

Western Australia

## **Coal Industry Superannuation Act 1989**

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As at 31 Oct 2014

Version 02-g0-01

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# Coal Industry Superannuation Act 1989

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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 —

**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;

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

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

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

**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).

- (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 and 17.]

#### 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

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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;

**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

- (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 (s. 7-28A and 28B) deleted by No. 19 of 2013 s. 18.]*

**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, 30. Deleted by No. 19 of 2013 s. 19.]*

**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)-(h) deleted]*

- (i) prescribing the manner in which notices may be served under this Act;
- (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 and 20.]*

### **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.]*

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

*[Schedule 2 deleted by No. 19 of 2013 s. 21.]*

*[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. 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)

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Short title	Number and year	Assent	Commencement
<i>Coal Industry Superannuation Amendment Act 2013</i>	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); Pt. 5: 31 Oct 2014 (see s. 2(c) and <i>Gazette</i> 24 Oct 2014 p. 4119)

<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.



## 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>
coal mine .....	3(1)
employer .....	3(1)
industrial instrument .....	4(3)
mine worker .....	3(1), 4(1)
open cut .....	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)
superannuation fund .....	3(1)
superannuation rules .....	3(1)