

**COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) AMENDMENT ACT 1992 No. 81**

NEW SOUTH WALES



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**COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) AMENDMENT ACT 1992 No. 81**

NEW SOUTH WALES



Act No. 81, 1992

An Act to amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 in order to provide an amended superannuation scheme for mine workers; and for other purposes. [Assented to 27 November 1992]

Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992 No. 81

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992.

Commencement

2. (1) Except as provided by this section, this Act commences on 3 January 1993.

(2) Schedule 1, and section 3 in its application to that Schedule, are taken to have commenced on 1 July 1992.

Amendment of Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45

3. The Coal and Oil Shale Mine Workers (Superannuation) Act 1941 is amended as set out in Schedules 1-3.

Amendment of Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983

4. The Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983 is amended as set out in Schedule 4.

SCHEDULE 1—AMENDMENTS ESTABLISHING A PENSION ACCOUNT

(Sec. 3)

(1) Section 2 (**Definitions**):

In section 2 (1), insert the following definitions in alphabetical order:

“**Fund**” means, except in Part 4C, the Coal and Oil Shale Mine Workers Superannuation Fund established by section 18.

“**Pension Account**” means the account established under section 18A.

(2) Section 18 (**The Fund**):

(a) From section 18 (1), omit “(in this Act referred to as the “**Fund**”)”.

SCHEDULE 1—AMENDMENTS ESTABLISHING A PENSION
ACCOUNT—*continued*

(b) At the end of section 18 (2) (a) (ii), insert:

; and

(iii) moneys paid to the Fund by the Joint Coal Board for credit of the Pension Account.

(3) Section 18A:

After section 18, insert:

The Pension Account

18A. (1) A separate account (“the Pension Account”) is to be kept of all money paid to the Fund by the Joint Coal Board on and after 1 July 1992.

(2) Credits to the Pension Account are to be in the form of an imprest account maintained at:

- (a) \$10,000,000, unless the Board gives approval for a larger amount or paragraph (b) or (c) applies; or
- (b) an amount less than \$10,000,000 that is approved by the Tribunal, unless paragraph (c) applies; or
- (c) an amount less than \$10,000,000 that is certified by the actuary, and agreed to by the Tribunal, as sufficient to fund future pension payments required by this Act.

(3) Administrative arrangements for the Pension Account are to include the following:

- The Tribunal is to submit to the Joint Coal Board each month a statement certifying the amount of pensions and redemptions paid from money in the account during the period to which the statement relates.
- Interest earned on money in the Pension Account is to be credited to that account and included in each monthly statement submitted to the Joint Coal Board by the Tribunal.
- A payment for credit of the Pension Account is to be made by the Joint Coal Board each month, the amount of the payment being determined by the Board after consideration of the statement submitted by the Tribunal for the last preceding month.

(4) All pensions and commuted pensions paid from the Fund on and after 1 July 1992 are to be debited to the Pension Account.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS**

(Sec. 3)

(1) Section 1A:

After section 1, insert:

**Contributions and benefits payable on and after 3
January 1993**

1A. (1) On and after 3 January 1993, a mine worker is not entitled or liable to contribute to the Fund, whether or not the mine worker was, or was entitled to be, a contributor before that date.

(2) This Act applies:

(a) to a pension under this Act of which payment had commenced before 3 January 1993 or that had become payable before that date but has not commenced to be paid; and

(b) to commutation of such a pension,

in the same way as it applies to a pension, and to commutation of a pension, that first becomes payable on or after 3 January 1993.

(3) If a mine worker resigned, or was retrenched or dismissed, before 3 January 1993 and had not applied for a benefit under this Act before that date, this Act applies to the former mine worker in the same way as it applies to a mine worker who resigns, or is retrenched or dismissed, on or after that date.

(4) On or after 3 January 1993, a benefit is not to be paid under Division 3 of Part 2 to, or in relation to, a mine worker unless the payment was due, but had not been made, before that date.

(2) Section 2 (Definitions):

(a) In section 2 (1), insert the following definitions in alphabetical order:

“**Accumulation Fund**” means the New South Wales Coal and Oil Shale Mining Industry (Superannuation) Accumulation Fund referred to in the Restructuring Agreement.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

“CPI figure”, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index (All Groups—Average of eight capital cities) published by the Australian Statistician under the Census and Statistics Act 1905 of the Commonwealth.

“Dormant member” means a former contributor to the Fund:

- (a) whose last period of service as a mine worker ceased due to retrenchment, resignation or dismissal; and
- (b) who has not taken any benefit from the Fund; and
- (c) who may become entitled:
 - (i) for the purposes of the Fund, to be credited with past service on being re-employed as a mine worker; or
 - (ii) to a payment from the Fund.

“Quarter” means each successive period of 3 calendar months the first of which commences on 1 January.

“Registrar” means the Registrar holding office under section 16.

“Restructuring Agreement” means the New South Wales Coal Mining Industry Statutory Fund (Restructuring) Agreement made on 25 June 1992 between the parties set out in Part 1 of Schedule 3.

“Retrenched”, in relation to a mine worker or dormant member, means that the employment of the mine worker or dormant member was terminated:

- (a) in a way referred to in subsection (1A); or
- (b) in a way determined by the Tribunal to have been an involuntary termination if the Tribunal also determines that, having regard to all the circumstances, the mine worker or dormant member is to be entitled to a benefit from the Fund as if the employment had been terminated in a way referred to in subsection (1A).

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

“**Special Account**”, in relation to a mine worker or dormant member, means the account in the Accumulation Fund which is in the name of the mine worker or dormant member and to which the contributions payable to the Accumulation Fund under the Restructuring Agreement are credited.

“**Subsidy Fund**” means the Coal and Oil Shale Mine Workers Compensation Subsidy Fund established by section 19C.

(b) After section 2 (1), insert:

(1A) For the purposes of this Act, a mine worker is retrenched if the employment of the mine worker is terminated and the termination is stated by the employer to have taken place because:

- (a) the employer no longer required the services of the mine worker and does not propose to fill the position then held by the mine worker; or
- (b) the work that the mine worker was employed to perform has been completed; or
- (c) the amount of work that the employer required to be performed has diminished and it has accordingly become necessary to reduce the number of employees employed by the employer; or
- (d) the mine worker has accepted an offer by the employer of terms on which retrenchment of the mine worker was proposed by the employer on a ground referred to in paragraph (a), (b) or (c).

(c) From section 2 (5), omit “the classification of loaderman in an industrial award applying to the coal mining industry in New South Wales”, insert instead “Group B of the Coal Mining Industry (Production and Engineering) Interim Consent Award, September 1990 (or such other rate as may be agreed upon by the parties to the Restructuring Agreement)”.

(3) Section 2J (Further extension of the definition of “Mine worker”):

Omit section 2J (13).

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(4) Section 2K:

After section 2J, insert:

Notices under section 2J

2K. (1) Before any work is commenced by a person other than a mine worker in or about, or in connection with, a coal or oil shale mine in New South Wales, the owner must give to the Tribunal a written notice that complies with subsection (2).

Maximum penalty: 5 penalty units for each day in any period of days during which this subsection is not complied with.

(2) The notice is to contain the following particulars:

- (a) the name and address of the employer, or proposed employer, of the person;
- (b) the proposed date of commencement of the work;
- (c) the terms of any contract for doing the work;
- (d) the number of persons who will be doing the work;
- (e) the nature of the work;
- (f) each location at which it is proposed that the work be done;
- (g) the number of persons by whom the work is proposed to be performed who are, to the knowledge of the owner, members of an association of employees registered as an organisation of employees under Part IX of the Industrial Relations Act 1988 of the Commonwealth;
- (h) the period for which it is proposed that the work be performed.

(5) Section 4A:

Omit the section, insert instead:

Special provisions for persons engaged in the coal mining industry in Queensland

4A. (1) In this section:

- (a) a reference to the applicable provisions is a reference to sections 3 (8) and 7 (1A), and to Division 4 of Part 2, except section 14P; and

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

- (b) a reference to a person to whom this section applies is a reference to a person whose last period of service as a mine worker was in Queensland, who has had prior service in the coal or oil shale mining industries in New South Wales and:
- (i) who has applied for a benefit under this Act; or
 - (ii) who has died and in respect of whom application has been made for such a benefit.

(2) For the purposes of the applicable provisions and of qualifying for a benefit under this Act, a person to whom this section applies is taken to have been a mine worker if he or she:

- (a) is or was, on or after 3 January 1993, employed in the coal mining industry in Queensland; and
- (b) by the operation of section 2 (2), would be taken to have been engaged in the coal or oil shale mining industries had the employment been in New South Wales,

but, for the purpose of calculating any benefit, industry service in New South Wales only (and no other service) is to be taken into account.

(3) The provisions of section 3 (1), (3) and (4) apply to a person taken by this section to have been a mine worker and so apply as if a reference in those provisions to New South Wales included a reference to Queensland.

(4) Section 6 applies to a person taken by this section to have been a mine worker and so applies as if:

- (a) a reference in that section to having been continuously resident, or resident, in New South Wales during a specified period included a reference to any period during which the person was continuously resident, or resident, in Queensland; and
- (b) a reference in that section to having been continuously engaged, or engaged, in the coal or oil shale mining industries in New South Wales during a specified period included a reference to any period during which the person was continuously employed, or employed, in the coal mining industry in Queensland; and

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

- (c) a reference in that section to having actually worked in or about a coal or oil shale mine in New South Wales for a specified period included a reference to any period during which the person worked in or about a coal mine in Queensland.
- (5) If a person dies or is incapacitated while employed in the coal mining industry in Queensland, the same benefit is payable to the person or persons entitled on the death or incapacity as would have been payable if the deceased or incapacitated person had retired on the date of death or incapacity.
- (6) Section 11 (**Pensions—special provisions**):
From section 11 (1), omit “payable to him until his death”, insert instead “payable to the mine worker for life unless it is earlier commuted under section 12”.
- (7) Section 12:
After section 11B, insert:
Commutation of pension
12. (1) The Tribunal may make, but is not obliged to make, a written offer to a pensioner, or to a prospective pensioner, providing for commutation of the pension to a lump sum calculated at a rate determined by the Tribunal and payable on conditions so determined.
- (2) Such an offer must state the amount of the lump sum and the conditions upon which acceptance of the offer would be given effect.
- (3) An election by a pensioner or prospective pensioner to accept an offer made under this section is to be made as indicated by the Tribunal when making the offer.
- (4) The amount of a lump sum payable under this section is to be an amount that is determined by the Tribunal after taking into consideration the advice of an actuary and the requirements of the Occupational Superannuation Standards Regulations of the Commonwealth.
- (5) If:
- (a) a pensioner who makes an election under this section dies before it is given effect; or

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(b) a prospective pensioner who makes an election under this section dies before the election is given effect but on or after the date on which the deceased would, but for the election, have become entitled to the pension, the Tribunal is to pay the lump sum to the personal representatives of the deceased.

(6) A pension does not become payable, or ceases to be payable, if it is commuted under this section.

(7) If a pension is commuted under this section by a person who subsequently dies and is survived by dependants or a de facto wife, a pension is not payable under section 10 to the dependants or under section 10A to the de facto wife.

(8) An election made under this section by a prospective pensioner is not to be given effect by the Tribunal before the award of the pension would, but for the election, have taken effect.

(8) Part 2, Divisions 4, 5:

Before Part 3, insert:

Division 4—Lump sum benefits after 2 January 1993

**Subdivision 1—Benefit payable on retirement on or
after age 55**

**Lump sum benefit for a mine worker on retirement and
for a retrenched dormant member**

14I. (1) A lump sum benefit is payable under this section to:

- (a) a mine worker who on 2 January 1993 was a contributor to the Fund and who retires after 2 January 1993 at the age of 55 or more; and
- (b) a person who:
 - (i) is a dormant member as a result of retrenchment as a mine worker; and
 - (ii) is aged 55 or more; and
 - (iii) applies for the benefit after 2 January 1993.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(2) A mine worker or dormant member to whom this section applies is entitled to payment from the Fund of a lump sum benefit equal to:

- (a) the benefit provided by subsection (3); or
- (b) the benefit provided by subsection (4) if:
 - (i) the mine worker or dormant member was at least 40 years of age on 2 January 1993; and
 - (ii) in the case of a mine worker, he or she was, immediately before retiring, a mine worker in respect of whom contributions were being paid to his or her Special Account; and
 - (iii) in the case of a dormant member, he or she was, immediately before being retrenched, a mine worker in respect of whom contributions were being paid to his or her Special Account; and
 - (iv) the benefit is greater than the benefit provided by subsection (3).

(3) The benefit provided by this subsection is the amount calculated in accordance with the formula:

$$A \times \frac{B}{C} \times D$$

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker retired or the retrenched dormant member applied for the benefit.

C is the CPI figure for the quarter that ended on 31 December 1992.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

D is the number of months of industry service:

- that were completed by the mine worker or retrenched dormant member before 3 January 1993; and
- in respect of which contributions have been paid to the Fund or are taken by the Tribunal to have been paid to the Fund.

(4) The benefit provided by this subsection is the amount calculated in accordance with the formula:

$$(A \times \frac{B}{C} \times E) - F$$

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker retired or the retrenched dormant member applied for the benefit.

C is the CPI figure for the quarter that ended on 31 December 1992.

E is the total number of months of completed service for which contributions in respect of the mine worker or retrenched dormant member have been, or are taken by the Tribunal to have been, paid to the Fund and, in respect of the period after 2 January 1993, have been paid to the mine worker's Special Account.

F is the amount standing to the credit of the mine worker's or retrenched dormant member's Special Account in the Accumulation Fund.

(5) If a retired mine worker, or a retrenched dormant member, dies before a benefit to which he or she would have otherwise been entitled under this section has been paid, the

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—continued**

benefit is to be paid to his or her personal representatives on application to the Tribunal.

Subdivision 2—Benefit payable on death

Lump sum benefit payable on death of mine worker or retrenched dormant member

14J. (1) A lump sum benefit of the amount provided by this section is payable as provided by section 14K on the death after 2 January 1993 of:

- (a) a mine worker who on that date was a contributor to the Fund; or
- (b) a person who on that date was a dormant member as a result of retrenchment and who dies before reaching the age of 60,

if no other benefit has been paid, or is payable, under this Division.

(2) On the death after 2 January 1993 of a mine worker who, immediately before dying, was a mine worker in respect of whom contributions were being paid to his or her Special Account, the lump sum benefit provided by this section is an amount equal to the greater of the amounts provided under subsections (5) and (6).

(3) On the death after 2 January 1993 of a retrenched dormant member to whom this section applies and who, immediately before being retrenched, was a mine worker in respect of whom contributions were being paid to his or her Special Account, the lump sum benefit payable under this section is the greater of the benefits provided by subsections (5) and (6).

(4) Except as provided by subsections (2) and (3), the lump sum benefit payable under this section is the benefit provided by subsection (5).

(5) The benefit provided by this subsection is the amount calculated in accordance with the following formula:

$$A \times \frac{B}{C} \times D$$

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker or retrenched dormant member died.

C is the CPI figure for the quarter that ended on 31 December 1992.

D is the number of months of industry service:

- that were completed by the mine worker or retrenched dormant member before 3 January 1993; and
- in respect of which contributions have been paid to the Fund or are taken by the Tribunal to have been paid to the Fund.

(6) The benefit provided by this subsection is the amount calculated in accordance with the formula:

$$(A \times \frac{B}{C} \times G) - F - H$$

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker or retrenched dormant member died.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—continued**

C is the CPI figure for the quarter that ended on 31 December 1992.

F is the amount standing to the credit of the deceased mine worker or retrenched dormant member in his or her Special Account in the Accumulation Fund.

G is the number of completed months of actual and notional service in the coal or oil shale mining industries in respect of which a benefit would, on the death of the mine worker or retrenched dormant member, have been payable under this Act as in force immediately before 3 January 1993.

H is the amount of insurance (if any) that, on the death of a mine worker or a retrenched dormant member, is payable from the Accumulation Fund in association with the mine worker's or dormant member's Special Account in the Accumulation Fund.

Payment of benefit on death of mine worker or retrenched dormant member

14K. (1) In this section “benefit unit” means the amount calculated in accordance with the formula:

$$240 \times A \times \frac{B}{C}$$

where A, B and C have the same meanings as they have in section 14J.

(2) For the purpose of distributing a benefit under section 14J, the benefit payable to a person for whom there is a nominal benefit under this section is:

- (a) such proportion of the benefit calculated under section 14J in respect of the mine worker or retrenched dormant member as the nominal benefit under this section bears to the sum of the nominal benefits which apply to that benefit; or
- (b) in a particular case, the benefit determined by the Tribunal.

(3) On the death of a mine worker or a retrenched dormant member, the nominal benefit for his or her spouse is the greater of:

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

- (a) 1 benefit unit; and
 - (b) the amount calculated in accordance with section 14I as if the mine worker or retrenched dormant member had retired on the date of death with entitlement to a benefit under that section.
- (4) If a nominal benefit is applicable under subsection (3), there is a nominal benefit for each child of the mine worker or retrenched dormant member equal to:
- (a) one-third of 1 benefit unit, unless there are more than 3 dependent children; or
 - (b) 1 benefit unit divided by the number of dependent children, if there are more than 3 dependent children.
- (5) If a nominal benefit is not applicable under subsection (3), the nominal benefit for each dependent child of the mine worker or retrenched dormant member is:
- (a) two-thirds of 1 benefit unit, unless there are more than 3 dependent children; or
 - (b) 2 benefit units divided by the number of dependent children, if there are more than 3 dependent children.
- (6) If there are fewer than 3 dependent children of a mine worker or retrenched dormant member who has died:
- (a) the nominal benefit for each of the dependent parents of the mine worker or retrenched dormant member is three-quarters of 1 benefit unit; and
 - (b) the nominal benefit for each of the dependent relatives of the mine worker or retrenched dormant member is one-half of 1 benefit unit; and
 - (c) the nominal benefit for each of the other dependants of the mine worker or retrenched dormant member is one-quarter of 1 benefit unit, unless a nominal benefit is otherwise provided by this section for the dependant.
- (7) For the purposes of this section, a person was dependent on a mine worker or retrenched dormant member only if the Tribunal is satisfied:
- (a) that the person was totally or mainly dependent for financial support on the mine worker or retrenched dormant member at the time of the death of the mine worker or dormant member; or

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(b) if the person is a child of the mine worker or dormant member, that the child was under 16 years of age at the time of the death of the mine worker or dormant member.

(8) If the spouse of a mine worker or retrenched dormant member dies:

(a) at the same time as the mine worker or dormant member or in such circumstances as to make it uncertain which of them survived the other; or

(b) within 48 hours before the death of the mine worker or dormant member,

the spouse is for the purposes of this section taken to have been alive at the time of the death of the mine worker or dormant member.

(9) The benefit to which a child is entitled under this section is payable for the support and education of the child:

(a) to one of the child's parents or guardians, unless paragraph (b) applies; or

(b) to another person, if the Tribunal so decides.

(10) If a child entitled to a benefit under this section attains the age of 18, the benefit is payable as soon as practicable to the child.

(11) If a mine worker:

(a) while actually engaged after 2 January 1993 in performing work as a mine worker, sustains an injury that is wholly or partly the result of an accident (including an event, act or omission resulting from the negligence or misconduct of any person, including the mine worker); and

(b) directly or indirectly as a result of the injury, dies within 6 months after the day on which the injury was sustained; and

(c) is survived by a spouse,

the nominal benefit for the spouse is three-eighths of 1 benefit unit.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(12) A nominal benefit is applicable under subsection (11) in addition to any nominal benefit applicable under this Part in relation to the mine worker.

(13) Subject to subsection (12):

- (a) the nominal benefits calculated under this section in respect of a mine worker or retrenched dormant member are not to exceed 2 benefit units; and
- (b) nominal benefits calculated under subsection (6) are to be reduced proportionally or eliminated if the total nominal benefits (excluding those under subsection (12)) would otherwise exceed 2 benefit units.

(14) If there is no person to whom a nominal benefit is applicable under this section, the benefit under section 14J:

- (a) is to be paid to the personal representatives of the mine worker or retrenched dormant member; and
- (b) is the amount calculated in accordance with section 14I as if the mine worker or retrenched dormant member had retired on the date of death with entitlement to a benefit under that section.

(15) In this section:

“**child**” means a child or step-child under 18 years of age;

“**relative**” means brother, sister, step-brother, step-sister, grandfather, grandmother, grandson or grand-daughter;

“**spouse**”, in relation to a deceased mine worker or dormant member, means the widow or widower who survives the deceased or:

- (a) if the deceased was a man, is not survived by a widow and at the time of his death was living with a woman as her husband on a bona fide domestic basis—the woman with whom he was so living; or
- (b) if the deceased was a woman, is not survived by a widower and at the time of her death was living with a man as his wife on a bona fide domestic basis—the man with whom she was so living.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

Subdivision 3—Incapacity of mine worker

Lump sum benefit payable for incapacity of mine worker

14L. (1) A benefit equal to the amount applicable under subsection (4) is payable to a person who:

- (a) on 2 January 1993 was a mine worker contributing to the Fund or after that date is a mine worker who on that date was a retrenched dormant member; and
- (b) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
- (c) had that employment terminated after 2 January 1993 as a result of his or her disability; and
- (d) has, in respect of the incapacity, neither been awarded a pension under section 6 nor become entitled to a lump sum benefit under section 14I; and
- (e) has submitted to any medical examination required under this section; and
- (f) has satisfied the Tribunal that, as a result of the incapacity, he or she is permanently unable to continue his or her engagement in the coal or oil shale mining industries, even if fit for engagement in some other remunerative employment.

(2) A benefit equal to the amount applicable under subsection (5) is payable to a person who:

- (a) on 2 January 1993 was a mine worker contributing to the Fund or after that date is a mine worker who on that date was a retrenched dormant member; and
- (b) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
- (c) as a result of his or her disability, had that employment terminated after 2 January 1993 by an owner contributing to the Accumulation Fund in respect of the mine worker; and
- (d) has, in respect of the incapacity, neither been awarded a pension under section 6 nor become entitled to a lump sum benefit under section 14I; and

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

- (e) has submitted to any medical examination required under this section; and
 - (f) has satisfied the Tribunal in accordance with subsection (10) that, as a result of the incapacity, he or she is permanently unable to continue his or her engagement in any kind of remunerative occupation in which he or she would otherwise reasonably be expected to be capable of engaging.
- (3) A benefit equal to the amount applicable under subsection (5) is payable to a person who:
- (a) on 2 January 1993 was a mine worker contributing to the Fund or after that date is a mine worker who on that date was a retrenched dormant member; and
 - (b) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
 - (c) as a result of his or her disability, had that employment terminated after 2 January 1993 by an owner contributing to the Accumulation Fund in respect of the mine worker; and
 - (d) has, in respect of the incapacity, neither been awarded a pension under section 6 nor become entitled to a lump sum benefit under section 14I; and
 - (e) has submitted to any medical examination required under this section; and
 - (f) has satisfied the Tribunal that, as a result of the incapacity, he or she is permanently unable to continue his or her engagement in the coal or oil shale mining industries, even if fit for engagement in some other remunerative employment.
- (4) The amount of a lump sum benefit payable under this section to a mine worker referred to in subsection (1) is the amount that would have been payable to the mine worker under section 14I (3) if:
- (a) the mine worker had retired on the date of disability; and

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(b) section 14I (3) had related to suffering a disability in the same way as it relates to retirement, and had not included a reference to a dormant member.

(5) The amount of a lump sum benefit payable to a mine worker referred to in subsection (2) or (3) is an amount equal to the amount calculated in accordance with the following formula:

$$(A \times \frac{B}{C} \times D) - F - H$$

where:

A, C, F and H have the same meanings as they would have in section 14J (6) if references in that subsection:

(a) to the death of a mine worker (however expressed) were references to a disabled mine worker; and

(b) to a retrenched dormant member had been omitted.

B is the CPI figure for the quarter that is 2 quarters before that during which the disability of the mine worker occurred.

D is the number of completed months of actual and notional service in the coal mining industry in respect of which a benefit would, on the incapacity of the mine worker, have been payable under this Act as in force immediately before 3 January 1993.

(6) In the explanation of the symbol "D" in subsection (5), a reference to notional service is a reference to the period of service which, when added to the actual period of service of the mine worker, is equal to the maximum period of service determined:

(a) in accordance with subsection (7), in the case of a mine worker referred to in subsection (2) as to whom the Tribunal is satisfied that the incapacity was caused by injury or illness while a mine worker; or

(b) as if the mine worker had retired on the date of the disability, in the case of a mine worker referred to in subsection (3).

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(7) The maximum period of service for the purposes of subsection (6) is to be determined:

- (a) if the mine worker is under 55 years of age at the date of disability—as if the mine worker had continued to be engaged in the coal or oil shale mining industries and had attained that age; or
- (b) if the mine worker is aged 55 or more at the date of disability—as if the mine worker had retired on that date.

(8) If the Tribunal is not satisfied that the incapacity or illness of a mine worker referred to in subsection (2) or (3) was caused by injury as a mine worker, the amount of the lump sum benefit payable to the mine worker is, instead of the amount applicable under subsection (5), an amount equal to the greater of:

- (a) the amount to which the mine worker would have been entitled under subsection (3) had the mine worker qualified for a benefit referred to in that subsection; and
- (b) 10 per cent of the amount referred to in paragraph (a), together with a further 10 per cent of that amount for each completed year of the mine worker's engagement in the coal or oil shale mining industries before the mine worker's date of disability, to a maximum of 100 per cent.

(9) The Tribunal may require an applicant for a lump sum benefit under this section to submit to an examination by a panel of 3 medical practitioners nominated by the Tribunal after considering any representations made by the applicant in relation to the membership of the panel.

(10) The Tribunal is not to be satisfied as to the incapacity of a mine worker referred to in subsection (2) unless, in addition to any other proof it may require, it is provided with a certificate or certificates that is signed by at least 2 medical practitioners and is to the effect that the mine worker is in their opinion unlikely ever to be able to work again in employment for which the mine worker is reasonably qualified by education, training and experience.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(11) A person is not entitled to a lump sum benefit under subsection (2) or (3) if the cause of the incapacity claimed was an act or default of the person that was intended to produce the incapacity.

(12) The date on which a person's incapacity arises and the date of the person's disability are a date or dates determined by the Tribunal which, in making the determination, is to have regard to all the circumstances of the case, including:

- (a) the person's medical and employment history; and
- (b) the date on which the person ceased to be able to be effectively employed as a mine worker.

(13) In this section:

"date of disability" means the date of termination of employment as a mine worker due to incapacity or illness, as determined by the Tribunal under subsection (12).

**Subdivision 4—Benefits following resignation or
dismissal**

Definition

14M. In this Subdivision:

"contributions" means contributions paid to the Fund by a mine worker before 3 January 1993 (including contributions paid in accordance with the terms and conditions of a permit issued to the mine worker under section 2E).

Benefits for mine workers who resign before age 55 and for certain persons who became dormant members by resignation or dismissal

14N. (1) This section applies:

- (a) to a mine worker who was contributing to the Fund on 2 January 1993 and who resigns before attaining the age of 55; and
- (b) to a dormant member whose last period of service as a mine worker ceased on account of resignation or dismissal and who has not taken a benefit from the Fund in respect of service before, on or after 3 January 1993.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(2) A benefit is payable under this section in respect of a mine worker, or a dormant member, if no pension or lump sum benefit is payable under this Act in respect of service for which contributions have been made to the Fund by the mine worker or dormant member.

(3) The benefit in respect of a mine worker, or a dormant member, is payable:

- (a) to the mine worker or dormant member on application to the Tribunal, unless the mine worker or dormant member dies before the payment is made; or
- (b) to the personal representatives of the mine worker or dormant member, on application to the Tribunal, if the mine worker or dormant member applies for the benefit and dies before it is paid; or
- (c) to the personal representatives of the mine worker or dormant member on application to the Tribunal, if the mine worker or dormant member dies without applying for the benefit.

(4) The benefit payable under this section is a refund of the contributions of the mine worker or dormant member made before 3 January 1993 in respect of the period or periods during which the mine worker or dormant member was engaged in the coal or oil shale mining industries until:

- (a) the date of resignation, in the case of a mine worker; or
- (b) in the case of a dormant member, the date of resignation or dismissal.

(5) There is to be added to a refund of contributions the total interest calculated in accordance with Schedule 4.

(6) Any period during which a person was engaged in the coal or oil shale mining industries is to be disregarded for the purposes of this section if a pension or lump sum benefit payment is, after termination of the engagement, otherwise payable under this Act by reference to that period.

(7) If contributions by a mine worker or dormant member in respect of a period are refunded under this section, the mine worker or dormant member is, for the purposes of Division 2 of Part 2, taken not to have been during that period engaged in the coal or oil shale mining industries.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(8) A reference in this section to contributions to the Fund is a reference to those contributions reduced by an amount equal to so much of them as has previously been refunded under section 19J and has not, after being refunded, been repaid to the Fund under section 10AA.

(9) This section does not prevent preservation of a benefit in the Fund by a mine worker who resigns.

Refund of shortfall

14O. (1) If:

- (a) for any reason a pension payable to or in respect of a mine worker under a provision of Division 2 of Part 2 is, except by commutation, cancelled or otherwise terminated; and
- (b) there is no dependant of the mine worker who is entitled to a pension under any other provision of that Division; and
- (c) the total benefit paid as pension under that Division (being the reduced amount if the pension has been reduced under that Division) is less than the amount of refund that would have been payable in respect of the mine worker under section 14N,

the Tribunal must, on the appropriate application being made, refund to the applicant the difference between the 2 amounts referred to in paragraph (c).

(2) For the purposes of this section an appropriate application is an application made by:

- (a) the mine worker concerned, unless the mine worker has died; or
- (b) a dependant of the mine worker, if the mine worker has died; or
- (c) the personal representatives of the mine worker, if the mine worker has died without dependants.

(3) If for any reason the amount of a lump sum benefit payable under this Division would be less than the amount of refund that would have been payable to, or in relation to, the mine worker under section 14N had that section been applicable:

- (a) the mine worker is; or

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(b) the personal representatives of the mine worker are, if the mine worker has died,
entitled to receive an amount equal to the amount of that refund instead of the lump sum benefit.

**Subdivision 5—Benefits following retrenchment
Retrenchment before age 55**

14P. (1) In this section, a reference to an affected person is a reference to:

- (a) a mine worker who:
 - (i) was a contributor to the Fund on 2 January 1993; and
 - (ii) before attaining the age of 55, is retrenched as a mine worker; and
 - (iii) elects to take a benefit under this section; and
- (b) a dormant member whose latest period of service was terminated by retrenchment on or after 26 March 1978 and who, before attaining the age of 55, elects to take a benefit under this section.

(2) The benefit payable to an affected person under this section is a benefit equal to that which would be applicable to the affected person under section 14I if the affected person had retired on the date of election and that section had been amended:

- (a) by omitting from section 14I (1) (a) the words “and who retires after 2 January 1993 at the age of 55 or more”; and
- (b) by omitting section 14I (1) (b) (ii).

(3) If the amount of the benefit payable under this section exceeds the amount calculated under section 14N (4) and (5), and an election is not made under subsection (4) of this section, the excess amount is to be:

- (a) transferred to an approved deposit fund, or to another superannuation fund, nominated by the affected person; or
- (b) used to purchase a deferred annuity, if the affected person so requires,

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

if the Tribunal is satisfied that the fund nominated, or the annuity required, complies with the Occupational Superannuation Standards Regulations of the Commonwealth.

(4) If the affected person so elects, the Tribunal is to deal with the whole of the benefit payable under this section as if it were an excess amount under subsection (3).

(5) If an affected person elects to take a benefit under this section and dies before the election takes effect, the benefit is payable to the personal representatives of the affected person.

(6) A person who makes an election under this section is not entitled to any other benefit under this Act, except a benefit under Part 4A.

Subdivision 6—General

Certain periods not to be counted

14Q. For the purposes of this Division, section 2 (2) (b) and (c) are taken to have been repealed.

Effect of clause 10 of Restructuring Agreement

14R. (1) The parties to the Restructuring Agreement are authorised to give effect to clause 10 of that Agreement.

(2) The provisions of clause 10 of the Restructuring Agreement are set out in Part 2 of Schedule 3.

Division 5—Applications

Application for lump sum benefit

14S. (1) An application for a lump sum benefit under this Part is to be in a form approved by the Tribunal, is to be verified by statutory declaration and is to be lodged with, or forwarded to, the Tribunal.

(2) On receipt of such an application, the Tribunal is to cause to be made such investigations as appear to the Tribunal to be desirable.

(3) After considering the application and the result of the investigations, the Tribunal is to approve or refuse the application or adjourn its consideration until further information required by the Tribunal is produced by the applicant.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(4) If the Tribunal approves the application, it is to state the number of completed calendar months of employment as a mine worker in respect of which the benefit is payable.

(5) The Tribunal is to notify an applicant under this section of its decision on the application.

(9) Section 16B:

After section 16A, insert:

Tribunal may appoint Manager

16B. (1) The Tribunal may enter into contracts or arrangements with any person:

(a) under which the person undertakes to carry out on behalf of the Tribunal any one or more of the functions of the Tribunal, including functions with respect to:

(i) the administration of the Coal and Oil Shale Mine Workers Superannuation Fund; or

(ii) the administration of the Coal and Oil Shale Mine Workers Compensation Subsidy Fund; or

(b) for the performance of services.

(2) The power of the Tribunal under this section to enter into a contract or arrangement does not extend to conferring on any other person the power of the Tribunal to appoint an actuary or actuaries to conduct an investigation into the state or sufficiency of either of the Funds to which this section relates.

(3) A person who enters into a contract or arrangement with the Tribunal under this section has, while acting in accordance with the terms of the contract or arrangement, those functions of the Tribunal specified in the contract or arrangement.

(4) The Tribunal may enter into a contract or arrangement with a person under this section with respect to the exercise of a function of the Tribunal by another person only if it is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under this Act.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(10) Sections 19–19AC:

Omit section 19, insert instead:

Contributions to Fund

19. (1) After 2 January 1993, an owner must pay to the Tribunal for credit of the Fund contributions at a weekly rate equal to 4 per cent of the Reference Rate for each mine worker employed by the owner who is:

- (a) a mine worker to whom Group A of the Coal Mining Industry (Supervision and Administration) Interim Consent Award 1990, New South Wales and Tasmania, applies; or
- (b) a Youth or a Junior; or
- (c) a 1st, 2nd or 3rd year apprentice,

together with contributions at a weekly rate equal to the special rate.

(2) After 2 January 1993, an owner must, for each other mine worker employed by the owner, pay to the Tribunal for credit of the Fund contributions at a weekly rate equal to 5 per cent of the Reference Rate together with contributions at a weekly rate equal to the special rate.

(3) Contributions required by this section are to be paid by the owner to the Tribunal:

- (a) for each day in respect of which the relevant mine worker is paid by the owner; and
- (b) at the end of each pay period in respect of which the mine worker is paid.

(4) If a payment required under this section is overdue for more than 14 days, the Tribunal may charge interest on the overdue amount at the rate of interest that, at the time the interest first becomes payable, is advertised as the overdraft reference rate of the Commonwealth Bank for amounts in excess of \$100,000.

(5) 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 Fund.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(6) In this section:

“special rate” means a rate equal to:

- (a) 5.5 per cent of the Reference Rate; or
- (b) such other rate as may be fixed by the Minister by order published in the Gazette on the recommendation of the Tribunal made:
 - (i) after consideration of an actuarial report provided under section 27; and
 - (ii) with the agreement of the parties to the New South Wales Coal Mining Industry Statutory Fund (Restructuring) Agreement dated 25 June 1992.

Records and notices relating to employment of mine worker

19AA. (1) An owner must keep, in a form approved by the Tribunal and in relation to each mine worker employed by the owner, a record of:

- (a) the date of birth of the mine worker; and
- (b) the date on which the mine worker became employed by the owner; and
- (c) the date on which the mine worker ceased to be employed by the mine owner.

(2) As soon as practicable after a mine worker ceases to be employed by an owner, the owner must give a written notice that complies with subsection (3) to the Tribunal.

Maximum penalty: 5 penalty units.

(3) The notice is to contain the following particulars:

- (a) the name of the mine worker; and
- (b) the date on which the mine worker ceased to be employed by the owner; and
- (c) the reason for the cessation of employment of the mine worker.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

Returns to be provided by owners

19AB. (1) Not later than 31 July in each year, each owner must provide the Tribunal with a return that is in a form approved by the Tribunal and sets out the payments made by the owner to the Tribunal under section 19 in respect of the year ending on the last preceding 30 June.

Maximum penalty: 5 penalty units.

- (2) The return is to include the following information:
- (a) the names, in alphabetical order, of the mine workers in relation to whom an amount has been paid to the Tribunal in the year to which the return relates; and
 - (b) the date of birth of each of those mine workers; and
 - (c) the total amount that has been paid by the owner to the Tribunal in relation to each of those mine workers during the year to which the return relates.

Information to be provided to Registrar

19AC. At the end of each week, each owner must provide the Tribunal with such information as the Tribunal may reasonably require in relation to the mine workers employed by the owner.

Maximum penalty: 5 penalty units.

(11) Section 19O (Investment of Fund):

After section 19O (3), insert:

(4) The Tribunal may, whether or not after consultation with the Joint Coal Board, make investments under this section of money in the Coal and Oil Shale Mine Workers Superannuation Fund that is money to which the Pension Account relates.

(12) Section 27 (Actuarial investigation and report):

- (a) In section 27 (1), after “Fund” where firstly occurring, insert “(including those to which the Pension Account relates)”.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(b) After section 27 (3AA), insert:

(3AB) The Joint Coal Board may appoint an actuary to review and report, at times determined by the Joint Coal Board with the agreement of the Tribunal, on the Pension Account for the purpose of valuing the pension liability of the Fund.

(13) Section 32A:

After section 32, insert:

Temporary modification of Act

32A. (1) Subject to subsection (2), regulations may be made under which the provisions of this Act are taken to be modified if the Minister certifies to the Governor that:

- (a) an event referred to in clause 10 (b) of the Restructuring Agreement (the provisions of which are set out in Part 2 of Schedule 3) has occurred; and
 - (b) the principles to be given effect by the regulations have been agreed to by representatives of such of the organisations set out in Part 1 of Schedule 3 as are in existence when the certificate is given.
- (2) A regulation referred to in this section:
- (a) may be made only for or with respect to matters for or with respect to which this Act makes provision; and
 - (b) may be made with effect from 3 January 1993 or a later date, whether or not it is made after, or published in the Gazette after, the date on which it is to take effect; and
 - (c) is revoked 12 months after being made, unless earlier revoked or otherwise ceasing to have effect; and
 - (d) has no effect in so far as, but for this paragraph, it would directly or indirectly amend this section or Part 3.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(14) Schedules 3 and 4:

After Schedule 2, insert:

**SCHEDULE 3—ACCUMULATION FUND AND
RESTRUCTURING AGREEMENT**

(Sec. 2)

Part 1—Accumulation Fund

Parties to Agreement

1. For the purposes of the definition of "Restructuring Agreement" in section 2 (1), the parties to the Agreement are:

- The New South Wales Coal Association, a registered organisation of employers, 221 Elizabeth Street, Sydney, New South Wales.
- Cumnock No. 1 Colliery Pty Ltd, a registered company, of PO Box 246, Singleton, New South Wales.
- The United Mine Workers, a Division of the Construction, Forestry and Mining Employees' Union, a registered trade union, 72-74 Buckingham Street, Surry Hills, New South Wales.
- The Federated Engine Drivers' and Firemens' Association, a registered trade union, 361 Kent Street, Sydney, New South Wales.
- The Metal and Engineering Workers' Union, a registered trade union, 136 Chalmers Street, Surry Hills, New South Wales.
- The Electrical Trades Union of Australia, a registered trade union, 52 Bay Street, Rockdale, New South Wales.
- The Australian Collieries' Staff Association, 91 Frederick Street, Merewether, New South Wales.
- The Colliery Officials' Association of NSW, a registered trade union, Unit 7 Medcalf Centre, 50 Medcalf Street, Warners Bay, New South Wales.
- The New South Wales Coal Mine Managers' Association, a registered trade union, Lot 8 Rodney Road, Mt Vincent, New South Wales.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

Part 2—Renegotiation of Restructuring Agreement

(Secs. 14R and 32A)

Text of Restructuring Agreement

2. The text of clause 10 of the Restructuring Agreement is as set out below.

10. RENEGOTIATION

(a) The parties recognise that during the life of this Agreement, circumstances on which this Agreement is founded may change. In the event that such changes occur and the intention of the parties to this Agreement is significantly adversely affected, the parties commit to renegotiation of this Agreement. Any renegotiation between the parties will commence from the basis of the funding arrangements which were in place immediately prior to the commencement of this Agreement i.e. contributions as a percentage of the Reference Rate of:

- employer contributions—7.5% ordinary and 5.5% special
- employee contributions—2.5% ordinary and 1.75% special

(b) Changed circumstances which would necessitate a renegotiation of this Agreement include, but are not limited to:

- i. changes in marginal tax rates during the life of this Agreement which, when aggregated, result in the gain from Salary Sacrifice being reduced from that amount identified in paragraph 8(c) above to below 3%.
- ii. a judicial decision/interpretation, a ruling by the Federal Government or the Taxation Office that the methods adopted by the parties to this Agreement to fund the liabilities of the Statutory Fund are no longer available, or are significantly less effective.
- iii. amendment to the Legislation by the NSW Government, or other decision or act of the Australian or NSW Government, the result of which makes this Agreement significantly less effective.
- iv. a reduction in employment in the New South Wales coal mining industry to less than 12,000 employees.

**SCHEDULE 4—INTEREST ON REFUND OF
CONTRIBUTIONS**

(Sec. 14N (5))

Total interest on refund

1. There is to be added to a refund of contributions the total interest payable in accordance with this Schedule.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW BENEFITS
—continued

Interest for year ending on 30 June 1988 and preceding years

2. (1) In this clause:

“applicable year” means:

- (a) the year that ended on 30 June 1988; and
- (b) each preceding year that ended on 30 June.

(2) Interest is payable on the balance of contributions as at the end of each of the applicable years and is so payable at the annual rate determined by the Tribunal for the particular year after having regard to the rates of interest payable during that year by the Commonwealth Savings Bank on ordinary savings accounts.

Interest for year ending on 30 June 1989 and succeeding complete years

3. (1) In this clause:

“applicable year” means:

- (a) the year that ended on 30 June 1989; and
- (b) each complete succeeding year that ends on 30 June.

(2) Interest is payable in respect of each applicable year on an amount equal to the total of:

- (a) the balance of contributions plus interest at the beginning of the year; and
- (b) one-half of the contributions paid during the year.

(3) Under this clause, the interest for a year is payable at a rate determined by the Tribunal having regard to the net earning rate of the Fund in that year.

Interest for part of year up to application for refund

4. (1) In this clause:

“applicable period”, in relation to a refund of contributions applied for after 2 January 1993, means so much of the year commencing on 1 July last preceding the application as had expired on the date of the application.

(2) Interest for the applicable period is payable on an amount equal to the total of:

- (a) the balance of contributions plus interest at the beginning of the period; and
- (b) one-half of the contributions paid during the applicable period.

(3) Under this clause, the interest for the applicable period is payable at a rate determined by the Tribunal as an estimate of the net earning rate of the Fund for the year of which the applicable period is part.

**SCHEDULE 3—AMENDMENTS PRESERVING CERTAIN
BENEFITS**

(Sec. 3)

- (1) **Section 3A (Authorised periods before 3 January 1993):**
After section 3A (7), insert:
 - (8) This section does not apply to service in the coal or oil shale mining industries that occurs after 2 January 1993.
- (2) **Part 2, Division 3, heading:**
After “Benefits”, insert “before 3 January 1993”.
- (3) **Section 5AA (Early retirement before 3 January 1993):**
In section 5AA (1) and (2), after “retire” wherever occurring, insert “before 3 January 1993”.
- (4) **Section 14A (Lump sum benefit payments to certain mine workers who retired on or after 26 March 1978 and before 3 January 1993):**
 - (a) In section 14A (1), after “1978”, insert “and before 3 January 1993”.
 - (b) From section 14A (3), omit “, referred to in section 14B”, insert instead “under section 14B (as in force before its repeal)”.
- (5) **Section 14AA (Lump sum benefit payments to certain other mine workers who retired on or after 3 July 1988 and before 3 January 1993):**
In section 14AA (1), after “1988”, insert “and before 3 January 1993”.
- (6) **Section 14B (Prescribed amount for purposes of sections 14A and 14AA):**
Omit the section.
- (7) **Section 14C (Lump sum benefit payment to retired mine workers: special provisions):**
Omit the section.

**SCHEDULE 3—AMENDMENTS PRESERVING CERTAIN
BENEFITS—*continued***

- (8) **Section 14D (Lump sum benefit payment on death of mine worker on or after 26 March 1978 and before 3 January 1993):**
- (a) In section 14D (1), from the definition of “prescribed dependent amount”, omit “(as referred to in section 14B)”, insert instead “under section 14B (as in force before its repeal)”.
 - (b) In section 14D (2), after “1978”, insert “and before 3 January 1993”.
 - (c) In section 14D (2) (a1), after “1988”, insert “and before 3 January 1993”.
 - (d) In section 14D (9) (a) (ii), after “sustained”, insert “and before 3 January 1993”.
 - (e) In section 14D (9), omit “(as referred to in section 14B)”, insert instead “under section 14B (as in force before its repeal)”.
- (9) **Section 14F (Lump sum benefit payment for disabled mine workers: special provisions):**
Omit the section.
- (10) **Section 14FA (Lump sum benefit payment for total and permanent incapacity on and after 3 July 1988 and before 3 January 1993):**
In section 14FA (1) (a) (ii), after “1988”, insert “and before 3 January 1993”.
- (11) **Section 14FB (Lump sum benefit payment for partial and permanent incapacity before 3 January 1993):**
In section 14FB (1) (a) (ii), after “disability”, insert “before 3 January 1993”.
- (12) **Section 14H (Applications for lump sum benefit payment):**
Omit the section.
- (13) **Part 4B, heading:**
After “CONTRIBUTIONS”, insert “BEFORE 3 JANUARY 1993”.

**SCHEDULE 3—AMENDMENTS PRESERVING CERTAIN
BENEFITS—continued**

(14) Section 19HA:

Before section 19I, insert:

Division applies if application made before 3 January 1993

19HA. A refund of contributions may be made in accordance with this Division only if application for the refund is made before 3 January 1993.

(15) Section 19I (Definition):

After “worker”, insert “before 3 January 1993”.

(16) Section 19L (Refund of contributions where mine worker ceases to be employed on or after 26 March 1978 and before 3 January 1993):

In section 19L (1), after “1978”, insert “and before 3 January 1993”.

(17) Schedule 2 (Savings and transitional provisions):

(a) Omit clause 2 (1) and (2), insert instead:

(1) Regulations may be made under section 32 containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Coal and Oil Shale Mine Workers (Superannuation)
Amendment Act 1990

Coal and Oil Shale Mine Workers (Superannuation)
Amendment Act 1992.

(2) Any such provision may, if the regulations so provide:

(a) take effect on the date of assent to the Act concerned or a later date; or

(b) take effect on 1 July 1992 or a later date, if it is a provision consequent on the enactment of Schedule 1 to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992, and section 3 of that Act in its application to that Schedule.

**SCHEDULE 4—AMENDMENT OF COAL AND OIL SHALE
MINE WORKERS (SUPERANNUATION) REGULATION 1983—
*continued***

(b) After clause 2, insert:

**Queensland mine worker who, before 3 January 1993,
retired, was disabled or died**

3. Despite its repeal on 3 January 1993, section 4A as in force immediately before its repeal continues to apply to and in respect of a Queensland mine worker who, before the repeal, had retired, had become disabled, or had died.

**SCHEDULE 4—AMENDMENT OF COAL AND OIL SHALE
MINE WORKERS (SUPERANNUATION) REGULATION 1983**

(Sec. 4)

(1) Clauses 16–20, 25, 25A, 27A, 28, 30 and 31:

Omit the clauses.

(2) Clause 32:

Omit the clause, insert instead:

Penalties generally

32. A person who contravenes clause 15, 29 (1) or 29 (3) is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

[*Minister's second reading speech made in—
Legislative Assembly on 29 October 1992
Legislative Council on 19 November 1992*]

**COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) AMENDMENT ACT 1992 No. 81**

NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 3—AMENDMENTS PRESERVING CERTAIN BENEFITS
SCHEDULE 4—AMENDMENT OF COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) REGULATION 1983

**COAL AND OIL SHALE MINE WORKERS
(SUPERANNUATION) AMENDMENT ACT 1992 No. 81**

NEW SOUTH WALES



Act No. 81, 1992

An Act to amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 in order to provide an amended superannuation scheme for mine workers; and for other purposes. [Assented to 27 November 1992]

Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992 No. 81

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992.

Commencement

2. (1) Except as provided by this section, this Act commences on 3 January 1993.

(2) Schedule 1, and section 3 in its application to that Schedule, are taken to have commenced on 1 July 1992.

Amendment of Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45

3. The Coal and Oil Shale Mine Workers (Superannuation) Act 1941 is amended as set out in Schedules 1-3.

Amendment of Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983

4. The Coal and Oil Shale Mine Workers (Superannuation) Regulation 1983 is amended as set out in Schedule 4.

SCHEDULE 1—AMENDMENTS ESTABLISHING A PENSION ACCOUNT

(Sec. 3)

(1) Section 2 (**Definitions**):

In section 2 (1), insert the following definitions in alphabetical order:

“**Fund**” means, except in Part 4C, the Coal and Oil Shale Mine Workers Superannuation Fund established by section 18.

“**Pension Account**” means the account established under section 18A.

(2) Section 18 (**The Fund**):

(a) From section 18 (1), omit “(in this Act referred to as the “**Fund**”)”.

**SCHEDULE 1—AMENDMENTS ESTABLISHING A PENSION
ACCOUNT—*continued***

(b) At the end of section 18 (2) (a) (ii), insert:

; and

(iii) moneys paid to the Fund by the Joint Coal Board for credit of the Pension Account.

(3) Section 18A:

After section 18, insert:

The Pension Account

18A. (1) A separate account (“the Pension Account”) is to be kept of all money paid to the Fund by the Joint Coal Board on and after 1 July 1992.

(2) Credits to the Pension Account are to be in the form of an imprest account maintained at:

- (a) \$10,000,000, unless the Board gives approval for a larger amount or paragraph (b) or (c) applies; or
- (b) an amount less than \$10,000,000 that is approved by the Tribunal, unless paragraph (c) applies; or
- (c) an amount less than \$10,000,000 that is certified by the actuary, and agreed to by the Tribunal, as sufficient to fund future pension payments required by this Act.

(3) Administrative arrangements for the Pension Account are to include the following:

- The Tribunal is to submit to the Joint Coal Board each month a statement certifying the amount of pensions and redemptions paid from money in the account during the period to which the statement relates.
- Interest earned on money in the Pension Account is to be credited to that account and included in each monthly statement submitted to the Joint Coal Board by the Tribunal.
- A payment for credit of the Pension Account is to be made by the Joint Coal Board each month, the amount of the payment being determined by the Board after consideration of the statement submitted by the Tribunal for the last preceding month.

(4) All pensions and commuted pensions paid from the Fund on and after 1 July 1992 are to be debited to the Pension Account.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS**

(Sec. 3)

(1) Section 1A:

After section 1, insert:

**Contributions and benefits payable on and after 3
January 1993**

1A. (1) On and after 3 January 1993, a mine worker is not entitled or liable to contribute to the Fund, whether or not the mine worker was, or was entitled to be, a contributor before that date.

(2) This Act applies:

(a) to a pension under this Act of which payment had commenced before 3 January 1993 or that had become payable before that date but has not commenced to be paid; and

(b) to commutation of such a pension,

in the same way as it applies to a pension, and to commutation of a pension, that first becomes payable on or after 3 January 1993.

(3) If a mine worker resigned, or was retrenched or dismissed, before 3 January 1993 and had not applied for a benefit under this Act before that date, this Act applies to the former mine worker in the same way as it applies to a mine worker who resigns, or is retrenched or dismissed, on or after that date.

(4) On or after 3 January 1993, a benefit is not to be paid under Division 3 of Part 2 to, or in relation to, a mine worker unless the payment was due, but had not been made, before that date.

(2) Section 2 (Definitions):

(a) In section 2 (1), insert the following definitions in alphabetical order:

“**Accumulation Fund**” means the New South Wales Coal and Oil Shale Mining Industry (Superannuation) Accumulation Fund referred to in the Restructuring Agreement.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

“CPI figure”, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index (All Groups—Average of eight capital cities) published by the Australian Statistician under the Census and Statistics Act 1905 of the Commonwealth.

“Dormant member” means a former contributor to the Fund:

- (a) whose last period of service as a mine worker ceased due to retrenchment, resignation or dismissal; and
- (b) who has not taken any benefit from the Fund; and
- (c) who may become entitled:
 - (i) for the purposes of the Fund, to be credited with past service on being re-employed as a mine worker; or
 - (ii) to a payment from the Fund.

“Quarter” means each successive period of 3 calendar months the first of which commences on 1 January.

“Registrar” means the Registrar holding office under section 16.

“Restructuring Agreement” means the New South Wales Coal Mining Industry Statutory Fund (Restructuring) Agreement made on 25 June 1992 between the parties set out in Part 1 of Schedule 3.

“Retrenched”, in relation to a mine worker or dormant member, means that the employment of the mine worker or dormant member was terminated:

- (a) in a way referred to in subsection (1A); or
- (b) in a way determined by the Tribunal to have been an involuntary termination if the Tribunal also determines that, having regard to all the circumstances, the mine worker or dormant member is to be entitled to a benefit from the Fund as if the employment had been terminated in a way referred to in subsection (1A).

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

“**Special Account**”, in relation to a mine worker or dormant member, means the account in the Accumulation Fund which is in the name of the mine worker or dormant member and to which the contributions payable to the Accumulation Fund under the Restructuring Agreement are credited.

“**Subsidy Fund**” means the Coal and Oil Shale Mine Workers Compensation Subsidy Fund established by section 19C.

(b) After section 2 (1), insert:

(1A) For the purposes of this Act, a mine worker is retrenched if the employment of the mine worker is terminated and the termination is stated by the employer to have taken place because:

- (a) the employer no longer required the services of the mine worker and does not propose to fill the position then held by the mine worker; or
- (b) the work that the mine worker was employed to perform has been completed; or
- (c) the amount of work that the employer required to be performed has diminished and it has accordingly become necessary to reduce the number of employees employed by the employer; or
- (d) the mine worker has accepted an offer by the employer of terms on which retrenchment of the mine worker was proposed by the employer on a ground referred to in paragraph (a), (b) or (c).

(c) From section 2 (5), omit “the classification of loaderman in an industrial award applying to the coal mining industry in New South Wales”, insert instead “Group B of the Coal Mining Industry (Production and Engineering) Interim Consent Award, September 1990 (or such other rate as may be agreed upon by the parties to the Restructuring Agreement)”.

(3) Section 2J (Further extension of the definition of “Mine worker”):

Omit section 2J (13).

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(4) Section 2K:

After section 2J, insert:

Notices under section 2J

2K. (1) Before any work is commenced by a person other than a mine worker in or about, or in connection with, a coal or oil shale mine in New South Wales, the owner must give to the Tribunal a written notice that complies with subsection (2).

Maximum penalty: 5 penalty units for each day in any period of days during which this subsection is not complied with.

(2) The notice is to contain the following particulars:

- (a) the name and address of the employer, or proposed employer, of the person;
- (b) the proposed date of commencement of the work;
- (c) the terms of any contract for doing the work;
- (d) the number of persons who will be doing the work;
- (e) the nature of the work;
- (f) each location at which it is proposed that the work be done;
- (g) the number of persons by whom the work is proposed to be performed who are, to the knowledge of the owner, members of an association of employees registered as an organisation of employees under Part IX of the Industrial Relations Act 1988 of the Commonwealth;
- (h) the period for which it is proposed that the work be performed.

(5) Section 4A:

Omit the section, insert instead:

Special provisions for persons engaged in the coal mining industry in Queensland

4A. (1) In this section:

- (a) a reference to the applicable provisions is a reference to sections 3 (8) and 7 (1A), and to Division 4 of Part 2, except section 14P; and

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

- (b) a reference to a person to whom this section applies is a reference to a person whose last period of service as a mine worker was in Queensland, who has had prior service in the coal or oil shale mining industries in New South Wales and:
- (i) who has applied for a benefit under this Act; or
 - (ii) who has died and in respect of whom application has been made for such a benefit.

(2) For the purposes of the applicable provisions and of qualifying for a benefit under this Act, a person to whom this section applies is taken to have been a mine worker if he or she:

- (a) is or was, on or after 3 January 1993, employed in the coal mining industry in Queensland; and
- (b) by the operation of section 2 (2), would be taken to have been engaged in the coal or oil shale mining industries had the employment been in New South Wales,

but, for the purpose of calculating any benefit, industry service in New South Wales only (and no other service) is to be taken into account.

(3) The provisions of section 3 (1), (3) and (4) apply to a person taken by this section to have been a mine worker and so apply as if a reference in those provisions to New South Wales included a reference to Queensland.

(4) Section 6 applies to a person taken by this section to have been a mine worker and so applies as if:

- (a) a reference in that section to having been continuously resident, or resident, in New South Wales during a specified period included a reference to any period during which the person was continuously resident, or resident, in Queensland; and
- (b) a reference in that section to having been continuously engaged, or engaged, in the coal or oil shale mining industries in New South Wales during a specified period included a reference to any period during which the person was continuously employed, or employed, in the coal mining industry in Queensland; and

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

- (c) a reference in that section to having actually worked in or about a coal or oil shale mine in New South Wales for a specified period included a reference to any period during which the person worked in or about a coal mine in Queensland.
- (5) If a person dies or is incapacitated while employed in the coal mining industry in Queensland, the same benefit is payable to the person or persons entitled on the death or incapacity as would have been payable if the deceased or incapacitated person had retired on the date of death or incapacity.
- (6) Section 11 (**Pensions—special provisions**):
From section 11 (1), omit “payable to him until his death”, insert instead “payable to the mine worker for life unless it is earlier commuted under section 12”.
- (7) Section 12:
After section 11B, insert:
Commutation of pension
12. (1) The Tribunal may make, but is not obliged to make, a written offer to a pensioner, or to a prospective pensioner, providing for commutation of the pension to a lump sum calculated at a rate determined by the Tribunal and payable on conditions so determined.
(2) Such an offer must state the amount of the lump sum and the conditions upon which acceptance of the offer would be given effect.
(3) An election by a pensioner or prospective pensioner to accept an offer made under this section is to be made as indicated by the Tribunal when making the offer.
(4) The amount of a lump sum payable under this section is to be an amount that is determined by the Tribunal after taking into consideration the advice of an actuary and the requirements of the Occupational Superannuation Standards Regulations of the Commonwealth.
(5) If:
(a) a pensioner who makes an election under this section dies before it is given effect; or

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(b) a prospective pensioner who makes an election under this section dies before the election is given effect but on or after the date on which the deceased would, but for the election, have become entitled to the pension, the Tribunal is to pay the lump sum to the personal representatives of the deceased.

(6) A pension does not become payable, or ceases to be payable, if it is commuted under this section.

(7) If a pension is commuted under this section by a person who subsequently dies and is survived by dependants or a de facto wife, a pension is not payable under section 10 to the dependants or under section 10A to the de facto wife.

(8) An election made under this section by a prospective pensioner is not to be given effect by the Tribunal before the award of the pension would, but for the election, have taken effect.

(8) Part 2, Divisions 4, 5:

Before Part 3, insert:

Division 4—Lump sum benefits after 2 January 1993

**Subdivision 1—Benefit payable on retirement on or
after age 55**

**Lump sum benefit for a mine worker on retirement and
for a retrenched dormant member**

14I. (1) A lump sum benefit is payable under this section to:

- (a) a mine worker who on 2 January 1993 was a contributor to the Fund and who retires after 2 January 1993 at the age of 55 or more; and
- (b) a person who:
 - (i) is a dormant member as a result of retrenchment as a mine worker; and
 - (ii) is aged 55 or more; and
 - (iii) applies for the benefit after 2 January 1993.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(2) A mine worker or dormant member to whom this section applies is entitled to payment from the Fund of a lump sum benefit equal to:

- (a) the benefit provided by subsection (3); or
- (b) the benefit provided by subsection (4) if:
 - (i) the mine worker or dormant member was at least 40 years of age on 2 January 1993; and
 - (ii) in the case of a mine worker, he or she was, immediately before retiring, a mine worker in respect of whom contributions were being paid to his or her Special Account; and
 - (iii) in the case of a dormant member, he or she was, immediately before being retrenched, a mine worker in respect of whom contributions were being paid to his or her Special Account; and
 - (iv) the benefit is greater than the benefit provided by subsection (3).

(3) The benefit provided by this subsection is the amount calculated in accordance with the formula:

$$A \times \frac{B}{C} \times D$$

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker retired or the retrenched dormant member applied for the benefit.

C is the CPI figure for the quarter that ended on 31 December 1992.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

D is the number of months of industry service:

- that were completed by the mine worker or retrenched dormant member before 3 January 1993; and
- in respect of which contributions have been paid to the Fund or are taken by the Tribunal to have been paid to the Fund.

(4) The benefit provided by this subsection is the amount calculated in accordance with the formula:

$$(A \times \frac{B}{C} \times E) - F$$

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker retired or the retrenched dormant member applied for the benefit.

C is the CPI figure for the quarter that ended on 31 December 1992.

E is the total number of months of completed service for which contributions in respect of the mine worker or retrenched dormant member have been, or are taken by the Tribunal to have been, paid to the Fund and, in respect of the period after 2 January 1993, have been paid to the mine worker's Special Account.

F is the amount standing to the credit of the mine worker's or retrenched dormant member's Special Account in the Accumulation Fund.

(5) If a retired mine worker, or a retrenched dormant member, dies before a benefit to which he or she would have otherwise been entitled under this section has been paid, the

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

benefit is to be paid to his or her personal representatives on application to the Tribunal.

Subdivision 2—Benefit payable on death

Lump sum benefit payable on death of mine worker or retrenched dormant member

14J. (1) A lump sum benefit of the amount provided by this section is payable as provided by section 14K on the death after 2 January 1993 of:

- (a) a mine worker who on that date was a contributor to the Fund; or
- (b) a person who on that date was a dormant member as a result of retrenchment and who dies before reaching the age of 60,

if no other benefit has been paid, or is payable, under this Division.

(2) On the death after 2 January 1993 of a mine worker who, immediately before dying, was a mine worker in respect of whom contributions were being paid to his or her Special Account, the lump sum benefit provided by this section is an amount equal to the greater of the amounts provided under subsections (5) and (6).

(3) On the death after 2 January 1993 of a retrenched dormant member to whom this section applies and who, immediately before being retrenched, was a mine worker in respect of whom contributions were being paid to his or her Special Account, the lump sum benefit payable under this section is the greater of the benefits provided by subsections (5) and (6).

(4) Except as provided by subsections (2) and (3), the lump sum benefit payable under this section is the benefit provided by subsection (5).

(5) The benefit provided by this subsection is the amount calculated in accordance with the following formula:

$$A \times \frac{B}{C} \times D$$

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker or retrenched dormant member died.

C is the CPI figure for the quarter that ended on 31 December 1992.

D is the number of months of industry service:

- that were completed by the mine worker or retrenched dormant member before 3 January 1993; and
- in respect of which contributions have been paid to the Fund or are taken by the Tribunal to have been paid to the Fund.

(6) The benefit provided by this subsection is the amount calculated in accordance with the formula:

$$\left(A \times \frac{B}{C} \times G\right) - F - H$$

where:

A is an amount equal to the greater of:

- 46.25 per cent of the Reference Rate as at 2 January 1993; and
- \$250.

B is the CPI figure for the later of:

- the quarter that ended on 31 December 1992; and
- the quarter that is 2 quarters before that during which the mine worker or retrenched dormant member died.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—continued**

C is the CPI figure for the quarter that ended on 31 December 1992.

F is the amount standing to the credit of the deceased mine worker or retrenched dormant member in his or her Special Account in the Accumulation Fund.

G is the number of completed months of actual and notional service in the coal or oil shale mining industries in respect of which a benefit would, on the death of the mine worker or retrenched dormant member, have been payable under this Act as in force immediately before 3 January 1993.

H is the amount of insurance (if any) that, on the death of a mine worker or a retrenched dormant member, is payable from the Accumulation Fund in association with the mine worker's or dormant member's Special Account in the Accumulation Fund.

Payment of benefit on death of mine worker or retrenched dormant member

14K. (1) In this section “benefit unit” means the amount calculated in accordance with the formula:

$$240 \times A \times \frac{B}{C}$$

where A, B and C have the same meanings as they have in section 14J.

(2) For the purpose of distributing a benefit under section 14J, the benefit payable to a person for whom there is a nominal benefit under this section is:

- (a) such proportion of the benefit calculated under section 14J in respect of the mine worker or retrenched dormant member as the nominal benefit under this section bears to the sum of the nominal benefits which apply to that benefit; or
- (b) in a particular case, the benefit determined by the Tribunal.

(3) On the death of a mine worker or a retrenched dormant member, the nominal benefit for his or her spouse is the greater of:

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

- (a) 1 benefit unit; and
 - (b) the amount calculated in accordance with section 14I as if the mine worker or retrenched dormant member had retired on the date of death with entitlement to a benefit under that section.
- (4) If a nominal benefit is applicable under subsection (3), there is a nominal benefit for each child of the mine worker or retrenched dormant member equal to:
- (a) one-third of 1 benefit unit, unless there are more than 3 dependent children; or
 - (b) 1 benefit unit divided by the number of dependent children, if there are more than 3 dependent children.
- (5) If a nominal benefit is not applicable under subsection (3), the nominal benefit for each dependent child of the mine worker or retrenched dormant member is:
- (a) two-thirds of 1 benefit unit, unless there are more than 3 dependent children; or
 - (b) 2 benefit units divided by the number of dependent children, if there are more than 3 dependent children.
- (6) If there are fewer than 3 dependent children of a mine worker or retrenched dormant member who has died:
- (a) the nominal benefit for each of the dependent parents of the mine worker or retrenched dormant member is three-quarters of 1 benefit unit; and
 - (b) the nominal benefit for each of the dependent relatives of the mine worker or retrenched dormant member is one-half of 1 benefit unit; and
 - (c) the nominal benefit for each of the other dependants of the mine worker or retrenched dormant member is one-quarter of 1 benefit unit, unless a nominal benefit is otherwise provided by this section for the dependant.
- (7) For the purposes of this section, a person was dependent on a mine worker or retrenched dormant member only if the Tribunal is satisfied:
- (a) that the person was totally or mainly dependent for financial support on the mine worker or retrenched dormant member at the time of the death of the mine worker or dormant member; or

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(b) if the person is a child of the mine worker or dormant member, that the child was under 16 years of age at the time of the death of the mine worker or dormant member.

(8) If the spouse of a mine worker or retrenched dormant member dies:

(a) at the same time as the mine worker or dormant member or in such circumstances as to make it uncertain which of them survived the other; or

(b) within 48 hours before the death of the mine worker or dormant member,

the spouse is for the purposes of this section taken to have been alive at the time of the death of the mine worker or dormant member.

(9) The benefit to which a child is entitled under this section is payable for the support and education of the child:

(a) to one of the child's parents or guardians, unless paragraph (b) applies; or

(b) to another person, if the Tribunal so decides.

(10) If a child entitled to a benefit under this section attains the age of 18, the benefit is payable as soon as practicable to the child.

(11) If a mine worker:

(a) while actually engaged after 2 January 1993 in performing work as a mine worker, sustains an injury that is wholly or partly the result of an accident (including an event, act or omission resulting from the negligence or misconduct of any person, including the mine worker); and

(b) directly or indirectly as a result of the injury, dies within 6 months after the day on which the injury was sustained; and

(c) is survived by a spouse,

the nominal benefit for the spouse is three-eighths of 1 benefit unit.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(12) A nominal benefit is applicable under subsection (11) in addition to any nominal benefit applicable under this Part in relation to the mine worker.

(13) Subject to subsection (12):

- (a) the nominal benefits calculated under this section in respect of a mine worker or retrenched dormant member are not to exceed 2 benefit units; and
- (b) nominal benefits calculated under subsection (6) are to be reduced proportionally or eliminated if the total nominal benefits (excluding those under subsection (12)) would otherwise exceed 2 benefit units.

(14) If there is no person to whom a nominal benefit is applicable under this section, the benefit under section 14J:

- (a) is to be paid to the personal representatives of the mine worker or retrenched dormant member; and
- (b) is the amount calculated in accordance with section 14I as if the mine worker or retrenched dormant member had retired on the date of death with entitlement to a benefit under that section.

(15) In this section:

“**child**” means a child or step-child under 18 years of age;

“**relative**” means brother, sister, step-brother, step-sister, grandfather, grandmother, grandson or grand-daughter;

“**spouse**”, in relation to a deceased mine worker or dormant member, means the widow or widower who survives the deceased or:

- (a) if the deceased was a man, is not survived by a widow and at the time of his death was living with a woman as her husband on a bona fide domestic basis—the woman with whom he was so living; or
- (b) if the deceased was a woman, is not survived by a widower and at the time of her death was living with a man as his wife on a bona fide domestic basis—the man with whom she was so living.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

Subdivision 3—Incapacity of mine worker

Lump sum benefit payable for incapacity of mine worker

14L. (1) A benefit equal to the amount applicable under subsection (4) is payable to a person who:

- (a) on 2 January 1993 was a mine worker contributing to the Fund or after that date is a mine worker who on that date was a retrenched dormant member; and
- (b) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
- (c) had that employment terminated after 2 January 1993 as a result of his or her disability; and
- (d) has, in respect of the incapacity, neither been awarded a pension under section 6 nor become entitled to a lump sum benefit under section 14I; and
- (e) has submitted to any medical examination required under this section; and
- (f) has satisfied the Tribunal that, as a result of the incapacity, he or she is permanently unable to continue his or her engagement in the coal or oil shale mining industries, even if fit for engagement in some other remunerative employment.

(2) A benefit equal to the amount applicable under subsection (5) is payable to a person who:

- (a) on 2 January 1993 was a mine worker contributing to the Fund or after that date is a mine worker who on that date was a retrenched dormant member; and
- (b) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
- (c) as a result of his or her disability, had that employment terminated after 2 January 1993 by an owner contributing to the Accumulation Fund in respect of the mine worker; and
- (d) has, in respect of the incapacity, neither been awarded a pension under section 6 nor become entitled to a lump sum benefit under section 14I; and

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

- (e) has submitted to any medical examination required under this section; and
 - (f) has satisfied the Tribunal in accordance with subsection (10) that, as a result of the incapacity, he or she is permanently unable to continue his or her engagement in any kind of remunerative occupation in which he or she would otherwise reasonably be expected to be capable of engaging.
- (3) A benefit equal to the amount applicable under subsection (5) is payable to a person who:
- (a) on 2 January 1993 was a mine worker contributing to the Fund or after that date is a mine worker who on that date was a retrenched dormant member; and
 - (b) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
 - (c) as a result of his or her disability, had that employment terminated after 2 January 1993 by an owner contributing to the Accumulation Fund in respect of the mine worker; and
 - (d) has, in respect of the incapacity, neither been awarded a pension under section 6 nor become entitled to a lump sum benefit under section 14I; and
 - (e) has submitted to any medical examination required under this section; and
 - (f) has satisfied the Tribunal that, as a result of the incapacity, he or she is permanently unable to continue his or her engagement in the coal or oil shale mining industries, even if fit for engagement in some other remunerative employment.
- (4) The amount of a lump sum benefit payable under this section to a mine worker referred to in subsection (1) is the amount that would have been payable to the mine worker under section 14I (3) if:
- (a) the mine worker had retired on the date of disability; and

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—continued**

(b) section 14I (3) had related to suffering a disability in the same way as it relates to retirement, and had not included a reference to a dormant member.

(5) The amount of a lump sum benefit payable to a mine worker referred to in subsection (2) or (3) is an amount equal to the amount calculated in accordance with the following formula:

$$(A \times \frac{B}{C} \times D) - F - H$$

where:

A, C, F and H have the same meanings as they would have in section 14J (6) if references in that subsection:

(a) to the death of a mine worker (however expressed) were references to a disabled mine worker; and

(b) to a retrenched dormant member had been omitted.

B is the CPI figure for the quarter that is 2 quarters before that during which the disability of the mine worker occurred.

D is the number of completed months of actual and notional service in the coal mining industry in respect of which a benefit would, on the incapacity of the mine worker, have been payable under this Act as in force immediately before 3 January 1993.

(6) In the explanation of the symbol "D" in subsection (5), a reference to notional service is a reference to the period of service which, when added to the actual period of service of the mine worker, is equal to the maximum period of service determined:

(a) in accordance with subsection (7), in the case of a mine worker referred to in subsection (2) as to whom the Tribunal is satisfied that the incapacity was caused by injury or illness while a mine worker; or

(b) as if the mine worker had retired on the date of the disability, in the case of a mine worker referred to in subsection (3).

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(7) The maximum period of service for the purposes of subsection (6) is to be determined:

- (a) if the mine worker is under 55 years of age at the date of disability—as if the mine worker had continued to be engaged in the coal or oil shale mining industries and had attained that age; or
- (b) if the mine worker is aged 55 or more at the date of disability—as if the mine worker had retired on that date.

(8) If the Tribunal is not satisfied that the incapacity or illness of a mine worker referred to in subsection (2) or (3) was caused by injury as a mine worker, the amount of the lump sum benefit payable to the mine worker is, instead of the amount applicable under subsection (5), an amount equal to the greater of:

- (a) the amount to which the mine worker would have been entitled under subsection (3) had the mine worker qualified for a benefit referred to in that subsection; and
- (b) 10 per cent of the amount referred to in paragraph (a), together with a further 10 per cent of that amount for each completed year of the mine worker's engagement in the coal or oil shale mining industries before the mine worker's date of disability, to a maximum of 100 per cent.

(9) The Tribunal may require an applicant for a lump sum benefit under this section to submit to an examination by a panel of 3 medical practitioners nominated by the Tribunal after considering any representations made by the applicant in relation to the membership of the panel.

(10) The Tribunal is not to be satisfied as to the incapacity of a mine worker referred to in subsection (2) unless, in addition to any other proof it may require, it is provided with a certificate or certificates that is signed by at least 2 medical practitioners and is to the effect that the mine worker is in their opinion unlikely ever to be able to work again in employment for which the mine worker is reasonably qualified by education, training and experience.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(11) A person is not entitled to a lump sum benefit under subsection (2) or (3) if the cause of the incapacity claimed was an act or default of the person that was intended to produce the incapacity.

(12) The date on which a person's incapacity arises and the date of the person's disability are a date or dates determined by the Tribunal which, in making the determination, is to have regard to all the circumstances of the case, including:

- (a) the person's medical and employment history; and
- (b) the date on which the person ceased to be able to be effectively employed as a mine worker.

(13) In this section:

"date of disability" means the date of termination of employment as a mine worker due to incapacity or illness, as determined by the Tribunal under subsection (12).

**Subdivision 4—Benefits following resignation or
dismissal**

Definition

14M. In this Subdivision:

"contributions" means contributions paid to the Fund by a mine worker before 3 January 1993 (including contributions paid in accordance with the terms and conditions of a permit issued to the mine worker under section 2E).

Benefits for mine workers who resign before age 55 and for certain persons who became dormant members by resignation or dismissal

14N. (1) This section applies:

- (a) to a mine worker who was contributing to the Fund on 2 January 1993 and who resigns before attaining the age of 55; and
- (b) to a dormant member whose last period of service as a mine worker ceased on account of resignation or dismissal and who has not taken a benefit from the Fund in respect of service before, on or after 3 January 1993.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(2) A benefit is payable under this section in respect of a mine worker, or a dormant member, if no pension or lump sum benefit is payable under this Act in respect of service for which contributions have been made to the Fund by the mine worker or dormant member.

(3) The benefit in respect of a mine worker, or a dormant member, is payable:

- (a) to the mine worker or dormant member on application to the Tribunal, unless the mine worker or dormant member dies before the payment is made; or
- (b) to the personal representatives of the mine worker or dormant member, on application to the Tribunal, if the mine worker or dormant member applies for the benefit and dies before it is paid; or
- (c) to the personal representatives of the mine worker or dormant member on application to the Tribunal, if the mine worker or dormant member dies without applying for the benefit.

(4) The benefit payable under this section is a refund of the contributions of the mine worker or dormant member made before 3 January 1993 in respect of the period or periods during which the mine worker or dormant member was engaged in the coal or oil shale mining industries until:

- (a) the date of resignation, in the case of a mine worker; or
- (b) in the case of a dormant member, the date of resignation or dismissal.

(5) There is to be added to a refund of contributions the total interest calculated in accordance with Schedule 4.

(6) Any period during which a person was engaged in the coal or oil shale mining industries is to be disregarded for the purposes of this section if a pension or lump sum benefit payment is, after termination of the engagement, otherwise payable under this Act by reference to that period.

(7) If contributions by a mine worker or dormant member in respect of a period are refunded under this section, the mine worker or dormant member is, for the purposes of Division 2 of Part 2, taken not to have been during that period engaged in the coal or oil shale mining industries.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(8) A reference in this section to contributions to the Fund is a reference to those contributions reduced by an amount equal to so much of them as has previously been refunded under section 19J and has not, after being refunded, been repaid to the Fund under section 10AA.

(9) This section does not prevent preservation of a benefit in the Fund by a mine worker who resigns.

Refund of shortfall

14O. (1) If:

- (a) for any reason a pension payable to or in respect of a mine worker under a provision of Division 2 of Part 2 is, except by commutation, cancelled or otherwise terminated; and
- (b) there is no dependant of the mine worker who is entitled to a pension under any other provision of that Division; and
- (c) the total benefit paid as pension under that Division (being the reduced amount if the pension has been reduced under that Division) is less than the amount of refund that would have been payable in respect of the mine worker under section 14N,

the Tribunal must, on the appropriate application being made, refund to the applicant the difference between the 2 amounts referred to in paragraph (c).

(2) For the purposes of this section an appropriate application is an application made by:

- (a) the mine worker concerned, unless the mine worker has died; or
- (b) a dependant of the mine worker, if the mine worker has died; or
- (c) the personal representatives of the mine worker, if the mine worker has died without dependants.

(3) If for any reason the amount of a lump sum benefit payable under this Division would be less than the amount of refund that would have been payable to, or in relation to, the mine worker under section 14N had that section been applicable:

- (a) the mine worker is; or

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(b) the personal representatives of the mine worker are, if the mine worker has died,
entitled to receive an amount equal to the amount of that refund instead of the lump sum benefit.

**Subdivision 5—Benefits following retrenchment
Retrenchment before age 55**

14P. (1) In this section, a reference to an affected person is a reference to:

- (a) a mine worker who:
 - (i) was a contributor to the Fund on 2 January 1993; and
 - (ii) before attaining the age of 55, is retrenched as a mine worker; and
 - (iii) elects to take a benefit under this section; and
- (b) a dormant member whose latest period of service was terminated by retrenchment on or after 26 March 1978 and who, before attaining the age of 55, elects to take a benefit under this section.

(2) The benefit payable to an affected person under this section is a benefit equal to that which would be applicable to the affected person under section 14I if the affected person had retired on the date of election and that section had been amended:

- (a) by omitting from section 14I (1) (a) the words “and who retires after 2 January 1993 at the age of 55 or more”; and
- (b) by omitting section 14I (1) (b) (ii).

(3) If the amount of the benefit payable under this section exceeds the amount calculated under section 14N (4) and (5), and an election is not made under subsection (4) of this section, the excess amount is to be:

- (a) transferred to an approved deposit fund, or to another superannuation fund, nominated by the affected person; or
- (b) used to purchase a deferred annuity, if the affected person so requires,

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

if the Tribunal is satisfied that the fund nominated, or the annuity required, complies with the Occupational Superannuation Standards Regulations of the Commonwealth.

(4) If the affected person so elects, the Tribunal is to deal with the whole of the benefit payable under this section as if it were an excess amount under subsection (3).

(5) If an affected person elects to take a benefit under this section and dies before the election takes effect, the benefit is payable to the personal representatives of the affected person.

(6) A person who makes an election under this section is not entitled to any other benefit under this Act, except a benefit under Part 4A.

Subdivision 6—General

Certain periods not to be counted

14Q. For the purposes of this Division, section 2 (2) (b) and (c) are taken to have been repealed.

Effect of clause 10 of Restructuring Agreement

14R. (1) The parties to the Restructuring Agreement are authorised to give effect to clause 10 of that Agreement.

(2) The provisions of clause 10 of the Restructuring Agreement are set out in Part 2 of Schedule 3.

Division 5—Applications

Application for lump sum benefit

14S. (1) An application for a lump sum benefit under this Part is to be in a form approved by the Tribunal, is to be verified by statutory declaration and is to be lodged with, or forwarded to, the Tribunal.

(2) On receipt of such an application, the Tribunal is to cause to be made such investigations as appear to the Tribunal to be desirable.

(3) After considering the application and the result of the investigations, the Tribunal is to approve or refuse the application or adjourn its consideration until further information required by the Tribunal is produced by the applicant.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(4) If the Tribunal approves the application, it is to state the number of completed calendar months of employment as a mine worker in respect of which the benefit is payable.

(5) The Tribunal is to notify an applicant under this section of its decision on the application.

(9) Section 16B:

After section 16A, insert:

Tribunal may appoint Manager

16B. (1) The Tribunal may enter into contracts or arrangements with any person:

(a) under which the person undertakes to carry out on behalf of the Tribunal any one or more of the functions of the Tribunal, including functions with respect to:

(i) the administration of the Coal and Oil Shale Mine Workers Superannuation Fund; or

(ii) the administration of the Coal and Oil Shale Mine Workers Compensation Subsidy Fund; or

(b) for the performance of services.

(2) The power of the Tribunal under this section to enter into a contract or arrangement does not extend to conferring on any other person the power of the Tribunal to appoint an actuary or actuaries to conduct an investigation into the state or sufficiency of either of the Funds to which this section relates.

(3) A person who enters into a contract or arrangement with the Tribunal under this section has, while acting in accordance with the terms of the contract or arrangement, those functions of the Tribunal specified in the contract or arrangement.

(4) The Tribunal may enter into a contract or arrangement with a person under this section with respect to the exercise of a function of the Tribunal by another person only if it is satisfied that the contract or arrangement is in the interests of the persons entitled to receive benefits under this Act.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(10) Sections 19–19AC:

Omit section 19, insert instead:

Contributions to Fund

19. (1) After 2 January 1993, an owner must pay to the Tribunal for credit of the Fund contributions at a weekly rate equal to 4 per cent of the Reference Rate for each mine worker employed by the owner who is:

- (a) a mine worker to whom Group A of the Coal Mining Industry (Supervision and Administration) Interim Consent Award 1990, New South Wales and Tasmania, applies; or
- (b) a Youth or a Junior; or
- (c) a 1st, 2nd or 3rd year apprentice,

together with contributions at a weekly rate equal to the special rate.

(2) After 2 January 1993, an owner must, for each other mine worker employed by the owner, pay to the Tribunal for credit of the Fund contributions at a weekly rate equal to 5 per cent of the Reference Rate together with contributions at a weekly rate equal to the special rate.

(3) Contributions required by this section are to be paid by the owner to the Tribunal:

- (a) for each day in respect of which the relevant mine worker is paid by the owner; and
- (b) at the end of each pay period in respect of which the mine worker is paid.

(4) If a payment required under this section is overdue for more than 14 days, the Tribunal may charge interest on the overdue amount at the rate of interest that, at the time the interest first becomes payable, is advertised as the overdraft reference rate of the Commonwealth Bank for amounts in excess of \$100,000.

(5) 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 Fund.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(6) In this section:

“special rate” means a rate equal to:

- (a) 5.5 per cent of the Reference Rate; or
- (b) such other rate as may be fixed by the Minister by order published in the Gazette on the recommendation of the Tribunal made:
 - (i) after consideration of an actuarial report provided under section 27; and
 - (ii) with the agreement of the parties to the New South Wales Coal Mining Industry Statutory Fund (Restructuring) Agreement dated 25 June 1992.

Records and notices relating to employment of mine worker

19AA. (1) An owner must keep, in a form approved by the Tribunal and in relation to each mine worker employed by the owner, a record of:

- (a) the date of birth of the mine worker; and
- (b) the date on which the mine worker became employed by the owner; and
- (c) the date on which the mine worker ceased to be employed by the mine owner.

(2) As soon as practicable after a mine worker ceases to be employed by an owner, the owner must give a written notice that complies with subsection (3) to the Tribunal.

Maximum penalty: 5 penalty units.

(3) The notice is to contain the following particulars:

- (a) the name of the mine worker; and
- (b) the date on which the mine worker ceased to be employed by the owner; and
- (c) the reason for the cessation of employment of the mine worker.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

Returns to be provided by owners

19AB. (1) Not later than 31 July in each year, each owner must provide the Tribunal with a return that is in a form approved by the Tribunal and sets out the payments made by the owner to the Tribunal under section 19 in respect of the year ending on the last preceding 30 June.

Maximum penalty: 5 penalty units.

- (2) The return is to include the following information:
- (a) the names, in alphabetical order, of the mine workers in relation to whom an amount has been paid to the Tribunal in the year to which the return relates; and
 - (b) the date of birth of each of those mine workers; and
 - (c) the total amount that has been paid by the owner to the Tribunal in relation to each of those mine workers during the year to which the return relates.

Information to be provided to Registrar

19AC. At the end of each week, each owner must provide the Tribunal with such information as the Tribunal may reasonably require in relation to the mine workers employed by the owner.

Maximum penalty: 5 penalty units.

(11) Section 19O (Investment of Fund):

After section 19O (3), insert:

(4) The Tribunal may, whether or not after consultation with the Joint Coal Board, make investments under this section of money in the Coal and Oil Shale Mine Workers Superannuation Fund that is money to which the Pension Account relates.

(12) Section 27 (Actuarial investigation and report):

- (a) In section 27 (1), after “Fund” where firstly occurring, insert “(including those to which the Pension Account relates)”.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued*

(b) After section 27 (3AA), insert:

(3AB) The Joint Coal Board may appoint an actuary to review and report, at times determined by the Joint Coal Board with the agreement of the Tribunal, on the Pension Account for the purpose of valuing the pension liability of the Fund.

(13) Section 32A:

After section 32, insert:

Temporary modification of Act

32A. (1) Subject to subsection (2), regulations may be made under which the provisions of this Act are taken to be modified if the Minister certifies to the Governor that:

- (a) an event referred to in clause 10 (b) of the Restructuring Agreement (the provisions of which are set out in Part 2 of Schedule 3) has occurred; and
 - (b) the principles to be given effect by the regulations have been agreed to by representatives of such of the organisations set out in Part 1 of Schedule 3 as are in existence when the certificate is given.
- (2) A regulation referred to in this section:
- (a) may be made only for or with respect to matters for or with respect to which this Act makes provision; and
 - (b) may be made with effect from 3 January 1993 or a later date, whether or not it is made after, or published in the Gazette after, the date on which it is to take effect; and
 - (c) is revoked 12 months after being made, unless earlier revoked or otherwise ceasing to have effect; and
 - (d) has no effect in so far as, but for this paragraph, it would directly or indirectly amend this section or Part 3.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

(14) Schedules 3 and 4:

After Schedule 2, insert:

**SCHEDULE 3—ACCUMULATION FUND AND
RESTRUCTURING AGREEMENT**

(Sec. 2)

Part 1—Accumulation Fund

Parties to Agreement

1. For the purposes of the definition of "Restructuring Agreement" in section 2 (1), the parties to the Agreement are:

- The New South Wales Coal Association, a registered organisation of employers, 221 Elizabeth Street, Sydney, New South Wales.
- Cumnock No. 1 Colliery Pty Ltd, a registered company, of PO Box 246, Singleton, New South Wales.
- The United Mine Workers, a Division of the Construction, Forestry and Mining Employees' Union, a registered trade union, 72-74 Buckingham Street, Surry Hills, New South Wales.
- The Federated Engine Drivers' and Firemens' Association, a registered trade union, 361 Kent Street, Sydney, New South Wales.
- The Metal and Engineering Workers' Union, a registered trade union, 136 Chalmers Street, Surry Hills, New South Wales.
- The Electrical Trades Union of Australia, a registered trade union, 52 Bay Street, Rockdale, New South Wales.
- The Australian Collieries' Staff Association, 91 Frederick Street, Merewether, New South Wales.
- The Colliery Officials' Association of NSW, a registered trade union, Unit 7 Medcalf Centre, 50 Medcalf Street, Warners Bay, New South Wales.
- The New South Wales Coal Mine Managers' Association, a registered trade union, Lot 8 Rodney Road, Mt Vincent, New South Wales.

**SCHEDULE 2—AMENDMENTS ESTABLISHING NEW
BENEFITS—*continued***

Part 2—Renegotiation of Restructuring Agreement

(Secs. 14R and 32A)

Text of Restructuring Agreement

2. The text of clause 10 of the Restructuring Agreement is as set out below.

10. RENEGOTIATION

(a) The parties recognise that during the life of this Agreement, circumstances on which this Agreement is founded may change. In the event that such changes occur and the intention of the parties to this Agreement is significantly adversely affected, the parties commit to renegotiation of this Agreement. Any renegotiation between the parties will commence from the basis of the funding arrangements which were in place immediately prior to the commencement of this Agreement i.e. contributions as a percentage of the Reference Rate of:

- employer contributions—7.5% ordinary and 5.5% special
- employee contributions—2.5% ordinary and 1.75% special

(b) Changed circumstances which would necessitate a renegotiation of this Agreement include, but are not limited to:

- i. changes in marginal tax rates during the life of this Agreement which, when aggregated, result in the gain from Salary Sacrifice being reduced from that amount identified in paragraph 8(c) above to below 3%.
- ii. a judicial decision/interpretation, a ruling by the Federal Government or the Taxation Office that the methods adopted by the parties to this Agreement to fund the liabilities of the Statutory Fund are no longer available, or are significantly less effective.
- iii. amendment to the Legislation by the NSW Government, or other decision or act of the Australian or NSW Government, the result of which makes this Agreement significantly less effective.
- iv. a reduction in employment in the New South Wales coal mining industry to less than 12,000 employees.

**SCHEDULE 4—INTEREST ON REFUND OF
CONTRIBUTIONS**

(Sec. 14N (5))

Total interest on refund

1. There is to be added to a refund of contributions the total interest payable in accordance with this Schedule.

SCHEDULE 2—AMENDMENTS ESTABLISHING NEW BENEFITS
—*continued*

Interest for year ending on 30 June 1988 and preceding years

2. (1) In this clause:

“applicable year” means:

- (a) the year that ended on 30 June 1988; and
- (b) each preceding year that ended on 30 June.

(2) Interest is payable on the balance of contributions as at the end of each of the applicable years and is so payable at the annual rate determined by the Tribunal for the particular year after having regard to the rates of interest payable during that year by the Commonwealth Savings Bank on ordinary savings accounts.

Interest for year ending on 30 June 1989 and succeeding complete years

3. (1) In this clause:

“applicable year” means:

- (a) the year that ended on 30 June 1989; and
- (b) each complete succeeding year that ends on 30 June.

(2) Interest is payable in respect of each applicable year on an amount equal to the total of:

- (a) the balance of contributions plus interest at the beginning of the year; and
- (b) one-half of the contributions paid during the year.

(3) Under this clause, the interest for a year is payable at a rate determined by the Tribunal having regard to the net earning rate of the Fund in that year.

Interest for part of year up to application for refund

4. (1) In this clause:

“applicable period”, in relation to a refund of contributions applied for after 2 January 1993, means so much of the year commencing on 1 July last preceding the application as had expired on the date of the application.

(2) Interest for the applicable period is payable on an amount equal to the total of:

- (a) the balance of contributions plus interest at the beginning of the period; and
- (b) one-half of the contributions paid during the applicable period.

(3) Under this clause, the interest for the applicable period is payable at a rate determined by the Tribunal as an estimate of the net earning rate of the Fund for the year of which the applicable period is part.

SCHEDULE 3—AMENDMENTS PRESERVING CERTAIN BENEFITS

(Sec. 3)

- (1) **Section 3A (Authorised periods before 3 January 1993):**
After section 3A (7), insert:
 - (8) This section does not apply to service in the coal or oil shale mining industries that occurs after 2 January 1993.
- (2) **Part 2, Division 3, heading:**
After “Benefits”, insert “before 3 January 1993”.
- (3) **Section 5AA (Early retirement before 3 January 1993):**
In section 5AA (1) and (2), after “retire” wherever occurring, insert “before 3 January 1993”.
- (4) **Section 14A (Lump sum benefit payments to certain mine workers who retired on or after 26 March 1978 and before 3 January 1993):**
 - (a) In section 14A (1), after “1978”, insert “and before 3 January 1993”.
 - (b) From section 14A (3), omit “, referred to in section 14B”, insert instead “under section 14B (as in force before its repeal)”.
- (5) **Section 14AA (Lump sum benefit payments to certain other mine workers who retired on or after 3 July 1988 and before 3 January 1993):**
In section 14AA (1), after “1988”, insert “and before 3 January 1993”.
- (6) **Section 14B (Prescribed amount for purposes of sections 14A and 14AA):**
Omit the section.
- (7) **Section 14C (Lump sum benefit payment to retired mine workers: special provisions):**
Omit the section.

**SCHEDULE 3—AMENDMENTS PRESERVING CERTAIN
BENEFITS—*continued***

- (8) **Section 14D (Lump sum benefit payment on death of mine worker on or after 26 March 1978 and before 3 January 1993):**
- (a) In section 14D (1), from the definition of “prescribed dependent amount”, omit “(as referred to in section 14B)”, insert instead “under section 14B (as in force before its repeal)”.
 - (b) In section 14D (2), after “1978”, insert “and before 3 January 1993”.
 - (c) In section 14D (2) (a1), after “1988”, insert “and before 3 January 1993”.
 - (d) In section 14D (9) (a) (ii), after “sustained”, insert “and before 3 January 1993”.
 - (e) In section 14D (9), omit “(as referred to in section 14B)”, insert instead “under section 14B (as in force before its repeal)”.
- (9) **Section 14F (Lump sum benefit payment for disabled mine workers: special provisions):**
Omit the section.
- (10) **Section 14FA (Lump sum benefit payment for total and permanent incapacity on and after 3 July 1988 and before 3 January 1993):**
In section 14FA (1) (a) (ii), after “1988”, insert “and before 3 January 1993”.
- (11) **Section 14FB (Lump sum benefit payment for partial and permanent incapacity before 3 January 1993):**
In section 14FB (1) (a) (ii), after “disability”, insert “before 3 January 1993”.
- (12) **Section 14H (Applications for lump sum benefit payment):**
Omit the section.
- (13) **Part 4B, heading:**
After “CONTRIBUTIONS”, insert “BEFORE 3 JANUARY 1993”.

**SCHEDULE 3—AMENDMENTS PRESERVING CERTAIN
BENEFITS—continued**

(14) Section 19HA:

Before section 19I, insert:

Division applies if application made before 3 January 1993

19HA. A refund of contributions may be made in accordance with this Division only if application for the refund is made before 3 January 1993.

(15) Section 19I (Definition):

After “worker”, insert “before 3 January 1993”.

(16) Section 19L (Refund of contributions where mine worker ceases to be employed on or after 26 March 1978 and before 3 January 1993):

In section 19L (1), after “1978”, insert “and before 3 January 1993”.

(17) Schedule 2 (Savings and transitional provisions):

(a) Omit clause 2 (1) and (2), insert instead:

(1) Regulations may be made under section 32 containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Coal and Oil Shale Mine Workers (Superannuation)
Amendment Act 1990

Coal and Oil Shale Mine Workers (Superannuation)
Amendment Act 1992.

(2) Any such provision may, if the regulations so provide:

(a) take effect on the date of assent to the Act concerned or a later date; or

(b) take effect on 1 July 1992 or a later date, if it is a provision consequent on the enactment of Schedule 1 to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1992, and section 3 of that Act in its application to that Schedule.

**SCHEDULE 4—AMENDMENT OF COAL AND OIL SHALE
MINE WORKERS (SUPERANNUATION) REGULATION 1983—
*continued***

(b) After clause 2, insert:

**Queensland mine worker who, before 3 January 1993,
retired, was disabled or died**

3. Despite its repeal on 3 January 1993, section 4A as in force immediately before its repeal continues to apply to and in respect of a Queensland mine worker who, before the repeal, had retired, had become disabled, or had died.

**SCHEDULE 4—AMENDMENT OF COAL AND OIL SHALE
MINE WORKERS (SUPERANNUATION) REGULATION 1983**

(Sec. 4)

(1) Clauses 16–20, 25, 25A, 27A, 28, 30 and 31:

Omit the clauses.

(2) Clause 32:

Omit the clause, insert instead:

Penalties generally

32. A person who contravenes clause 15, 29 (1) or 29 (3) is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

[*Minister's second reading speech made in—
Legislative Assembly on 29 October 1992
Legislative Council on 19 November 1992*]