



New South Wales

Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* (*the Act*) so as to permit the implementation of a renegotiated agreement relating to a superannuation scheme covering coal and oil shale mine workers, former workers and their dependants.

The Amalgamated Fund, a superannuation fund that relates to the superannuation scheme concerned, is governed by the Act and the COALSUPER Trust Deed.

The COALSUPER Trust Deed includes provisions for the operation, management and investment of the Amalgamated Fund. It also prescribes the functions of the Corporate Trustee in relation to that Fund.

Explanatory note

The Amalgamated Fund consists of an accumulation benefit fund (*Part 2 of the Fund*) and a defined benefit fund (*Part 3 of the Fund*). Part 3 of the Fund was closed to new members in January 1993.

The provisions of the Act and the COALSUPER Trust Deed that are currently in force reflect an agreement (the *Restructuring Agreement*) made in 1992 between representatives of coal mine owners and representatives of coal mine employees.

This Bill amends the Act so as to permit the implementation of a renegotiated agreement (the *1999 Superannuation Agreement*) relating to the Amalgamated Fund. That Agreement was made between the same parties (or their successors) as the Restructuring Agreement.

The 1999 Superannuation Agreement provides, among other things, for the following:

- (a) an option for certain mine workers to elect to convert their entitlement to a defined benefit in Part 3 of the Fund to an accumulation benefit in Part 2 of the Fund,
- (b) a reduction in the amount that mine owners are currently required to contribute to Part 3 of the Fund to reduce the unfunded liability of that Part (because that unfunded liability has been significantly reduced by contributions to date),
- (c) increases in certain mine workers' pensions (*Column 5 pensions*), to be funded by employer contributions to Part 3 of the Fund,
- (d) the future indexation of those pensions in accordance with the Consumer Price Index, to be funded by part of the salary sacrifice contributions of certain mine workers,
- (e) changes to other rates at which payments are currently made to the Fund in respect of mine workers who are not members of Part 3 of the Fund (including those who exercise the option referred to in paragraph (a)),
- (f) changes to the accounts and reserves into which payments to the Amalgamated Fund are made (including, in the case of mine workers who direct that their salary sacrifice contributions be made to a superannuation fund other than Part 2 of the Fund, a new requirement that payments be made to that other fund),
- (g) provision for the distribution of any surplus that might arise in Part 3 of the Fund,
- (h) variation of the Restructuring Agreement.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2000.

Clause 3 is a formal provision giving effect to the amendments to the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* set out in Schedule 1.

Schedule 1 Amendments

Definitions

Schedule 1 [1], [2] and [3] amend section 2 (Definitions) of the Act. Schedule 1 [1] inserts definitions of certain terms for the purposes of the proposed new provisions of the Act. Schedule 1 [2] omits a definition that is no longer required and Schedule 1 [3] amends the definition of *Restructuring Agreement* in consequence of the 1999 Superannuation Agreement.

COALSUPER Trust Deed

Schedule 1 [4] inserts proposed subsection (4A) in section 15C (Corporate Trustee to maintain trust deed and governing rules) of the Act. The proposed subsection requires the COALSUPER Trust Deed to empower the Corporate Trustee:

- (a) to determine the priority of claims on the Amalgamated Fund on the winding-up of that Fund or on the occurrence of any event that, in the opinion of the Corporate Trustee, makes such a determination necessary or appropriate, and
- (b) to distribute any surplus that arises in Part 3 of the Fund.

Schedule 1 [5] inserts a further subsection in section 15C to make it clear that a conversion of a defined benefit in Part 3 of the Fund to an accumulation benefit in Part 2 of the Fund (as contemplated by clause 4.1 of the 1999 Superannuation Agreement) does not contravene the provision of the Act that requires the Corporate Trustee to ensure that the COALSUPER Trust Deed does not in any way restrict or remove a right that a mine worker had when that Deed (or any amendment to, or substitution of, that Deed) took effect.

Explanatory note

Amalgamated Fund

Schedule 1 [6] inserts proposed subsection (3) in section 18 (COALSUPER Retirement Income Fund (the Amalgamated Fund)) of the Act. The proposed subsection specifies certain reserves and accounts (including the pension account) that are to be established in the Amalgamated Fund.

Schedule 1 [8] repeals section 18C (1) and (2) of the Act. Section 18C is concerned with the pension account, which is used to fund the payment of benefits under Part 3 of the Fund. Schedule 1 [8] inserts a new section 18C (1), which provides for the pension account to be divided into the following 2 sub-accounts:

- (a) the Joint Coal Board sub-account (which is to fund all Part 3 liability under the current provisions of the Act and the COALSUPER Trust Deed), and
- (b) the Column 5 pensions increase and indexation sub-account (which is to fund the new increases in, and indexation of, the Column 5 pensions).

Schedule 1 [7] and **[9]–[13]** make amendments consequential on Schedule 1 [6] and [8].

Schedule 1 [14] amends section 19 of the Act (Contributions required to be paid to Amalgamated Fund) to give effect to the changes to the rates at which certain payments are currently made to the Fund, and changes to the accounts and reserves into which those payments are made, in respect of mine workers who elect to convert their entitlement in Part 3 of the Fund to an entitlement in Part 2 of the Fund or who are otherwise not members of Part 3 of the Fund.

Unfunded liability of Part 3 of Fund

Employer contributions to the Amalgamated Fund at a weekly rate equal to the *special rate* reduce the unfunded liability of Part 3 of the Fund.

Currently, section 19 (7) of the Act sets the special rate at:

- (a) 5.5% of the Reference Rate, or
- (b) such other rate as may be fixed by the Corporate Trustee by determination published in the Gazette:
 - (i) after considering a report of an actuary, and
 - (ii) with the agreement of the parties to the Restructuring Agreement.

Schedule 1 [16] repeals and re-enacts section 19 (7) so as to provide that the special rate is such rate as may be fixed from time to time by the Corporate Trustee by determination published in the Gazette after considering a report of the actuary and with the agreement of the shareholders of the Corporate Trustee.

Explanatory note

Schedule 1 [21] inserts a savings and transitional provision that deems the rate specified in section 19 (7) as in force immediately before the repeal and re-enactment of that subsection by the proposed Act to be the special rate for the purposes of section 19 until a rate is fixed by the Corporate Trustee in accordance with the subsection as re-enacted.

Schedule 1 [15] inserts proposed subsections (4A) and (4B) in section 19 to allow the Corporate Trustee to suspend the obligation of owners to make contributions at the special rate.

Indexation of Column 5 pensions

Schedule 1 [17] inserts proposed section 19AD in the Act. The proposed section requires the Corporate Trustee to determine the rate required from time to time to fund the indexation of Column 5 pensions by reference to the Consumer Price Index, in accordance with clause 11 of the 1999 Superannuation Agreement.

Restructuring Agreement

Clause 2 of Part 2 of Schedule 3 (Accumulation Fund and Restructuring Agreement) to the Act sets out the text of clause 10 of the Restructuring Agreement. Clause 10 (b) of that Agreement has been amended by the 1999 Superannuation Agreement.

To reflect that amendment in the Act:

- (a) **Schedule 1 [18]** amends a reference in section 32A (Temporary modification of Act) of the Act to clause 10 (b) of the Restructuring Agreement, and
- (b) **Schedule 1 [22]** repeals and re-enacts so much of clause 2 of Part 2 of Schedule 3 to the Act as contains clause 10 (b) of the Restructuring Agreement.

Schedule 1 [19] replaces an outdated reference to the organisations who are parties to the Restructuring Agreement with a reference to the shareholders of the Corporate Trustee.

Schedule 1 [23] inserts a new Part 3 in Schedule 3 to the Act. Part 3 sets out the parties to the 1999 Superannuation Agreement.

Regulations

Schedule 1 [20] amends clause 2 (1) of Schedule 2 (Savings and transitional provisions) to the Act to enable the making of regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



New South Wales

Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Bill 2000

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New South Wales

Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* so as to permit the implementation of a restructured superannuation funding agreement made between representatives of coal mine owners and representatives of coal mine employees, and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on 1 July 2000.	6
3 Amendment of Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45	7 8
The <i>Coal and Oil Shale Mine Workers (Superannuation) Act 1941</i> is amended as set out in Schedule 1.	9 10

Schedule 1 Amendments

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(Section 3)

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[1] Section 2 Definitions

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Insert in alphabetical order in section 2 (1):

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actuary means a person, appointed by the Corporate Trustee,
who is a member of the Institute of Actuaries of Australia.

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Column 5 pension means a pension payable under the
COALSUPER Rules at the rate specified (as at 31 December
1999) in Column 5 of Appendix 3A to those Rules.

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complying fund means a complying superannuation fund
within the meaning of section 45 of the *Superannuation
Industry (Supervision) Act 1993* of the Commonwealth.

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member of Part 3 of the Fund means a person who is a
Member of Part 3 of the Fund within the meaning of the
COALSUPER Trust Deed.

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1999 Superannuation Agreement means the 1999
Superannuation Agreement made on 23 December 1999
between the parties set out in Part 3 of Schedule 3.

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Part 2 of the Fund means Part 2 of the Amalgamated Fund.

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Part 3 of the Fund means Part 3 of the Amalgamated Fund.

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pension CPI contribution means a contribution calculated at
the pension CPI rate.

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pension CPI rate means the rate determined under section
19AD.

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transferee means a mine worker who has made the election,
referred to in clause 4.1 of the 1999 Superannuation
Agreement, to convert his or her defined benefit in Part 3 of the
Fund to an accumulation benefit in Part 2 of the Fund.

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[2] Section 2 (1), definition of "Pension Account"

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Omit the definition.

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Schedule 1 Amendments

[3] Section 2 (1), definition of “Restructuring Agreement”	1
Omit “made on 25 June 1992 between the parties set out in Part 1 of Schedule 3”.	2 3
Insert instead “originally made on 25 June 1992 between the parties set out in Part 1 of Schedule 3, as varied by the 1999 Superannuation Agreement”.	4 5
[4] Section 15C Corporate Trustee to maintain trust deed and governing rules	6 7
Insert after section 15C (4):	8
(4A) The COALSUPER Trust Deed must also empower the Corporate Trustee:	9
(a) to determine the priority of claims for payment out of the Amalgamated Fund, on the winding-up of the Amalgamated Fund (or on the occurrence of any event that, in the opinion of the Corporate Trustee, makes a determination of the priority of claims on that Fund necessary or appropriate), of pensions, lump sum benefits, refunds of contributions and any other benefits required or authorised to be paid under this Act or under the COALSUPER Trust Deed, and	10 11 12 13 14 15 16 17 18 19
(b) in accordance with clause 13 of the 1999 Superannuation Agreement, to distribute any surplus (determined by the actuary) that arises in Part 3 of the Fund to employers and mine workers (being employers and mine workers who are contributing to the Amalgamated Fund at the time the actuary makes the determination) on an equitable basis in proportion to their contributions to Part 3 of the Fund.	20 21 22 23 24 25 26 27
[5] Section 15C (8)	28
Insert at the end of section 15C (7):	29
(8) A conversion of a mine worker’s defined benefit in Part 3 of the Fund to an accumulation benefit in Part 2 of the Fund pursuant to the election referred to in clause 4.1 of the 1999 Superannuation Agreement is taken not to contravene subsection (7).	30 31 32 33 34

[6] Section 18 COALSUPER Retirement Income Fund (the Amalgamated Fund)	1 2
Insert at the end of the section:	3
(3) The following reserves and accounts are to be established in the Amalgamated Fund:	4 5
(a) a reserve in respect of Part 2 of the Fund, comprising:	6
(i) the mine workers' special accounts, and	7
(ii) the mine workers' transferred benefits account, and	8 9
(iii) the mine workers' special salary sacrifice account,	10 11
(b) a reserve in respect of Part 3 of the Fund, including (but not limited to):	12
(i) the pension account, and	13 14
(ii) the dormant members' account,	15
(c) such other accounts and reserves as may be established by the Corporate Trustee for the efficient management of the Fund.	16 17 18
[7] Section 18A Payments into Amalgamated Fund	19
Omit "Pension Account" from section 18A (c).	20
Insert instead "pension account".	21
[8] Section 18C Special provisions applicable to pension account	22
Omit section 18C (1) and (2). Insert instead:	23
(1) The pension account referred to in section 18 (3) (b) (i) is to be divided into the following sub-accounts:	24 25
(a) the Joint Coal Board sub-account,	26
(b) the Column 5 pensions increase and indexation sub-account.	27 28

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[9] Section 18C (3)	1
Omit “Credits to the Pension Account”.	2
Insert instead “Credits to the Joint Coal Board sub-account (which is a continuation of the account kept under this section as in force immediately before 1 July 2000, being the date on which Schedule 1 [9] to the <i>Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000</i> commenced)”.	3 4 5 6 7
[10] Section 18C (4) (a)	8
Omit “the account”. Insert instead “the Joint Coal Board sub-account”.	9
[11] Section 18C (4) (b)	10
Omit “Pension Account to be credited to that Account”.	11
Insert instead “Joint Coal Board sub-account to be credited to that sub-account”.	12 13
[12] Section 18C (4) (c)	14
Omit “that Account”. Insert instead “that sub-account”.	15
[13] Section 18C (5)	16
Omit “Pension Account”. Insert instead “pension account”.	17
[14] Section 19 Contributions required to be paid to Amalgamated Fund	18
Omit section 19 (1), (2) and (3). Insert instead:	19
(1) An owner must pay contributions in accordance with this section for each mine worker employed by the owner.	20 21
(2) Except for contributions paid to a complying fund other than Part 2 of the Fund, the contributions are to be paid to the Corporate Trustee for crediting to the Amalgamated Fund in accordance with this section.	22 23 24 25
(2A) The owner must pay both of the following for crediting to Part 3 of the Fund:	26 27
(a) for each mine worker—contributions at a weekly rate equal to the special rate,	28 29

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| (b) | for each transferee or other mine worker who is not a member of Part 3 of the Fund—the pension CPI contribution. | 1
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| (2B) | The owner must pay contributions at a weekly rate equal to 4 per cent of the Reference Rate for crediting to Part 3 of the Fund for each mine worker who is a member of Part 3 of the Fund and is: | 4
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| (a) | a mine worker to whom group A of the <i>Coal Mining Industry (Supervision and Administration) Consent Award 1999, New South Wales and Tasmania</i> (or any award that succeeds or supersedes that Award) applies, or | 8
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| (b) | a youth or a junior, or | 13 |
| (c) | a first, second or third year apprentice. | 14 |
| (2C) | For each other mine worker who is a member of Part 3 of the Fund, the owner must pay contributions at a weekly rate equal to 5 per cent of the Reference Rate (in accordance with clause 12.1 of the 1999 Superannuation Agreement) for crediting to that Part of the Fund. | 15
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| (2D) | For each transferee or other mine worker who is not a member of Part 3 of the Fund and is: | 20
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| (a) | a mine worker to whom group A of the <i>Coal Mining Industry (Supervision and Administration) Consent Award 1999, New South Wales and Tasmania</i> (or any award that succeeds or supersedes that Award) applies, or | 22
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| (b) | a youth or a junior, or | 27 |
| (c) | a first, second or third year apprentice, | 28 |
| | the owner must pay contributions at a weekly rate equal to 4 per cent of the Reference Rate (less the pension CPI contribution), for crediting to: | 29
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| (d) | Part 2 of the Fund, or | 32 |
| (e) | if the mine worker has elected to contribute to a complying fund other than Part 2 of the Fund—to that fund. | 33
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- (2E) For each other transferee or other mine worker who is not a member of Part 3 of the Fund, the owner must pay contributions at a weekly rate equal to 5 per cent of the Reference Rate (less the pension CPI contribution) (in accordance with clauses 12.2 and 12.3 of the 1999 Superannuation Agreement), for crediting to:
- (a) Part 2 of the Fund, or
 - (b) if the mine worker has elected to contribute to a complying fund other than Part 2 of the Fund—to that fund.
- (3) For each eligible mine worker the owner must also pay contributions at a weekly rate, in accordance with the COALSUPER Trust Deed:
- (a) in the case of a mine worker who contributes to Part 2 of the Fund—to the Corporate Trustee for crediting to the mine worker's special account in that Part of the Fund, and
 - (b) in the case of a mine worker who has elected to contribute to a complying fund other than Part 2 of the Fund—to that fund.
- A mine worker is an *eligible mine worker* for the purposes of this subsection if the mine worker is an *eligible employee* within the meaning of Part 2 of the COALSUPER Trust Deed.

[15] Section 19 (4A) and (4B)

Insert after section 19 (4):

- (4A) Despite the other provisions of this section, the Corporate Trustee may, by notice published in the Gazette, suspend (for a time specified in the notice or until publication of a further notice under this subsection) owners' obligations under subsection (2A) to pay contributions at a weekly rate equal to the special rate.
- (4B) A notice referred to in subsection (4A) may be published only:
- (a) after considering a relevant report of the actuary, and
 - (b) with the agreement of the shareholders of the Corporate Trustee.

[16] Section 19 (7)	1
Omit the subsection. Insert instead:	2
(7) In this section, <i>special rate</i> means such rate as may be fixed from time to time by the Corporate Trustee by determination published in the Gazette:	3 4 5
(a) after considering a relevant report of the actuary, and	6
(b) with the agreement of the shareholders of the Corporate Trustee.	7 8
[17] Section 19AD	9
Insert after section 19AC:	10
19AD Corporate Trustee to set pension CPI rate	11
(1) The Corporate Trustee is to determine the rate required from time to time to fund the indexation, by reference to the Consumer Price Index in accordance with clause 11 of the 1999 Superannuation Agreement, of Column 5 pensions.	12 13 14 15
(2) Any such determination:	16
(a) is to be made after considering a relevant report of the actuary, and	17 18
(b) is to have effect for a period specified in the determination, and	19 20
(c) may be varied by the Corporate Trustee following an annual assessment by an actuary.	21 22
(3) In this section, <i>Consumer Price Index</i> means the Consumer Price Index (All Groups—Weighted Average of eight capital cities) issued by the Australian Statistician.	23 24 25
[18] Section 32A Temporary modification of Act	26
Insert “, as varied by the 1999 Superannuation Agreement,” after “provisions of which” in section 32A (1) (a).	27 28

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[19] Section 32A (1) (b)	1
Omit “representatives of such of the organisations set out in Part 1 of Schedule 3 as are in existence when the certificate is given”.	2 3
Insert instead “the shareholders of the Corporate Trustee”.	4
[20] Schedule 2 Savings and transitional provisions	5
Insert at the end of clause 2 (1):	6
<i>Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000</i>	7 8
[21] Schedule 2, Part 7	9
Insert after clause 31:	10
Part 7 Provisions consequent on enactment of Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000	11 12 13 14
32 Special rate	15
The rate specified in section 19 (7) (a), as that paragraph was in force immediately before 1 July 2000 (being the date of the repeal and re-enactment of section 19 (7) by Schedule 1 [16] to the <i>Coal and Oil Shale Mine Workers (Superannuation) Amendment (1999 Superannuation Agreement) Act 2000</i>), is taken to be the special rate for the purposes of section 19 until a rate is fixed by the Corporate Trustee in accordance with section 19 (7) as so re-enacted.	16 17 18 19 20 21 22 23

[22] Schedule 3 Accumulation Fund and Restructuring Agreement	1
Omit the text of clause 10 (b) of the Restructuring Agreement from clause 2 of Part 2.	2
Insert instead:	3
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(b) Changed circumstances which would necessitate a renegotiation of the 1992 Restructuring Agreement and the 1999 Superannuation Agreement include, but are not limited to:	5
(i) changes in marginal tax rates which reduce the benefit of salary sacrifice;	6
(ii) a judicial decision or interpretation, legislation or a Tax Office ruling, that the methods adopted to fund CoalSuper are no longer available, or are significantly less effective, or unenforceable;	7
(iii) amendment to the MP Act, or other legislative change, the result of which makes the 1992 Restructuring Agreement or the 1999 Superannuation Agreement, significantly less effective;	8
(iv) legislation which invalidates or impairs the operation of the Salary Sacrifice Agreement.	9
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[23] Schedule 3, Part 3	22
Insert after Part 2:	23
Part 3 1999 Superannuation Agreement	24
3 Parties	25
For the purpose of the definition of <i>1999 Superannuation Agreement</i> in section 2 (1), the parties to the Agreement are:	26
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• NEW SOUTH WALES MINERALS COUNCIL LIMITED, a Company limited by guarantee whose registered office is situated at 13 th Floor, 227 Elizabeth Street, Sydney, New South Wales, 2000.	28
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Schedule 1 Amendments

- CONSTRUCTION FORESTRY MINING AND ENERGY UNION, MINING AND ENERGY DIVISION, an organisation registered under the Workplace Relations Act, 1996 Commonwealth whose registered office is situated at 13–15 Wentworth Avenue, East Sydney, New South Wales, 2011. 1
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- AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION, NEW SOUTH WALES BRANCH, an organisation of employees registered under the Industrial Relations Act, 1996 New South Wales whose registered office is situated at 133 Parramatta Road, Granville, New South Wales, 2142. 7
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- ELECTRICAL TRADES UNION OF AUSTRALIA, NEW SOUTH WALES BRANCH, an organisation of employees registered under the Industrial Relations Act, 1996, New South Wales whose registered office is situated at Level 5, 370 Pitt Street, Sydney, New South Wales, 2000. 14
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- AUSTRALIAN COLLIERIES' STAFF ASSOCIATION an organisation registered under the Workplace Relations Act, 1996, Commonwealth whose registered office is situated at 91 Frederick Street, Merewether, New South Wales, 2291. 20
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- THE COLLIERY OFFICIALS ASSOCIATION OF NEW SOUTH WALES, an organisation of employees registered under the Industrial Relations Act, 1996, New South Wales whose registered office is situated at Unit 7, 50 Medcalf Street, Warners Bay, New South Wales, 2282. 25
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- NEW SOUTH WALES COAL MINE MANAGERS' ASSOCIATION, an unregistered association whose office is situated at 10 Hallet Place, Singleton Heights, New South Wales, 2330. 31
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