



Western Australia

Coal Industry Superannuation Act 1989

## **Coal Industry Superannuation Regulations 1990**

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at 3 August 2007

Western Australia

## Coal Industry Superannuation Regulations 1990

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Coal Industry Superannuation Act 1989

## Coal Industry Superannuation Regulations 1990

### Part 1 — Preliminary

**1. Citation**

These regulations may be cited as the *Coal Industry Superannuation Regulations 1990*<sup>1</sup>.

**2. Commencement**

These regulations shall come into operation on the day on which the Act comes into operation<sup>1</sup>.

## Part 2 — Interpretative provisions

### 3. Terms used in these regulations

- (1) In these regulations, unless the contrary intention appears —
- accrued benefit**, in relation to a member, means the amount equal to the benchmark amount multiplied by —
- (a) 13% of the period of the member's category A membership while in service prior to 1 July 1988; plus
  - (b) 12% of the period of the member's category A membership while in service on or after 1 July 1988;
- accumulation account** means the account kept for a member under regulation 27A;
- benchmark amount** has the meaning given in regulation 7;
- category A member** means a person who is a member of category A under regulation 9A;
- category B member** means a person who is a member of category B under regulation 9A;
- category C member** means a person who is a member of category C under regulation 9A;
- category D member** means a person who is a member of category D under regulation 9A;
- discount factor** means the discount factor determined from time to time by the Board on the advice of the actuary;
- former Act** means the *Coal Mine Workers (Pensions) Act 1943*;
- member** means a person who has become a member under regulation 10, 11, 11A, 11AA or 42(2)(a) and who has not ceased to be a member under regulation 11B;
- member's multiple**, in relation to a member who has retained a benefit, means the multiple recorded under regulation 22(3) in respect of the member;
- partner** means —
- (a) a spouse; or



- (b) a de facto partner who is a spouse as defined in section 10 of the SIS Act<sup>2</sup>;

**previous fund** means the Coal Mine Workers' Pensions Fund established under the former Act;

**salary day** means —

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

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

**splittable contribution** has the same meaning as it has in Division 6.7 of the SIS Regulations.

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

*[Regulation 3 amended in Gazette 14 May 1996 p. 2025-6; 8 Sep 1998 p. 4908; 30 Apr 2002 p. 2185-6; 23 May 2003 p. 1823; 11 Jul 2006 p. 2535-6.]*

#### **4. Membership**

- (1) A reference to the membership of a member is a reference to the most recent uninterrupted period during which the member has been in service and has —
  - (a) consecutively paid contributions under the former Act and been a member of the Fund; or
  - (b) been a member of the Fund,

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

- (2) If a person who has ceased to be in service but who is still a member returns to service, the Board may include any part of the period during which the person was previously in service in

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the person's membership on such terms and conditions as the Board determines.

*[Regulation 4 amended in Gazette 9 Aug 1991 p. 4180; 31 Dec 1992 p. 6368; 14 May 1996 p. 2026.]*

**4A. Service**

In these regulations —

- (a) a person is *in service* if the person is a mine worker or an officer of the Board; and
- (b) a person is *in service with an employer* if the person is —
  - (i) in the case of an officer of the Board, in service while an officer of the Board; and
  - (ii) in the case of a mine worker, in service while employed by, working on the mine of, or otherwise associated with, that employer.

*[Regulation 4A inserted in Gazette 14 May 1996 p. 2026; amended in Gazette 23 May 2003 p. 1823.]*

**5. Total permanent disablement**

A member who is 60 years of age or younger shall be regarded as totally and permanently disabled —

- (a) in the event that the Board has under section 13 of the Act effected a group life insurance or assurance policy that contains provision for payments of benefits in respect of total and permanent disablement and that policy is in force for the time being in respect of the member if the member is totally and permanently disabled within the meaning of and for the purposes of that policy;
- (b) in the event that the Board has under section 13 of the Act effected a group life insurance or assurance policy that contains provision for payment of benefits in respect of total and permanent disablement and that

policy is not in force for the time being in respect of the member by reason only of the refusal of insurance by the insurer with which that policy has been effected, if in the opinion of the Board, after consideration of material evidence satisfactory to it, the member is totally and permanently disabled within the terms of the definition of total and permanent disablement contained in that policy; or

- (c) in any other event if the Board is satisfied, 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 Board, the member is suited to undertake by education, training or experience or for which the member would be suited as a result of retraining.

*[Regulation 5 amended in Gazette 14 May 1996 p. 2026-7.]*

**6. Partial permanent disablement**

A member shall be regarded as partially and permanently disabled if the member —

- (a) is 60 years of age or younger;
- (b) is not totally and permanently disabled; and
- (c) in the opinion of the Board, after consideration of material evidence satisfactory to it, is physically or mentally incapable of engaging in, or working for reward in, any occupation or work for the employer for which he or she is reasonably qualified by education, training or experience.

*[Regulation 6 inserted in Gazette 14 May 1996 p. 2027.]*

**7. Benchmark amount**

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

***benchmark amount*** means —

- (a) until 1 July 1999, \$31 452; and
- (b) on and after that date, the benchmark amount on the previous 30 June increased by —
  - (i) either —
    - (A) an amount equal to the increase (if any) in the index of Average Weekly Ordinary Time Earning for full-time adults published by the Australian Statistician for the year ending on the previous 31 March; or
    - (B) such lesser amount as is determined by the Board on the recommendation of the actuary;
  - and
  - (ii) any additional amount agreed between the Board and all employers.
- (2) The Board may, on the recommendation of the actuary, determine that 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 Board makes a determination under subregulation (2), the increase to be effected under subregulation (1)(a)(i) is to be equal to the increase (if any) in the index of Average Weekly Ordinary Time Earning for full-time adults published by the Australian Statistician for the quarter ending on the previous 31 September, 31 December, 31 March or 31 June respectively.

*[Regulation 7 inserted in Gazette 14 May 1996 p. 2027;  
amended in Gazette 8 Sep 1998 p. 4908-9.]*

**[8.** *Deleted in Gazette 14 May 1996 p. 2027.]*

**9. Dependants**

- (1) In this regulation —
- child*, in relation to a member, includes —
- (a) a step-child of the member;
  - (b) an adopted child of the member irrespective of the date of adoption;
  - (c) a child of the spouse or de facto partner of the member;
  - (d) a child recognized by the Board as an adopted child of the member;
  - (e) an illegitimate child of the member; and
  - (f) a child of the member born after the death of the member.
- (2) The dependants of a member are —
- (a) the spouse or de facto partner of the member;
  - (b) any child of the member; and
  - (c) any other person who, in the opinion of the Board, is, or was at the time of the death of the member, wholly or partially dependant on the member or has, or had at that time, a legal or moral right to look to the member for support or a reasonable expectation of receiving support from the member.

*[Regulation 9 amended in Gazette 30 Jun 2003 p. 2595;  
21 Jun 2005 p. 2677.]*

## **Part 3 — Membership of the Fund**

### **9A. Categories of membership**

The members of the Fund are divided into 4 categories as follows —

- (a) category A — people who became members under regulation 10 or 11 but not regulation 11(1)(a); and
- (b) category B — people who became members under regulation 11A; and
- (c) category C — people who became members under regulation 11(1)(a); and
- (d) category D — people who became members under regulation 11AA or 42(2)(a).

*[Regulation 9A inserted in Gazette 23 May 2003 p. 1824; amended in Gazette 11 Jul 2006 p. 2536.]*

### **10. Contributors under former Act**

A mine worker who paid contributions to the previous fund immediately before the commencement of the Act shall, by virtue of this regulation, become a category A member of the Fund on that commencement.

*[Regulation 10 amended in Gazette 14 May 1996 p. 2028.]*

### **11. Mine workers**

- (1) Where a person who is not already a member of the Fund becomes a mine worker that person shall, by virtue of this regulation, become —
  - (a) if the Board is of the opinion that the person is unlikely to remain in service as a mine worker for more than 6 months, a category C member; or
  - (b) otherwise, a category A member,when he or she becomes a mine worker.

- (2) If a category C member is still in service as a mine worker 6 months after becoming a category C member, he or she becomes a category A member from the day after the expiry of those 6 months.
- (3) However if, on the expiry of those 6 months, the Board is of the opinion that the member is unlikely to remain in service as a mine worker for more than a further 3 months, the Board may allow the person to remain a category C member for a further period of up to 3 months.
- (4) If, on the expiry of any such further period, the person is still in service as a mine worker, he or she becomes a category A member from the day after the expiry of that further period.
- (5) If the Board is of the opinion that the terms of a category C member's employment, appointment, election or contract have changed so that he or she is likely to remain in service as a mine worker for more than 6 months (or any longer period allowed under subregulation (3)), the person becomes a category A member from the day on which that change occurred.
- (6) A mine worker who is on active service as a member of the Defence Forces of the Commonwealth is deemed to continue to be in service as a mine worker during that period.

*[Regulation 11 inserted in Gazette 23 May 2003 p. 1824-5.]*

**11A. Officers of the Board**

- (1) An officer of the Board may apply to become a category B member at any time by giving written notice to the Board.
- (2) If the Board accepts an officer's application, the officer becomes a category B member on the officer's next salary day.

*[Regulation 11A inserted in Gazette 14 May 1996 p. 2028.]*

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**11AA. Partners**

- (1) A member who is a mine worker or an officer of the Board may apply for the member's partner to become a category D member by giving written notice to the Board.
- (2) If the Board accepts the application, the partner becomes a category D member when the application is accepted.

*[Regulation 11AA inserted in Gazette 11 Jul 2006 p. 2536; amended in Gazette 20 Feb 2007 p. 506.]*

**11B. Cessation of membership**

A member ceases to be a member if —

- (a) both —
  - (i) the member has ceased to be in service; and
  - (ii) all benefits which are or may be payable to or in respect of the member, have been paid or transferred from the Fund;
- or
- (b) the member receives a benefit under regulation 21C(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 Fund.

*[Regulation 11B inserted in Gazette 14 May 1996 p. 2028-9; amended in Gazette 11 Jul 2006 p. 2536.]*

**12. Notification by the Board to new members**

The Board shall give written notice to each person who becomes a member informing that person of his or her rights, and the rights of that person's dependants and legal personal representatives in respect of benefits from the Fund together with any other information which the SIS Act<sup>2</sup> requires the Board to give to new members.

*[Regulation 12 amended in Gazette 14 May 1996 p. 2029.]*



**13. Board's discretion**

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

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

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

*[Regulation 13 amended in Gazette 14 May 1996 p. 2029.]*

## **Part 4 — Contributions to the Fund**

### **14. Contributions by members**

- (1) Each category A member in service shall contribute to the Fund each year an amount equal to 3% of the benchmark amount.
  - (1a) A member shall pay the contributions payable under subregulation (1) in instalments as at each salary day.
  - (1b) A category A member may contribute to the Fund any further amount agreed between the member and the Board.
  - (1c) A category B, C or D member may contribute to the Fund any amount agreed between the member and the Board.
  - (1d) A member whose partner is also a member may contribute to the Fund for the partner any amount agreed between the member and the Board.
- (2) The contributions payable by a member under subregulation (1) shall be —
  - (a) deducted from the member's salary by the employer when each payment of salary is made; and
  - (b) paid to the Fund on his behalf within 3 working days of deduction.
- [(3) deleted]*
- (4) A person who is deemed to be a mine worker under regulation 11(6) is liable to make contributions to the Fund but no employer contributions are payable in respect of such a person.

*[Regulation 14 amended in Gazette 9 Aug 1991 p. 4180-1; 14 May 1996 p. 2029; 8 Sep 1998 p. 4909; 23 May 2003 p. 1825; 11 Jul 2006 p. 2536-7.]*

**15. Contributions by employers**

- (1) Subject to subregulation (6), each employer shall contribute to the Fund in respect of each category A member in service with that employer the amount or at the rate recommended by the actuary under subregulation (5), or such other amount or rate as is agreed between the Board, the actuary and the employers.
- (2) An employer shall pay the contributions payable under subregulation (1) in instalments as at each salary day.
- (3) Each employer shall contribute to the Fund in respect of each category B member and each category C member in service with that employer the amount (if any) agreed between the employer and the member.
- (4) An employer may contribute such further amount in respect of a member as is agreed between the employer and the member.
- (5) In each report on an actuarial review conducted under section 23(1) of the Act, the actuary shall advise the Board of the amounts or rates of contributions required from each employer in order to ensure the stability of the Fund and secure the rights of members.
- (6) The amount or rate of contributions to be made by an employer under subregulation (1) shall not be —
  - (a) less than 7%; nor
  - (b) more than 10%,of the benchmark amount multiplied by the number of category A members in service with that employer.
- (7) If the rate of contributions recommended by the actuary under subregulation (5) is greater than the maximum rate permitted by subregulation (6) —
  - (a) the Board shall obtain from the actuary a report as to the extent (if any) to which benefits should be reduced having regard to the level of employer contributions and the capacity of the Fund to pay benefits; and

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- (b) these regulations may be amended to reduce benefits in accordance with that report.
- (8) Regulation 53(1), (2) and (3) does not apply to an amendment made under subregulation (7)(b).

*[Regulation 15 inserted in Gazette 14 May 1996 p. 2029-30; amended in Gazette 8 Sep 1998 p. 4909; 23 May 2003 p. 1825.]*

**16. Contribution splitting**

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

*[Regulation 16 inserted in Gazette 11 Jul 2006 p. 2537.]*

**16A. Acceptance of Commonwealth payments**

The Board may accept from the Commonwealth Commissioner of Taxation payment of any of the following in respect of a member —

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

- (b) an amount equal to the balance of the member's account in the Superannuation Holding Accounts Reserve under the *Small Superannuation Accounts Act 1995* of the Commonwealth;
- (c) a Government co-contribution under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* of the Commonwealth.

*[Regulation 16A inserted in Gazette 11 Jul 2006 p. 2537.]*

## **Part 5 — Benefits**

### **Division 1 — Entitlement to benefits**

#### **17. Retirement benefits — category A**

- (1) A category A member who leaves service with an 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 an 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;
  - (b) become entitled to a benefit under subregulation (1) on that day; and
  - (c) retained the whole of that benefit in the Fund under regulation 22 (without making an election under regulation 22AA(1)) until the day the member actually left service with that employer.

*[Regulation 17 inserted in Gazette 14 May 1996 p. 2030;  
amended in Gazette 30 Apr 2002 p. 2186.]*

#### **18. Death benefits — category A**

- (1) If a category A member who is under 60 years of age dies in service, the Board shall 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.
- (1a) If a category A member who is between 60 and 65 years of age (inclusive) dies in service, the Board shall 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 17(1).
- (2) If a category A member who is over 65 years of age dies in service, the Board shall 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;
  - (b) become entitled to a benefit under regulation 17(1) on that day; and
  - (c) retained the whole of that benefit in the Fund under regulation 22 (without making an election under regulation 22AA(1)) until the date of death.

*[Regulation 18 inserted in Gazette 14 May 1996 p. 2030-1; amended in Gazette 8 Sep 1998 p. 4909-10; 30 Apr 2002 p. 2186.]*

**19. Total and permanent disablement benefit — category A**

- (1) A category A member who is under 60 years of age and who leaves service with an employer because of total and permanent disablement 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.

(1a) A category A member who is over 60 years of age and who leaves service with an employer because of total and permanent disablement 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 17(1) or (2) (as applicable).

(2) In this regulation and regulation 20 —  
***date of disablement*** means the last day in respect of which the member received remuneration from that employer prior to becoming entitled to the benefit.

*[Regulation 19 inserted in Gazette 14 May 1996 p. 2031;  
amended in Gazette 8 Sep 1998 p. 4910.]*

**20. Partial and permanent disablement benefit — category A**

A category A member who leaves service with an employer because of partial and permanent disablement 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.

*[Regulation 20 inserted in Gazette 14 May 1996 p. 2031.]*

**21. Leaving service benefit — category A**

(1) Subject to subsection (2), a category A member who leaves service with an employer in circumstances other than those described in regulations 17 to 20 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 Fund — 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 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 Fund under regulation 22 (without making an election under regulation 22AA(1)) until the day the member actually left service with that employer.

*[Regulation 21 inserted in Gazette 14 May 1996 p. 2031-2; amended in Gazette 30 Apr 2002 p. 2186-7; 23 May 2003 p. 1825.]*

*[21A. Deleted in Gazette 30 Apr 2002 p. 2187.]*

**21B. Benefits for category B or category C members**

- (1) A category B member or category C member who leaves service with an 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 the Board is to pay a benefit equal to the balance in the member's accumulation account.

*[Regulation 21B inserted in Gazette 14 May 1996 p. 2032; amended in Gazette 23 May 2003 p. 1825.]*

**21C. Benefits while in service**

- (1) If a member —
- (a) is in service; and
  - (b) reaches the age at which the SIS Act <sup>2</sup> requires the Board to pay the member's benefit,

the Board 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 member who —
- (a) is in service;
  - (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 member who —
- (a) is in service;
  - (b) is under 65 years of age; and
  - (c) requests payment,

is entitled to a benefit of up to the amount which the Board is permitted by the SIS Act <sup>2</sup> 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 accordingly.

*[Regulation 21C inserted in Gazette 14 May 1996 p. 2032-3.]*

**21D. Benefits for category D members**

- (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 Act<sup>2</sup>, other than death; or
  - (b) gives notice to the Board that he or she wishes to withdraw from the Fund.
- (2) If a category D member dies while still a member, the Board 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 Board is permitted by the SIS Act<sup>2</sup> to pay to the member.

*[Regulation 21D inserted in Gazette 11 Jul 2006 p. 2538.]*

**22. Retaining benefits**

- (1) A member who is entitled to payment of a benefit may, prior to the benefit being paid, request the Board to retain all or part of it in the Fund.
- (2) If a member requests the retention of all or part of the accumulation component of a benefit, the Board 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 Board 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 21(1)(b),

(as the case may be) the Board 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.

*[Regulation 22 inserted in Gazette 30 Apr 2002 p. 2187; amended in Gazette 23 May 2003 p. 1825.]*

**22AA. 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 22(3) may elect to convert that component to an accumulation benefit.
- (2) If a member makes an election under subregulation (1) the Board is to credit to the member's accumulation account an amount equal to the multiple of —
- (a) the member's multiple;
  - (b) the benchmark amount as at the date of the conversion; and
  - (c) if the member —
    - (i) became entitled to the benefit under regulation 21(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.

*[Regulation 22AA inserted in Gazette 30 Apr 2002 p. 2187-8.]*

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**22AB. Payment of retained benefits**

- (1) The Board must pay all or part of a retained benefit to a member, or transfer it under regulation 44 —
  - (a) subject to regulation 22A, when requested to do so by the member; or
  - (b) when required under the SIS Act <sup>2</sup> to do so.
- (1a) However a member who has retained a defined benefit component of a benefit under regulation 22(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 22AA.
- (2) 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;
    - (ii) the benchmark amount as at the date of payment or transfer; and
    - (iii) if the member —
      - (A) became entitled to the benefit under regulation 21(1)(a); and
      - (B) is under 55 years of age on the day on which the benefit is paid or transferred,
- (2a) 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.

- (3) If a member who has retained a benefit dies before the benefit is paid or transferred, the Board is to pay, in accordance with regulation 24 —
- (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.

*[Regulation 22AB inserted in Gazette 30 Apr 2002 p. 2188-9; amended in Gazette 23 May 2003 p. 1825-6.]*

**22AC. Account based pension**

- (1) The Board may agree with a member who —
- (a) has retained a benefit under regulation 22(2) or (4); or
  - (b) having retained a benefit under regulation 22(3), has converted it to an accumulation benefit under regulation 22AA,

to pay all or part of that benefit to the member as an account based pension on such terms and conditions as are agreed between the member and the Board.

- (2) The terms and conditions on which it is agreed that an account based pension is to be paid must be consistent with the SIS Act<sup>2</sup>.
- (3) If the Board agrees to pay all or part of a member's retained benefit as an account based pension, the Board is to transfer the amount agreed to be paid as an account based pension from the member's accumulation account to an account kept by the Board for the member from which the pension will be paid.
- (4) If a member to whom an account based pension is being paid dies while there is still an amount in the account kept for the member under subregulation (3), the Board is to pay that

amount in accordance with regulation 24 or as otherwise agreed under subregulation (1).

(5) In this regulation —

**account based pension** means a benefit that is taken to be a pension for the purposes of the SIS Act <sup>2</sup> under regulation 1.06(4) or (8) of the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth.

*[Regulation 22AC inserted in Gazette 23 May 2003 p. 1826-7; amended in Gazette 21 Jun 2005 p. 2677-8.]*

**22A. Preservation**

If required to do so by the SIS Act <sup>2</sup> the Board must preserve all or part of any benefit otherwise payable from the Fund in a manner consistent with the SIS Act <sup>2</sup>.

*[Regulation 22A inserted in Gazette 14 May 1996 p. 2033.]*

**22B. Reduction if surcharge paid**

If any amount paid by the Board under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth in relation to a member has not been deducted from the member's accumulation account, the Board may reduce a benefit payable to or in respect of the member by that amount plus interest at a rate determined by the Board on the advice of the Actuary.

*[Regulation 22B inserted in Gazette 8 Sep 1998 p. 4910.]*

**Division 2 — Payment of benefits**

**23. Term used in this Division**

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

**24. Payment of benefits in respect of deceased members**

- (1) Benefits payable in respect of a member upon or after the member's death shall be paid from the Fund by the Board —
  - (a) to or for the benefit of the dependants of the member; or
  - (b) to the legal personal representative of the member.
- (2) Any payment of a benefit under subregulation (1) may at the discretion of the Board be made or paid —
  - (a) to either the dependants of the member or his legal personal representative or both;
  - (b) to any one or more of the dependants of the member to the exclusion of the others of them; and
  - (c) in such shares or proportions as the Board thinks fit and without the Board being under any obligation to ensure equality between the persons to whom payment is made.
- (3) Before exercising its discretion under subregulation (2) the Board shall consider —
  - (a) the will (if available) of the member;
  - (b) any nomination that the member may have made under regulation 25; and
  - (c) such other matters as the Board considers relevant.
- (4) Where under this regulation any sum is payable to or for the benefit of a minor —
  - (a) the Board may pay that sum (without being responsible to see to its application) —
    - (i) to the parent or guardian of the minor or to any other person who appears to have the custody or control of the minor or with whom the minor resides; or
    - (ii) to a trustee corporation to be held in trust under such terms and conditions as determined by the Board for the benefit of the minor until the minor ceases to be a minor;

and



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

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

**25. Nomination of dependants to receive benefits**

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

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

**26. Time and mode of payment of benefits**

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

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

(2) Where the payment of any amount is postponed under subregulation (1) interest at such rates as are determined from time to time by the Board shall be added to the amount so postponed from the date on which the benefit entitlement arose

to a date, not more than 28 days before payment, determined by the Board.

- (3) Where, after a benefit has been paid to a member under a regulation, it is established that the member was eligible for a benefit under another regulation, the Board may pay to or in respect of that member the benefit payable under the latter regulation but any amount previously paid to the member shall be deducted from the benefit payable under the latter regulation.
- (4) Where a person who is or may be entitled to any benefit is, in the opinion of the Board, unable by reason of mental incapacity to manage his or her own affairs, the Board may pay that benefit —
  - (a) to a person appointed under the *Mental Health Act 1996* to be the manager of the estate of the first-mentioned person, or, if there is no such manager, to any other person, for or on behalf of the first-mentioned person; or
  - (b) to the dependants of the first-mentioned person.
- (5) A payment under subregulation (4) shall, without any thing more, be a sufficient discharge to the Board.

*[Regulation 26 amended in Gazette 31 Dec 1992 p. 6368; 8 Sep 1998 p. 4910.]*

**27. Proofs**

- (1) A person appearing, purporting or claiming to be qualified for or entitled to any benefit shall on request produce to the Board such evidence and do and execute such acts and documents as the Board may reasonably require.
- (2) Whenever it becomes necessary for the Board to decide questions of fact the Board may act upon such proofs and presumptions, or either, as it considers satisfactory irrespective of whether they are strictly legal proofs or presumptions.

*[Division 3 deleted in Gazette 31 Dec 1992 p. 6368.]*

## Part 5A — Accumulation accounts

[Heading inserted in Gazette 14 May 1996 p. 2033.]

### 27A. Accumulation accounts

- (1) The Board shall keep an accumulation account for each member.
- (2) The Board shall credit to a member's accumulation account —
  - (a) all contributions made to the Fund by or for the member; and
  - (b) the amount of any splittable contributions transferred to the member under regulation 16; and
  - (ba) payments accepted from the Commissioner of Taxation under regulation 16A in respect of the member; and
  - (c) amounts transferred from other funds or converted to accumulation benefits under regulation 43; and
  - (d) the proceeds of any life insurance policy effected for the member the premiums for which were debited to the account; and
  - (e) any amounts required under regulation 22, 22AA or 42(2)(b) to be credited to the account; and
  - (f) earnings distributed to that account under regulation 27B.
- (3) The Board shall debit to a member's accumulation account —
  - (a) premiums for life insurance effected in respect of the member; and
  - (b) tax payable by the Board in respect of employer contributions credited to the account; and
  - (ba) any amount payable by the Board under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth in relation to the member; and
  - (bb) administrative costs attributable to the member; and

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- (bc) the amount of any splittable contributions transferred by the member under regulation 16; and
- (bd) any amounts to be debited to the account under regulation 42(3); and
- (c) losses distributed to that account under regulation 27B; and
- (d) the accumulation component of any benefit or amount transferred from the Fund in respect of the member.

*[Regulation 27A inserted in Gazette 14 May 1996 p. 2033-4; amended in Gazette 8 Sep 1998 p. 4911; 30 Apr 2002 p. 2189; 23 May 2003 p. 1827; 11 Jul 2006 p. 2538-9.]*

**27B. Earnings and losses**

- (1) At the end of each financial year (or at such other times as the Board determines) the Board shall declare a Fund earning rate for the period since the last declaration was made.
- (2) The Board shall distribute the earnings or losses of the Fund for the period covered by the declaration to the accumulation accounts that exist on the last day of that period.
- (3) The Board may, from time to time, declare an interim Fund earning rate.
- (4) When a benefit is to be paid or an amount is to be transferred from an accumulation account, the Board is to distribute earnings or losses of the Fund for the period since the last date as at which a distribution was made to that account at the interim Fund earning rate.
- (5) The Board shall decide whether Fund earning rates are to be applied to accumulation accounts on daily balances, on average balance or on some other basis.
- (6) In determining a Fund earning rate the Board shall take into account —
  - (a) the earnings or losses of the Fund;

- (b) the costs and expenses of the Fund, including any tax that is or may be incurred by the Board;
  - (c) the level of the Fund's reserves;
  - (d) the appropriateness of averaging earnings, losses and expenses over several years; and
  - (e) any other matters which the SIS Act <sup>2</sup> requires the Board to consider or which the Board considers relevant.
- (7) The Fund earning rate or interim Fund earning rate for any period may be positive or negative.

*[Regulation 27B inserted in Gazette 14 May 1996 p. 2034.]*

## **Part 6 — Employers**

### **33. Admission of other employers**

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

### **34. Release of employers**

- (1) The Board may release a body that is an employer under the Act and the members in service with it from participation in the Fund and —
  - (a) that body shall cease to be an employer; and
  - (b) those members shall cease to be members,on the date on which Schedule 1 to the Act is amended to delete that employer and upon terms and conditions determined by the Board.
- (2) Where a body and the members in service with it are released from participation in the Fund under subregulation (1) the interest in the Fund of that body and those members shall be —
  - (a) ascertained by the Board on the advice of the actuary; and
  - (b) dealt with in such manner as the Board and that body consider equitable taking into account the membership of and the amounts contributed by and in respect of each

of those members and any other circumstances which the Board and that body consider relevant,

but no benefit shall be paid to any member who is in service unless that payment is permitted by the SIS Act<sup>2</sup>.

*[Regulation 34 amended in Gazette 14 May 1996 p. 2035.]*

**35. Dissolution of employer**

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

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

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

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

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

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

- (a) in such form and provided by such arrangements as are determined by the Board; and
- (b) paid to the members referred to in subregulation (1) in full discharge of all claims by or in respect of them in

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relation to any rights or benefits under these regulations or in connection with or arising out of the Fund.

- (4) Where a member referred to in subregulation (1) enters service with another 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.

*[Regulation 35 amended in Gazette 14 May 1996 p. 2035.]*



## Part 7 — Pensions

### 36. Rate of pensions and additional payments

- (1) Subject to subregulation (2) —
  - (a) pensions and additional payments payable under clause 6 of Schedule 3 to the Act;
  - (b) additional amounts which become payable under regulation 37;
  - (c) pensions which become payable under this Part,shall be paid at the rate at which they were paid or payable immediately before the coming into operation of the Act.
- (2) The rate of pension or additional payment referred to in subregulation (1) shall be altered at the same times and in the same proportions as the benchmark amount referred to in regulation 7 is altered.

*[Regulation 36 amended in Gazette 14 May 1996 p. 2035;  
8 Sep 1998 p. 4911.]*

### 37. Additional payments in respect of dependants

- (1) A person who receives a pension under clause 6 of Schedule 3 to the Act shall also be eligible for an addition to such pension consisting of such amounts as would have been payable to that person if section 9 of the former Act had remained in operation.
- (2) The Board shall have the same power to refuse to award an addition to a pension, to cancel or suspend so much of any pension as consists of such addition, and to award or continue an addition as the tribunal had under section 9 of the former Act.

### 38. Pension payable to dependants

Upon the death of a person who has received a pension under clause 6 of Schedule 3 to the Act a person who would have been eligible for a pension under section 10 of the former Act as a

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dependant of that person shall be eligible for a pension as if that section were still in force and for that purpose the Board shall have all of the functions of the former tribunal under that section.

**39. Suspension of pension**

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

## **Part 8 — Elections and appointments**

### **40. Election of members**

- (1) Every election of members of the Board shall be conducted using an optional preferential system of voting and a secret ballot.
- (2) The Combined Coal Mining Unions Council shall appoint a returning officer who shall be responsible for the conduct of elections in accordance with this regulation.
- (3) Where there is only one candidate for election to an office on the Board the returning officer shall declare the candidate to be elected to that office.

### **41. Appointment of members**

- (1) The vacancy that occurs during a year in one of the offices of the appointed members of the Board and the vacancy that occurs during that year in the office of the appointed alternate member of the Board shall both be filled by appointment at the same time.
- (2) If there is any dispute amongst the employers as to which persons should be appointed to the Board, the chairman shall determine the appointments by lot.

### **41A. Vacancies**

A vacancy on the Board must be filled within the time specified in the SIS Act <sup>2</sup>.

*[Regulation 41A inserted in Gazette 14 May 1996 p. 2036.]*

**Part 9 — Miscellaneous**

**42.        Splitting of entitlements on dissolution of marriage**

- (1) Terms used in this regulation have the same meanings as they have in Part 7A of the SIS Regulations.
- (2) If, under Part 7A of the SIS Regulations, the Board creates a new interest for a non-member spouse —
  - (a) the non-member spouse becomes a category D member when that interest is created; and
  - (b) the Board is to credit to the non-member spouse's accumulation account an amount equal to the value of that interest determined in accordance with the SIS Regulations.
- (2a) The Board cannot, under Part 7A of the SIS Regulations, create a new interest in the Fund for a non-member spouse unless that person is or has been the spouse or de facto partner of a mine worker or an officer of the Board.
- (3) If the Board is required under Part 7A of the SIS Regulations to reduce the value of the benefits of a member spouse the Board may —
  - (a) in relation to a category A member do either or both of the following —
    - (i) reduce the member's accrued benefit;
    - (ii) debit an amount to the member's accumulation account;
  - or
  - (b) in relation to a category B, C or D member, debit an amount to the member's accumulation account,in a manner and to an extent permitted by the SIS Regulations.
- (4) Despite anything else in these regulations, the Board may pay or transfer the superannuation interest in the Fund of a

non-member spouse if it is required or permitted to do so under Part 7A of the SIS Regulations.

*[Regulation 42 inserted in Gazette 11 Jul 2006 p. 2539; amended in Gazette 20 Feb 2007 p. 507.]*

**43. Transfers from other funds**

- (1) The Board may make and carry into effect arrangements under which an agreed sum or agreed assets are to be paid by or transferred from another superannuation fund to the Fund for the benefit of a member of the Fund.
- (1a) The arrangements may be made with the member or the trustee of or other persons controlling the other fund or both.
- (2) A member in respect of whom arrangements have been made for the transfer to the Fund of an agreed sum or agreed assets under subregulation (1) shall, as a member, be granted such rights to benefits additional to those otherwise provided under these regulations as are determined by the Board on the advice of the actuary.
- (3) If a member has been granted additional benefits under subregulation (2) that are calculated on a defined benefit basis, they may be converted to benefits calculated on an accumulation basis on such terms as the Board and member agree.

*[Regulation 43 amended in Gazette 14 May 1996 p. 2036; 11 Jul 2006 p. 2539-40.]*

**44. Transfers to other funds**

- (1) The Board may, with the written consent of a member and subject to such conditions as the Board thinks fit, pay or transfer to any other superannuation fund, or any approved deposit fund or deferred annuity fund, or any like fund, any benefit to which a member is entitled under these regulations.

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- (1a) The Board must pay to a member or transfer to another superannuation fund or other person or fund, any benefit which the SIS Act <sup>2</sup> requires to be so paid or transferred.
- (2) If —
- (a) an employer enters into arrangements to amalgamate with, or transfer any part of its engagements to, a person or body; and
  - (b) under those arrangements a member ceases to be in service with that employer but enters into service with that other person or body,

the Board may with the written consent of that member and subject to such conditions as the Board thinks fit (and in lieu of paying the benefit which would otherwise be payable under these regulations) pay or transfer to a superannuation fund established or operated for the benefit of any people in service with that other person or body such amount as in the opinion of the Board on the advice of the actuary represents the interest of the member in the Fund to be applied by the trustees of that other superannuation fund for the benefit of that member.

- (3) If the benefit payable to or in respect of a member is paid or transferred under subregulation (1) or if the interest of a member in the Fund is paid or transferred under subregulation (2) —
- (a) the receipt of the trustees of or other persons controlling the fund to which the benefit or the interest of the member (as the case may be) is paid or transferred shall be a sufficient discharge to the Board; and
  - (b) neither the Board nor the employer shall be responsible for the payment, application or disposal by the trustees of or other persons controlling that fund of the benefit or the interest so paid or transferred.

*[Regulation 44 amended in Gazette 14 May 1996 p. 2036;  
11 Jul 2006 p. 2540.]*

**45. Temporary cessation of employment and leave without pay**

- (1) If a member leaves service in circumstances where it is reasonable to expect that the member will return to service within a reasonable time, the Board may treat the member as continuing to be in service on such terms and conditions as are agreed between the Board, the member and the employer.
- (2) If a member is on leave without pay the Board, the employer and the member may enter into an agreement as to the terms and conditions on which the member shall continue to be a member during the absence of that member.
- (3) The terms and conditions agreed upon under subregulation (1) and (2) may include terms or conditions inconsistent with the other provisions of these regulations.
- (4) Unless otherwise agreed under subregulation (1) or (2) —
  - (a) no contributions are payable by or in respect of the member during the relevant period;
  - (b) the relevant period is not to be counted in determining the member's membership; and
  - (c) if a benefit becomes payable under regulation 19 or 20 during the relevant period, the member is deemed to have received salary on the employer's last salary day prior to the benefit becoming payable.
- (5) In subregulation (4) —

***relevant period*** means any period during which a member has —

  - (a) continued in service under subregulation (1); or
  - (b) been absent on leave without pay.

*[Regulation 45 amended in Gazette 14 May 1996 p. 2037.]*

**46. Application of regulations to members employed part-time**

- (1) If at any time a category A member (in this regulation called a ***prescribed member***) is or has been classified by the employer as

being part-time, these regulations shall apply to that prescribed member with the modifications and variations set out in this regulation.

- (2) The employer shall in respect of any period during which a prescribed member is classified as being part-time, determine the percentage (in this regulation called *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 shall be 100%.
- (4) Whenever there is a change in the service percentage of a prescribed member the employer shall advise the Board and the member of that change.
- [(5) *deleted*]
- (6) During any period of membership during which the service percentage of a prescribed member is less than 100% the contributions that would otherwise have been payable by the member under regulation 14 or by the employer under regulation 15 shall be reduced in the ratio that the service percentage of the member bears to 100%.
- (7) Where any lump sum retirement benefit calculated under regulation 17 is payable under these regulations to or in respect of a prescribed member in respect of any period of membership during which the service percentage of the member was less than 100%, that benefit shall be reduced in the ratio that the service percentage of the member during that period bears to 100%.
- (8) Where any death benefit calculated under regulation 18 is payable under these regulations to or in respect of a prescribed member and, immediately before the benefit became payable, the member was classified by the employer as being employed part-time, the amount by which the amount referred to in



regulation 18(1)(b), as assessed in relation to that member, exceeds the amount equal to the accrued benefit of that member shall be reduced in the ratio that the service percentage of the member immediately before the benefit became payable bears to 100%.

*[Regulation 46 amended in Gazette 14 May 1996 p. 2037; 23 May 2003 p. 1827.]*

**47. Requirements for insurance**

- (1) For the purposes of effecting, increasing or otherwise varying any policy of insurance or assurance as provided in section 13 of the Act, the Board may from time to time require a member —
  - (a) to be medically examined;
  - (b) to submit other evidence of health;
  - (c) to provide proof of age to the satisfaction of the insurer; and
  - (d) to take such other steps as may be required for any of those purposes.
- (2) If a category A member refuses to undergo the medical examination or to undertake any other step that may reasonably be required by the Board for the purposes of effecting, increasing or otherwise varying any policy of insurance or assurance or if the member does or omits to do anything that would or may prejudice the policy or result in any of the policy proceeds not becoming payable, the Board may adjust the defined benefit component of benefits to be payable from the Fund to or in respect of that member in such manner as the Board considers appropriate.
- (3) The Board shall not effect a group life insurance or assurance policy that contains provision for payment of benefits in respect of total and permanent disablement unless in the opinion of the Board the definition of total and permanent disablement contained in that policy is such that a member covered by that

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policy would be considered by the insurer with which the policy is effected to be totally and permanently disabled if in the opinion of the insurer, after considering any medical or other evidence that it considers to be relevant, that the member is, and until attaining 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.

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

*[Regulation 47 amended in Gazette 14 May 1996 p. 2037-8.]*

[48.    Deleted in Gazette 31 Dec 1992 p. 6369.]

[49.    Deleted in Gazette 14 May 1996 p. 2038.]

**50.    Notices**

- (1) A notice may be given by the Board to any member either personally or by sending it by post to the member at the last known address or to the normal place of work of that member.
- (2) Any notice sent by post under subregulation (1) shall be deemed to have been served on the day following the day on which the envelope or wrapper containing that notice is posted and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and put in the post office.

*[Regulation 50 amended in Gazette 14 May 1996 p. 2038.]*

**51.    General meetings of members**

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

**52. Information**

- (1) The Board must give to each member, each employer and any other person the information which the SIS Act<sup>2</sup> requires the Board to give to that person at the time it is required by that Act to be given.
- (2) The annual report must be given to members as soon as practicable after the Board submits the annual report under section 66 of the *Financial Administration and Audit Act 1985* and not later than 14 days before the ensuing annual general meeting of members.

*[Regulation 52 inserted in Gazette 14 May 1996 p. 2038.]*

**53. Amendments to these regulations**

- (1) A regulation that amends these regulations in such a way as will increase the contributions payable by employers to the Fund to an amount in excess of 10% of the benchmark amount shall not be made unless the employers have given their consent to the amendment.
- (2) A regulation that amends these regulations in such a way as will increase a benefit payable under these regulations shall not be made under the Act unless —
  - (a) the actuary has certified that the amendment will not or is not likely to result in an increase in the contributions payable by the employers to the Fund; or
  - (b) the employers have given their consent to the amendment.
- (3) Without limiting the operation of subregulations (1) and (2), and subject to subregulation (4) and regulation 15(9), a regulation that amends these regulations shall not be made under the Act unless —
  - (a) the actuary has certified that the total value of the rights of members and their dependants accrued at the time the

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amendment takes effect will not be reduced by the amendment; or

- (b) at least two-thirds in number of the members for the time being have given their written consent to the amendment.
- (4) Subregulation (3) does not apply to the making of a regulation that amends these regulations in order to ensure that these regulations conform with, or obtain the benefit of, a law of the State or Commonwealth governing, regulating or affecting the operation or maintenance of superannuation, pension or like funds.
- (5) No amendment may reduce a benefit contrary to the SIS Act <sup>2</sup>.
- (6) No amendment may enable an individual to be appointed to replace the Board as trustee of the Fund unless, after the amendment, the Fund will comply with the SIS Act <sup>2</sup>.

*[Regulation 53 amended in Gazette 31 Dec 1992 p. 6369; 14 May 1996 p. 2038; 8 Sep 1998 p. 4911.]*

*[Schedule 1 deleted in Gazette 30 Apr 2002 p. 2189.]*

*[Schedules 2, 2A, 2B and 2C deleted in Gazette 14 May 1996 p. 2039.]*

## **Schedule 3**

[Reg. 51]

### **General meetings of members of the Fund**

**1. Notice of meeting**

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

**2. Quorum**

- (1) A quorum is present at a general meeting if not less than 5% of the members are present.
- (2) If a quorum is not present within half an hour after the time appointed for a general meeting the meeting shall take place but the Board is not obliged to consider any resolution of that meeting until the resolution is ratified at a general meeting at which a quorum is present.

**3. Chairman**

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

**4. Board members may attend**

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

**5. Annual general meeting**

- (1) An annual general meeting shall be held not later than 90 days after the annual report of the Board is submitted under section 66 of the *Financial Administration and Audit Act 1985*.
- (2) An annual general meeting —
  - (a) shall consider the annual report of the Board submitted under section 66 of the *Financial Administration and Audit Act 1985* in respect of the preceding financial year;

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- (b) shall consider any business of which notice has been given in the notice of meeting; and
- (c) may consider any other business that may be relevant to the operation of the Fund.

*[Clause 5 amended in Gazette 31 Dec 1992 p. 6369.]*

**6. Special general meeting**

A special general meeting —

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

**7. Mode of voting on motions**

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

*[Clause 7 amended in Gazette 8 Sep 1998 p. 4911.]*

**8. Voting rights**

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

**9. Minutes**

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

**10. Procedure**

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

**Notes**

<sup>1</sup> This reprint is a compilation as at 3 August 2007 of the *Coal Industry Superannuation Regulations 1990* 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**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Coal Industry Superannuation Regulations 1990</i>	28 Jun 1990 p. 3109-36	1 Jul 1990 (see r. 2 and <i>Gazette</i> 22 Jun 1990 p. 3027)
<i>Coal Industry Superannuation Amendment Regulations 1991</i>	9 Aug 1991 p. 4180-1	9 Aug 1991
<i>Coal Industry Superannuation Amendment Regulations 1992</i>	31 Dec 1992 p. 6368-9	1 Jan 1993 (see r. 2)
<i>Coal Industry Superannuation Amendment Regulations 1993</i>	1 Oct 1993 p. 5347-50	1 Oct 1993
<i>Coal Industry Superannuation Amendment Regulations 1996</i> <sup>3</sup>	14 May 1996 p. 2024-40	15 May 1996 (see r. 2 and <i>Gazette</i> 14 May 1996 p. 2019)
<b>Reprint of the <i>Coal Industry Superannuation Regulations 1990</i> as at 30 May 1996</b> (includes amendments listed above)		
<i>Coal Industry Superannuation Amendment Regulations 1998</i>	8 Sep 1998 p. 4908-11	8 Sep 1998
<i>Coal Industry Superannuation Amendment Regulations 2002</i> <sup>4</sup>	30 Apr 2002 p. 2185-9	30 Apr 2002
<b>Reprint of the <i>Coal Industry Superannuation Regulations 1990</i> as at 5 Jul 2002</b> (includes amendments listed above)		
<i>Coal Industry Superannuation Amendment Regulations 2003</i>	23 May 2003 p. 1823-7	23 May 2003
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 5</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Coal Industry Superannuation Amendment Regulations 2005</i>	21 Jun 2005 p. 2677-8	21 Jun 2005
<i>Coal Industry Superannuation Amendment Regulations 2006</i>	11 Jul 2006 p. 2535-40	11 Jul 2006
<i>Coal Industry Superannuation Amendment Regulations 2007</i>	20 Feb 2007 p. 506-7	20 Feb 2007
<b>Reprint 3: The <i>Coal Industry Superannuation Regulations 1990</i> as at 3 Aug 2007</b> (includes amendments listed above)		



<sup>2</sup> The *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

<sup>3</sup> The *Coal Industry Superannuation Amendment Regulations 1996* r. 34 reads as follows:

“

**34. Transitional**

The benefit of a member who became entitled to the benefit from the Fund before these regulations came into operation is to be calculated and paid to the member in accordance with the principal regulations as if these regulations had not come into operation.

”.

<sup>4</sup> The *Coal Industry Superannuation Amendment Regulations 2002* r. 11 reads as follows:

“

**11. Transitional — currently retained benefits**

If, when these regulations come into operation, the multiple recorded by the Board under regulation 22(3) (as in force immediately before these regulations come into operation) in relation to a member’s retained benefit is less than the multiple that would have been recorded under regulation 22(3) if these regulations had come into operation before the member became entitled to the benefit (the “**new multiple**”), then the member’s multiple is taken to be the new multiple.

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