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COAL INDUSTRY SUPERANNUATION
ACT 1989

COAL INDUSTRY
SUPERANNUATION
REGULATIONS 1990

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WESTERN AUSTRALIA

**COAL INDUSTRY SUPERANNUATION
REGULATIONS 1990**

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WESTERN AUSTRALIA

COAL INDUSTRY SUPERANNUATION ACT 1989

**COAL INDUSTRY SUPERANNUATION
REGULATIONS 1990**

Made by His Excellency the Governor in Executive Council.

PART 1—PRELIMINARY

Citation

1. These regulations may be cited as the *Coal Industry Superannuation Regulations 1990*.

Commencement

2. These regulations shall come into operation on the day on which the Act comes into operation.

PART 2—INTERPRETATIVE PROVISIONS

Definitions and interpretation

3. (1) In these regulations, unless the contrary intention appears—
“accrued benefit”, in relation to a member, means the sum of all the accrual products of that member multiplied by the final average salary applicable to that member;

“accrual product”, in relation to a member, means the proportion of the final average salary obtained by multiplying the appropriate accrual rate by the period of membership of that member during which that accrual rate applied;

“accrual rate” means—

- (a) 13% of the final average salary per year of membership prior to 1 July 1988; and
- (b) 12% of the final average salary per year of membership after 30 June 1988;

“former Act” means the *Coal Mine Workers (Pensions) Act 1943*;

“member” means—

- (a) a member of the Fund; or
- (b) a person who has ceased to be a member of the Fund in respect of whom a benefit is payable under these regulations, as the context requires;

“previous fund” means the Coal Mine Workers’ Pensions Fund established under the former Act.

(2) Regulations 4 to 9 shall have effect for the purposes of the application and interpretation of these regulations.

Membership

4. A reference to the membership of a member is a reference to the most recent uninterrupted period during which the member has—

- (a) consecutively paid contributions under the former Act and been a member of the Fund; or
- (b) been a member of the Fund,

expressed in years and parts thereof and calculated to 2 decimal places.

Total permanent disablement

5. A member shall be regarded as totally and permanently disabled—

- (a) in the event that the Board has under section 13 of the Act effected a group life insurance or assurance policy that contains provision for payments of benefits in respect of total and permanent disablement and that policy is in force for the time being in respect of the member if the member is totally and permanently disabled within the meaning of and for the purposes of that policy;
- (b) in the event that the Board has under section 13 of the Act effected a group life insurance or assurance policy that contains provision for payment of benefits in respect of total and permanent disablement and that policy is not in force for the time being in respect of the member by reason only of the refusal of insurance by the insurer with which that policy has been effected, if in the opinion of the Board, after consideration of material evidence satisfactory to it, the member is totally and permanently disabled within the terms of the definition of total and permanent disablement contained in that policy; or
- (c) in any other event if—

- (i) the member has retired from employment with an employer before attaining compulsory retirement age; and
- (ii) the Board is satisfied, after considering any medical or other evidence that it considers to be relevant, that the member is, and until attaining the age of compulsory retirement will continue to be, physically or mentally incapable of engaging in, or working for reward in, any occupation or work for which, in the opinion of the

Board, the member is suited to undertake by education, training or experience or for which the member would be suited as a result of retraining.

Partial permanent disablement

6. A member shall be regarded as partially and permanently disabled if the member is not totally and permanently disabled and—

- (a) the member has retired from employment with an employer before attaining compulsory retirement age; and
- (b) in the opinion of the Board, after consideration of material evidence satisfactory to it, the member has retired on the ground that the member is physically or mentally incapable of engaging in, or working for reward in, any occupation or work in the employment of the employer for which he or she is reasonably qualified by education, training or experience.

Benchmark rate and salary

7. In these regulations—

- (a) the benchmark rate of a member means the weekly rate of wages prescribed from time to time for the classification of "Motor Truck Drivers of over 100 tons but not exceeding 110 tons" in the coal mining industrial award applicable to employees of Western Collieries Ltd in Western Australia; and
- (b) the benchmark salary of a member means the benchmark rate of that member, as prescribed from time to time, multiplied by 52.

Final average salary

8. (1) In this regulation "the relevant date" in relation to a member means the last day of the month immediately preceding the month in which the benefit is to be paid to the member.

(2) The final average salary applicable to a member is the weighted average (calculated on a daily basis) of the benchmark salary during the period of 3 years immediately preceding the relevant date.

Dependants

9. (1) In this regulation—

"child", in relation to a member, includes—

- (a) a step-child of the member;
- (b) an adopted child of the member irrespective of the date of adoption;
- (c) a child of the spouse of the member;
- (d) a child recognized by the Board as an adopted child of the member;
- (e) an illegitimate child of the member;
- and
- (f) a child of the member born after the death of the member;

"spouse", in relation to a member, includes a person of the opposite sex to the member who is, or was at the time of the death of the member, living with the member as a husband or wife of the member on a *bona fide* domestic basis, although not legally married to the member.

(2) The dependants of a member are—

- (a) the spouse of the member;
- (b) any child of the member; and

- (c) any other person who, in the opinion of the Board, is, or was at the time of the death of the member, wholly or partially dependant on the member or has, or had at that time, a legal or moral right to look to the member for support or a reasonable expectation of receiving support from the member.

PART 3—MEMBERSHIP OF THE FUND

Contributors under former Act

10. A mine worker who paid contributions to the previous fund immediately before the commencement of the Act shall, by virtue of this regulation, become a member of the Fund on that commencement and, subject to the Act, shall remain a member of the Fund so long as he or she continues in employment as a mine worker.

Mine workers

11. Where a person who is not already a member of the Fund becomes a mine worker after the commencement of the Act that person shall, by virtue of this regulation, become a member of the Fund when he or she becomes a mine worker and shall remain a member of the Fund as long as he or she continues in employment as a mine worker.

Notification by the Board to new members

12. The Board shall give written notice to each person who becomes a member informing that person of his or her rights, and the rights of that person's dependants and legal personal representatives in respect of benefits from the Fund.

Board's discretion

13. (1) The Board may, when it considers there are special circumstances—
- (a) deem a person to be eligible to be a member;
 - or
 - (b) deem a member, a dependant of a member, a former member or the personal representative of a member or former member to be eligible for payment of a benefit to which that person is not otherwise entitled under this Act,

and that person shall be entitled to be a member and receive benefits as a member or to receive a benefit, as deemed by the Board.

(2) Any cost to the Fund arising from any exercise of the Board's discretion under subregulation (1) must be assessed by an actuary and reported in the next annual report of the Board.

PART 4—CONTRIBUTIONS TO THE FUND

Contributions by members

14. (1) Subject to subregulation (3) each member of the Fund shall contribute to the Fund 3% of the benchmark salary.

- (2) The contributions payable by a member under subregulation (1) shall be—
- (a) deducted from the member's salary by the employer when each payment of salary is made; and
 - (b) paid to the Fund on his behalf within 3 working days of deduction.
- (3) No contributions shall be payable by a member after the member reaches compulsory retirement age.

Contributions by employers

15. (1) In this regulation—

“salary day” in relation to an employer means a day on which salary becomes payable by the employer to members who are employees of that employer.

(2) Until an amount or rate is set under subregulation (4) each employer shall in relation to, and on or as soon as practicable after, each salary day contribute to the Fund at the rate of 8.5% of the benchmark salary for each member of the Fund who is an employee of that employer.

(3) The actuary shall, whenever a report as the result of an actuarial review conducted under section 23 (1) of the Act is made to the Board, advise the Board of the amounts or rates of contributions required from each employer in order to ensure the stability of the Fund and secure the rights of members.

(4) Subject to subregulations (5), (6) and (7) each employer shall in relation to, and on or as soon as practicable after, each salary day contribute to the Fund in respect of the members of the Fund who are employees of that employer—

- (a) such amounts or rates of contribution as were last advised by the actuary to the Board under subregulation (3); or
- (b) such other amounts or rates of contribution as may be agreed upon by the employer, the Board and the actuary.

(5) No contributions shall be payable in respect of a member after the member reaches compulsory retirement age.

(6) Notwithstanding subregulation (4) but subject to subregulation (7) the contributions payable by an employer to the Fund in relation to a salary day shall be not less than 7% of the total amount of benchmark salaries payable in relation to that salary day to members employed by that employer in respect of whom contributions are payable.

(7) Notwithstanding subregulation (4) an employer shall not pay amounts or rates of contribution to the Fund that would result in the amounts or rates of contribution payable to the Fund in relation to a salary day exceeding 10% of the total amount of the benchmark salaries payable in relation to that salary day to members employed by that employer in respect of whom contributions are payable.

(8) Where pursuant to subregulation (7) an employer pays amounts or rates of contribution to the Fund that are less than the amounts or rates referred to in subregulation (4) (a) the Board shall obtain from the actuary a report as to the extent (if any) to which the benefits prescribed in these regulations should be reduced having regard to the amounts or rates of contribution that the employer is paying and the capacity of the Fund to meet claims for the payment of benefit.

(9) Regulation 53 does not apply to the making of a regulation amending these regulations after a report has been received under subregulation (8) so long as the reductions in benefits effected by the amending regulation do not exceed the

reductions recommended in the report and the regulation conforms with any laws of the State or Commonwealth governing or regulating the operation or maintenance of superannuation funds.

Levy

16. (1) In addition to the contributions payable to the Fund under regulation 15, each employer shall contribute to the Fund a levy of 8% of the benchmark salary for each member of the Fund who is an employee of that employer.

(2) The levy referred to in subregulation (1)—

- (a) is payable on the same days as the contributions payable under regulation 15; and
- (b) ceases to be payable on 7 October 1990.

PART 5—BENEFITS

Division 1—Entitlement to benefits

Benefits on retirement on or before compulsory retirement age

17. (1) Subject to the Act and these regulations, where a member—

- (a) retires from the employment of the employer when the member reaches compulsory retirement age; or
- (b) retires from the employment of the employer before the member reaches compulsory retirement age for a reason other than the member's total and permanent disablement or partial and permanent disablement and that retirement occurs when or after the member reaches the age of 55 years,

there shall be paid to the member from the Fund a lump sum retirement benefit equal to the accrued benefit of that member at the date of retirement.

(2) Notwithstanding subregulation (1), a member who is entitled to a lump sum benefit under subregulation (1) may, prior to retirement from the employment of the employer, apply to the Board to have that benefit preserved within the Fund.

(3) If an application by a member under subregulation (2) is approved by the Board the benefit shall be preserved under and subject to regulation 22.

Death benefits

18. (1) Subject to the Act and these regulations, where a member dies while in the employment of the employer on or before reaching compulsory retirement age, there shall be payable from the Fund a lump sum benefit equal to the greater of—

- (a) an amount equal to the accrued benefit of that member; or
- (b) an amount equal to the accrued benefit which would have been accrued if the member had remained a member until the age of 60 years and there had been no change in the final average salary applicable to that member.

(2) Benefits payable under this regulation shall be paid by the Board in the manner set out in regulation 24.

Total and permanent disablement benefits

19. Subject to the Act and these regulations if a member retires from the employment of the employer before the member reaches compulsory retirement age as a result of his total and permanent disablement, there shall be paid from

the Fund to that member a lump sum benefit equal to the amount that would have been payable under regulation 18 (1) if the member had died on the last day in respect of which the member received remuneration from the employer.

Partial and permanent disablement benefits

20. Subject to the Act and these regulations if a member retires from the employment of the employer before the member reaches compulsory retirement age as a result of the member's partial and permanent disablement, there shall be paid from the Fund to that member a benefit equal to the amount that would have been payable under regulation 17 if the member had retired on the last day in respect of which that member received remuneration from the employer.

Benefits on termination of employment

21. Subject to the Act and these regulations, if a member ceases to be in the employment of the employer before the member reaches the age of 55 years otherwise than as provided in regulation 18, 19 or 20 that member shall become entitled to—

- (a) a cash termination benefit calculated in accordance with Schedule 1; or
- (b) a preserved benefit calculated in accordance with Schedule 2,

as elected by the member at the time the member ceases employment with the employer.

Preserved benefits

22. (1) Where a member becomes entitled to a preserved benefit under regulation 17 or 21, the Board shall maintain a record of the multiple of the final average salary applicable to that member.

(2) Where a member becomes entitled to payment of a preserved benefit under subregulation (3) the Board shall determine the amount of that preserved benefit by multiplying the multiple of the final average salary recorded under subregulation (1) by the final average salary applicable to the member.

(3) A preserved benefit is payable by the Board—

- (a) to the member if the member—
 - (i) reaches the age of 65 years;
 - (ii) retires from the workforce on or after reaching the age of 55 years;
 - (iii) retires from the workforce as a result of permanent incapacity or permanent invalidity as provided in subregulation (4) before reaching the age of 55 years; or
 - (iv) permanently departs Australia; or
- (b) to the member's dependants or legal personal representative under regulation 24 if the member dies.

(4) For the purposes of the payment of a preserved benefit under subregulation (3) (a) (iii) a member shall be accepted by the Board as having retired due to permanent incapacity or permanent invalidity if the member provides to the Board a certificate signed by 2 persons registered as medical practitioners under a law of a State or Territory providing for the registration of medical practitioners certifying that in their opinion the member is unlikely ever again to engage in, or work for reward in, any occupation or work for which the member is reasonably qualified by education, training or experience.

(5) The Board, after making such deductions as are determined by the Board and agreed by the member, shall pay or transfer to any other superannuation fund, approved deposit fund, deferred annuity fund or other like fund, the balance of a member's preserved benefit if—

- (a) the member requests in writing that the Board do so; and
- (b) the Board is satisfied that the balance paid or transferred will not be payable to the member under that fund otherwise than in circumstances similar to those provided for in subregulation (3).

(6) Where under subregulation (5) the balance of a preserved benefit is paid or transferred by the Board to another fund—

- (a) the receipt of the trustees of or other persons controlling the fund shall be a sufficient discharge to the Board; and
- (b) neither the Board nor the employer shall be responsible for the payment, application or disposal of the balance paid or transferred, by the trustees of or other persons controlling that fund.

Division 2—Payment of benefits

Definition

23. In this Division and Division 3, unless the contrary intention appears, "benefit" means a benefit payable under these regulations.

Payment of benefits in respect of deceased members

24. (1) Benefits payable in respect of a member upon or after the member's death shall be paid from the Fund by the Board—

- (a) to or for the benefit of the dependants of the member; or
- (b) to the legal personal representative of the member.

(2) Any payment of a benefit under subregulation (1) may at the discretion of the Board be made or paid—

- (a) to either the dependants of the member or his legal personal representative or both;
- (b) to any one or more of the dependants of the member to the exclusion of the others of them; and
- (c) in such shares or proportions as the Board thinks fit and without the Board being under any obligation to ensure equality between the persons to whom payment is made.

(3) Before exercising its discretion under subregulation (2) the Board shall consider—

- (a) the will (if available) of the member;
- (b) any nomination that the member may have made under regulation 25; and
- (c) such other matters as the Board considers relevant.

(4) Where under this regulation any sum is payable to or for the benefit of a minor—

- (a) the Board may pay that sum (without being responsible to see to its application)—
 - (i) to the parent or guardian of the minor or to any other person who appears to have the custody or control of the minor or with whom the minor resides; or

(ii) to a trustee corporation to be held in trust under such terms and conditions as determined by the Board for the benefit of the minor until the minor ceases to be a minor;

and

(b) the receipt of that parent or guardian, or that other person, or the trustee corporation for any sum so paid shall be a good discharge to the Board for that sum.

(5) In subregulation (4) "trustee corporation" means the Public Trustee in and of a State or any company authorized by an Act of a State to administer the estates of deceased persons and other trust estates.

Nomination of dependants to receive benefits

25. The Board shall when a person becomes a member, and thereafter at such intervals as the Board thinks fit, invite the member to nominate—

- (a) the dependants to whom the member wishes benefits that may be payable upon or after his death to be paid; and
- (b) the proportions in which the member wishes the benefits to be paid.

Time and mode of payment of benefits

26. (1) Notwithstanding anything contained in these regulations the Board may—

- (a) make an interim payment in respect of any benefit;
- (b) postpone the payment of the whole or part of any benefit for any period not exceeding 6 months after the happening of the event upon which the benefit became payable;
- (c) with the agreement of the person to whom the benefit is payable, postpone the payment of the whole or part of any benefit for any period;
- (d) make payment of any benefit itself or cause or arrange for such payment to be made for or on its behalf.

(2) Where the payment of any amount is postponed under subregulation (1) interest at such rates as are determined from time to time by the Board shall be added to the amount so postponed from the date on which the benefit entitlement arose to a date, not more than 28 days before payment, determined by the Board.

(3) Where, after a benefit has been paid to a member under a regulation, it is established that the member was eligible for a benefit under another regulation, the Board may pay to or in respect of that member the benefit payable under the latter regulation but any amount previously paid to the member shall be deducted from the benefit payable under the latter regulation.

(4) Where a person who is or may be entitled to any benefit is, in the opinion of the Board, unable by reason of mental incapacity to manage his or her own affairs, the Board may pay that benefit—

- (a) to a person appointed under the *Mental Health Act 1962* to be the manager of the estate of the first-mentioned person, or, if there is no such manager, to any other person, for or on behalf of the first-mentioned person; or
- (b) to the dependants of the first-mentioned person.

(5) A payment under subregulation (4) shall, without any thing more, be a sufficient discharge to the Board.

Proofs

27. (1) A person appearing, purporting or claiming to be qualified for or entitled to any benefit shall on request produce to the Board such evidence and do and execute such acts and documents as the Board may reasonably require.

(2) Whenever it becomes necessary for the Board to decide questions of fact the Board may act upon such proofs and presumptions, or either, as it considers satisfactory irrespective of whether they are strictly legal proofs or presumptions.

*Division 3—Forfeiture and reduction of, and deductions from, benefits***Benefits forfeited if deceased member has no dependants or personal representative**

28. (1) If after reasonable enquiry it appears to the Board that a member died without dependants and that it is unlikely that any person will apply for a grant of probate of the will or administration of the estate of the member, the benefit that would otherwise be payable in respect of the member on or after the member's death shall be forfeited to the Fund.

(2) If after a benefit payable in respect of a deceased member has been forfeited to the Fund under subregulation (1)—

- (a) the Board is subsequently satisfied that the member had dependants; or
- (b) a person subsequently applies for a grant of probate of the will or administration of the estate of the member,

the Board at its discretion may pay out of the Fund, in the manner set out in regulation 24, such amounts as it thinks fit, but the amounts payable under this subregulation shall not exceed in total the amount of the forfeited benefit together with interest thereon from the time of the death of the member at such rates as the Board may determine.

Benefits forfeited if assigned or if recipient absent

29. (1) No benefit or portion of a benefit shall be assignable at law or in equity.

(2) Where a benefit is or may be payable to a person and—

- (a) that person does or permits to be done any act or thing; or
- (b) some event happens,

whereby the whole or any part of that benefit would, whether by the act of that person or by operation of law, become payable to or vested in any other person or in any statutory or other public authority, that benefit shall be forfeited to the Fund.

(3) Subject to subregulation (4), if after reasonable enquiry the Board cannot locate a person to whom a benefit is payable that benefit shall, if the Board in its discretion so determines, be forfeited to the Fund.

(4) A benefit shall not be forfeited under subregulations (3)—

- (a) within 2 years after the benefit becomes payable; or
- (b) within 2 years after the making of a payment by—
 - (i) the employer of the member to or in respect of whom the benefit is payable; or
 - (ii) the Board,

to the person who cannot be located.

(5) Subject to subregulation (6), where a benefit has been forfeited under subregulation (2) or (3) the Board at its discretion may at any time pay out of the Fund such amounts as it thinks fit to or for the benefit of—

- (a) the person who but for this regulation would have been entitled to the forfeited benefit; or
- (b) any of his or her dependants.

(6) Any amounts payable under subregulation (5)—

- (a) shall not exceed in total the amount of the forfeited benefit together with interest thereon from the time the benefit first became payable at such rates as the Board may determine; and
- (b) may be paid to such persons as the Board thinks fit without the Board being responsible to see to their application.

Deductions from benefits

30. (1) Subject to subregulation (3) the Board may deduct from any benefit that, but for this subregulation, would be payable to or in respect of a member and pay to the employer such amount (if any) as the employer certifies is refundable to the employer under the terms and conditions of the employment of the employee as the unearned pro-rata portion of the value of annual leave, sick leave or long service leave granted to the employee before the completion of the period required to accrue that leave.

(2) The Board shall not make a deduction from a benefit under subregulation (1) unless it has first given notice of its intention to do so to the person to whom the benefit is payable.

(3) The Board may deduct from any benefit any taxes, levies or duties payable in respect of that benefit to the Commonwealth or any State and pay the relevant authority the amount so deducted on behalf of the person to whom the benefit is payable.

Reduction of benefits to the extent of any amount not insured

31. (1) Subject to subregulations (2) and (3) a benefit payable to or in respect of a member under regulation 18 or 19 shall be reduced by—

- (a) the amount of any insurance sought by the Board in respect of the death or the total and permanent disablement of the member (as the case may be) that has been—
 - (i) refused by an insurer; or
 - (ii) offered by an insurer at other than normal rates and not effected by the Board; and
- (b) the amount of any claim not paid by an insurer under the terms of any policy effected by the Board in respect of the death or the total and permanent disablement of the member (as the case may be).

(2) Notwithstanding subregulation (1) the benefit payable in respect of a member under regulation 18 or 19 shall not be less than the benefit that would have been payable to or in respect of that member if calculated under regulation 18 (1) (a).

(3) The Board may determine in any particular case that the reduction referred to in subregulation (1) or any part of that reduction shall not be applied and that determination shall have effect.

Reduction of benefits in case of previous disease or disability

32. (1) Where a person who suffers from any disease or has any disability becomes a member, the Board may by notice in writing to that person, determine that, in the event of the death, total and permanent disablement, or partial and permanent disablement, of that person arising out of that disease or disability, the benefits to be payable to or in respect of that member shall be reduced in such manner as is set out in the notice and, notwithstanding any other provision of these regulations, on the death, total and permanent disablement or partial and permanent disablement of that member the benefit payable in respect of that member shall be ascertained in accordance with the notice.

(2) A notice in writing under subregulation (1) shall be given to the person concerned when, or as soon as practicable after, that person becomes a member.

PART 6—EMPLOYERS

Admission of other employers

33. (1) The Board and a body other than a body mentioned in Schedule 1 to the Act may, at any time enter into an agreement for that body and employees of that body to participate in the Fund and that body shall become an employer for the purposes of the Act and these regulations on and from the date on which Schedule 1 to the Act is amended under section 3 (2) of the Act to include that employer.

(2) An agreement under subregulation (1) shall be in such form as is determined by the Board.

Release of employers

34. (1) The Board may release a body that is an employer under the Act and the members employed by it from participation in the Fund and—

- (a) that body shall cease to be an employer; and
- (b) the members employed by that body shall cease to be members,

on the date on which Schedule 1 to the Act is amended to delete that employer and upon terms and conditions determined by the Board.

(2) Where a body and the members employed by it are released from participation in the Fund under subregulation (1) the interest in the Fund of that body and those members shall be—

- (a) ascertained by the Board on the advice of the actuary; and
- (b) dealt with in such manner as the Board and that body consider equitable taking into account the membership of and the amounts contributed by and in respect of each of those members and any other circumstances which the Board and that body consider relevant,

but no provision shall be made for the payment of a benefit to any of those members while that member remains in the employment of that body other than for the support and maintenance of that member and the dependants of that member in the case of hardship.

Dissolution of employer

35. (1) Subject to subregulation (4) and regulation 44 (2) and (3), where an employer—

- (a) is wound up or dissolved; or
- (b) amalgamates with or transfers the whole of its engagements to any other person or body,

the interest in the Fund of that employer and the members employed by it at the time of the winding up, dissolution, amalgamation or transfer, as the case may be, shall be ascertained by the Board on the advice of the actuary and applied by the Board in the manner set out in subregulation (2).

(2) Where subregulation (1) applies in relation to an employer the interest in the Fund referred to in subregulation (1) shall be applied by the Board in the following order—

- (a) in providing as far as possible through the Fund or otherwise the benefits to which the members referred to in subregulation (1) would have been entitled had they voluntarily retired from the employment of that employer; and
- (b) by distributing any balance then remaining for the benefit of those members in such manner as the Board on the advice of the actuary considers equitable.

(3) The benefits referred to in subregulation (2) shall be—

- (a) in such form and provided by such arrangements as are determined by the Board; and
- (b) paid to the members referred to in subregulation (1) in full discharge of all claims by or in respect of them in relation to any rights or benefits under these regulations or in connection with or arising out of the Fund.

(4) Where a member employed by an employer enters the employment of another employer as from the time of the winding up, dissolution, amalgamation or transfer of engagements of the first-mentioned employer this regulation does not apply to or in relation to that member.

PART 7—PENSIONS

Rate of pensions and additional payments

36. (1) Subject to subregulation (2)—

- (a) pensions and additional payments payable under clause 6 of Schedule 3 to the Act;
- (b) additional amounts which become payable under regulation 37;
- (c) pensions which become payable under this Part,

shall be paid at the rate at which they were paid or payable immediately before the coming into operation of the Act.

(2) The rate of pension or additional payment referred to in subregulation (1) shall be altered at the same times and in the same proportions as the benchmark rate referred to in regulation 7 is altered.

Additional payments in respect of dependants

37. (1) A person who receives a pension under clause 6 of Schedule 3 to the Act shall also be eligible for an addition to such pension consisting of such amounts as would have been payable to that person if section 9 of the former Act had remained in operation.

(2) The Board shall have the same power to refuse to award an addition to a pension, to cancel or suspend so much of any pension as consists of such addition, and to award or continue an addition as the tribunal had under section 9 of the former Act.

Pension payable to dependants

38. Upon the death of a person who has received a pension under clause 6 of Schedule 3 to the Act a person who would have been eligible for a pension under section 10 of the former Act as a dependant of that person shall be eligible for a pension as if that section were still in force and for that purpose the Board shall have all of the functions of the former tribunal under that section.

Suspension of pension

39. Notwithstanding the repeal of the former Act, section 26 of that Act shall continue to apply in relation to a pension payable under clause 6 of Schedule 3 to the *Coal Industry Superannuation Act 1989*, and for that purpose the Board shall have all of the functions of the former tribunal under that section.

PART 8—ELECTIONS AND APPOINTMENTS

Election of members

40. (1) Every election of members of the Board shall be conducted using an optional preferential system of voting and a secret ballot.

(2) The Combined Coal Mining Unions Council shall appoint a returning officer who shall be responsible for the conduct of elections in accordance with this regulation.

(3) where there is only one candidate for election to an office on the Board the returning officer shall declare the candidate to be elected to that office.

Appointment of members

41. (1) The vacancy that occurs during a year in one of the offices of the appointed members of the Board and the vacancy that occurs during that year in the office of the appointed alternate member of the Board shall both be filled by appointment at the same time.

(2) If there is any dispute amongst the employers as to which persons should be appointed to the Board, the chairman shall determine the appointments by lot.

PART 9—MISCELLANEOUS

Contributions for additional benefits

42. (1) A member may enter into an agreement with the Board to contribute to the Fund such contributions, additional to the contributions payable by the member under regulation 14, as are specified in the agreement.

(2) The Board shall establish an additional contribution account in the name of each member who enters into an agreement under subsection (1) and shall maintain a record of the balance of that account.

(3) An agreement under subregulation (1) shall specify—

- (a) the amounts or rates of contributions to be payable under the agreement;
- (b) the intervals at which, or manner in which, contributions payable under the agreement are to be varied;
- (c) the method of payment of contributions under the agreement; and

(d) the period of notice required for the variation or cancellation of the agreement.

(4) Where a member makes contributions under an agreement under subregulation (1)—

- (a) the contributions so made shall be used to establish and add to an accumulation in respect of that member (in this subregulation referred to as the allocated accumulation of that member);
- (b) at the end of each financial year or at such other times as determined by the Board the allocated accumulation of the member shall be credited with interest at such rates as may from time to time be determined by the Board;
- (c) subject to these regulations if the member ceases to be in the employment of the employer and a benefit is payable to or in respect of that member then the benefit shall be increased by an amount equal to the allocated accumulation of the member; and
- (d) the allocated accumulation of the member shall not be payable to or in respect of the member except in accordance with paragraph (c).

(5) Where a member elects to preserve additional contributions paid under this regulation, the member shall enter into an agreement with the Board as to the multiple of the final average salary which will apply in lieu of the accumulated contribution and that multiple shall be used by the Board in determining the amount payable where additional contributions are preserved.

Transfers from other funds

43. (1) The Board may make and carry into effect arrangements—

- (a) with a person who becomes a member of the Fund and who is or has been a member of another superannuation or like fund; or
- (b) in respect of that person, with the trustees of or other persons controlling that other fund; or
- (c) with that person and those trustees,

under which an agreed sum or agreed assets shall be paid by or transferred from that other fund to the Fund.

(2) A member in respect of whom arrangements have been made for the transfer to the Fund of an agreed sum or agreed assets under subregulation (1) shall, as a member, be granted such rights to benefits additional to those otherwise provided under these regulations as are determined by the Board on the advice of the actuary.

Transfers to other funds

44. (1) The Board may, with the written consent of a member and subject to such conditions as the Board thinks fit, pay or transfer to any other superannuation fund, or any approved deposit fund or deferred annuity fund, or any like fund, any benefit which may be payable under these regulations or in respect of that member on the cessation of that member's employment with the employer.

(2) If—

- (a) an employer enters into arrangements to amalgamate with, or transfer any part of its engagements to, a person or body; and
- (b) under those arrangements a member ceases to be employed by the employer but enters into the employment of that other person or body,

the Board may with the written consent of that member and subject to such conditions as the Board thinks fit (and in lieu of paying the benefit which would otherwise be payable under these regulations) pay or transfer to a superannuation

fund established or operated for the benefit of any employees of that other person or body such amount as in the opinion of the Board on the advice of the actuary represents the interest of the member in the Fund to be applied by the trustees of that other superannuation fund for the benefit of that member.

(3) If the benefit payable to or in respect of a member is paid or transferred under subregulation (1) or if the interest of a member in the Fund is paid or transferred under subregulation (2)—

- (a) the receipt of the trustees of or other persons controlling the fund to which the benefit or the interest of the member (as the case may be) is paid or transferred shall be a sufficient discharge to the Board; and
- (b) neither the Board nor the employer shall be responsible for the payment, application or disposal by the trustees of or other persons controlling that fund of the benefit or the interest so paid or transferred.

Temporary cessation of employment and leave without pay

45. (1) If a member ceases to be in the employment of the employer in circumstances in which it is reasonable to expect that the cessation may be of a temporary nature and that that member may re-enter the employment of the employer the Board may with the consent of the employer allow that member to continue to be a member on such terms and conditions as may be agreed upon by the Board, the employer and the member.

(2) If a member is absent from the employment of the employer on leave without pay the Board, the employer and the member may enter into an agreement as to the terms and conditions on which the member shall continue to be a member during the absence of that member.

(3) The terms and conditions agreed upon under subregulation (1) and (2) may include terms or conditions inconsistent with the other provisions of these regulations.

(4) Subject to anything to the contrary contained in terms and conditions agreed upon under subregulation (1) or (2), as the case may be—

- (a) any period during which a member has—
 - (i) continued to be a member under subregulation (1); or
 - (ii) been absent from the employment of the employer on leave without pay,

shall unless otherwise agreed by the employer and the Board be deducted from the membership of the member for the purposes of calculating any benefit payable under these regulations;

- (b) for the purpose of calculating any benefit that becomes payable to a member under regulation 19 or 20 at a time when the member—
 - (i) is continuing to be a member under subregulation (1); or
 - (ii) is absent from the employment of the employer on leave without pay,

the member shall be deemed to have received salary on the last salary day of the employer before the benefit became payable; and

- (c) no contributions shall be made by or in respect of a member to the Fund during any period during which the member has—
 - (i) continued to be a member under subregulation (1); or
 - (ii) been absent from the employment of the employer on leave without pay.

(5) In subregulation (4) (b) "salary day" has the meaning given by regulation 15 (1).

Application of regulations to members employed part-time

46. (1) If at any time a member (in this regulation called a "prescribed member") is or has been classified by the employer as being employed part-time, these regulations shall apply to that prescribed member with the modifications and variations set out in this regulation.

(2) The employer shall in respect of any period during which a prescribed member is classified as being employed part-time, determine the percentage (in this regulation called "the service percentage") of full-time employment being worked by that member during that period.

(3) The service percentage in respect of any period during which a prescribed member is not classified as being employed part-time shall be 100%.

(4) Whenever there is a change in the service percentage of a prescribed member the employer shall advise the Board and the member of that change.

(5) For the purposes of determining the superannuation salary of a prescribed member the annual rate of remuneration of the member shall be deemed to be the actual annual rate of remuneration adjusted in the ratio that 100% bears to the service percentage of the member.

(6) During any period of membership during which the service percentage of a prescribed member is less than 100% the contributions that would otherwise have been payable by the member under regulation 14 or by the employer under regulation 15 shall be reduced in the ratio that the service percentage of the member bears to 100%.

(7) Where any lump sum retirement benefit calculated under regulation 17 is payable under these regulations to or in respect of a prescribed member in respect of any period of membership during which the service percentage of the member was less than 100%, that benefit shall be reduced in the ratio that the service percentage of the member during that period bears to 100%.

(8) Where any death benefit calculated under regulation 18 is payable under these regulations to or in respect of prescribed member and, immediately before the benefit became payable, the member was classified by the employer as being employed part-time, the amount by which the amount referred to in regulation 18 (1) (b), as assessed in relation to that member, exceeds the amount equal to the accrued benefit of that member shall be reduced in the ratio that the service percentage of the member immediately before the benefit became payable bears to 100%.

Requirements for insurance

47. (1) For the purposes of effecting, increasing or otherwise varying any policy of insurance or assurance as provided in section 13 of the Act, the Board may from time to time require a member—

- (a) to be medically examined;
- (b) to submit other evidence of health;
- (c) to provide proof of age to the satisfaction of the insurer; and
- (d) to take such other steps as may be required for any of those purposes.

(2) If a member refuses to undergo the medical examination or to undertake any other step that may reasonably be required by the Board for the purposes of effecting, increasing or otherwise varying any policy of insurance or assurance or if the member does or omits to do anything that would or may prejudice the policy or result in any of the policy proceeds not becoming payable, the Board may adjust the benefits to be payable from the Fund to or in respect of that member in such manner as the Board considers appropriate.

(3) The Board shall not effect a group life insurance or assurance policy that contains provision for payment of benefits in respect of total and permanent disablement unless in the opinion of the Board the definition of total and permanent disablement contained in that policy is such that a member covered by that policy would be considered by the insurer with which the policy is effected to be totally and permanently disabled if in the opinion of the insurer, after considering any medical or other evidence that it considers to be relevant, that the member is, and until attaining the age of compulsory retirement will continue to be, physically or mentally incapable of engaging in, or working for reward in, any occupation or work for which, in the opinion of the insurer, the member is suited to take by education, training or experience or for which the member would be suited as a result of retraining.

(4) In subregulation (3) "effect" includes acquire or take by assignment.

No personal claim

48. No member or person claiming through that member or on behalf or as a dependant of that member shall be entitled to require payment of that member's interest in the Fund except as provided in these regulations.

Repayments

49. Where a person has been excluded from the definition of "mine worker" under section 4 (3) of the Act the Board shall pay to that person the amount of the contributions paid by that person under regulation 14 and interest on that amount calculated on the balance of contributions as at the end of each financial year or at such other times as determined by the Board at a rate determined from time to time by the Board.

Notices

50. (1) A notice may be given by the Board to any member either personally or by sending it by post to the member at the last known address or to the normal place of employment of that member.

(2) Any notice sent by post under subregulation (1) shall be deemed to have been served on the day following the day on which the envelope or wrapper containing that notice is posted and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and put in the post office.

General meetings of members

51. Schedule 3 applies to and in relation to general meetings of members held under section 30 of the Act.

Annual report to be provided to members

52. As soon as practicable after the Board submits its annual report under section 66 of the *Financial Administration and Audit Act 1985*, and not later than 14 days before the ensuing annual general meeting of members is held under clause 5 (1) of Schedule 3, the Board shall provide each member with a copy of the annual report and with a copy of any actuarial report received by the Board under section 23 (3) of the Act since the last preceding annual general meeting of members.

Amendments to these regulations

53. (1) A regulation that amends these regulations in such a way as will increase the contributions payable by employers to the Fund to an amount in excess of 10% of the benchmark salary shall not be made unless the employers have given their consent to the amendment.

(2) A regulation that amends these regulations in such a way as will increase a benefit payable under these regulations shall not be made under the Act unless—

- (a) the actuary has certified that the amendment will not or is not likely to result in an increase in the contributions payable by the employers to the Fund; or
- (b) the employers have given their consent to the amendment.

(3) Without limiting the operation of subregulations (1) and (2), and subject to subregulations (4) and (5) and regulation 15 (9), a regulation that amends these regulations shall not be made under the Act unless—

- (a) the actuary has certified that the total value of the rights of members and their dependants accrued at the time the amendment takes effect will not be reduced by the amendment; or
- (b) at least two-thirds in number of the members for the time being have given their written consent to the amendment.

(4) Subregulation (3) does not apply to the making of a regulation that amends these regulations in order to ensure that these regulations conform with, or obtain the benefit of, a law of the State or Commonwealth governing, regulating or affecting the operation or maintenance of superannuation, pension or like funds.

(5) Notwithstanding any provision of these regulations the Board may take such actions as are necessary to comply with the *Occupational Superannuation Standards Act 1987* of the commonwealth and shall not take any action that is contrary to that legislation.

SCHEDULE 1

CALCULATION OF CASH TERMINATION BENEFIT

(Reg. 21)

The formula for calculating a cash termination benefit in respect of a member is—

$$CB = 0.3 \times FAS \times AP$$

where—

- CB is the cash benefit;
- FAS is the final average salary which applies to the member;
- AP is the sum of all the accrual products of the member at the time of cessation of employment.

SCHEDULE 2

CALCULATION OF PRESERVED BENEFIT

(Regs. 21, 22)

The formula for calculating a preserved benefit in respect of a member is—

$$PB = FAS \times AP \times f$$

Where—

- PB is the preserved benefit;
- FAS is the final average salary which applies to the member;
- AP is the sum of all the accrual products of the member at the time of cessation of employment;

f is—

- (a) if the member had been a member for less than 5 years at the time of cessation—0.3;
- (b) if the member had been a member for more than 5 and less than 15 years at the time of cessation—

$$0.3 + [n - 5] \times 0.07$$

Where "n" is the term of membership at the time of cessation;
and

- (c) in other cases—1.00.

SCHEDULE 3

(Reg. 51)

GENERAL MEETINGS OF MEMBERS OF THE FUND

Notice of meeting

1. Not less than 7 and not more than 30 days' notice in writing of a general meeting shall be given but the accidental omission to give notice to or the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

Quorum

2. (1) A quorum is present at a general meeting if not less than 5% of the members are present.

 (2) If a quorum is not present within half an hour after the time appointed for a general meeting the meeting shall take place but the Board is not obliged to consider any resolution of that meeting until the resolution is ratified at a general meeting at which a quorum is present.

Chairman

3. The chairman of any general meeting shall be appointed by the Board.

Board members may attend

4. Members of the Board shall be entitled to be present at general meetings but a member of the Board who is not a member of the Fund shall not be entitled to vote at a general meeting.

Annual general meeting

5. (1) An annual general meeting shall be held not later than 60 days after the annual report of the Board is submitted under section 66 of the *Financial Administration and Audit Act 1985*.

(2) An annual general meeting—

- (a) shall consider the annual report of the Board submitted under section 66 of the *Financial Administration and Audit Act 1985* in respect of the preceding financial year;
- (b) shall consider any business of which notice has been given in the notice of meeting; and
- (c) may consider any other business that may be relevant to the operation of the Fund.

Special general meeting

6. A special general meeting—
- (a) shall consider any business of which notice has been given in the notice of meeting; and
 - (b) may consider any other business that may be relevant to the purpose of the meeting.

Mode of voting on motions

7. (1) Subject to subclause (3), at a general meeting a motion put to the vote of the meeting shall be decided—
- (a) by a simple majority of the votes of the members present and voting; and
 - (b) on a show of hands unless before or on the declaration of the result of the show of hands a poll is demanded a member present.
- (2) A demand for a poll under subclause (1) (b) may be withdrawn.
- (3) Where a poll on a motion is demanded under subclause (1) (b) the vote of a member not present at the general meeting shall be counted if it was lodged, in writing, with the secretary of the Board not less than 24 hours before the general meeting.

Voting rights

8. (1) Each member present at a general meeting, or whose vote is counted at a general meeting under clause 7 (3), shall have one vote.
- (2) The chairman of a general meeting shall not have a second or casting vote.

Minutes

9. Minutes shall be kept of each general meeting and such minutes if purporting to be signed by the chairman of the general meeting or of the next succeeding general meeting shall be *prima facie* evidence of the matters contained in those minutes.

Procedure

10. Except as provided in this Schedule a general meeting may determine its own procedure.

By His Excellency's Command,

M. C. WAUCHOPE, Clerk of the Council.

