

Western Australia

Coal Industry Superannuation Act 1989

Coal Industry Superannuation Regulations 2014

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Coal Industry Superannuation Regulations 2014

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Coal Industry Superannuation Regulations 2014

Part 1 — Preliminary

1. Citation

These regulations are the *Coal Industry Superannuation Regulations 2014*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Coal Industry Superannuation Amendment Act 2013* Part 3 comes into operation.

[3-8. *Have not come into operation.*²]

[Pt. 2-7 *have not come into operation.*²]

Notes

¹ This is a compilation of the *Coal Industry Superannuation Regulations 2014*. The following table contains information about those regulations ^{1a}.

Compilation table

Citation	Gazettal	Commencement
<i>Coal Industry Superannuation Regulations 2014</i> r. 1 and 2	17 Apr 2014 p. 1091-132	17 Apr 2014 (see r. 2(a))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Citation	Gazettal	Commencement
<i>Coal Industry Superannuation Regulations 2014</i> r. 3-8 and Pt. 2-7 ²	17 Apr 2014 p. 1091-132	30 Jun 2014 (see r. 2(b) and <i>Gazette</i> 13 Jun 2014 p. 1859)

² On the date as at which this compilation was prepared, the *Coal Industry Superannuation Regulations 2014* r. 3-8 and Pt. 2-7 have not come into operation. They read as follows:

3. Terms used

In these regulations, unless the contrary intention appears —

1943 fund means the Coal Mine Workers' Pensions Fund established under the *Coal Mine Workers (Pensions) Act 1943*;

1989 fund means the Coal Industry Superannuation Fund established by section 9 of the Act as in force immediately before the scheme commencement day;

accrued benefit, for a category A member, has the meaning given in regulation 27(4);

accumulation account means —

- (a) the account kept for a member under regulation 26(1);
and
- (b) any account kept for a member under the *Coal Industry Superannuation Regulations 1990* immediately before the fund transfer day (within the meaning given in section 28A), the balance of which has not yet been

transferred to the Trustee under section 28A and credited to the member's account kept under regulation 26(1);

accumulation contributions means —

- (a) contributions received under regulation 19; and
- (b) contributions received under regulation 21; and
- (c) payments received under regulation 22(a) which the trustee considers to relate to amounts due under regulation 21; and
- (d) payments received under regulation 22(b) or (c);

benchmark amount has the meaning given in regulation 6;

category A membership period, in relation to a category A member, has the meaning given in regulation 27(1);

date of disablement, in relation to a member who becomes entitled to a benefit under regulation 30 or 31, means the last day in respect of which the member received remuneration from his or her participating employer prior to becoming entitled to the benefit;

defined benefit component means a benefit, or part of a benefit, calculated by reference to regulation 27;

defined benefit contributions means —

- (a) contributions due under regulation 18; and
- (b) contributions due under regulation 20; and
- (c) payments received under regulation 22(a) which the trustee considers to relate to amounts due under regulation 20;

designated fund means the superannuation fund for the time being designated by regulations made under section 7B of the Act;

designated fund rules means the governing rules (within the meaning given in the SIS Act section 10(1)) in relation to the designated fund;

discount factor means a discount factor determined from time to time by the trustee on the advice of the scheme actuary for the purposes of the scheme;

earnings index means —

- (a) the index of Average Weekly Ordinary Time Earnings for full-time adults published by the Australian Bureau of Statistics; or
- (b) if the Australian Bureau of Statistics ceases to publish that index, another index of average earnings selected for the purposes of the scheme by the trustee on the recommendation of the scheme actuary;

employer contribution rate means the annual rate of employer contributions in respect of category A members for the time being determined under regulation 20(3);

funding report means a report prepared by the scheme actuary under regulation 20(1);

in service has the meaning given in regulation 5(a);

in service with a participating employer has the meaning given in regulation 5(b);

member's multiple, in relation to a member who has retained a benefit, means the multiple recorded under regulation 37(3) in respect of the member;

participating employer means an employer who has entered into a participation agreement under regulation 10;

partner means a spouse as defined in the SIS Act section 10(1);

recommended contribution rate means annual rate of employer contributions in respect of category A members for the time being recommended by the scheme actuary under regulation 20(2)(a);

salary day means —

- (a) in relation to a participating employer, a day on which remuneration becomes payable by the employer to members who are in service with the employer; and
- (b) in relation to a member, a day on which the member's remuneration from the member's participating employer becomes payable;

scheme actuary means the actuary for the time being appointed by the trustee under regulation 4 to advise it in connection with the scheme;

scheme commencement day means the day on which the *Coal Industry Superannuation Amendment Act 2013* Part 3 comes into operation;

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Commonwealth);

SIS legislation means the SIS Act and the SIS Regulations;

SIS Regulations means the *Superannuation Industry (Supervision) Regulations 1994* (Commonwealth);

splittable contribution has the meaning given in the SIS Regulations regulation 6.42;

trustee means the trustee of the designated fund.

4. Scheme actuary

- (1) The trustee is to appoint an actuary to advise it in connection with the scheme.

- (2) A person is not to be appointed as actuary under subregulation (1) unless the trustee is reasonably satisfied that the person meets the requirements imposed under the SIS legislation for appointment as actuary of a registrable superannuation entity (within the meaning given in the SIS Act section 10(1)).

5. Service

In these regulations —

- (a) a person is *in service* if the person is a mine worker; and
- (b) a person is *in service with a participating employer* if the person is in service while employed by, working on the mine of, or otherwise associated with, that participating employer.

6. Benchmark amount

- (1) Subject to subregulations (2) and (3), in these regulations —
benchmark amount means —

- (a) until 1 July 2014, \$62 204; and
 - (b) on and after that date, the benchmark amount on the previous 30 June increased by —
 - (i) either —
 - (I) an amount equal to the increase (if any) in the earnings index for the year ending on the previous 31 March; or
 - (II) a lesser amount determined by the trustee on the recommendation of the scheme actuary;
 - and
 - (ii) any additional amount agreed between the trustee and the participating employers,
- rounded to the nearest whole dollar.

- (2) The trustee may, on the recommendation of the scheme actuary, determine that the benchmark amount is to be increased quarterly on 1 January, 1 April, 1 July and 1 October each year instead of annually on 1 July.
- (3) If the trustee makes a determination under subregulation (2), the increase to be effected under subregulation (1)(b)(i) is to be equal to the increase (if any) in the earnings index for the quarter ending on the previous 30 September, 31 December, 31 March or 30 June respectively.

7. Total permanent disablement of category A members

(1) If—

- (a) the trustee has, for the purposes of the scheme, effected a group life insurance or assurance policy providing benefits to category A members in respect of total and permanent disablement; and
- (b) the policy is in force for the time being in respect of a category A member who is under 60 years of age,

that member is regarded as totally and permanently disabled for the purposes of the scheme if the member is totally and permanently disabled within the meaning of and for the purposes of the policy.

(2) If—

- (a) the trustee has, for the purposes of the scheme, effected a group life insurance or assurance policy providing benefits to category A members in respect of total and permanent disablement; and
- (b) the policy is not in force for the time being in respect of a category A member who is under 60 years of age by reason only of the refusal of insurance by the insurer,

that member is regarded as totally and permanently disabled for the purposes of the scheme if in the opinion of the trustee, 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 that is relevant, having regard to the date on which that member became a category A member.

(3) In any other case, subject to the SIS legislation a category A member who is under 60 years of age is regarded as totally and permanently disabled for the purposes of the scheme if the trustee is satisfied, after considering any medical or other evidence that it considers to be relevant, that —

- (a) in the case of a member who became a category A member before 1 July 2014, the member is, and until attaining 60 years of age 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 trustee, the member is suited to undertake by education, training or experience or for which the member would be suited as a result of retraining; or

- (b) in the case of any other category A member, the member is suffering permanent incapacity within the meaning given in the SIS Regulations regulation 1.03C.

8. Partial permanent disablement of category A members

A category A member who is under 60 years of age is regarded as partially and permanently disabled for the purposes of the scheme if the member —

- (a) is not totally and permanently disabled; but
- (b) in the opinion of the trustee, after consideration of material evidence satisfactory to it —
 - (i) in the case of a member who became a category A member before 1 July 2014, is physically or mentally incapable of engaging in, or working for reward in, any occupation or work for the member's participating employer for which he or she is reasonably qualified by education, training or experience; and
 - (ii) in the case of any other category A member, is suffering temporary incapacity within the meaning given in the SIS Regulations regulation 6.01(2).

Part 2 — Employers

9. Participation of employers

An employer who employs mine workers in Western Australia must participate in the scheme.

10. Participation agreement

- (1) Every employer required by regulation 9 to participate in the scheme must enter into an agreement with the trustee —
 - (a) to furnish to the trustee all information reasonably required by the trustee in relation to —
 - (i) the employer and its establishments and activities in Western Australia; and
 - (ii) mine workers employed by the employer in Western Australia;
 - and
 - (b) to perform the employer's obligations under the scheme in a timely fashion and in a manner acceptable to the trustee.
- (2) An agreement under subregulation (1) is to be in a form determined by the trustee.

11. Default by employer

Where —

- (a) a participating employer fails or refuses to pay any amount of defined benefit contributions that it is obliged under the scheme to pay; and
- (b) the trustee has taken all steps to enforce the employer's obligations under the scheme which it considers to be in the best interests of members; and
- (c) the trustee after consulting the scheme actuary considers that on account of the employer's failure or refusal the financial stability of the scheme is not sufficiently assured and the rights of members are not sufficiently secured; and
- (d) the trustee determines that it is not in the best interests of members that entitlements should continue to accrue under regulation 28 in respect of members employed by that employer,

the trustee on the advice of the scheme actuary is to ascertain the interest in the scheme of the members in service with that employer at the time of the trustee's determination, and to apply that interest in the manner set out in regulation 48.

12. Dissolution of employer

- (1) Subject to subregulation (2) and regulation 44, where a participating 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 trustee on the advice of the scheme actuary is to ascertain the interest in the scheme of the members in service with that employer at the time of the winding up, dissolution, amalgamation or transfer, as the case may be, and to apply it in the manner set out in regulation 48.

- (2) Where a member referred to in subregulation (1) enters service with another participating employer as from the time of the winding up, dissolution, amalgamation or transfer of engagements of the previous employer this regulation does not apply to or in relation to that member.

Part 3 — Members

13. Category A membership

- (1) A person who is a category A member of the 1989 fund on the scheme commencement day becomes a category A member of the scheme on that day.
- (2) If a person who is not already a member —
 - (a) becomes a mine worker in service with a participating employer or after the scheme commencement day; and
 - (b) does not become a category C member under regulation 15(2),the person becomes a category A member.
- (3) A member who ceases to be a category C member under regulation 15(3), (4) or (5) while remaining a mine worker in service with a participating employer becomes a category A member.

14. Category B membership

A person who is a category B member of the 1989 fund on the scheme commencement day becomes a category B member of the scheme on that day.

15. Category C membership

- (1) A person who is a category C member of the 1989 fund on the scheme commencement day becomes a category C member of the scheme on that day.
- (2) If —
 - (a) a person who is not already a member becomes a mine worker in service with a participating employer on or after the scheme commencement day; and
 - (b) the person's participating employer advises the trustee that the person is unlikely to remain in service as a mine worker for more than 6 months,the person becomes a category C member of the scheme.
- (3) Where a category C member remains in service with a participating employer as a mine worker for 6 months —
 - (a) if the member's participating employer advises the trustee that the member is unlikely to remain in its service as a mine worker for more than a further 3 months, the member continues as a category C member; but

- (b) in any other case, the member ceases to be a category C member.
- (4) If the participating employer of a category C member advises the trustee that the terms of the member's service have changed so that the member is likely to remain in its service as a mine worker for more than 6 months (or any longer period allowed under subregulation (3)(a)) the member ceases to be a category C member from the day on which that change occurred.
- (5) If a category C member is still in service with a participating employer as a mine worker at the expiry of any extended period of category C membership arising under subregulation (3)(a), the member ceases to be a category C member.

16. Category D membership

- (1) A person who is a category D member of the 1989 fund on the scheme commencement day becomes a category D member of the scheme on that day.
- (2) On or after the scheme commencement day, a category A, B or C member may apply for his or her partner to become a category D member by giving written notice to the trustee.
- (3) If the trustee accepts the application, the partner becomes a category D member when the application is accepted.

17. Termination of membership

A member ceases to be a member if —

- (a) both —
 - (i) the member has ceased to be in service with a participating employer; and
 - (ii) all benefits which are or may be payable to or in respect of the member, have been paid or transferred;
- or
- (b) the member receives a benefit under regulation 34(1) or (2); or
- (c) in the case of a category D member, the whole of the balance in the member's accumulation account has been paid or transferred from the scheme; or
- (d) in the case of a category A member, the trustee has terminated the defined benefit section of the scheme under regulation 25(2) and the interest in the scheme of the category A member has been ascertained under regulation 25(4) and applied under regulation 48.

Part 4 — Contributions

18. Mandatory contributions by category A members

- (1) A category A member in service with a participating employer is to contribute to the scheme at an annual rate equivalent to 3% of the benchmark amount.
- (2) The employer of a category A member is —
 - (a) to deduct the contribution due under subregulation (1) by instalments from the member's remuneration on each salary day; and
 - (b) to remit each instalment to the trustee within 3 working days of deduction.

19. Voluntary member contributions

- (1) In addition to the contributions required under regulation 18, a category A member may contribute to the scheme any further amount agreed with the trustee.
- (2) A category B member, category C member or category D member may contribute to the scheme any amount agreed with the trustee.
- (3) A member of any category whose partner is also a member may contribute to the scheme in respect of the partner any amount agreed with the trustee.

20. Mandatory employer contributions for category A members

- (1) From time to time the trustee is to instruct the scheme actuary, after consulting the trustee and the employers, to prepare and to present to the trustee a report on the annual rate of employer contributions in respect of category A members that is required to fund the benefits for category A members which have accrued, and which are expected to accrue.
- (2) In each funding report, the scheme actuary is to —
 - (a) recommend the annual rate of employer contributions in respect of category A members which in the opinion of the scheme actuary would ensure the financial stability of the scheme and secure the rights of members, expressed as a percentage of the benchmark amount from time to time; and
 - (b) if the recommended contribution rate exceeds 10% of the benchmark amount, advice on how the terms of these regulations regarding accrual of benefits for category A members might be altered so as to reduce the recommended contribution rate to 10% of the benchmark amount.

- (3) The trustee is to consider each funding report presented by the scheme actuary, and is to determine an employer contribution rate, which is to be —
 - (a) if the recommended contribution rate is less than 7% of the benchmark amount, 7% of the benchmark amount; and
 - (b) if the recommended contribution rate is not less than 7%, nor more than 10%, of the benchmark amount, the recommended contribution rate; and
 - (c) if the recommended contribution rate is more than 10% of the benchmark amount, 10% of the benchmark amount.
- (4) If, in a funding report, the recommended contribution rate is more than 10% of the benchmark amount, the trustee is to take the steps set out in regulation 25(1).
- (5) Each participating employer is to contribute to the scheme at the employer contribution rate determined for the time being, multiplied by the number of category A members in service with that participating employer.
- (6) A participating employer —
 - (a) is to pay the contributions payable under subregulation (5) in instalments as at each salary day; and
 - (b) is to remit each instalment to the trustee within 3 working days of the salary day.

21. Voluntary employer contributions

- (1) In respect of a category A member, in addition to the contributions required under regulation 20, a participating employer —
 - (a) may contribute to the scheme any further amount; and
 - (b) is to contribute to the scheme any further amount agreed with the member.
- (2) In respect of a category B member, a category C member or a category D member, a participating employer —
 - (a) may contribute to the scheme any amount; and
 - (b) is to contribute to the scheme any amount agreed with the member.

22. Acceptance of Commonwealth payments

The trustee may accept payment of any of the following in respect of a member —

- (a) a shortfall component under the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth);

- (b) an amount equal to the balance of the member's account in the Superannuation Holding Accounts Special Account under the *Small Superannuation Accounts Act 1995* (Commonwealth);
- (c) a Government co-contribution under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Commonwealth);
- (d) any other amount offered to or received by the trustee under Commonwealth legislation providing for payments to superannuation funds in respect of superannuation entitlements of members of those funds.

23. Contribution splitting

- (1) A member for whom splittable contributions have been made to the scheme may apply to the trustee to transfer some or all of those contributions for the benefit of the member's partner in accordance with the SIS Regulations Division 6.7.
- (2) The member may apply to transfer those contributions —
 - (a) if the member's partner is also a member of the scheme, to the partner's accumulation account; or
 - (b) if the member's partner is a member of another superannuation fund that is able to accept the transfer, to that other fund.
- (3) The trustee may accept an application under subregulation (1) if it is satisfied that the application complies with the SIS Regulations Division 6.7.
- (4) On acceptance of an application under subregulation (1) the trustee is to transfer the contributions as requested.

Part 5 — Application of contributions to fund benefits

24. Application of defined benefit contributions

The trustee is to apply defined benefit contributions received as the trustee thinks fit, in accordance with the SIS legislation and the designated fund rules —

- (a) in paying an equitable share of the expenses of the scheme; and
- (b) in creating and maintaining reserves as it thinks fit, including a reserve for the payment of benefits calculated by reference to regulation 27 and an equitable share of the future expenses of the scheme; and
- (c) in effecting insurance on the lives of category A members to secure the payment of benefits payable on

the death or disablement of category A members which in the opinion of the trustee are not adequately secured by the reserve maintained under paragraph (b) or by accumulation accounts.

25. Funding shortfall in respect of benefits for category A members

- (1) If, in a funding report prepared under regulation 20, the recommended contribution rate is more than 10% of the benchmark amount, the trustee is to —
 - (a) refer the funding report to the Minister; and
 - (b) invite the Minister to consider making amendments to these regulations with a view to equalising the employer contribution rate and the recommended contribution rate; and
 - (c) consider taking any step, or doing any thing, permitted to it under the SIS legislation with a view to equalising the employer contribution rate and the recommended contribution rate.
- (2) If, after considering a funding report prepared under regulation 20 in which the recommended contribution rate is more than 10% of the benchmark amount —
 - (a) the trustee has completed the measures required by subregulation (1); and
 - (b) the employer contribution rate and the recommended contribution rate have not been equalised; and
 - (c) the trustee after consulting the scheme actuary considers that the financial stability of the scheme is not sufficiently assured and the rights of members are not sufficiently secured; and
 - (d) the trustee considers that it is not in the best interests of members that entitlements should continue to accrue under regulation 28,
the trustee is to terminate the defined benefit section of the scheme with effect from an immediate or stated future date (the **DB termination day**).
- (3) As from the DB termination day —
 - (a) contributions cease to be payable under regulations 18 and 20 in respect of any period of service after the DB termination day; and

- (b) any period of service after the DB termination day will be disregarded in computing a member's category A membership period under regulation 27.
- (4) The trustee is to ascertain the interest in the scheme of the category A members as at the DB termination day and to apply it in the manner set out in regulation 48.

26. Application of accumulation contributions

- (1) The trustee is to keep an account for each member.
- (2) Subject to subregulation (3), the designated fund rules apply to govern —
 - (a) the crediting of any amount to a member's accumulation account; and
 - (b) the debiting of any amount to a member's accumulation account; and
 - (c) the identification of the assets representing a member's accumulation account; and
 - (d) the investment or application of those assets, including the delegation of investment or insurance decisions to individual members, and the implementation of decisions made by members; and
 - (e) the identification and allocation of the earnings and losses attributable to those assets.
- (3) The trustee is to apply accumulation contributions received as the trustee thinks fit, in accordance with the SIS legislation and the designated fund rules —
 - (a) in paying an equitable share of the expenses of the scheme; and
 - (b) in effecting insurance on the lives of members to secure the payment of benefits payable on the death or disablement of members which in the opinion of the trustee are not adequately secured by accumulation accounts or (in the case of category A members) by arrangements made under regulation 24; and
 - (c) in crediting the members' accumulation accounts.

Part 6 — Benefits

Division 1 — Entitlement to benefits

27. Category A: calculation of accrued benefit

- (1) In this regulation, subject to subregulations (2) and (3) —

category A membership period, in relation to a category A member, means the most recent continuous period during which the member has been in service and has —

- (a) been a member of, and paid contributions to, the 1943 fund; or
- (b) been a category A member of the 1989 fund; or
- (c) been a category A member of the scheme in service with a participating employer,

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

post-1988 component, in relation to a member's category A membership period, means a part of the category A membership period which falls on or after 1 July 1988;

pre-1988 component, in relation to a member's category A membership period, means a part of the category A membership period which falls before 1 July 1988.

- (2) A member's category A membership period, and each component of it, are to be expressed in years and parts of years, calculated to 2 decimal places.
- (3) If a category A member who has ceased to be in service but who is still a category A member returns to service with a participating employer, the trustee may include any part of the period during which the member was previously in service in the member's category A membership period, and in any component of it, on such terms and conditions as the trustee determines.
- (4) The **accrued benefit** for a category A member is an amount equal to the benchmark amount multiplied by the sum of —
 - (a) any pre-1988 component of the member's category A membership period multiplied by 13%; plus
 - (b) any post-1988 component of the member's category A membership period multiplied by 12%.

28. Category A: retirement benefit

- (1) A category A member who leaves service with a participating employer between 55 and 65 years of age (inclusive) is entitled to a benefit equal to —
 - (a) the member's accrued benefit; and
 - (b) the balance of the member's accumulation account.
- (2) A category A member who leaves service with a participating employer for any reason (other than death) after reaching 65 years of age is entitled to a benefit equal to the amount that would have been payable to the member if the member had —

- (a) left service with that employer on the day the member turned 65 years of age; and
- (b) become entitled to a benefit under subregulation (1) on that day; and
- (c) retained the whole of that benefit in the scheme under regulation 37 (without making an election under regulation 38(1)) until the day the member actually left service with that employer.

29. Category A: death benefit

- (1) If a category A member who is under 60 years of age dies in service with a participating employer, the trustee is to pay a benefit equal to —
 - (a) the member's accrued benefit calculated as if —
 - (i) the member had remained in service until reaching 60 years of age; and
 - (ii) the benchmark amount had remained the same as it was on the date of death;
 - and
 - (b) the balance of the member's accumulation account.
- (2) If a category A member who is between 60 and 65 years of age (inclusive) dies in service with a participating employer, the trustee is to pay a benefit equal to the benefit that would have been payable to the member if the member had left service on the date of death and become entitled to a benefit under regulation 28(1).
- (3) If a category A member who is over 65 years of age dies in service with a participating employer, the trustee is to pay a benefit equal to the benefit that would have been payable to the member if the member had —
 - (a) left service on the day the member turned 65 years of age; and
 - (b) become entitled to a benefit under regulation 28(1) on that day; and
 - (c) retained the whole of that benefit in the scheme under regulation 37 (without making an election under regulation 38(1)) until the date of death.

30. Category A: total and permanent disablement benefit

- (1) A category A member who is under 60 years of age and who leaves service with a participating employer because the member is totally and permanently disabled is entitled to a benefit equal to —

- (a) the member's accrued benefit calculated as if —
 - (i) the member had remained in service with that employer until reaching 60 years of age; and
 - (ii) the benchmark amount had remained the same as it was on the date of disablement;and
 - (b) the balance of the member's accumulation account.
- (2) A category A member who is over 60 years of age and who leaves service with a participating employer because the member is totally and permanently disabled is entitled to a benefit equal to the benefit to which the member would have been entitled if the member had left service on the date of disablement and become entitled to a benefit under regulation 28(1) or (2) (as applicable).

31. Category A: partial and permanent disablement benefit

A category A member who leaves service with a participating employer because the member is partially and permanently disabled is entitled to a benefit equal to —

- (a) the member's accrued benefit calculated as at the date of disablement; and
- (b) the balance of the member's accumulation account.

32. Category A: leaving service benefit

- (1) Subject to subregulation (2), a category A member who leaves service with a participating employer in circumstances other than those described in regulations 28 to 31 is entitled to a benefit equal to the balance of the member's accumulation account plus —
- (a) if the member retains the whole of the defined benefit component of the benefit in the scheme, the member's accrued benefit; or
 - (b) otherwise, an amount equal to the member's accrued benefit multiplied by the discount factor.
- (2) A category A member who leaves service with a participating employer by reason of ceasing to be a mine worker but who remains in employment with the same employer —
- (a) is not entitled to a benefit under subregulation (1) at the time of leaving service; and
 - (b) is entitled to a benefit when the member ceases to be in employment with that employer equal to the amount that would have been payable to the member if the member had —

- (i) become entitled to a benefit under subregulation (1) on the day the member ceased to be a mine worker; and
- (ii) retained the whole of that benefit in the scheme under regulation 37 until the day the member actually left service with that employer.

33. Categories B and C: leaving service and death benefits

- (1) A category B member or category C member who leaves service with a participating employer for any reason (other than death) is entitled to a benefit equal to the balance in the member's accumulation account.
- (2) If a category B member or category C member dies in service with a participating employer the trustee is to pay a benefit equal to the balance in the member's accumulation account.

34. Categories A, B and C: benefits while in service

- (1) If a category A member, category B member or category C member —
 - (a) is in service with a participating employer; and
 - (b) reaches the age at which the SIS legislation requires the trustee to pay the member's benefit,the trustee must pay to the member a benefit equal to the benefit that the member would have been entitled to had the member left service on the date the member reached that age.
- (2) A category A member, category B member or category C member who —
 - (a) is in service with a participating employer; and
 - (b) is 65 years of age or older; and
 - (c) requests payment,is entitled to a benefit equal to the benefit that the member would have been entitled to had the member left service on the date of the request.
- (3) A category A member, category B member or category C member who —
 - (a) is in service with a participating employer; and
 - (b) is under 65 years of age; and
 - (c) requests payment,is entitled to a benefit of up to the amount which the trustee is permitted by the SIS legislation to pay to the member.

- (4) If a benefit paid under subregulation (3) includes a defined benefit component, the benefit payable to or in respect of the member when the member leaves service is to be adjusted by the trustee on the advice of the scheme actuary.

35. Category D: all benefits

- (1) A category D member is entitled to a benefit equal to the balance in the member's accumulation account if the member —
- (a) satisfies a condition of release under the SIS legislation, other than death; or
 - (b) gives notice to the trustee that he or she wishes to withdraw from the scheme.
- (2) If a category D member dies while still a member, the trustee is to pay a benefit equal to the balance in the member's accumulation account.
- (3) A category D member who is not yet entitled to a benefit under subregulation (1) and requests payment, is entitled to a benefit of up to the amount which the trustee is permitted by the SIS legislation to pay to the member.

Division 2 — Preserving, retaining and paying benefits

36. Preserving benefits

If a benefit becomes payable under the scheme but the SIS legislation does not permit the benefit, or part of it, to be paid, the trustee is to preserve the benefit, or the part which cannot be paid, in a manner which is consistent with the SIS legislation and in accordance with the designated fund rules.

37. Retaining benefits

- (1) A member who is entitled to payment of a benefit may, prior to the benefit being paid, request the trustee to retain all or part of it in the scheme.
- (2) If a member requests the retention of all or part of the accumulation component of a benefit, the trustee is to retain in the member's accumulation account the portion of that component that the member has elected to retain.
- (3) If a member requests the retention of all of the defined benefit component of a benefit, the trustee is to make a record of the multiple of the benchmark amount used to calculate the defined benefit component of the benefit.
- (4) If a member requests the retention of part only of —
- (a) the defined benefit component of a benefit; or

- (b) the amount calculated in accordance with regulation 32(1)(b),

(as the case may be) the trustee is to credit to the member's accumulation account, and retain in that account, an amount equal to the portion of that component or amount that the member has elected to retain.

38. Conversion of retained defined benefits to accumulation benefits

- (1) A member who has retained all of the defined benefit component of a benefit under regulation 37(3) may elect to convert that component to an accumulation benefit.
- (2) If a member makes an election under subregulation (1) the trustee is to credit to the member's accumulation account an amount equal to the multiple of—
 - (a) the member's multiple; and
 - (b) the benchmark amount as at the date of the conversion; and
 - (c) if the member—
 - (i) became entitled to the benefit under regulation 32(1)(a); and
 - (ii) is under 55 years of age on the date of the conversion,the discount factor.
- (3) When an amount has been credited to the member's accumulation account under subregulation (2), the member's multiple is reduced to zero.

39. Payment of retained benefits

- (1) The trustee must pay all or part of a retained benefit to a member or transfer it under regulation 44—
 - (a) subject to regulation 36, when requested to do so by the member; or
 - (b) when required under the SIS Act to do so.
- (2) However a member who has retained a defined benefit component of a benefit under regulation 37(3) cannot request the payment or transfer of part only of that component unless the member first converts it to an accumulation benefit under regulation 38.
- (3) When the whole of a retained benefit is to be paid or transferred under subregulation (1) the amount to be so paid or transferred is—
 - (a) the balance in the member's accumulation account; and

- (b) if the retained benefit includes a defined benefit component, an amount equal to the multiple of —
 - (i) the member's multiple; and
 - (ii) the benchmark amount as at the date of payment or transfer; and
 - (iii) if the member —
 - (I) became entitled to the benefit under regulation 32(1)(a); and
 - (II) is under 55 years of age on the day on which the benefit is paid or transferred,the discount factor.
- (4) When part only of a retained benefit is to be paid or transferred under subregulation (1) the amount to be so paid or transferred is the amount requested by the member.
- (5) If a member who has retained a benefit dies before the benefit is paid or transferred, the trustee is to pay —
 - (a) the balance in the member's accumulation account; and
 - (b) if the retained benefit includes a defined benefit component, an amount equal to the multiple of —
 - (i) the member's multiple; and
 - (ii) the benchmark amount as at the date of payment.

40. Paying benefits

- (1) In this regulation, unless the contrary intention appears —
benefit means a benefit payable under these regulations.
- (2) Subject to the SIS legislation, the designated fund rules apply to govern —
 - (a) the form, timing and other circumstances of any payment of any benefit; and
 - (b) the proofs which the trustee may require before paying any benefit; and
 - (c) the terms and conditions on which the trustee is to pay benefits to a beneficiary who is a minor or who is subject to other legal incapacity; and
 - (d) the terms and conditions on which the trustee is to pay benefits payable in respect of a member upon or after the member's death; and

- (e) the terms and conditions on which members may make death benefit nominations and the effect of death benefit nominations made.

Part 7 — Miscellaneous

41. Application of the designated fund rules

Subject to these regulations and to the SIS legislation, the designated fund rules apply to govern all matters connected with —

- (a) the powers and functions of the trustee; and
- (b) the exercise or delegation by the trustee of its powers and functions; and
- (c) the investment, management and application of the assets of the scheme by the trustee; and
- (d) the allocation as between members or groups of members of the tax and other liabilities and expenses of the scheme and arrangements for discharging those liabilities and expenses.

42. Family law matters

Subject to the SIS legislation, the designated fund rules apply to govern —

- (a) the splitting of members' interests in or entitlements under the scheme following the breakdown of marriage or of a de facto relationship; and
- (b) everything done by the trustees in connection with or in consequence of a split referred to in paragraph (a).

43. Transfers from other funds

If another superannuation fund or like institution (the *transferor fund*) offers to pay or transfer to the trustee a member's benefit or interest in the transferor fund, the trustee may accept the payment or transfer and apply it in any manner consistent with the SIS legislation and in accordance with the designated fund rules.

44. Transfers to other funds

The trustee may pay or transfer a benefit to which a member is entitled, or a member's interest in the scheme, to another superannuation fund or like institution in any manner consistent with the SIS legislation and in accordance with the designated fund rules.

45. Temporary cessation of employment and leave without pay

- (1) In this regulation —

relevant period means any period during which a member —

- (a) continues in service under subregulation (2); or
 - (b) has been absent on leave without pay.
- (2) If a member leaves the service of his or her participating employer in circumstances where it is reasonable to expect that the member will return to service within a reasonable time, the trustee may treat the member as continuing to be in service with a participating employer on such terms and conditions as are agreed between the trustee, the member and the member's participating employer.
- (3) If a member is on leave without pay the trustee, the member's participating employer and the member may enter into an agreement as to the terms and conditions on which the member continues to be a member during the absence of that member.
- (4) The terms and conditions agreed upon under subregulation (2) or (3) may include terms or conditions inconsistent with the other provisions of these regulations.
- (5) Unless otherwise agreed under subregulation (2) or (3) —
- (a) no contributions are payable by or in respect of the member during the relevant period; and
 - (b) in the case of a category A member, the relevant period is not to be counted in determining the member's category A membership period; and
 - (c) in the case of a category A member, if a benefit becomes payable under regulation 30 or 31 during the relevant period, the member is deemed to have received salary on the participating employer's last salary day prior to the benefit becoming payable.

46. Application of regulations to category A members employed part-time

- (1) If at any time a category A member (a **prescribed member**) is or has been classified by the participating employer as being part-time, these regulations apply to that prescribed member with the modifications and variations set out in this regulation.
- (2) The participating employer is, in respect of any period during which a prescribed member is classified as being part-time, to determine the percentage (the **service percentage**) of full-time service 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 is 100%.

- (4) Whenever there is a change in the service percentage of a prescribed member the participating employer is to advise the trustee and the member of that change.
- (5) 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 18 or by the employer under regulation 20 is to be reduced in the ratio that the service percentage of the member bears to 100%.
- (6) Where any lump sum retirement benefit calculated under regulation 28 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 is to be reduced in the ratio that the service percentage of the member during that period bears to 100%.
- (7) Where any death benefit calculated under regulation 29 is payable under these regulations to or in respect of a prescribed member and, immediately before the benefit became payable, the member was classified by the participating employer as being employed part-time, the amount by which the amount referred to in regulation 29(1)(a), as assessed in relation to that member, exceeds the amount equal to the accrued benefit of that member is to be reduced in the ratio that the service percentage of the member immediately before the benefit became payable bears to 100%.

47. Requirements for insurance

- (1) Subject to the SIS legislation, the designated fund rules apply to govern —
 - (a) the obligations of members —
 - (i) to be medically examined; and
 - (ii) to submit other evidence of health; and
 - (iii) to provide proof of age; and
 - (iv) to provide other information or take other steps required by the trustee for the purposes of the scheme;
 - and
 - (b) the right of the trustee to deny, adjust, suspend or terminate a member's benefit if the member does not comply with the obligations referred to in paragraph (a).
- (2) The trustee is not to effect, to acquire or to take an assignment of a group life insurance or assurance policy that contains provision for

payment of benefits in respect of total and permanent disablement of category A members unless in the opinion of the trustee the definition of total and permanent disablement contained in that policy is such that a member covered by that policy who became a category A member before 1 July 2014 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 60 years of age 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.

48. Termination of a part of the scheme

- (1) Where in accordance with regulation 11, 12 or 25 the interest in the scheme of any members is to be applied under this regulation, the trustee is to apply the interest, in a manner consistent with the SIS legislation and the designated fund rules, in the following order —
 - (a) in paying or providing for proper costs and expenses;
 - (b) in providing or securing as far as possible through the scheme or otherwise the benefits to which the members concerned would have been entitled had they voluntarily left service with that employer;
 - (c) as to any balance then remaining, in providing further benefits to or in respect of the members concerned in such manner as the trustee on the advice of the scheme actuary considers equitable.
- (2) The benefits referred to in subregulation (1) are —
 - (a) to be in such form and provided or secured by such arrangements as are determined by the trustee; and
 - (b) to be provided to or secured for the members concerned 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 scheme.