

Western Australia

## **Coal Industry Superannuation Act 1989**

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As at 30 Jun 2014

Version 02-f0-00

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# Coal Industry Superannuation Act 1989

## Contents

### Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Mine worker	4

### Part 2 — Superannuation for mine workers

7A.	Superannuation rules	7
7B.	Designated fund	7

### Part 3 — The Coal Industry Superannuation Board

7.	Establishment of the Board	9
8.	Constitution of the Board	9
9.	The Coal Industry Superannuation Fund	10
10.	Functions and general powers of the Board	11
10A.	Compliance with SIS Act	13
10AA.	Consent of Board to be obtained if required under SIS Act	14
11.	Power to invest	14
12.	Investment policy	15
13.	Power to insure	15
14.	Board to have powers of trustee	15
15.	Discretionary exercise of powers	15
16.	Delegation	16
17.	Power to make determinations	16
18.	Appointment of investment managers	16

Contents

---

19.	Appointment of Administration Manager	17
20.	Appointment of actuary	17
21.	Officers of the Board	17
23.	Actuarial review	18
24.	Advice to the Board	19
25.	Records	19
26.	Application of <i>Financial Management Act 2006</i> and <i>Auditor General Act 2006</i>	19
27.	Accounts of delegates	19
28A.	Winding up of Fund	20
28B.	Notification following winding up	21

**Part 4 — Miscellaneous**

28.	Employer's powers and liabilities in respect of termination not affected	22
29.	Members' rights to compensation not to be affected	22
29A.	<i>Unclaimed Money Act 1990</i> does not apply to unclaimed benefits	22
30.	General meeting of members	23
31.	Regulations	23
32.	Review of Act	24

**Schedule 2 — Provisions as to Board**

1.	Interpretation	25
2.	Elections	25
3.	Appointments	25
4.	Terms of office	25
5.	Publication	27
6.	How vacancies occur	27
6A.	Vacancies to be filled within certain period	28
7.	Alternate members	28
8.	Meetings of the Board	29
10.	Performance of functions by resolution	30
11.	Disclosure of interest	30
12.	Common seal	30
13.	Allowances	31
14.	Protection from liability	31

**Notes**

Compilation table	32
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Provisions that have not come into operation	33
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**Defined terms**



Western Australia

## **Coal Industry Superannuation Act 1989**

**An Act relating to superannuation for persons involved in coal mining in Western Australia and for various other persons and for related purposes.**

*[Long title inserted by No. 16 of 2006 s. 3.]*

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Coal Industry Superannuation Act 1989*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on such day as is fixed by proclamation<sup>1</sup>.

**3. Interpretation**

(1) In this Act, unless the contrary intention appears —

**Administration Manager** means the Administration Manager appointed under section 19;

**Board** means the Coal Industry Superannuation Board established under section 7;

**coal mine** includes an open cut, a shaft in the course of being sunk, a tunnel, a level and inclined plane in the course of being driven, and a shaft, level, plane, working place, tramway and siding both below ground and above ground, in and adjacent to and belonging to a coal mine;

**Commissioner** has the same meaning as in the SIS Act;

**delegate** means a person to whom any function of the Board is delegated under section 16;

**employer** means a natural person, firm or body corporate that employs mine workers;

**Fund** means the Coal Industry Superannuation Fund established under section 9;

**investment manager** means an investment manager appointed under section 18;

**mine worker** has the meaning given in section 4;

**officer** of the Board, means —

(a) the Administration Manager; and



- (b) any person appointed to be an officer of the Board under section 21(1);

**open cut** means a coal mine that is formed by an excavation in the ground and that has no overlying cover of earth;

**property** means real and personal property of any nature and includes —

- (a) any estate, share or interest in any property;
- (b) any thing or chose in action;
- (c) money and money's worth; and
- (d) policies of insurance and assurance;

**scheme** means the superannuation scheme for mine workers constituted by this Act;

**scheme benefits** means the superannuation and related benefits to be paid under superannuation rules;

**scheme contributions** means the contributions payable or paid under superannuation rules;

**SIS Act** means —

- (a) the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; and
- (b) any regulations or other instrument in force under that Act;

**successor fund** has the meaning given in *Superannuation Industry (Supervision) Regulations 1994* (Commonwealth) regulation 1.03(1);

**superannuation fund** means a regulated superannuation fund within the meaning of the SIS Act section 19;

**superannuation rules** means rules made by regulations under section 7A(1);

**the actuary** means the actuary appointed under section 20.

**s. 4**

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- (2) The Governor may amend Schedule 1 by order published in the *Gazette*.

*[Section 3 amended by No. 45 of 1994 s. 4; No. 46 of 1995 s. 5; No. 19 of 2013 s. 4.]*

**4. Mine worker**

- (1) Subject to this section, for the purposes of this Act, ***mine worker*** means —

(a) a person who is employed in the coal mining industry of Western Australia in terms of an industrial instrument;  
or

(b) an employee's inspector appointed under section 17 of the *Mines Safety and Inspection Act 1994*; or

(c) a person who —

(i) is an elected official of a registered organisation, the membership of which is principally confined to mine workers referred to in paragraph (a); and

(ii) has actually been employed in a coal mine in Western Australia for a period of, or for periods aggregating not less than, 5 years;

or

(d) a person who is employed, whether by way of service agreement or by way of subcontract —

(i) in or about an open cut by a contractor who contracts with an employer for the excavation or the removal of overburden or the winning of coal from the open cut; or

(ii) in or about a coal mine by a contractor who contracts with an employer for the working of the coal mine or any part of the coal mine;

or

- (e) a contractor who —
  - (i) is principally engaged in the excavation or removal of overburden, or the winning of coal, from an open cut or the working of a coal mine, or any part of a coal mine, or transporting coal in or about a coal mine in accordance with a contract entered into with an employer;
  - (ii) uses not more than one vehicle at any one time for the purposes described in subparagraph (i); and
  - (iii) does not employ any person in carrying out the contract,

but, subject to subsection (2), does not include —

- (f) a person who is a director of a company which is the owner of a coal mine; or
  - (g) a superintendent or an instructor of any mine rescue corps or body.
- (2) The Governor may by regulations extend the definition of “mine worker”.
- (3) In this section —
- industrial instrument*** means any of the following —
- (a) an award, industrial agreement or order made under the *Industrial Relations Act 1979*;
  - (b) an award, determination, enterprise agreement or order made under the *Fair Work Act 2009* (Commonwealth);
  - (c) an award, determination or agreement given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth);
  - (d) an award, agreement, determination, order or similar instrument which is made under a law of the State or the Commonwealth dealing with workplace relations and which is prescribed for the purposes of this definition;

**s. 4**

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**registered organisation** means any of the following —

- (a) an association of employees, or an enterprise association, registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);
- (b) an organisation of employees registered under the *Industrial Relations Act 1979*;
- (c) a like association or organisation which is registered under a law of the State or the Commonwealth dealing with workplace relations and which is prescribed for the purposes of this definition.

*[(4)-(6) deleted]*

*[Section 4 amended by No. 62 of 1994 s. 109; No. 19 of 2013 s. 5.]*

*[5. Deleted by No. 16 of 2006 s. 4.]*

*[6. Deleted by No. 46 of 1995 s. 6.]*

## **Part 2 — Superannuation for mine workers**

*[Heading inserted by No. 19 of 2013 s. 6.]*

### **7A. Superannuation rules**

- (1) The Governor may, by regulations, make rules to govern the scheme.
- (2) Rules made under subsection (1) are —
  - (a) to provide for mine workers to become members of the scheme, for different categories of membership and for admission to, continuation of and cessation of membership; and
  - (b) to require employers to participate in the scheme and to provide for admission to, continuation of and cessation of participation; and
  - (c) to specify superannuation and related benefits to be paid to or in respect of members of the scheme; and
  - (d) to provide for the protection, adjustment, reduction, forfeiture and application of the scheme benefits; and
  - (e) to require members and employers to pay contributions towards the scheme benefits, and to specify the amount or rate of contributions to be paid by members and employers respectively, or procedures by which the amount or rate of such contributions is to be determined.
- (3) Rules made under subsection (1) may include any provision necessary or convenient for consistency with the SIS Act.

*[Section 7A inserted by No. 19 of 2013 s. 6.]*

### **7B. Designated fund**

- (1) The Governor may, by regulations —
  - (a) designate a superannuation fund as the fund to which the scheme contributions are to be paid and through which the scheme benefits are to be provided; and

**s. 7B**

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- (b) revoke a designation made under paragraph (a).
- (2) Regulations may not designate a superannuation fund under subsection (1)(a) unless the Minister is satisfied that —
  - (a) the governing rules of the superannuation fund will, if the superannuation fund is designated, so far as the SIS Act permits —
    - (i) entitle members and employers to participate in and pay scheme contributions to the superannuation fund; and
    - (ii) require the trustee of the superannuation fund to provide the scheme benefits;
  - and
  - (b) the superannuation fund will, with respect to each member, be a successor fund in relation to a transfer of benefits from the superannuation fund through which, immediately before the designation, the scheme benefits are provided.
- (3) Regulations may not revoke the designation of a superannuation fund under subsection (1)(b) unless they also designate another superannuation fund under subsection (1)(a) with effect from the revocation.
- (4) Regulations made under subsection (1) may include any provision necessary or convenient for consistency with the SIS Act.

*[Section 7B inserted by No. 19 of 2013 s. 6.]*

## **Part 3 — The Coal Industry Superannuation Board**

### **7. Establishment of the Board**

- (1) For the purposes of this Act there shall be a board to be known as the Coal Industry Superannuation Board.
- (2) The Board is a body corporate with perpetual succession and a common seal and is capable of —
  - (a) acquiring, holding and disposing of property;
  - (b) suing and being sued; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed until the contrary is shown.
- (4) The Board is not an agent of the Crown in right of the State.
- (5) The Board is not part of the Public Service under the *Public Sector Management Act 1994*.

*[Section 7 amended by No. 46 of 1995 s. 7.]*

### **8. Constitution of the Board**

- (1) Subject to this Act the Board shall consist of 5 members of whom —
  - (a) one shall be a chairman appointed by the Governor in accordance with the requirements of the SIS Act;
  - (b) 2 shall be elected in accordance with the regulations by the members of the Fund; and
  - (c) 2 shall be appointed in accordance with the regulations by the employers.

**s. 9**

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- (2) The members of the Fund may in accordance with the regulations elect a person to be an alternate member of the Board.
- (3) The employers may in accordance with the regulations appoint a person to be an alternate member of the Board.
- (4) Schedule 2 has effect in relation to the Board.  
*[Section 8 amended by No. 46 of 1995 s. 8.]*

**9. The Coal Industry Superannuation Fund**

- (1) There is a fund to be known as the Coal Industry Superannuation Fund.

*[(1a)-(1c) deleted]*

- (2A) Members of the scheme are members of the Fund.

- (2) The Fund consists of —
  - (a) scheme contributions paid at a time when no superannuation fund is designated under section 7B(1); and
  - (b) all other property received by the Board for or in connection with the Fund; and
  - (c) property in which the Fund is invested; and
  - (d) income derived from the investment of the Fund; and
  - (e) accretions to, and profits arising from the realisation of, property in which the Fund is invested.
- (3) The Fund shall be available for —
  - (a) the payment of the scheme benefits; and
  - [(b) deleted]*
  - (c) the payment of the costs and expenses of conducting elections under clause 2 of Schedule 2; and
  - (d) the payment of allowances to members of the Board under clause 13 of Schedule 2; and



- (e) the payment of the costs and expenses of administering the Fund and the provisions of this Act relating to the Fund; and
- (f) the transfer of benefits in respect of members of the Fund, subject to and in accordance with the SIS Act.

*[Section 9 amended by No. 46 of 1995 s. 9; No. 16 of 2006 s. 5; No. 19 of 2013 s. 10.]*

**10. Functions and general powers of the Board**

- (1) The functions of the Board are —
  - (a) to administer, invest and manage the Fund; and
  - (b) to perform any other functions conferred on the Board under any written law.
- (2) Subject to this Act the Board may do all acts and things that are necessary or convenient to be done to enable it to perform its functions.
- (3) Without limiting the generality of subsection (2) the Board may, subject to this Act —
  - (a) enter into and execute all deeds, contracts and documents that it may think expedient for the purpose of securing the benefits to be provided from the Fund;
  - (b) appropriate any part of the Fund (including the proceeds arising from any insurance or assurance policies) in full or part satisfaction of any duties or taxes;
  - (c) acquire or dispose of any property on such terms of payment as it thinks fit;
  - (d) grant or take options or other pre-emptive rights for the sale, purchase or leasing of any property;
  - (e) insure or re-insure any risks, contingencies or liabilities of the Fund with or through such persons and on such terms and conditions as the Board thinks fit;
  - (f) subject to subsection (4), raise or borrow money at such rates of interest and on such terms and conditions as it

**s. 10**

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- thinks fit and either by way of fixed loan for a period of time or by way of bank overdraft on a fluctuating basis;
- (g) subject to subsection (4), incur liabilities of such amounts and on such terms and conditions as it thinks fit and provide and set aside out of the Fund sufficient money for or towards the discharge or reduction of any encumbrance, debt or other liability affecting any part of the Fund;
  - (h) secure, guarantee, indemnify or support the performance of any obligation undertaken by it by securities of any nature over the whole or any part of the Fund;
  - (i) open and operate on accounts with bankers or other financial institutions and sign, draw, discount, accept and endorse cheques, bills and other negotiable instruments in such manner as it determines;
  - (j) lease, let out or hire for such periods and at such rentals as it thinks fit any property forming part of the Fund;
  - (k) postpone the realisation of any property forming part of the Fund for so long as the Board thinks fit even though the property may be of a speculative or wasting nature;
  - (l) expend such amounts in the development and improvement of any property forming part of the Fund as the Board thinks fit;
  - (m) promote and market the Fund;
  - (n) conduct research relating to the Fund.
- (4) The Board may raise or borrow money under subsection (1) for the purpose of overcoming any cash flow problem in the payment of benefits under this Act, but for no other purpose.
- (5) The Board may recover any money owing to the Fund —
- (a) in any court of competent jurisdiction as a debt due to the Board;
  - (b) by deducting the amount owing from any amount that is, or becomes, payable from the Fund to the debtor;

- (c) if the money is owed by an employer, by entering into an arrangement for the satisfaction of the debt in such manner as the Board considers appropriate; or
  - (d) if the money is owed by a member of the Fund who is employed by an employer, by directing that employer to deduct the amount owing from the member's pay and to pay it to the Board.
- (6) An employer must comply with a direction given to it under subsection (5)(d).
- (7) In carrying out its functions the Board must, as far as practicable —
- (a) act in the best interests of members of the Fund;
  - (b) ensure that members of the Fund and employers are fully informed of their rights and obligations under the Act; and
  - (c) ensure equity between different categories of members of the Fund.

*[Section 10 amended by No. 45 of 1994 s. 5 and 19; No. 16 of 2006 s. 6.]*

**10A. Compliance with SIS Act**

- (1) The Board shall ensure that, so far as practicable —
- (a) the requirements of the SIS Act are complied with so far as they relate to the Fund; and
  - (b) any direction given by the Commissioner under the SIS Act in relation to the Fund is complied with.
- (2) The Board may do anything that is necessary or convenient to be done to enable it to comply with subsection (1).
- (3) The Board and any other person shall not do anything under this Act that is inconsistent with the requirements of the SIS Act.
- (4) This section has effect notwithstanding any other provision of this Act.

**s. 10AA**

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*[Section 10A inserted by No. 46 of 1995 s. 10.]*

**10AA. Consent of Board to be obtained if required under SIS Act**

If the SIS Act requires a person to obtain the consent of the Board before exercising any discretion under this Act, the person shall not exercise that discretion without first obtaining that consent.

*[Section 10AA inserted by No. 46 of 1995 s. 10.]*

*[10B. Deleted by No. 19 of 2013 s. 7.]*

**11. Power to invest**

- (1) The Board may invest any money or other assets of the Fund not required for any other purpose in any of the following investments —
  - (a) as trust funds may be invested under Part III of the *Trustees Act 1962*;
  - (b) subject to subsection (3), in acquiring, improving, or lending on the security of, an estate in land situated in the Commonwealth; or
  - [(c) deleted]*
  - (d) in any other investment, or class or kind of investment, approved by the Minister.
- (2) An investment under this section may be made jointly or in association with any other person or persons.
- (3) An investment shall not be made under subsection (1)(b) except in accordance with independent expert advice.
- (4) The Board may sell, alienate, or lease any estate in land acquired under subsection (1) and may realise, sell, convert, vary, and transpose other investments.
- (5) Notwithstanding anything in this section, the Board shall not lend any money from the Fund to a member of the Fund either directly or by means of an arrangement for lending money to a

Fund member in the exercise of a power of investment under this section.

*[Section 11 amended by No. 45 of 1994 s. 7; No. 1 of 1997 s. 18.]*

**12. Investment policy**

The Board and every delegate of the Board who at any time undertakes the investment of all or part of the Fund shall have regard only to the best interests of the Fund and its members in relation to the making of every such investment.

**13. Power to insure**

- (1) The Board may —
  - (a) subject to the regulations, effect and maintain policies of all types of insurance or assurance to provide for any benefit or part of a benefit that may become payable from the Fund; and
  - (b) pay out of the Fund all premiums under or in respect of policies referred to in paragraph (a).
- (2) The powers conferred under this section are in addition to and extension of the powers conferred by sections 10 and 11.
- (3) In this section —  
*effect* includes acquire or take by assignment.

**14. Board to have powers of trustee**

Without limiting the generality of section 10 or 11 the Board shall have the powers conferred by law on a trustee.

**15. Discretionary exercise of powers**

Subject to section 12 the powers conferred on the Board under this Act or by any other law —

- (a) may be exercised by the Board in such circumstances, in such manner and on such terms and conditions as the Board thinks fit;

**s. 16**

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- (b) may be exercised by the Board jointly with any other person and notwithstanding that by doing so the Board may lose sole control of any of the investments or other applications of the Fund or cause any part of the property of the Fund to be intermingled with any other property; and
- (c) shall so far as they relate to the investment or other applications of the Fund be exercisable by the Board as if it were the absolute beneficial owner of the Fund.

**16. Delegation**

- (1) The Board may, by instrument in writing delegate to any person, any function of the Board under this Act, other than this power of delegation.
- (2) A function delegated under subsection (1) shall, when performed by the delegate in accordance with the instrument of delegation, be deemed, for the purposes of this Act, to have been performed by the Board.

**17. Power to make determinations**

The Board shall determine all questions or issues of doubt or difficulty in relation to —

- (a) the interpretation of any of the provisions of this Act relating to the Fund;
- (b) the rights of the members of the Fund under this Act; or
- (c) the management and administration of the Fund or the performance of the functions conferred on the Board.

**18. Appointment of investment managers**

- (1) The Board may, by instrument in writing, appoint a person as an investment manager of the Fund and, without limiting the generality of section 16, may delegate to an investment manager so appointed any of its functions under this Act or any other Act as to the investment of the Fund.

- (2) The Board may cause or permit the title to any property forming part of the Fund to be registered in the name of an investment manager in trust.

*[Section 18 amended by No. 46 of 1995 s. 11.]*

**19. Appointment of Administration Manager**

- (1) The Board shall, by instrument in writing, appoint an Administration Manager of the Board.
- (2) The Administration Manager shall perform such duties and have such powers as the Board may from time to time determine.

*[Section 19 inserted by No. 45 of 1994 s. 8; amended by No. 46 of 1995 s. 12.]*

**20. Appointment of actuary**

The Board is to appoint as the actuary to the Fund a person who is a Fellow or Accredited Member of the Institute of Actuaries of Australia.

*[Section 20 inserted by No. 16 of 2006 s. 7.]*

**21. Officers of the Board**

- (1) In addition to the Administration Manager appointed under section 19, the Board may appoint such other officers as it considers necessary for the purpose of enabling the functions of the Board properly to be carried out.
- (2) When an officer appointed by the Board is not an officer of the Public Service of the State at the time of appointment then, subject to any relevant order, award or agreement made under the *Industrial Relations Act 1979*, the Board may determine the remuneration and other conditions of service of that officer.
- (3) Part 3 of the *Public Sector Management Act 1994* does not apply to officers of the Board.

**s. 23**

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- (4) If an officer appointed by the Board was an officer of the Public Service of the State at the time of appointment —
- (a) the appointment does not affect or prejudice the application to that person of the provisions of Part 3 of the *Public Sector Management Act 1994* or of any other Act applying to persons as officers of the Public Service of the State if they applied to that person immediately before his or her appointment; and
  - (b) that officer is employed in the department principally assisting the Minister to whom the administration of this Act is for the time being committed by the Governor with that administration.

*[Section 21 amended by No. 32 of 1994 s. 19; No. 45 of 1994 s. 9; No. 46 of 1995 s. 13; No. 16 of 2006 s. 8.]*

*[22. Deleted by No. 16 of 2006 s. 9.]*

**23. Actuarial review**

- (1) On or before the day 3 years after the commencement of this Act and thereafter at intervals of not more than 3 years the Board shall call on the actuary to conduct an actuarial review of the Fund.
- (2) The Board shall provide the actuary with such information as he may require to conduct an actuarial review under subsection (1).
- (3) The actuary shall report to the Board in writing the result of an actuarial review conducted under subsection (1), within the period of 12 months after the date as at which the review was made.
- (4) The Board shall provide each employer with a copy of each report received by the Board under subsection (3).

*[Section 23 amended by No. 45 of 1994 s. 10.]*



**24. Advice to the Board**

The Board may obtain the advice or opinion of any accountant, actuary, banker, legal practitioner, medical practitioner, stockbroker or other professional person and may act on the advice or opinion of such a person irrespective of whether or not the advice or opinion has been sought by the Board.

**25. Records**

The Board shall ensure that a complete record is kept of —

- (a) all the members of the Fund and all other persons becoming entitled to a benefit from the Fund;
- (b) the deaths of members of the Fund; and
- (c) all other things necessary for the proper administration of the Fund.

**26. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

*[Section 26 amended by No. 77 of 2006 s. 17.]*

**27. Accounts of delegates**

- (1) In this section —  
***liabilities*** does not include liabilities for the payment of benefits under the Fund.
- (2) If the receipt or expenditure of money is delegated by the Board under section 16 or 18, the Board shall procure from the delegate or investment manager, as soon as practicable after the end of each financial year, a full and true statement of account of all the moneys received and expended by the delegate or investment manager on behalf of the Board during that year and

**s. 28A**

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a statement of the assets and liabilities held or incurred by the delegate or investment manager on behalf of the Board as at the end of that year.

*[Section 27 amended by No. 46 of 1995 s. 14.]*

**28A. Winding up of Fund**

(1) In this section —

***fund transfer day*** means the day on which the first regulations made under section 7B come into operation;

***successor trustee*** means the trustee of the superannuation fund designated by the first regulations made under section 7B.

(2) On the fund transfer day the Board is to transfer the scheme benefits to the successor trustee in accordance with the SIS Act.

(3) From the fund transfer day —

(a) the Board is to accept no scheme contributions accruing due after, or calculated in respect of a period of service completed after, the fund transfer day; and

(b) no entitlement to scheme benefits arises against the Board or the Fund in respect of any period of service or membership after, or in respect of any death or disablement occurring after, the fund transfer day.

(4) As soon as reasonably practicable after the fund transfer day, the Board is to wind up the Fund by —

(a) delivering to the successor trustee all records and information in the possession or under the control of the Board which the successor trustee requires for the operation of the scheme; and

(b) transferring the assets of the Fund to the successor trustee in accordance with the SIS Act; and

(c) completing all outstanding returns, reports and accounts required under this Act or under the SIS Act in relation to the Fund or the Board; and

- (d) delivering to the Director of State Records all records and information in its possession or under its control which it has not delivered to the successor trustee.

*[Section 28A inserted by No. 19 of 2013 s. 15.]*

**28B. Notification following winding up**

As soon as reasonably practical after the Board is satisfied that the winding up of the Fund under section 28A is completed, it is to notify the Minister that the winding up is complete.

*[Section 28B inserted by No. 19 of 2013 s. 15.]*

**Part 4 — Miscellaneous**

**28. Employer's powers and liabilities in respect of termination not affected**

- (1) Nothing in this Act shall affect the rights of an employer in relation to the termination of employment of a member of the scheme and the fact of being a member of the scheme shall not be taken in any respect as implying a guarantee of continued employment by an employer.
- (2) Nothing in this Act and no right or expectation with respect to the accrual in the future of a benefit under the scheme shall affect the quantum of damages in any action brought by a member of the scheme against an employer on account of the termination of his employment.

*[Section 28 amended by No. 19 of 2013 s. 11.]*

**29. Members' rights to compensation not to be affected**

- (1) Nothing in this Act shall affect the rights of a member of the scheme in relation to any claim for damages or compensation that the member may have arising out of or with respect to his employment by an employer.
- (2) A benefit to which a member of the scheme or any other person is entitled under the scheme shall not be affected by any damages or compensation payable to or in respect of the member.

*[Section 29 amended by No. 19 of 2013 s. 12.]*

**29A. Unclaimed Money Act 1990 does not apply to unclaimed benefits**

The *Unclaimed Money Act 1990* does not apply in relation to unclaimed benefits in the Fund.

*[Section 29A inserted by No. 16 of 2006 s. 10.]*

**30. General meeting of members**

- (1) The Board shall call an annual general meeting of the members of the Fund.
- (2) The Board may call a special general meeting of the members of the Fund whenever it thinks fit and shall call such a meeting at the request, in writing, of not less than 5% of those members.
- (3) Subject to the regulations the day on which, and time and place at which, a general meeting is held under this section shall be determined by the Board.
- (4) A general meeting held under this section may make recommendations to the Board on the business considered by the general meeting.
- (5) A general meeting held under this section shall be conducted in accordance with the prescribed procedures.

**31. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and in particular may make regulations —

*[(a)-(e) deleted]*

- (f) preventing the Board from effecting or maintaining a policy of insurance under section 13 if that policy does not comply with prescribed requirements;
- (g) as to general meetings under section 30;
- (ga) as to the election and appointment of members and alternate members of the Board;
- (h) requiring the Board to furnish reports to members of the Fund and prescribing the matters to be dealt with in such reports;
- (i) prescribing the manner in which notices may be served under this Act;

**s. 32**

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- (j) prescribing or providing for the approval of forms for the purposes of this Act;
- (k) prescribing requirements as to information to be given in or in connection with applications, returns, claims, elections, and other documents delivered or made for the purposes of this Act, and the evidence to be supplied in support;
- (l) providing for any other matter necessary or convenient for consistency with the SIS Act.

*[Section 31 amended by No. 46 of 1995 s. 15; No. 16 of 2006 s. 11; No. 19 of 2013 s. 13.]*

**32. Review of Act**

- (1) As soon as is reasonably practicable after the 3<sup>rd</sup> anniversary of the day on which the first regulations made under section 7B come into operation, the Treasurer is to carry out a review of the operation of this Act and, in the course of the review, is to consider and have regard to —
  - (a) the requirement for employers to pay contributions towards the scheme benefits; and
  - (b) such other matters as appear to the Treasurer to be relevant to the operation and effectiveness of this Act.
- (2) The Treasurer shall prepare a report based on the review of this Act and shall, as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

*[Section 32 amended by No. 16 of 2006 s. 12; No. 19 of 2013 s. 16.]*

*[Part 5 (s. 33-35) deleted by No. 19 of 2013 s. 8.]*

*[Schedule 1 deleted by No. 19 of 2013 s. 14.]*

## Schedule 2 — Provisions as to Board

[s. 8]

*[Heading amended by No. 19 of 2010 s. 4.]*

### 1. Interpretation

In this Schedule, unless the contrary intention appears —

***appointed member*** means a member of the Board appointed by the employers and includes an alternate member so appointed;

***elected member*** means a member of the Board elected by the members of the Fund and includes an alternate member so elected.

### 2. Elections

- (1) As soon as practicable after the commencement of this Act elections shall be conducted in the prescribed manner to fill the offices of elected members.
- (2) Whenever the office of an elected member is vacant or is due to become vacant an election shall be conducted in the prescribed manner to elect a person to fill the vacancy.

### 3. Appointments

- (1) As soon as is practicable after the commencement of this Act appointments shall be made in the prescribed manner to fill the offices of appointed members.
- (2) Whenever the office of an appointed member is vacant or is due to become vacant an appointment shall be made in the prescribed manner to fill the vacancy.

### 4. Terms of office

- (1) Subject to this Schedule —
  - (a) the chairman of the Board holds office for such period not exceeding 3 years as is specified in the instrument of appointment and is eligible for reappointment;
  - (b) an elected member and an appointed member other than an alternate member hold office —

**cl. 4**

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- (i) where the member is elected or appointed to fill a vacancy occurring by effluxion of time — for a period ending 2 years after the occurrence of that vacancy;
  - (ii) where the member is elected or appointed to fill a vacancy occurring otherwise than by effluxion of time — for the remainder of the period for which that member's predecessor in office was elected or appointed,  
and is eligible for re-election or reappointment;
- (c) an elected member and an appointed member who is an alternate member shall hold office —
  - (i) where the member is elected or appointed to fill a vacancy occurring by effluxion of time — for a period ending one year after the occurrence of that vacancy;
  - (ii) where the member is elected or appointed to fill a vacancy occurring otherwise than by effluxion of time — for the remainder of the period for which the member's predecessor in office was elected or appointed,  
and is eligible for re-election or reappointment.
- (2) Subject to this Schedule but notwithstanding subclause (1), of the persons first elected after the coming into operation of this Act —
  - (a) the first elected shall hold office for a period ending 2 years after the election;
  - (b) the second elected shall hold office for a period ending one year after the election; and
  - (c) the third elected shall be the elected alternate member of the Board for a period ending one year after the election.
- (3) If 2 elected members receive the same number of votes at the election or if an election is not necessary, the chairman of the Board shall determine by lot which of the members shall be appointed for one year or as the alternate member, as the case requires.
- (4) Subject to this Schedule but notwithstanding subclause (1), of the persons first appointed after the coming into operation of this Act —



- (a) one shall hold office for a period of 2 years after the appointment;
- (b) one shall hold office for a period of one year after the appointment; and
- (c) one shall be the appointed alternate member for a period ending one year after the appointment.

**5. Publication**

The Board shall cause notice of—

- (a) the election of elected members to the Board;
- (b) the appointment of appointed members to the Board; and
- (c) the appointment of a chairman of the Board,

to be published for information in the *Gazette*.

**6. How vacancies occur**

- (1) The office of a member of the Board becomes vacant if—
  - (a) the member dies;
  - (b) the member is removed from office under subclause (2);
  - (c) the member—
    - (i) becomes a disqualified person within the meaning of Part 15 of the SIS Act; or
    - (ii) is suspended or removed under Part 17 of that Act;
  - (d) the member resigns his or her office by notice in writing delivered to the Board;
  - (e) the member's tenure of that office expires;
  - (f) the member ceases to satisfy a condition that the member was required to satisfy to be eligible for appointment;
  - (g) the member is absent without leave of the Board from 4 consecutive meetings of the Board of which the member has had notice;
  - (h) in the case of the chairman, the chairman ceases to be an independent director within the meaning of the SIS Act; or
  - (i) in the case of an elected member, the member—

**cl. 6A**

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- (i) ceases to be a member of the Fund; or
  - (ii) is removed from office under subclause (3).
- (2) The Governor may remove a member of the Board on the grounds of misbehaviour or incompetence or mental or physical incapacity that impairs the performance of the member's duties.
- (3) An elected member may be removed from office by a motion passed in accordance with the regulations at a general meeting of members of the Fund held in accordance with the regulations.
- (4) In this clause *member* includes an alternate member of the Board.

*[Clause 6 inserted by No. 46 of 1995 s. 17.]*

**6A. Vacancies to be filled within certain period**

If the office of a member of the Board (other than the chairman) becomes vacant, the Board shall ensure that as far as practicable the vacancy is filled within the prescribed period after it occurred.

*[Clause 6A inserted by No. 46 of 1995 s. 17.]*

**7. Alternate members**

- (1) If an elected member is absent from a meeting of the Board the elected alternate member of the Board is entitled to attend that meeting.
- (2) If for any reason an elected member vacates the office of elected member before the expiry of the period for which the member was elected, the elected alternate member of the Board is, until the vacancy is filled, entitled to receive notice of and attend every meeting of the Board.
- (3) If an appointed member is absent from a meeting of the Board the appointed alternate member of the Board is entitled to attend that meeting.
- (4) If for any reason an appointed member vacates the office of appointed member before the expiry of the period for which the member was appointed, the appointed alternate member of the Board is, until the vacancy is filled, entitled to receive notice of and attend every meeting of the Board.

- (5) An alternate member attending a meeting of the Board in accordance with this clause has all the functions of a member of the Board.
- (6) No act or omission of an alternate member attending a meeting shall be questioned on the ground that the occasion for doing so had not arisen.

**8. Meetings of the Board**

- (1) The chairman of the Board shall preside at all meetings of the Board at which the chairman is present but if the chairman is not present at a meeting the members of the Board present may elect one of their number to preside.
- (2) The Board shall hold such meetings as are necessary for the performance of its functions.
- (2a) A member of the Board may attend a meeting of the Board by telephone, audio-visual link-up or any other form of instantaneous communication provided that all Board members attending the meeting are simultaneously in contact with each other.
- (3) The Administration Manager may convene a meeting of the Board at any time and shall on request in writing by a member of the Board convene such a meeting before the expiration of 30 days after the receipt of the request.
- (4) The Administration Manager shall notify each member of the Board of the time, date, and place of every meeting and adjourned meeting of the Board.
- (5) A decision of the Board shall only be taken to have been made if not less than two-thirds of the total number of members of the Board have voted for it.
- (6) The chairman and any other member of the Board shall not have a second or casting vote.
- (7) The Board shall cause to be kept a record of the proceedings of its meetings.
- (8) Subject to this Act, the Board may regulate its own procedure.

*[Clause 8 amended by No. 45 of 1994 s. 11; No. 46 of 1995 s. 17; No. 16 of 2006 s. 14.]*

**cl. 10**

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[9. Deleted by No. 46 of 1995 s. 17.]

**10. Performance of functions by resolution**

- (1) A resolution in writing, signed or assented to by each member of the Board by letter, telegram, telex or facsimile transmission shall be as valid and effectual as if it had been passed at the meeting of the Board.
- (2) A resolution under subclause (1) may consist of several documents in like form, each signed or assented to by one or more members of the Board.

**11. Disclosure of interest**

- (1) A member of the Board who has a direct or indirect pecuniary interest in a matter that is being or is about to be considered by the Board, otherwise than as a member of and in common with other members of the Fund —
  - (a) shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of that interest at a meeting of the Board;
  - (b) shall not take part in any deliberation or decision of the Board with respect to that matter.

Penalty: \$2 000.

- (2) A disclosure made under subclause (1)(a) at a meeting of a Board shall be recorded in the record of proceedings of the Board.
- (3) For the purposes of clause 9, a member who is precluded under subclause (1)(b) from taking part in any deliberation or decision of a Board with respect to a matter shall be deemed to be absent from the meeting while that matter is being deliberated or decided upon.

**12. Common seal**

- (1) The form of the common seal of the Board shall be determined by the Board.
- (2) The common seal of the Board shall not be affixed to any document except upon the resolution of the Board.

- (3) The common seal of the Board shall only be affixed to an instrument in the presence of 2 members and each of them shall sign the document to attest that the common seal was so affixed.
- (4) A document is duly executed by the Board if the common seal of the Board is affixed to it in accordance with subclauses (2) and (3).

**13. Allowances**

There shall be paid to the members of the Board such allowances as the Minister may, on the recommendation of the Board, approve.

**14. Protection from liability**

The Board or a member of the Board is not liable for any act or omission that occurred in the performance or purported performance of any function under this Act unless, in relation to that act or omission, the Board or member —

- (a) failed to act honestly; or
- (b) intentionally or recklessly failed to exercise a sufficient degree of care and diligence.

*[Clause 14 inserted by No. 46 of 1995 s. 17.]*

*[Schedule 3 deleted by No. 19 of 2013 s. 9.]*

### Notes

<sup>1</sup> This is a compilation of the *Coal Industry Superannuation Act 1989* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Coal Industry Superannuation Act 1989</i>	28 of 1989	12 Dec 1989	1 Jul 1990 (see s. 2 and <i>Gazette</i> 22 Jun 1990 p. 3027)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Acts Amendment (Coal Mining Industry) Act 1994</i> Pt. 2 and s. 19 <sup>3</sup>	45 of 1994	22 Sep 1994	Pt. 2: 22 Sep 1994 (see s. 2(1)); s. 19: 16 Nov 1994 (see s. 2(2) and <i>Gazette</i> 15 Nov 1994 p. 5801)
<i>Mines Safety and Inspection Act 1994</i> s. 109	62 of 1994	7 Nov 1994	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)
<i>Coal Industry Superannuation Amendment Act 1995</i> <sup>4</sup>	46 of 1995	1 Nov 1995	15 May 1996 (see s. 2 and <i>Gazette</i> 14 May 1996 p. 2019)
<i>Trustees Amendment Act 1997</i> s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Coal Industry Superannuation Act Amendment Order 2000</i> published in <i>Gazette</i> 29 Sep 2000 p. 5535-6			29 Sep 2000
<b>Reprint of the <i>Coal Industry Superannuation Act 1989</i> as at 8 Dec 2000</b> (includes amendments listed above)			
<i>Coal Industry Superannuation Amendment Act 2006</i>	16 of 2006	17 May 2006	14 Jun 2006
<b>Reprint 2: The <i>Coal Industry Superannuation Act 1989</i> as at 4 Aug 2006</b> (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

Short title	Number and year	Assent	Commencement
<i>Coal Industry Superannuation Amendment Act 2013</i> (other than Pt. 5)	19 of 2013	4 Nov 2013	Pt. 1: 4 Nov 2013 (see s. 2(a)); Pt. 2: 5 Nov 2013 (see s. 2(b)); Pt. 3 and 4: 30 Jun 2014 (see s. 2(c) and <i>Gazette</i> 13 Jun 2014 p. 1859)

<sup>1a</sup> 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

Short title	Number and year	Assent	Commencement
<i>Coal Industry Superannuation Amendment Act 2013 Pt. 5</i> <sup>5</sup>	19 of 2013	4 Nov 2013	Pt. 5: to be proclaimed (see s. 2(c))

<sup>2</sup> Now see the *Workplace Relations Act 1996* of the Commonwealth.

<sup>3</sup> The *Acts Amendment (Coal Mining Industry) Act 1994* s. 8(2) is a transitional provision that is of no further effect.

<sup>4</sup> The *Coal Industry Superannuation Amendment Act 1995* s. 8(2) is a transitional provision that is of no further effect.

<sup>5</sup> On the date as at which this compilation was prepared, the *Coal Industry Superannuation Amendment Act 2013 Pt. 5* had not come into operation. It reads as follows:

### Part 5 — Amendments following winding up

#### 17. Section 3 amended

(1) In section 3(1) delete the definitions of:

*Administration Manager*

*Board*

*Commissioner*

*delegate*

*Fund*

*investment manager*

*officer*

*property*  
*the actuary*

- (2) In section 3(1) in the definition of *superannuation rules* delete “section 7A(1);” and insert:

section 7A(1).

- 18. Part 3 deleted**  
Delete Part 3.
- 19. Sections 29A and 30 deleted**  
Delete sections 29A and 30.
- 20. Section 31 amended**  
Delete section 31(f), (g), (ga) and (h).
- 21. Schedule 2 deleted**  
Delete Schedule 2.



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Administration Manager .....	3(1)
appointed member .....	Sch. 2, cl. 1
Board .....	3(1)
coal mine .....	3(1)
commencement day .....	Sch. 3, cl. 1
Commissioner .....	3(1)
Corporation .....	10B(4)
delegate .....	3(1)
effect .....	13(3)
elected member .....	Sch. 2, cl. 1
employer .....	3(1)
former Act .....	Sch. 3, cl. 1
Fund .....	3(1)
fund transfer day .....	28A(1)
industrial instrument .....	4(3)
investment manager .....	3(1)
liabilities .....	27(1)
Long Service Leave Fund .....	10B(4)
member .....	Sch. 2, cl. 6(4)
mine worker .....	3(1), 3(1), 4(1)
officer .....	3(1)
open cut .....	3(1)
property .....	3(1)
registered organisation .....	4(3)
scheme .....	3(1)
scheme benefits .....	3(1)
scheme contributions .....	3(1)
SIS Act .....	3(1)
successor fund .....	3(1)
successor trustee .....	28A(1)
superannuation fund .....	3(1)
superannuation rules .....	3(1)
the actuary .....	3(1)