

**ACTS AMENDMENT (COAL
MINING INDUSTRY) ACT 1994**

No. 45 of 1994

AN ACT to repeal the *Coal Mining Industry Long Service Leave Act 1950*, to make consequential provisions with respect to any assets and liabilities under that Act, to amend the *Coal Industry Superannuation Act 1989* and to make consequential amendments to the —

- ***Constitution Acts Amendment Act 1899*;**
- ***Fatal Accidents Act 1959*;**
- ***Financial Administration and Audit Act 1985*; and**
- ***Parliamentary Commissioner Act 1971*,**

and for related purposes.

[Assented to 22 September 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Coal Mining Industry) Act 1994*.

Commencement

2. (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Part 3 comes into operation on a day to be fixed by proclamation.

**PART 2 — COAL INDUSTRY SUPERANNUATION
ACT 1989 AMENDED**

Principal Act

3. In this Part, the *Coal Industry Superannuation Act 1989** is referred to as the principal Act.

[* *Act No. 28 of 1989.*]

Section 3 amended

4. Section 3 (1) of the principal Act is amended by inserting after the definition of "Board" the following —

"

"Commissioner" has the same meaning as in the Commonwealth Act;

"Commonwealth Act" means the *Occupational Superannuation Standards Act 1987* of the Commonwealth;

"Commonwealth standards" means any standards prescribed by regulation under the Commonwealth Act;

".

Section 10 amended

5. Section 10 of the principal Act is amended —

(a) in subsection (3) (f) by inserting before "raise or borrow" the following —

" subject to subsection (4), ";

- (b) in subsection (3) (g) by inserting before “incur liabilities” the following —

“ subject to subsection (4), ”; and

- (c) by inserting after subsection (3) the following subsection —

“

(4) The Board may raise or borrow money under subsection (1) for the purpose of overcoming any cash flow problem in the payment of benefits under this Act, but for no other purpose.

”.

Section 10A inserted

- 6.** After section 10 of the principal Act the following section is inserted —

“

Compliance with Commonwealth standards

10A. (1) The Board —

- (a) shall ensure that the Fund complies with the Commonwealth standards so far as they apply to that Fund;
- (b) shall comply with any requirement in relation to the Fund made by the Commissioner under the Commonwealth Act; and
- (c) shall not, in relation to the administration, management or investment of the Fund do anything that is contrary to, or inconsistent

with, the Commonwealth standards so far as they apply to that Fund.

(2) This section has effect notwithstanding any other provision of this Act.

”.

Section 11 amended

7. Section 11 of the principal Act is amended by inserting after subsection (4) the following subsection —

“

(5) Notwithstanding anything in this section, the Board shall not lend any money from the Fund to a member of the Fund either directly or by means of an arrangement for lending money to a Fund member in the exercise of a power of investment under this section.

”.

Section 19 repealed and a section substituted, and saving

8. (1) Section 19 of the principal Act is repealed and the following section substituted —

“

Appointment of Administration Manager

19. (1) The Board shall appoint an Administration Manager of the Board.

(2) The Administration Manager shall perform such duties and have such powers as the Board may from time to time determine.

”.

(2) The person who at the time of the commencement of this section holds the position of secretary under section 19 of the principal Act shall, on or after that time, be deemed to have been appointed as Administration Manager.

Section 21 amended

9. Section 21 of the principal Act is amended —

(a) in subsection (2) —

(i) by deleting “Subject” and substituting the following —

“

When an officer appointed
by the Board is not an
officer of the Public Service
of the State at the time of
appointment then, subject

”;

and

(ii) by deleting “its officers.” and substituting the following —

“ that officer. ”;

(b) in subsection (3) by deleting “The” and substituting the following —

“ Subject to subsection (4), the ”; and

- (c) by inserting after subsection (3) the following subsection —

“

(4) If an officer appointed by the Board was an officer of the Public Service of the State at the time of appointment —

- (a) the appointment does not affect or prejudice the application to that person of the provisions of the *Public Service Act 1978* or of any other Act applying to persons as officers of the Public Service of the State if they applied to that person immediately before his or her appointment; and
- (b) that officer is employed in the department principally assisting the Minister to whom the administration of this Act is for the time being committed by the Governor with that administration.

”.

Section 23 amended

10. Section 23 (3) of the principal Act is amended —

- (a) by deleting “As soon as is practicable, the” and substituting the following —

“ The ”; and

- (b) by deleting “under subsection (1).” and substituting the following —

“

under subsection (1), within the period of 12 months after the date as at which the review was made.

”.

Schedule 2 amended

11. Schedule 2 to the principal Act is amended —

- (a) in clause 8 (3) by deleting “secretary of the Board” and substituting the following —

“ Administration Manager ”; and

- (b) in clause 8 (4) by deleting “secretary of the Board” and substituting the following —

“ Administration Manager ”.

**PART 3 — COAL MINING INDUSTRY LONG SERVICE
LEAVE ACT 1950 REPEALED AND
CONSEQUENTIAL AMENDMENTS**

Interpretation

12. In this Part, unless the contrary intention appears —

“**Administrator**” means the Administrator appointed under the repealed Act;

“**commencement day**” means the day on which this Part comes into operation;

“**Long Service Leave Fund**” means the Coal Mining Industry Long Service Trust Fund, established under section 3 of the repealed Act;

“**Minister**” means the Minister for Mines for the State;

“**repealed Act**” means the *Coal Mining Industry Long Service Leave Act 1950**.

[* *Reprinted as approved on 7 April 1971.*
For subsequent amendments see 1992 Index to
Legislation of Western Australia, Table 1, p. 34.]

Repeal of the *Coal Mining Industry Long Service Leave Act 1950*

13. The *Coal Mining Industry Long Service Leave Act 1950* is repealed.

Vesting of property and obligations

14. (1) On the commencement day —

(a) all moneys in the Long Service Leave Fund; and

- (b) every right and interest in the Long Service Leave Fund,

are vested in the Minister.

(2) The vesting effected by subsection (1) is without prejudice to any debts, trusts or liabilities that immediately before the commencement day affected the property vested.

(3) On the commencement day, the Minister becomes, by virtue of this subsection, liable to pay all the debts of the Long Service Leave Fund, and discharge liabilities and obligations of the Administrator that existed immediately before the commencement day to the extent that the Long Service Leave Fund and the Administrator would have been liable if this Act had not been enacted.

(4) Upon the discharge of liabilities of the Minister under subsection (3), the balance of the moneys vested in the Minister under subsection (1) shall be transferred by the Minister to the Coal Mining Industry (Long Service Leave) Fund established under the *Coal Mining Industry (Long Service Leave Funding) Act 1992* of the Commonwealth.

Transfer of records

15. On the commencement day, the Minister shall take delivery of all books, documents, records, instruments and other papers relating to the administration of the Long Service Leave Fund.

Continuance of proceedings

16. Any proceedings pending immediately before the commencement of this Act to which the Administrator was a party may be continued on or after that commencement day as if the Minister were a party to those proceedings instead of the Administrator and all claims and defences that would have been

available to the Administrator if this Act had not been enacted are available to the Minister.

Final report by the Administrator

17. (1) The Administrator shall report in respect of his operations as required by section 66 of the *Financial Administration and Audit Act 1985* for the period between 1 July 1993 and the commencement day.

(2) Notwithstanding the repeal of the repealed Act, the Administrator is to remain in office as if there had been no such repeal for the purposes of subsection (1).

Regulations

18. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential on the enactment of this Act.

(2) A provision made under subsection (1) may, notwithstanding section 25 (3) of the *Interpretation Act 1984*, be made to take effect on the day on which this Act receives the Royal Assent or on a later date.

(3) To the extent to which a provision made under subsection (1) takes effect on and from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate —

- (a) to affect, in a manner prejudicial to any person, the rights of that person existing before the date of publication; or
- (b) to impose a liability on any person in respect of anything done or omitted before the date of publication.

***Coal Industry Superannuation Act 1989* amended**

19. (1) Section 10 of the *Coal Industry Superannuation Act 1989** is amended by repealing subsection (1) and substituting the following subsection —

“

(1) Subject to section 10B, the functions of the Board are to administer, invest and manage the Fund.

”.

(2) Before section 11 of the *Coal Industry Superannuation Act 1989** the following section is inserted —

“

Board may administer Long Service Leave Fund on behalf of the Commonwealth

10B. (1) The Board may enter into a contract with the Corporation, to administer the Long Service Leave Fund on behalf of the Board of that Corporation.

(2) For the purpose of administering the Long Service Leave Fund pursuant to a contract entered into under subsection (1), the Board has such functions, duties and powers as are necessary or convenient to meet its obligations under that contract.

(3) Nothing in this section empowers the Board to exercise any of its functions and general powers under section 10 or 11 other than in relation to the Fund.

(4) In this section —

“Corporation” means the Coal Mining Industry (Long Service Leave) Corporation, established under the *Coal Mining Industry (Long Service Leave Funding) Act 1992* of the Commonwealth;

“Long Service Leave Fund” means the Coal Mining Industry (Long Service Leave) Fund, established under the *Coal Mining Industry (Long Service Leave Funding) Act 1992* of the Commonwealth.

”

[* *Act No. 28 of 1989.*]

***Financial Administration and Audit Act 1985* amended**

20. Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by deleting “Administrator of the Coal Mining Industry Long Service Leave Trust Fund”.

[* *Reprinted as at 1 July 1991.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, pp. 73-4 and Act No. 60 of 1992.]

PART 4 — MISCELLANEOUS AMENDMENTS

***Constitution Acts Amendment Act 1899* amended**

21. Schedule V to the *Constitution Acts Amendment Act 1899** is amended in Part 3 by deleting “The Pensions Tribunal constituted under the *Coal Mine Workers (Pensions) Act 1943.*”.

[* *Reprinted as at 6 April 1993.*

For subsequent amendments see Act No. 77 of 1992.]

***Fatal Accidents Act 1959* amended**

22. Section 5 (2) of the *Fatal Accidents Act 1959** is amended in paragraph (c) by deleting subparagraph (iii) and substituting the following subparagraph —

“ (iii) the *Coal Industry Superannuation Act 1989;* ”.

[* *Reprinted as approved on 13 April 1976.*

*For subsequent amendments see 1992 Index to
Legislation of Western Australia, Table 1, p. 72.]*

***Parliamentary Commissioner Act 1971* amended**

23. The Schedule to the *Parliamentary Commissioner Act 1971** is amended by deleting “Coal Mine Workers’ Pensions Tribunal established under the *Coal Mine Workers (Pensions) Act 1943.*”.

[* *Reprinted as at 21 October 1992.]*