

Explanatory note

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

Overview of Bill

The object of this Bill is to retrospectively amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 (the Principal Act) to complete the transition with respect to superannuation contributions (begun by amendment of the Principal Act in 2006), so that contributions by mine owners will have been in accordance with the requirements of the Superannuation Guarantee Charge Act 1992 and Superannuation Guarantee (Administration) Act 1992 of the Commonwealth (the Commonwealth legislation) from 1 July 2006. The Bill, with effect from 1 July 2006:

(a) removes the superannuation contribution provisions of the Principal Act that relate to Part 2 of the AUSCOAL Superannuation Fund (the Amalgamated Fund), which is the current default scheme for coal and oil shale mine workers, so that there is no requirement to pay contributions in excess of the minimum required by the Commonwealth legislation, being 9% of ordinary time earnings, as a weekly amount, and

(b) removes the legal effect of the provisions for superannuation contributions (including various formulae) that are contained in four industrial agreements made in 1988, 1991, 1992 and 1999, and

(c) refers instead to the revised AUSCOAL Superannuation Fund Trust Deed (the AUSCOAL Trust Deed) and AUSCOAL Superannuation Fund Rules (the AUSCOAL Rules) by which the scheme is governed, and

(d) ensures that every employed mine worker will be entitled to at least the same amount of superannuation contribution following the amendment of the Principal Act as applied before it, by inserting a specific transitional provision and by providing the ability to make transitional regulations.

Outline of provisions

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

Clause 2 provides that the proposed Act is taken to have commenced on 1 July 2006.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

The superannuation arrangements for coal and oil shale mine workers, former workers and their dependants have been negotiated as a series of industrial agreements between employers and their associations and trade unions (the parties). These agreements include the formulae for contributions and are given effect through the Coal and Oil Shale Mine Workers (Superannuation) Act 1941. The contributions can be made to Part 2 of the Amalgamated Fund (the current scheme) or to another fund to which a mine worker has elected to contribute. By amendment of the Principal Act in 2006, the superannuation contribution for each mine worker was prescribed to be not less than 9% of the mine worker's ordinary time earnings, as a weekly amount, even if the application of the formulae would result in a lesser amount. This percentage is the rate prescribed under the Commonwealth legislation. Contribution to Part 3 of the Amalgamated Fund under section 19 (2A) of the Principal Act was excluded from the 9% calculation. Subsequent to that amendment the parties clarified their intention to fully transition to compliance with the Commonwealth legislation from 1 July 2006.

Schedule 1 [7] amends the Principal Act by inserting proposed section 2A, which ceases the legal effect of four listed industrial agreements insofar as they require

superannuation contributions to be made to Part 2 or Part 3 the Amalgamated Fund or another fund to which the mine worker has elected to contribute.

Schedule 1 [13] amends the Principal Act by substituting section 19 so as to remove the superannuation contribution provisions in respect of Part 2 of the Amalgamated Fund. Certain of the former arrangements for contribution to Part 3 (the closed scheme) of the Amalgamated Fund (by owners) are not affected by the transition and have been retained. Contributions to the current scheme are now to be dealt with by arrangements between the parties in accordance with the Commonwealth legislation. Schedule 1 [5], [9]–[11], [14] and [15] make amendments consequential on Schedule 1 [7] and [13].

Schedule 1 [1]–[4], [6], [8] and [12] amend references in various sections of the Principal Act to the renamed AUSCOAL Trust Deed and AUSCOAL Rules, formerly the COALSUPER Trust Deed and COALSUPER Rules, the documents that empower the Corporate Trustee to govern the Amalgamated Fund.

Schedule 1 [18] amends Schedule 2 to the Principal Act by inserting proposed Part 9 (proposed clauses 35–38) containing savings and transitional provisions.

Proposed clause 36 validates any superannuation contribution paid by an owner for a mine worker before the date of assent to the proposed Act that was in compliance with the Principal Act, the AUSCOAL Trust Deed and any industrial agreement (as then in force), so as to avoid the need for a refund.

Proposed clause 37 applies to circumstances where, immediately before the date of assent to the proposed Act (in respect of any period commencing on or after 1 July 2006), the contribution payable for a mine worker employed by an owner is, as a result of the superannuation contribution formulae contained in the Act, the industrial agreements and the AUSCOAL Trust Deed, an amount that is higher than the amount payable from the date of assent. In such circumstances, the owner, and any subsequent owner who employs the mine worker, are liable to continue to pay the higher amount. For the purposes of this clause, any contribution payable under section 19 (2A) of the Principal Act as then in force or under proposed section 19 (1) and any salary sacrifice contribution payable are not included. If any additional amounts are payable by an owner pursuant to proposed clause 37 they are to be credited to Part 2 of the Amalgamated Fund or another complying fund if the mine worker has made such an election.

Schedule 1 [16] and [17] amend Schedule 2 to the Principal Act to enable savings and transitional regulations to be made, such as regulations for the purpose of protecting an existing entitlement of a mine worker to superannuation contributions. Proposed clause 38 (as inserted by Schedule 1 [18]) also enables regulations to be made.