



New South Wales

# Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2008

## 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.



First print



New South Wales

# Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2008

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New South Wales

# **Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2008**

No. , 2008

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## **A Bill for**

An Act to amend the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* with respect to the legal effects of certain industrial agreements and superannuation contributions by mine owners; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008</i> .	3 4
<b>2 Commencement</b>	5
This Act is taken to have commenced on 1 July 2006.	6
<b>3 Amendment of Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45</b>	7 8
The <i>Coal and Oil Shale Mine Workers (Superannuation) Act 1941</i> is amended as set out in Schedule 1.	9 10
<b>4 Repeal of Act</b>	11
(1) This Act is repealed on the day following the date of assent.	12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14



<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>The whole Act (except sections 2, 15C (1), 18 and 19 and Schedules 2 and 3)</b>	3
	Omit “COALSUPER” wherever occurring. Insert instead “AUSCOAL”.	4
		5
<b>[2]</b>	<b>Section 2 Definitions</b>	6
	Omit the definition of <i>Amalgamated Fund</i> from section 2 (1).	7
	Insert instead:	8
	<i>Amalgamated Fund</i> means the AUSCOAL Superannuation Fund, that was formerly named the COALSUPER Retirement Income Fund as referred to in section 18.	9
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<b>[3]</b>	<b>Section 2 (1)</b>	12
	Insert in alphabetical order:	13
	<i>AUSCOAL Rules</i> means the AUSCOAL Superannuation Fund Rules, that were formerly named the COALSUPER Rules, (as amended or substituted from time to time) included in the AUSCOAL Trust Deed that govern the occupational superannuation schemes to which the AUSCOAL Trust Deed relates.	14
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	<i>AUSCOAL Trust Deed</i> means the AUSCOAL Superannuation Fund Trust Deed, that was formerly named the COALSUPER Trust Deed (as amended or substituted from time to time) for the reconstitution of the occupational superannuation schemes referred to in section 15C (1).	20
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<b>[4]</b>	<b>Section 2 (1), definitions of “Column 5 pension” and “member of Part 3 of the Fund”</b>	25
	Omit “COALSUPER” wherever occurring. Insert instead “AUSCOAL”.	26
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<b>[5]</b>	<b>Section 2 (1), definitions of “Special Account” and “transferee”</b>	28
	Omit the definitions.	29
<b>[6]</b>	<b>Section 2 (9)</b>	30
	Insert at the end of section 2:	31
	(9) Notes included in this Act do not form part of this Act.	32

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<b>[7] Section 2A</b>	1
Insert after section 2:	2
<b>2A Cessation of legal effect of agreements</b>	3
The following agreements do not have any legal effect from the commencement of this section insofar as they require contributions to be made to Part 2 or Part 3 of the Amalgamated Fund as referred to in the AUSCOAL Trust Deed or to another fund to which the mine worker has elected to contribute:	4
(a) the Restructuring Agreement,	5
(b) the 1999 Superannuation Agreement,	6
(c) the Industrial Agreement made on 6 September 1988 between N.S.W. Colliery Proprietors' Association Limited and 8 trade unions,	7
(d) the Industrial Agreement made on 14 May 1991 between New South Wales Coal Association, Cornwall Coal Company No Liability and 4 trade unions.	8
<b>Note.</b> New South Wales Coal Mining Industry Statutory Superannuation Fund (Salary Sacrifice) Agreement (ODN No 292 of 1992) is revoked by order of the Australian Industrial Relations Commission dated 14 May 2008.	9
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<b>[8] Section 15C Corporate Trustee to maintain trust deed and governing rules</b>	21
Insert after section 15C (1):	22
<b>Note.</b> The COALSUPER Trust Deed (including the COALSUPER Rules) has been renamed the AUSCOAL Superannuation Fund Trust Deed (including the AUSCOAL Superannuation Fund Rules) by amendment of the Trust Deed and Rules.	23
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<b>[9] Section 15C (4A) (a)</b>	28
Omit "Trust Deed, and". Insert instead "Trust Deed.".	29
<b>[10] Section 15C (4A) (b)</b>	30
Omit the paragraph.	31
<b>[11] Section 15C (8)</b>	32
Omit the subsection.	33
<b>[12] Section 18 AUSCOAL Superannuation Fund (the Amalgamated Fund)</b>	34
Insert after section 18 (2):	35
<b>Note.</b> The Amalgamated Fund has been renamed the AUSCOAL Superannuation Fund by amendment of the Trust Deed and Rules.	36
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<b>[13] Section 19</b>	1
Omit the section. Insert instead:	2
<b>19 Special rate contributions required to be paid to the Amalgamated Fund</b>	3
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(1) An owner must make contributions at a special rate at intervals determined by the Corporate Trustee in respect of each mine worker employed by the owner for crediting to Part 3 of the Fund.	5
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(2) The amount of the special rate is the amount determined from time to time by the Corporate Trustee after considering a relevant report of the actuary.	8
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(3) If a contribution required to be paid under this section is overdue for more than 21 days, the Corporate Trustee may charge interest on the overdue amount at the rate of interest that, at the time when the interest first becomes payable, is advertised as the overdraft reference rate of the Commonwealth Bank for amounts in excess of \$100,000.	11
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(4) Interest payable under this section is recoverable in the same way as unpaid contributions and any interest paid or recovered is to be credited to the Amalgamated Fund.	17
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(5) Contributions under this section are in addition to the amount of any contributions to superannuation that are payable in respect of each mine worker under the AUSCOAL Trust Deed, this or any other Act of the State or any Act of the Commonwealth.	20
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<b>Note.</b> Liability for minimum employer contributions to employee superannuation arises under the <i>Superannuation Guarantee Charge Act 1992</i> of the Commonwealth and is regulated under the <i>Superannuation Guarantee (Administration) Act 1992</i> of the Commonwealth.	24
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<b>[14] Section 19AD Corporate Trustee to set pension CPI rate</b>	28
Omit the section.	29
<b>[15] Section 32A Temporary modification of Act</b>	30
Omit the section.	31
<b>[16] Schedule 2 Savings and transitional provisions</b>	32
Insert at the end of clause 2 (1):	33
<i>Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008</i>	34
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<b>[17] Schedule 2, clause 2 (2) (d)</b>	1
Insert at the end of clause 2 (2) (c):	2
, or	3
(d) take effect on 1 July 2006 or a later date, if it is a provision consequent on the enactment of the provisions of Schedule 1 to the <i>Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008</i> , and section 3 of that Act in its application to those provisions.	4 5 6 7 8
<b>[18] Schedule 2, Part 9</b>	9
Insert after Part 8:	10
<b>Part 9 Provisions consequent on enactment of Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008</b>	11 12 13
<b>35 Definition</b>	14
In this Part, <i>amending Act</i> means the <i>Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 2008</i> .	15 16
<b>36 Validity of contributions paid from 1 July 2006 to 30 June 2008</b>	17
To avoid doubt, any total contribution:	18
(a) that was paid by an owner for a mine worker prior to the date of assent to the amending Act, and	19 20
(b) that exceeded 9% of the mine worker's ordinary time earnings, as a weekly amount, (excluding any amount paid pursuant to section 19 (2A) as in force immediately before the commencement of the amending Act), and	21 22 23 24
(c) that was paid in compliance with this Act, the AUSCOAL Trust Deed and any industrial agreement as in force when the payment was made,	25 26 27
is taken to have been validly paid.	28
<b>Note.</b> Clause 36 confirms the validity of any contributions actually paid before the commencement of the amending Act that were in compliance with this Act, the AUSCOAL Trust Deed and any industrial agreement before the amending Act had effect.	29 30 31 32

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<b>37</b>	<b>Preservation of entitlement</b>	1
(1)	If the amount of superannuation contribution that an owner was liable to pay for a mine worker employed by that owner immediately before the date of assent to the amending Act, in respect of any period on or after 1 July 2006, was higher than the amount that the owner is liable to pay after the amending Act commenced, then the owner continues to be liable to pay the superannuation contribution at the higher amount.	2 3 4 5 6 7 8
(2)	For the purposes of subclause (1), an owner's liability to pay a superannuation contribution includes a liability under any provision of the AUSCOAL Trust Deed or any other superannuation fund to which the owner contributes in respect of that mine worker, this Act or any other Act of the State or Commonwealth, but does not include:	9 10 11 12 13 14
	(a) the requirement to contribute to Part 3 of the Fund under section 19 (2A) as in force immediately before the commencement of the amending Act and under section 19 (1) as inserted by the amending Act, or	15 16 17 18
	(b) any liability to pay a salary sacrifice contribution.	19
(3)	If an additional amount is payable pursuant to subclause (1), the owner must pay the contributions:	20 21
	(a) in the case of a mine worker who contributes to Part 2 of the Fund—to the Corporate Trustee for crediting to that Part of the Amalgamated Fund, and	22 23 24
	(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.	25 26 27
(4)	This clause also applies to any other owner who subsequently employs the mine worker.	28 29
	<b>Note.</b> Clause 37 preserves a mine worker's right to a higher amount of employer contribution than is required under the <i>Superannuation Guarantee Charge Act 1992</i> and the <i>Superannuation Guarantee (Administration) Act 1992</i> of the Commonwealth if a higher amount of contribution was payable immediately before the date of assent to the amending Act. The entitlement extends back in respect of any period from 1 July 2006 and is continuing. The main categories of mine worker to which this clause relates are those for whom the owner paid a flat weekly rate contribution pursuant to the industrial agreements and those whose wages and salaries are excluded from the calculation of employer liability under the Commonwealth legislation, such as employees aged 70 years or over.	30 31 32 33 34 35 36 37 38 39 40 41

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**38 Regulations**

Regulations made under Part 1 of this Schedule, for the purposes of this Part, have effect despite anything to the contrary in Part 1.

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