixty years; to make provision for and with respect to the payment of benefits to such persons and certain other persons; to amend the *Widows Pensions Act 1925-1937* and certain other Acts; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act, commencement and construction

- (1) This Act may be cited as the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*.
- (2) (Repealed)
- (3)
  - (a) Parts 1 and 5 shall commence on the day upon which the assent of His Majesty to this Act is signified.
  - (b) Parts 2, 3 and 4 shall commence upon such day or days as may be appointed by the Governor and notified by a proclamation published in the Gazette.

A different day may be so appointed and notified in respect of any of such Parts.

- (4) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or of the regulations or the application thereof to any person or circumstance is held invalid, the remainder of this Act or of such regulations and the application of such provision to other persons or circumstances shall not be affected.
- (5) This Act shall be read and construed with the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

### **1A Contributions and benefits payable on and after 3 January 1993**

- (1) On and after 3 January 1993, a mine worker is not entitled or liable to contribute to the Old Fund or the Amalgamated Fund, whether or not the mine worker was, or was entitled to be, a contributor before that date.
- (1A) Subsection (1) does not prevent a mine worker from making voluntary contributions to the Amalgamated Fund as provided by the AUSCOAL Trust Deed.
- (2)-(4) (Repealed)

### **2 Definitions**

- (1) In this Act, unless the context or subject-matter otherwise indicates or requires:

**Accumulation Fund** means the New South Wales Coal and Oil Shale Mining Industry (Superannuation) Accumulation Fund referred to in the Restructuring Agreement.

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

**Amalgamated Fund** means the AUSCOAL Superannuation Fund, that was formerly named the COALSUPER Retirement Income Fund as referred to in section 18.

**AUSCOAL Rules** means the AUSCOAL Superannuation Fund Rules, that were formerly named the COALSUPER Rules, (as amended or substituted from time to time) included in the AUSCOAL Trust Deed that govern the occupational superannuation schemes to which the AUSCOAL Trust Deed relates.

**AUSCOAL Trust Deed** means the AUSCOAL Superannuation Fund Trust Deed, that was formerly named the COALSUPER Trust Deed (as amended or substituted from time to time) for the reconstitution of the occupational superannuation schemes referred to in section 15C (1).

**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).

**Column 5 pension** means a pension payable under the AUSCOAL 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.

**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](#).

**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.

**Dormant member** means a former contributor to the Old Fund:

- (a) whose last period of service as a mine worker ceased due to retrenchment, resignation or dismissal, and
- (b) who has not taken any benefit from the Old Fund or the Amalgamated Fund, and
- (c) who may become entitled:
  - (i) for the purposes of the Amalgamated Fund, to be credited with past service on being re-employed as a mine worker, or
  - (ii) to a payment from the Amalgamated Fund.

**Exercise** a function includes perform a duty.

**Function** includes a power, duty or authority.

**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 AUSCOAL Trust Deed.

**Mine worker** means:

- (a) a person engaged in the coal or oil shale mining industries in New South Wales who was, immediately before the commencement of the [Coal and Oil Shale Mine Workers \(Superannuation\) Amendment Act 1990](#), contributing to the Old Fund, or
- (b) a person who, after that commencement, becomes employed by an owner in or about a coal or oil shale mine in New South Wales (whether underground or above ground), or
- (c) a person who is engaged in the coal or oil shale mining industries, either before or after that commencement, and in respect of whom the Corporate Trustee has made a determination under section 15B declaring the person to be a mine worker for the purposes of this Act, or
- (d) a person in respect of any period during which the person was the holder of a

permit in force under section 2E (as in force before the commencement of Schedule 3 to the *Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994*) authorising the person to be employed in some industry, other than the coal or oil shale mining industries, specified in the permit, or

- (e) a person who is engaged in work declared by a determination in force under section 2J to be mine work,

but does not include such a person who is ordinarily so engaged or employed for less than 10 hours per week.

**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*).

**Owner** means any person who is the immediate proprietor, the lessee or the occupier of a coal or oil shale mine, and includes:

- (a) where a coal or oil shale mine is being worked by a person who is an official liquidator, receiver, manager or other person authorised by law to carry on the business of working the mine—that person,
- (b) where a coal or oil shale mine belongs to, or is held in trust for, the Crown, a department of the Government or a statutory authority—the Crown, the department or the statutory authority, as the case may be, and
- (c) where a coal or oil shale mine is being worked by a contractor—in addition to any other person, the contractor,

but, except as provided by subsection (7), does not include a person who merely receives a royalty, rent or fine from a coal or oil shale mine or is merely holding the property on or in which a coal or oil shale mine is situated subject to any lease, grant or licence to, or contract with, another person for the working of the coal or oil shale mine.

**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.

**Prescribed** means prescribed by this Act or the regulations.

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



**Reference Rate**, as at any particular time, means such rate as the Corporate Trustee declares in a determination under subsection (5) in force as at that time to be the specified rate for the purposes of this definition.

**Editorial note—**

For determinations under subsection (5), see the Historical notes at the end of this Act.

**Regulations** means regulations made under this Act.

**Restructuring Agreement** means the New South Wales Coal Mining Industry Statutory Fund (Restructuring) Agreement originally made on 25 June 1992 between the parties set out in Part 1 of Schedule 3, as varied by the 1999 Superannuation Agreement.

**Subsidy Fund** means the Coal and Oil Shale Mine Workers Compensation Subsidy Fund established by section 19C.

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

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

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (1A) For the purposes of this Act, a mine worker is retrenched if the employment of the mine worker is terminated and the termination is stated by the employer to have taken place because:
- (a) the employer no longer required the services of the mine worker and does not propose to fill the position then held by the mine worker, or
  - (b) the work that the mine worker was employed to perform has been completed, or
  - (c) the amount of work that the employer required to be performed has diminished and it has accordingly become necessary to reduce the number of employees employed by the employer, or
  - (d) the mine worker has accepted an offer by the employer of terms on which retrenchment of the mine worker was proposed by the employer on a ground referred to in paragraph (a), (b) or (c).
- (2) A person shall, for the purposes of this Act, be deemed to be “engaged in the coal or oil shale mining industries”:

- (a) for any period (whether before or after the commencement of Part 2) during which the person is employed as a mine worker,
- (b) for any period (whether before or after the commencement of Part 2) during which the person is unemployed, if, immediately before the date upon which the person so became unemployed:
  - (i) the person was employed (whether underground or above ground) in or about a coal or oil shale mine in New South Wales by the owner of the mine, or
  - (ii) the person was a member of a permanent rescue corps established at a central rescue station pursuant to the *Mines Rescue Act 1925*, or
  - (iii) the person was a member of the New South Wales Mines Rescue Brigade established under the *Mines Rescue Act 1994*:

Provided that a person shall not be deemed to be “engaged in the coal or oil shale mining industries” by reason of the operation of paragraph (b) unless the Corporate Trustee is satisfied that the person’s employment was terminated otherwise than for misconduct and that the person’s failure to obtain other employment was through no fault on the person’s part:

Provided further that the period for which any such person is unemployed shall be deemed not to be interrupted by periods during which the person is employed upon relief work or upon other work of a casual nature,

- (c) for any period (whether before or after the day on which the assent of Her Majesty to the *Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1957* is signified) during which the person is employed pursuant to a request by the Corporate Trustee to accept available employment under and in accordance with section 19F.

(3), (4) (Repealed)

- (5) Where there is a variation in the weekly rate of wage prescribed for Group B of the Coal Mining Industry (Production and Engineering) Interim Consent Award, September 1990 (or such other rate as may be agreed upon by the parties to the Restructuring Agreement), the Corporate Trustee:

- (a) shall, in and by a determination published in the Gazette as soon as practicable after the variation is made:
  - (i) subject to subparagraph (ii)—specify that rate as so varied and declare it to be the specified rate for the purposes of the definition of **Reference Rate** in subsection (1), or
  - (ii) where there are 2 or more such rates so prescribed—specify one of those rates as so varied and declare it to be the specified rate for the purposes of that

definition, and

(b) shall, in the determination, specify the date as from which the determination takes effect, being the date as from which the specified rate became or becomes payable as wages to loaders or any class of loaders,

and any previous determination made under this subsection shall not be in force in respect of any period commencing on or after the date so specified.

(6) (Repealed)

(7) For the purposes of sections 19 and 19D, if a mine worker is employed by a person who is not an owner as defined in subsection (1), a reference to an owner includes a reference to the employer of the mine worker.

(8) Subsection (7) does not apply to a mine worker who is:

(a) a check-weigher or district check inspector, or

(b) an elected official of an industrial or trade union of employees or of an association of employees registered as an organisation under the *Industrial Relations Act 1988* of the Commonwealth, of which union or organisation the membership is principally confined to persons who are employed in or about a coal or oil shale mine (whether underground or above ground).

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

(9) Notes included in this Act do not form part of this Act.

## **2A Cessation of legal effect of agreements**

The following agreements do not have any legal effect from the commencement of this section insofar as they require contributions to be made to Part 2 or Part 3 of the Amalgamated Fund as referred to in the AUSCOAL Trust Deed or to another fund to which the mine worker has elected to contribute:

(a) the Restructuring Agreement,

(b) the 1999 Superannuation Agreement,

(c) the Industrial Agreement made on 6 September 1988 between N.S.W. Colliery Proprietors' Association Limited and 8 trade unions,

(d) the Industrial Agreement made on 14 May 1991 between New South Wales Coal Association, Cornwall Coal Company No Liability and 4 trade unions.

**Note—**

New South Wales Coal Mining Industry Statutory Superannuation Fund (Salary Sacrifice) Agreement (ODN No 292 of 1992) is revoked by order of the Australian Industrial Relations Commission dated 14 May 2008.

**2B-2I (Repealed)**

**2J Further extension of the definition of mine worker**

- (1) Where any work is performed or to be performed in or about or in connection with a coal or oil shale mine in New South Wales, whether in pursuance of a contract or otherwise, the Corporate Trustee may, from time to time, by determination in writing (which determination is, in this section, referred to as **the determination**), declare that that work or so much of that work as is specified or described in the determination shall be mine work for the purposes of this section.

**Editorial note—**

For determinations under this subsection see the Historical notes at the end of this Act.

- (2) The specification or description of any work in the determination may be made by reference to such matters as the Corporate Trustee thinks fit.
- (3) Without affecting the generality of subsection (2), work may be specified or described in the determination by reference to the work performed or to be performed by a person or class of persons specified or described therein.
- (4) A determination shall take effect from the day specified therein as the date of commencement of the determination.
- (5) The Corporate Trustee shall not, in the determination, specify a day under subsection (4) that is earlier than three months before the date of the determination unless the Corporate Trustee is satisfied that in all the circumstances of the case it is just and reasonable to do so.
- (6) Subject to this section, the Corporate Trustee may, in the determination, specify a day under subsection (4) that is before or after the commencement of section 2 of the [Coal and Oil Shale Mine Workers \(Superannuation\) Amendment Act 1971](#).
- (7) As from the date of commencement of the determination, this section applies to a person who is engaged in mine work, whether or not the person is or would, but for subsection (8), be a mine worker by virtue of any other provision of this Act, but does not apply to a person who is ordinarily so engaged for less than 10 hours per week.
- (8) During any period that a person is a mine worker by virtue of this section and the operation of the determination the person shall be deemed, notwithstanding anything elsewhere contained in this Act, not to be a mine worker during that period by virtue of any other provision of this Act.
- (9) Without affecting the generality of any other provision of this section, the Corporate

Trustee may, in the determination, declare that a person specified or described therein, or a person of a class of persons specified or described therein, is not a mine worker by virtue of this section and the operation of the determination, and the declaration shall have effect according to its tenor.

(10)–(10B) (Repealed)

(11) As from the date of commencement of the determination the provisions of this Act shall, subject to this section, apply to and in respect of persons who are mine workers by virtue of this section and the operation of the determination:

Provided that the provisions of this Act in their application to and in respect of any such person shall be deemed to have been modified to the following extent, that is to say—references, express or implied, in this Act, to the commencement of Part 2, shall be construed as references:

(a) where the date of the determination is later than the date of commencement of the determination—to the date of the determination, or

(b) in any other case—to the date of commencement of the determination.

(12) For the purposes of this Act, all mine work shall be deemed to be work in or about a coal or oil shale mine.

(13), (14) (Repealed)

(15) In this section:

**date of commencement of the determination** means the day specified in the determination as the date of commencement thereof.

**date of the determination** means the date on which the determination is made.

**mine work** means any work declared to be mine work under subsection (1).

## **2K Notices under section 2J**

(1) Before any work is commenced by a person other than a mine worker in or about, or in connection with, a coal or oil shale mine in New South Wales, the owner must give to the Corporate Trustee a written notice that complies with subsection (2).

Maximum penalty: 5 penalty units for each day in any period of days during which this subsection is not complied with.

(2) The notice is to contain the following particulars:

(a) the name and address of the employer, or proposed employer, of the person,

(b) the proposed date of commencement of the work,

- (c) the terms of any contract for doing the work,
- (d) the number of persons who will be doing the work,
- (e) the nature of the work,
- (f) each location at which it is proposed that the work be done,
- (g) the number of persons by whom the work is proposed to be performed who are, to the knowledge of the owner, members of an association of employees registered as an organisation of employees under Part IX of the *Industrial Relations Act 1988* of the Commonwealth,
- (h) the period for which it is proposed that the work be performed.

### **3-4 (Repealed)**

#### **4A Special provisions for persons engaged in the coal mining industry in a reciprocating State**

(1) In this section:

- (a) a reference to the applicable provisions is a reference to sections 3 (8) and 7 (1A), and to Division 4 of Part 2, except section 14P, and
- (b) a reference to a person to whom this section applies is a reference to a person whose last period of service as a mine worker was in a reciprocating State, who has had prior service in the coal or oil shale mining industries in New South Wales and:
  - (i) who has applied for a benefit under this Act, or
  - (ii) who has died and in respect of whom application has been made for such a benefit.

(2) For the purposes of the applicable provisions and of qualifying for a benefit under this Act, a person to whom this section applies is taken to have been a mine worker if he or she:

- (a) is or was, on or after 3 January 1993, employed in the coal mining industry in a reciprocating State, and
- (b) by the operation of section 2 (2), would be taken to have been engaged in the coal or oil shale mining industries had the employment been in New South Wales,

but, for the purpose of calculating any benefit, industry service in New South Wales only (and no other service) is to be taken into account.

(3) The provisions of section 3 (1), (3) and (4) apply to a person taken by this section to have been a mine worker and so apply as if a reference in those provisions to New

South Wales included a reference to a reciprocating State.

- (4) Section 6 applies to a person taken by this section to have been a mine worker and so applies as if:
- (a) a reference in that section to having been continuously resident, or resident, in New South Wales during a specified period included a reference to any period during which the person was continuously resident, or resident, in a reciprocating State, and
  - (b) a reference in that section to having been continuously engaged, or engaged, in the coal or oil shale mining industries in New South Wales during a specified period included a reference to any period during which the person was continuously employed, or employed, in the coal mining industry in a reciprocating State, and
  - (c) a reference in that section to having actually worked in or about a coal or oil shale mine in New South Wales for a specified period included a reference to any period during which the person worked in or about a coal mine in a reciprocating State.
- (5) If a person dies or is incapacitated while employed in the coal mining industry in a reciprocating State, the same benefit is payable to the person or persons entitled on the death or incapacity as would have been payable if the deceased or incapacitated person had retired on the date of death or incapacity.

## **Part 2**

### **5-14V (Repealed)**

## **Part 3 The Corporate Trustee**

### **15 Functions of Corporate Trustee**

The Corporate Trustee has the functions conferred or imposed on it by and under this or any other Act.

#### **15A (Repealed)**

#### **15B Power of Corporate Trustee to make determinations declaring certain persons to be mine workers for the purposes of this Act**

- (1) The powers of the Corporate Trustee include a power to make determinations declaring persons engaged in the coal or oil shale mining industries to be mine workers for the purposes of this Act.

#### **Editorial note—**

For determinations under this subsection see the Historical notes at the end of this Act.

- (2), (3) (Repealed)

- (4) A determination under this section takes effect:
- (a) from and including a date specified in the determination (which may be the date of the determination or a date before or after that date but not earlier than the date on which the person to whom the determination relates was first engaged in the coal or oil shale mining industries), or
  - (b) if no such date is specified—from and including the date of the determination.
- (5) The Corporate Trustee may not make a determination under subsection (1) in respect of a person who is ordinarily engaged in the coal or oil shale mining industries for less than 10 hours per week.

**15C Corporate Trustee to maintain trust deed and governing rules**

- (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.

**Note—**

The COALSUPER Trust Deed (including the COALSUPER Rules) has been renamed the AUSCOAL Superannuation Fund Trust Deed (including the AUSCOAL Superannuation Fund Rules) by amendment of the Trust Deed and Rules.

- (2) The Corporate Trustee must at all times ensure:
- (a) that the AUSCOAL Trust Deed (including the AUSCOAL 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 AUSCOAL Trust Deed, if amended or substituted, continues to comply with this section.
- (4) The AUSCOAL 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 AUSCOAL Rules, and
  - (d) provide for such other matters as may be necessary for the effective and efficient operation of those schemes.
- (4A) The AUSCOAL 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 AUSCOAL Trust Deed.
  - (b) (Repealed)
- (5) The AUSCOAL 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
  - (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
  - (j) 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.
- (6) The AUSCOAL Trust Deed is invalid to the extent that it is inconsistent with this Act.
- (7) The Corporate Trustee must ensure that the AUSCOAL 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 AUSCOAL Rules,
- had when that Deed, or any amendment to or substitution of that Deed, took effect. The AUSCOAL Rules may, however, confer additional rights on such a mine worker, dormant member, dependant or person.
- (8) (Repealed)

## **16 (Repealed)**

### **16A Corporate Trustee may delegate its functions**

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.

**16B-17A (Repealed)**

**Part 4 Funds and contributions**

**17B Definition**

In this Part, **Approved Company** means the company approved by the Minister administering the *Coal Industry Act 2001* for the purpose of exercising the function specified in section 10 (1) (l) of that Act.

**18 AUSCOAL Superannuation Fund (the Amalgamated Fund)**

- (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 COALSUPER Trust Deed.

**Note—**

The Amalgamated Fund has been renamed the AUSCOAL Superannuation Fund by amendment of the Trust Deed and Rules.

- (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.

**18A Payments into Amalgamated Fund**

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 AUSCOAL Trust Deed, and
- (c) money paid to the Amalgamated Fund by the Approved Company for crediting to the pension account, and
- (d) money borrowed for the purposes of the Amalgamated Fund, and
- (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.

**18B Payments from Amalgamated Fund**

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 AUSCOAL Rules, and
- (b) all expenses incurred by the Corporate Trustee in the administration of this Act, and
- (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 AUSCOAL Rules, and
- (d) administrative expenses arising under the AUSCOAL Trust Deed, and
- (e) any other payments approved by the Corporate Trustee under the AUSCOAL 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.

### **18C Special provisions applicable to pension account**

- (1) The pension account referred to in section 18 (3) (b) (i) is to be divided into the following sub-accounts:
  - (a) the Approved Company sub-account,
  - (b) the Column 5 pensions increase and indexation sub-account.
- (2) (Repealed)
- (3) Credits to the Approved Company sub-account (which is a continuation of the account kept under this section as in force immediately before the date on which Schedule 7.2 [4] to the *Coal Industry Act 2001* commenced) are to be in the form of an imprest account maintained at:
  - (a) \$10,000,000 (unless the Approved Company 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 Corporate Trustee (unless paragraph (c) applies), or
  - (c) an amount less than \$10,000,000 that is approved by the Corporate Trustee on the advice of an actuary as being sufficient to fund the payment of future pensions payable under the AUSCOAL Rules.

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

- (4) The Corporate Trustee must ensure that administrative arrangements are established that include the following:
  - (a) an arrangement requiring the Corporate Trustee to submit to the Approved Company each month a statement certifying the amount of pensions and redemptions paid from money in the Approved Company sub-account during the period to which the statement relates,
  - (b) an arrangement for interest earned on money held in the Approved Company sub-account to be credited to that sub-account and included in each monthly statement submitted to the Approved Company by the Corporate Trustee,
  - (c) an arrangement providing for the Approved Company to pay to the Corporate Trustee each month an amount for crediting to that sub-account.

The amount of the payment under paragraph (c) is to be determined by the Approved Company after consideration of the statement submitted by the Corporate Trustee for the preceding month.

- (5) The Corporate Trustee must ensure that all pensions and commuted pensions are paid

from the Amalgamated Fund and are debited to the pension account.

### **19 Special rate contributions required to be paid to the Amalgamated Fund**

- (1) An owner must make contributions at a special rate at intervals determined by the Corporate Trustee in respect of each mine worker employed by the owner for crediting to Part 3 of the Fund.
- (2) The amount of the special rate is the amount determined from time to time by the Corporate Trustee after considering a relevant report of the actuary.
- (3) If a contribution required to be paid under this section is overdue for more than 21 days, the Corporate Trustee 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.
- (4) Interest payable under this section is recoverable in the same way as unpaid contributions and any interest paid or recovered is to be credited to the Amalgamated Fund.
- (5) Contributions under this section are in addition to the amount of any contributions to superannuation that are payable in respect of each mine worker under the AUSCOAL Trust Deed, this or any other Act of the State or any Act of the Commonwealth.

**Note—**

Liability for minimum employer contributions to employee superannuation arises under the [Superannuation Guarantee Charge Act 1992](#) of the Commonwealth and is regulated under the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth.

### **19AA Records and notices relating to employment of mine worker**

- (1) An owner must keep, in a form approved by the Corporate Trustee and in relation to each mine worker employed by the owner, a record of:
  - (a) the date of birth of the mine worker, and
  - (b) the date on which the mine worker became employed by the owner, and
  - (c) the date on which the mine worker ceased to be employed by the mine owner.
- (2) As soon as practicable after a mine worker ceases to be employed by an owner, the owner must give a written notice that complies with subsection (3) to the Corporate Trustee.

Maximum penalty: 5 penalty units.
- (3) The notice is to contain the following particulars:
  - (a) the name of the mine worker, and

- (b) the date on which the mine worker ceased to be employed by the owner, and
- (c) the reason for the cessation of employment of the mine worker.

**19AB Returns to be provided by owners**

- (1) Not later than 31 July in each year, each owner must provide the Corporate Trustee with a return that is in a form approved by the Corporate Trustee and sets out the payments made by the owner to the Corporate Trustee under section 19 in respect of the year ending on the last preceding 30 June.

Maximum penalty: 5 penalty units.

- (2) The return is to include the following information:
  - (a) the names, in alphabetical order, of the mine workers in relation to whom an amount has been paid to the Corporate Trustee in the year to which the return relates, and
  - (b) the date of birth of each of those mine workers, and
  - (c) the total amount that has been paid by the owner to the Corporate Trustee in relation to each of those mine workers during the year to which the return relates.

**19AC Information to be provided to Corporate Trustee**

- (1) Each owner must provide the Corporate Trustee with such information as the Corporate Trustee may reasonably require in relation to the mine workers employed by the owner no later than 21 days after the end of each month.

Maximum penalty: 5 penalty units.

- (2) Not later than 3 months after the end of the financial year applicable in respect of a coal or oil shale mine, the owner must provide to the Corporate Trustee a certificate by an auditor certifying that, in respect of each mine worker employed by the owner, the owner has contributed the amounts required under this Act (including under the AUSCOAL Rules).

Maximum penalty: 5 penalty units.

**19AD (Repealed)**

**Part 4A Coal and oil shale mine workers compensation subsidies**

**19A Eligibility of mine workers for subsidies**

- (1) Any mine worker who, in respect of incapacity due to the inhalation of dust in coal or oil shale mines in New South Wales:
  - (a) has at any time before or after the commencement of the *Coal and Oil Shale Mine*

*Workers (Pensions) Further Amendment Act 1947* been awarded compensation under the *Workers' Compensation Act 1926*, or the *Workers Compensation Act 1987*, or

- (b) has at any time before the commencement of the *Coal and Oil Shale Mine Workers (Pensions) Further Amendment Act 1947* received compensation pursuant to any agreement with an insurer within the meaning of the *Workers' Compensation Act 1926*,

shall be eligible for a subsidy in accordance with the provisions of this Part.

- (2) Notwithstanding anything contained in subsection (1) a mine worker who, in respect of incapacity due to the inhalation of dust in coal or oil shale mines in New South Wales, has after the commencement of the *Coal and Oil Shale Mine Workers (Pensions) Further Amendment Act 1947* been awarded compensation under the *Workers' Compensation Act 1926* shall, where such award was made operative from a date prior to such commencement, be deemed to have been eligible for a subsidy from such date in accordance with the provisions of this Part.
- (3) A mine worker who in accordance with the foregoing provisions of this section is eligible for a subsidy in accordance with the provisions of this Part shall not be entitled to any benefits under the AUSCOAL Rules relating to the payment of pensions.

### **19B Amount of subsidy**

- (1) The amount of subsidy per week payable to any mine worker eligible for a subsidy in pursuance of section 19A shall, subject to any deductions required to be made as hereinafter provided, be:
- (a) the maximum amount per week which would be payable by way of compensation in accordance with the provisions of the *Workers' Compensation Act 1926* or the *Workers Compensation Act 1987* (whichever is applicable), to or in respect of such mine worker had such mine worker been awarded compensation for total incapacity due to the inhalation of dust,
- (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 AUSCOAL Rules had the mine worker been 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,

whichever is the greater.



(1A) (Repealed)

(2) The deductions which shall be made from any subsidy per week payable to a mine worker under this Part shall be:

- (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 AUSCOAL 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,
- (b) where any weekly payments of compensation are payable to or in respect of the mine worker under the *Workers' Compensation Act 1926* or the *Workers Compensation Act 1987* or any agreement referred to in paragraph (b) of subsection (1) of section 19A—the amount of such weekly payments.

(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 AUSCOAL Rules, and
- (b) any additions to the pension that the mine worker would have been receiving under those Rules.

(2A) Where a weekly subsidy is payable to a mine worker under this Part and such mine worker has been offered and has accepted employment in accordance with the provisions of paragraph (d) of subsection (1) of section 19F, an amount equivalent to one-third of such subsidy shall be deducted, during the period of such employment, from the amount of subsidy to which such mine worker is eligible in accordance with the provisions of subsection (1) and subsection (2).

(3) Where a mine worker has received or receives a lump sum in redemption or commutation of weekly payments of compensation under the *Workers' Compensation Act 1926* or the *Workers Compensation Act 1987* or any agreement referred to in paragraph (b) of subsection (1) of section 19A, no subsidy shall be payable to such mine worker until the expiration of a period ascertained as follows:

The period shall be the period during which, if the weekly payments of compensation to such mine worker under the award or agreement in respect of such compensation had been continued as from the date of acceptance of such lump sum, the total sum would have been so payable to such mine worker as from such date would have been equal to the amount of such lump sum, less such portion of such lump sum as the Corporate Trustee is satisfied has either before or after the commencement of the *Coal and Oil Shale Mine Workers (Superannuation)*

*Amendment Act 1950* been applied by the mine worker in the purchase of the mine worker's home, redeeming any mortgage on the mine worker's home, or payment of medical expenses in connection with incapacity due to the inhalation of dust.

In calculating the total sum which would have been so payable to such mine worker for the purposes of this subsection, no regard shall be had to any provision of this Act that would, but for this paragraph, require the deduction of any amount from such total sum.

- (4) The disqualification under subsection (3) shall:
  - (a) in respect of a mine worker who, before the first day of November, one thousand nine hundred and fifty-one, has attained the age of sixty years, cease to have effect on the said date,
  - (b) in respect of a mine worker who, after such date, attains the age of sixty years, cease to have effect upon the date on which the mine worker attains that age.
- (5) (Repealed)
- (6) Paragraphs (b) and (c) of subsection (1) do not apply to or in respect of a mine worker entitled to a lump sum benefit payment under the AUSCOAL Rules.

**19BA Conversion of subsidy payments into lump sum**

- (1) A mine worker who has been awarded a subsidy under this Part may elect to be paid, instead of weekly payments, a lump sum in accordance with this section.
- (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.
- (3) An election by a mine worker to be paid a lump sum:
  - (a) must be made in a form approved by the Corporate Trustee, and
  - (b) must be received in the office of the Corporate Trustee not later than 4 months after the mine worker is notified under subsection (2) of the right to make the election.
- (4) If an election is not received in the office of the Corporate Trustee by the due date because of any mistake, unavoidable delay or other good cause, the Corporate Trustee may accept the election subject to such conditions as it thinks fit.

- (5) An election takes effect on such date as the Corporate Trustee determines.
- (6) The amount of the lump sum to be paid to a mine worker:
  - (a) shall be determined by the Corporate Trustee after taking into consideration the advice of an actuary appointed for the purpose by the Corporate Trustee, and
  - (b) shall be the amount which, having regard to the life expectancy of the mine worker and other relevant factors at the date of the determination, fairly represents, in the opinion of the Corporate Trustee, the equivalent of the future weekly payments that would have been payable to or in respect of the mine worker if the mine worker had not elected to be paid a lump sum.
- (7) If a lump sum is paid to a mine worker under this section instead of weekly payments of subsidy:
  - (a) the weekly payments do not become payable to the mine worker, or cease to be payable to the mine worker, as the case requires, and
  - (b) a pension is not payable under the AUSCOAL Rules on the death of the mine worker.
- (8) If a mine worker who makes an election under this section dies before payment of the lump sum is made, the Corporate Trustee shall pay the lump sum to the personal representative of the deceased.

### **19C Coal and Oil Shale Mine Workers Compensation Subsidy Fund**

- (1) There shall be established under this Part a Fund to be known as the Coal and Oil Shale Mine Workers Compensation Subsidy Fund (hereinafter in this Part referred to as the Subsidy Fund).
- (2) The Subsidy Fund shall consist of such moneys as are required or authorised by this Act to be paid into that Fund.
- (3) There shall be payable out of the Subsidy Fund:
  - (a) all subsidies payable to mine workers in pursuance of this Part,
  - (b) the expenses involved in the administration of this Part.
- (4) The Corporate Trustee is responsible for administering the Subsidy Fund in accordance with this Part.
- (5) (Repealed)

### **19CA Corporate Trustee may invest Subsidy Fund**

- (1) The Corporate Trustee may invest the money held in the Subsidy Fund in any manner

authorised for the investment of trust funds.

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

#### **19D Owners to pay contributions to Subsidy Fund when required**

- (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 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.

#### **19E Subsidies—special provisions**

- (1) Where any mine worker has been awarded a subsidy under this Part the subsidy shall, subject to sections 19BA, 19F, 19G and 19H and the other provisions of this Act, be payable to the mine worker until the mine worker's death or the repeal of this Part, whichever is the earlier.
- (2) Upon the death of any mine worker who has been awarded a subsidy under this Part no payment from the Subsidy Fund shall be paid to any dependant of such mine worker.

No mine worker shall be paid more than one subsidy under this Part.

#### **19F Conditions attaching to and suspension of weekly payments of subsidy**

- (1) Where a mine worker is eligible for or has been awarded a subsidy under this Part the mine worker shall forthwith upon being requested by the Corporate Trustee so to do:
- (a) register for employment at the office of the Commonwealth Employment Service nearest to the mine worker's place of residence,
  - (b) (Repealed)

- (c) make application for an age or invalid pension,
  - (d) accept available employment (not being relief work) offered to the mine worker through the Commonwealth Employment Service where such employment is not inconsistent either in itself or by reason of the conditions under which it is performed with the maintenance of the mine worker's health.
- (2) Acceptance of employment (whether under subsection (1) or otherwise) by a mine worker eligible for or to whom a subsidy has been awarded or by the mine worker's dependants shall forthwith be notified to the Corporate Trustee by such mine worker.
  - (3) Where the Corporate Trustee determines that a mine worker has, without reasonable cause or excuse, failed to comply with any of the provisions of this section no subsidy shall be payable to such mine worker in respect of the period during which such failure continues or such less period as the Corporate Trustee may fix.
  - (4) This section does not apply to a mine worker who is paid a lump sum under section 19BA instead of weekly payments of subsidy.

**19G Application of certain provisions of this Act to subsidies**

- (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 AUSCOAL 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.

**19H Suspension of weekly payments of subsidy in certain cases**

- (1) Where any mine worker who is eligible for or who has been awarded a subsidy pursuant to this Part is sentenced to imprisonment for any period in excess of one month, the mine worker's subsidy rights pursuant to this Part shall be suspended during the period of such imprisonment.
- (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 AUSCOAL 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) This section does not apply to a mine worker who is paid a lump sum under section 19BA instead of weekly payments of subsidy.

## **Parts 4B, 4C**

### **19HA-19T (Repealed)**

## **Part 5 Miscellaneous**

### **20 Pensions to be inalienable**

- (1) A pension payable under the AUSCOAL 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 AUSCOAL 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.

### **21 (Repealed)**

### **22 Appointment of person to receive pension or lump sum benefit payment**

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

### **23 Questions may be referred to Supreme Court**

- (1) The Corporate Trustee may refer any question arising under this Act or the AUSCOAL Trust Deed to the Supreme Court for determination.
- (2) (Repealed)
- (3) All persons interested and appearing before the Supreme Court at the hearing of a reference under this section are entitled to be heard.

### **23A (Repealed)**

### **24 Unpaid contributions recoverable as debt**

- (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.

- (2) If in any proceedings against any person for failure to pay any contribution payable under section 19 or section 19D within the time prescribed the defendant alleges that the defendant is exempt from the obligation to pay the contribution, or that the defendant has paid the contribution, the burden of proving such exemption or payment shall be on the defendant.

### **25-28B (Repealed)**

### **29 Offences relating to benefit payments**

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

- (2) Where a person is convicted of an offence under subsection (1) and it is made to appear that, in consequence of such offence the person was wrongly paid any amount by way of pension or lump sum benefit payment, the convicting court may, in addition to the penalty or punishment referred to in that subsection, impose a penalty or additional penalty not exceeding twice the amount so wrongly paid.

### **30 Recovery of penalties**

- (1) Any penalty imposed by or under this Act or the regulations may be recovered in a summary manner before the Local Court.
- (2) Any Magistrate may in any proceedings for a penalty under this Act or the regulations make such order as to the payment of costs as may be thought just, and may assess the amount of such costs.

### **31 (Repealed)**

### **32 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all



matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) (Repealed)

(3) A regulation may impose a penalty not exceeding 5 penalty units for an offence against the regulation.

(4)-(7) (Repealed)

### **32A (Repealed)**

### **33 Savings and transitional provisions**

Schedule 2 has effect.

### **Schedule 1 (Repealed)**

### **Schedule 2 Savings and transitional provisions**

(Section 33)

### **Part 1 Preliminary**

#### **1 (Repealed)**

#### **2 Savings and transitional regulations**

(1) Regulations may be made under section 32 containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990*

*Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992*

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

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

*Superannuation Legislation Amendment Act 1996*

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

*Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2006*

*Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008*

(2) Any such provision may, if the regulations so provide:

(a) take effect on the date of assent to the Act concerned or a later date, or

- (b) take effect on 1 July 1992 or a later date, if it is a provision consequent on the enactment of Schedule 1 to the *Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992*, and section 3 of that Act in its application to that Schedule, or
  - (c) take effect on 1 July 1990 or a later date, if it is a provision consequent on the enactment of the provisions of Schedule 1 to the *Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1994*, and section 3 of that Act in its application to those provisions, or
  - (d) take effect on 1 July 2006 or a later date, if it is a provision consequent on the enactment of the provisions of Schedule 1 to the *Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008*, and section 3 of that Act in its application to those provisions.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of *Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992***

### **3 Queensland mine worker who, before 3 January 1993, retired, was disabled or died**

Despite its repeal on 3 January 1993, section 4A as in force immediately before its repeal continues to apply to and in respect of a Queensland mine worker who, on or after 4 December 1989 and before the repeal, had retired, had become disabled, had been retrenched or had died.

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

- (1) Section 4A, as in force before its repeal on 3 January 1993, is taken, from and including 1 July 1990 until its repeal, to have applied to a person employed in the coal mining industry in Western Australia in the same way as it applied to a person employed in the coal mining industry in Queensland.
- (2) Despite its repeal on 3 January 1993, that section, as so in force, is taken to continue to apply to and in respect of a person employed in the coal mining industry in Western Australia if, before the repeal, the person had retired, had become disabled, had been

retrenched or had died.

### **Part 3 Provision consequent on enactment of [Coal and Oil Shale Mine Workers \(Superannuation\) Amendment Act 1994](#)**

#### **5 Validation of interest payment**

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

### **Part 4 Provisions consequent on Schedule 1 to [Coal and Oil Shale Mine Workers \(Superannuation\) Further Amendment Act 1994](#)**

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

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.

#### **6A Payments under section 14L (Lump sum benefit payable for incapacity of mine worker)**

- (1) This clause applies to a person to whom a lump sum benefit was paid under section 14L (2) or (3) of this Act, as inserted by the [Coal and Oil Shale Mine Workers \(Superannuation\) Amendment Act 1992](#) and repealed by the [Coal and Oil Shale Mine Workers \(Superannuation\) Further Amendment Act 1994](#).
- (2) Any such person is taken to be entitled to, and to have been entitled to be paid, a benefit equivalent to the greater amount of the amounts of benefit calculated in accordance with section 14L (4) and (5), as so inserted and repealed.

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

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 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).

## **Part 5 Provisions consequent on Schedule 2 to Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994**

### **8 Power to make orders fixing Reference Rate**

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.

### **9 Tribunal's functions relating to Pension Account**

- (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 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.

### **10 Orders fixing "special rate" for the purposes of section 19**

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.

## **Part 6 Provisions consequent on Schedule 3 to Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994**

### **11 Definition of "Tribunal"**

In this Part, ***Tribunal*** means the Coal and Oil Shale Mine Workers' Superannuation Tribunal.

### **12 Dissolution of Tribunal**

- (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

(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.

### **13 Special provisions with respect to transfer of assets and other matters**

(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.

#### **14 Tribunal members to vacate office**

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.

#### **15 Orders and directions of Tribunal**

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.

#### **16 Notices given to Tribunal under section 2K (Notices under section 2J)**

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).

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

- (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.

#### **18 Applications for lump sum benefit under section 14S**

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.

## **19 Contracts and arrangements entered into by the Tribunal**

- (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.

## **20 Powers of Tribunal in respect of inquiries and investigations**

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.

## **21 Tribunal's functions relating to Pension Account**

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).

## **22 Tribunal's functions relating to contributions payable under section 19**

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

## **23 Approval and notices under sections 19AA and 19AB**

- (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).

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

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).

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

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).

**26 Estimates under section 19D (Contributions to Subsidy Fund)**

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.

**27 Suspension of pensions in certain cases**

- (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 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 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 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.

## 28 Suspension of benefits under section 19H or 21

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).

## **29 References to Industrial Court**

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).

## **30 Appeals relating to disputes**

- (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.

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

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).

## **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.

## **Part 8 Provisions consequent on enactment of Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2006**

### **33 Amending Act**

In this Part, **amending Act** means the *Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2006*.

### **34 Actions taken in respect of compulsory retirement**

Any action taken on or after 21 February 2006, but before 1 July 2006, that purported to allow a person otherwise required to retire under this Act to continue in employment is not invalid only because of the failure to comply with a provision of this Act repealed or amended by the amending Act.

## **Part 9 Provisions consequent on enactment of Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008**

### **35 Definition**

In this Part, **amending Act** means the *Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008*.

### **36 Validity of contributions paid from 1 July 2006 to 30 June 2008**

To avoid doubt, any total contribution:

- (a) that was paid by an owner for a mine worker prior to the date of assent to the amending Act, and
- (b) that exceeded 9% of the mine worker's ordinary time earnings, as a weekly amount, (excluding any amount paid pursuant to section 19 (2A) as in force immediately before

the commencement of the amending Act), and

- (c) that was paid in compliance with this Act, the AUSCOAL Trust Deed and any industrial agreement as in force when the payment was made,

is taken to have been validly paid.

**Note—**

Clause 36 confirms the validity of any contributions actually paid before the commencement of the amending Act that were in compliance with this Act, the AUSCOAL Trust Deed and any industrial agreement before the amending Act had effect.

### **37 Preservation of entitlement**

- (1) If the amount of superannuation contribution that an owner was liable to pay for a mine worker employed by that owner immediately before the date of assent to the amending Act, in respect of any period on or after 1 July 2006, was higher than the amount that the owner is liable to pay after the amending Act commenced, then the owner continues to be liable to pay the superannuation contribution at the higher amount.
- (2) For the purposes of subclause (1), an owner's liability to pay a superannuation contribution includes a liability under any provision of the AUSCOAL Trust Deed or any other superannuation fund to which the owner contributes in respect of that mine worker, this Act or any other Act of the State or Commonwealth, but does not include:
- (a) the requirement to contribute to Part 3 of the Fund under section 19 (2A) as in force immediately before the commencement of the amending Act and under section 19 (1) as inserted by the amending Act, or
- (b) any liability to pay a salary sacrifice contribution.
- (3) If an additional amount is payable pursuant to subclause (1), the owner must pay the contributions:
- (a) in the case of a mine worker who contributes to Part 2 of the Fund—to the Corporate Trustee for crediting to that Part of the Amalgamated 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.
- (4) This clause also applies to any other owner who subsequently employs the mine worker.

**Note—**

Clause 37 preserves a mine worker's right to a higher amount of employer contribution than is required under the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth if a higher amount of contribution was payable immediately before the date of assent to the amending Act. The entitlement extends back in respect of any period from 1 July 2006 and is continuing. The

main categories of mine worker to which this clause relates are those for whom the owner paid a flat weekly rate contribution pursuant to the industrial agreements and those whose wages and salaries are excluded from the calculation of employer liability under the Commonwealth legislation, such as employees aged 70 years or over.

### **38 Regulations**

Regulations made under Part 1 of this Schedule, for the purposes of this Part, have effect despite anything to the contrary in Part 1.

## **Schedule 3 Accumulation Fund and Restructuring Agreement**

(Section 2)

### **Part 1 Accumulation Fund**

#### **1 Parties to Agreement**

For the purposes of the definition of **Restructuring Agreement** in section 2 (1), the parties to the Agreement are:

- The New South Wales Coal Association, a registered organisation of employers, 221 Elizabeth Street, Sydney, New South Wales.
- Cumnock No 1 Colliery Pty Ltd, a registered company, of PO Box 246, Singleton, New South Wales.
- The United Mine Workers, a Division of the Construction, Forestry and Mining Employees' Union, a registered trade union, 72-74 Buckingham Street, Surry Hills, New South Wales.
- The Federated Engine Drivers' and Firemens' Association, a registered trade union, 361 Kent Street, Sydney, New South Wales.
- The Metal and Engineering Workers' Union, a registered trade union, 136 Chalmers Street, Surry Hills, New South Wales.
- The Electrical Trades Union of Australia, a registered trade union, 52 Bay Street, Rockdale, New South Wales.
- The Australian Collieries' Staff Association, 91 Frederick Street, Merewether, New South Wales.
- The Colliery Officials' Association of NSW, a registered trade union, Unit 7 Medcalf Centre, 50 Medcalf Street, Warners Bay, New South Wales.
- The New South Wales Coal Mine Managers' Association, a registered trade union, Lot 8 Rodney Road, Mt Vincent, New South Wales.

## Part 2 Renegotiation of Restructuring Agreement

(Sections 14R and 32A)

### 2 Text of Restructuring Agreement

The text of clause 10 of the Restructuring Agreement is as set out below.

#### 10 RENEGOTIATION

- (a) The parties recognise that during the life of this Agreement, circumstances on which this Agreement is founded may change. In the event that such changes occur and the intention of the parties to this Agreement is significantly adversely affected, the parties commit to renegotiation of this Agreement. Any renegotiation between the parties will commence from the basis of the funding arrangements which were in place immediately prior to the commencement of this Agreement i.e. contributions as a percentage of the Reference Rate of:
- employer contributions—7.5% ordinary and 5.5% special
  - employee contributions—2.5% ordinary and 1.75% special
- (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.

## 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 13<sup>th</sup> Floor, 227 Elizabeth Street, Sydney, New

South Wales, 2000.

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

#### **Schedule 4 (Repealed)**