

WESTERN AUSTRALIA

# COAL INDUSTRY SUPERANNUATION ACT 1989

(No. 28 of 1989)

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WESTERN AUSTRALIA

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# COAL INDUSTRY SUPERANNUATION ACT

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No. 28 of 1989

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**AN ACT to provide for a compulsory retirement age, and a superannuation scheme, for mine workers, to establish the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund, to empower the making of regulations providing for contributions to and benefits from that fund, to repeal the *Coal Mine Workers (Pensions) Act 1943*, and for connected purposes.**

[Assented to 12 December 1989]

The Parliament of Western Australia enacts as follows:

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Coal Industry Superannuation Act 1989*.

## Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

## Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Board” means the Coal Industry Superannuation Board established under section 7;

“compulsory retirement age”, in relation to a mine worker, means the age of retirement applicable to the mine worker under section 6 (1);

“coal mine” includes an open cut, a shaft in the course of being sunk, a tunnel, a level and inclined plane in the course of being driven, and a shaft, level, plane, working place, tramway and siding both below ground and above ground, in and adjacent to and belonging to a coal mine;

“employer” means an employer mentioned in Schedule 1;

“Fund” means the Coal Industry Superannuation Fund established under section 9;

“mine worker” means a person who is a mine worker under section 4;

“open cut” means a coal mine that is formed by an excavation in the ground and that has no overlying cover of earth;

“property” means real and personal property of any nature and includes—

- (a) any estate, share or interest in any property;
- (b) any thing or chose in action;
- (c) money and money’s worth; and
- (d) policies of insurance and assurance;

“the actuary” means the actuary appointed under section 20.

(2) The Governor may amend Schedule 1 by order published in the *Gazette*.

**Mine worker**

4. (1) Subject to this section, for the purposes of this Act, “mine worker” means—

- (a) a person who is employed in the coal mining industry of Western Australia in terms of an award or industrial agreement under the *Industrial Relations Act 1979* or the *Industrial Relations Act 1988* of the Commonwealth, other than a person who is for the time being excluded by a notice of the Board under subsection (3);
- (b) a workmen’s inspector appointed under the *Coal Mines Regulation Act 1946*;
- (c) a person who—
  - (i) is an elected official of an industrial or trade union of employees, or of an association of employees, registered as an organization within the meaning of the *Industrial Relations Act 1988* of the Commonwealth, or under the *Industrial Relations Act 1979*, of which union or association the membership is principally confined to mine workers referred to in paragraph (a); and
  - (ii) in the opinion of the Board has actually been employed in a coal mine in Western Australia for a period of, or for periods aggregating not less than, 5 years;
- (d) a person who, in the opinion of the Board, is employed, whether by way of service agreement or by way of subcontract—
  - (i) in or about an open cut by a contractor who contracts with an employer for the excavation or the removal of overburden or the winning of coal from the open cut; or
  - (ii) in or about a coal mine by a contractor who contracts with an employer for the working of the coal mine or any part of the coal mine;

and

- (e) a contractor who—
  - (i) is principally engaged in the excavation or removal of overburden, or the winning of coal, from an open cut or the working of a coal mine, or any part of a coal mine, or transporting coal in or about a coal mine in accordance with a contract entered into with an employer;

- (ii) uses not more than one vehicle at any one time for the purposes described in subparagraph (i); and
- (iii) does not employ any person in carrying out the contract,

but, subject to subsection (2), does not include—

- (f) a person who is a director of a company which is the owner of a coal mine; or
- (g) a superintendent or an instructor of any mine rescue corps or body.

(2) The Governor may by order published in the *Gazette* extend the definition of “mine worker”.

(3) Where the Board is of the opinion that it is not likely that a person will become entitled to a benefit under this Act as, or in respect of, a person who is employed in the coal mining industry of Western Australia pursuant to an award or industrial agreement under the *Industrial Relations Act 1979* or the *Industrial Relations Act 1988* of the Commonwealth, the Board may by notice served on that person, exclude the person so employed from the definition of “mine worker”.

(4) Where—

- (a) a person has made regular contributions to the Fund as a mine worker; and
- (b) the Board has excluded that person from the definition of “mine worker”,

the Board shall—

- (c) pay to that person an amount calculated as prescribed; and
- (d) determine the period of service in respect of which the amount referred to in paragraph (c) is calculated and that period of service shall be disregarded in the ascertainment of any future or other benefits under this Act to that mine worker or to any other person whose entitlement is derived through that mine worker.

(5) Where the Board is of the opinion that there has been a change in the circumstances which the Board considered in making a determination under subsection (3), the Board may give a further written notice to that person providing that, from a day specified in that notice, the person is no longer excluded from the definition of “mine worker”.

(6) Where under subsection (5) the Board gives notice that a person is no longer excluded from the definition of "mine worker", and if that person has repaid to the Board any amount paid to that person under subsection (4) and interest on that amount at a rate determined by the Board, then the period of service in respect of which that amount was calculated shall be included when ascertaining any future or other benefits to that mine worker or to any other person whose entitlement is derived through that mine worker.

### Reciprocating States

5. (1) Where the Governor is satisfied—

- (a) that there is in force in any other State legislation providing for the payment of benefits to coal mine workers and their dependants; and
- (b) that an agreement with such other State has been entered into under subsection (2),

he may by order published in the *Gazette* declare such other State to be a reciprocating State for the purposes of this Act.

(2) The Minister may, on behalf of this State, enter into an agreement with a Minister of the Crown for such other State acting on behalf of such other State, with respect to all or any of the following matters—

- (a) the circumstances in which and the conditions subject to which the Board will, for the purposes of this Act, regard any person who is or has been a mine worker in or is or has been engaged in the coal mining industry of such other State, as a person who is or has been a mine worker within the meaning of this Act;
- (b) the circumstances in which and the conditions subject to which the Board may accept and act upon a certificate furnished by the Minister of the Crown for such other State or by a specified officer of such other State that any person is or has been a mine worker in or is or has been engaged in the coal mining industry of such other State, and the period or periods during which he has been such a worker or has been so engaged;
- (c) the circumstances in which and the conditions subject to which the Fund shall be liable for the payment of the whole or any part of any benefit awarded to a person of the class referred to in paragraph (a);
- (d) the circumstances in which and the conditions subject to which payment may be made from the Fund to the corresponding fund or funds established under the legislation of such other State;



- (e) the making of such provision as may be necessary to ensure that a mine worker or the dependants of that mine worker shall not become entitled to payment of a benefit under this Act as well as under the legislation of such other State;
- (f) any adjustment which may be necessary, if the order declaring such other State to be a reciprocating State is revoked; and
- (g) any other matter arising under this Act which the Minister may consider necessary or convenient to be included in the agreement.

(3) An agreement with a Minister of the Crown for a State entered into under subsection (2) shall not have effect until an order under subsection (1) in respect of that State is published in the *Gazette*.

(4) The Governor may by order published in the *Gazette* revoke an order under subsection (1) with the Minister of the Crown for a State, and where an order is so revoked the agreement entered into under subsection (2) in respect of that State lapses, except to the extent to which it relates to the matters referred to in paragraph (f) of that subsection.

(5) In this section "State" includes the Northern Territory and the Australian Capital Territory.

## PART 2—COMPULSORY RETIREMENT OF MINE WORKER

### Retirement

6. (1) The compulsory retirement age of a mine worker is—
- (a) in the case of a mine worker eligible to be a member of the Association of Colliery Management or covered by Division "A" of the Colliery Staff Award 1955, as amended—
    - (i) 62 years; or
    - (ii) the age at which the mine worker is required to retire under subsection (3); and
  - (b) in the case of any other mine worker, 60 years.

(2) Notwithstanding subsection (1), for the purpose of receiving benefits under this Act a mine worker may retire at any prescribed age.

(3) An employer may require a mine worker referred to in subsection (1) (a) to retire after attaining the age of 60 years.

(4) A person shall not take into or retain in employment as a mine worker any person who is of or above compulsory retirement age.

(5) A person who is employed as a mine worker and who while so employed attains compulsory retirement age shall retire and vacate his employment as a mine worker immediately upon attaining that age.

(6) A person of or above compulsory retirement age shall not accept or continue in employment as a mine worker.

Penalty applicable to subsections (4), (5) and (6): \$1 000 and a daily penalty of \$20 for every day or part thereof during which the offence continues.

### PART 3—THE COAL INDUSTRY SUPERANNUATION BOARD

#### **Establishment of the Board**

7. (1) For the purposes of this Act there shall be a board to be known as the Coal Industry Superannuation Board.

(2) The Board is a body corporate with perpetual succession and a common seal and is capable of—

- (a) acquiring, holding and disposing of property;
- (b) suing and being sued; and
- (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed until the contrary is shown.

(4) The Board is not an agent of the Crown in right of the State.

(5) The Board is not part of the Public Service under the *Public Service Act 1978*.

#### **Constitution of the Board**

8. (1) Subject to this Act the Board shall consist of 5 members of whom—

- (a) one shall be a chairman appointed by the Governor;

- (b) 2 shall be elected in accordance with the regulations by the members of the Fund; and
- (c) 2 shall be appointed in accordance with the regulations by the employers.

(2) The members of the Fund may in accordance with the regulations elect a person to be an alternate member of the Board.

(3) The employers may in accordance with the regulations appoint a person to be an alternate member of the Board.

(4) Schedule 2 has effect in relation to the Board.

### **The Coal Industry Superannuation Fund**

**9.** (1) For the purposes of providing superannuation and related benefits to and in respect of mine workers under this Act there shall be a fund to be known as the Coal Industry Superannuation Fund.

(2) The Fund consists of—

- (a) contributions paid in accordance with the regulations by members of the Fund and by employers in respect of such members;
- (b) all other property received by the Board for or in connection with the Fund;
- (c) property in which the Fund is invested;
- (d) income derived from the investment of the Fund; and
- (e) accretions to, and profits arising from the realization of, property in which the Fund is invested.

(3) The Fund shall be available for the payment of—

- (a) benefits to or in respect of members of the Fund in accordance with this Act;
- (b) pensions and additional payments payable under clause 6 of Schedule 3;
- (c) the costs and expenses of conducting elections under clause 2 of Schedule 2;
- (d) allowances to members of the Board under clause 13 of Schedule 2; and

- (e) the costs and expenses of administering the Fund and the provisions of this Act relating to the Fund.

### **Functions and general powers of the Board**

**10.** (1) The functions of the Board is to administer, invest and manage the Fund.

(2) Subject to this Act the Board may do all acts and things that are necessary or convenient to be done to enable it to perform its functions.

(3) Without limiting the generality of subsection (2) the Board may, subject to this Act—

- (a) enter into and execute all deeds, contracts and documents that it may think expedient for the purpose of securing the benefits to be provided from the Fund;
- (b) appropriate any part of the Fund (including the proceeds arising from any insurance or assurance policies) in full or part satisfaction of any duties or taxes;
- (c) acquire or dispose of any property on such terms of payment as it thinks fit;
- (d) grant or take options or other pre-emptive rights for the sale, purchase or leasing of any property;
- (e) insure or re-insure any risks, contingencies or liabilities of the Fund with or through such persons and on such terms and conditions as the Board thinks fit;
- (f) raise or borrow money at such rates of interest and on such terms and conditions as it thinks fit and either by way of fixed loan for a period of time or by way of bank overdraft on a fluctuating basis;
- (g) incur liabilities of such amounts and on such terms and conditions as it thinks fit and provide and set aside out of the Fund sufficient money for or towards the discharge or reduction of any encumbrance, debt or other liability affecting any part of the Fund;
- (h) secure, guarantee, indemnify or support the performance of any obligation undertaken by it by securities of any nature over the whole or any part of the Fund;

- (i) open and operate on accounts with bankers or other financial institutions and sign, draw, discount, accept and endorse cheques, bills and other negotiable instruments in such manner as it determines;
- (j) lease, let out or hire for such periods and at such rentals as it thinks fit any property forming part of the Fund;
- (k) postpone the realization of any property forming part of the Fund for so long as the Board thinks fit even though the property may be of a speculative or wasting nature;
- (l) expend such amounts in the development and improvement of any property forming part of the Fund as the Board thinks fit.

### **Power to invest**

**11.** (1) The Board may invest any money or other assets of the Fund not required for any other purpose in any of the following investments—

- (a) in any investments that are from time to time authorized by law for the investment of trust funds;
- (b) subject to subsection (3), in acquiring, improving, or lending on the security of, an estate in land situated in the Commonwealth;
- (c) in any investment to which paragraph (a) does not apply by reason only that it is an investment the price of which is not quoted on a Stock Exchange in a State or Territory of the Commonwealth; or
- (d) in any other investment, or class or kind of investment, approved by the Minister.

(2) An investment under this section may be made jointly or in association with any other person or persons.

(3) An investment shall not be made under subsection (1) (b) except in accordance with independent expert advice.

(4) The Board may sell, alienate, or lease any estate in land acquired under subsection (1) and may realize, sell, convert, vary, and transpose other investments.

**Investment policy**

12. The Board and every delegate of the Board who at any time undertakes the investment of all or part of the Fund shall have regard only to the best interests of the Fund and its members in relation to the making of every such investment.

**Power to insure**

13. (1) The Board may—

- (a) subject to the regulations, effect and maintain policies of all types of insurance or assurance to provide for any benefit or part of a benefit that may become payable from the Fund; and
- (b) pay out of the Fund all premiums under or in respect of policies referred to in paragraph (a).

(2) The powers conferred under this section are in addition to and extension of the powers conferred by sections 10 and 11.

(3) In this section “effect” includes acquire or take by assignment.

**Board to have powers of trustee**

14. Without limiting the generality of section 10 or 11 the Board shall have the powers conferred by law on a trustee.

**Discretionary exercise of powers**

15. Subject to section 12 the powers conferred on the Board under this Act or by any other law—

- (a) may be exercised by the Board in such circumstances, in such manner and on such terms and conditions as the Board thinks fit;
- (b) may be exercised by the Board jointly with any other person and notwithstanding that by doing so the Board may lose sole control of any of the investments or other applications of the Fund or cause any part of the property of the Fund to be intermingled with any other property; and
- (c) shall so far as they relate to the investment or other applications of the Fund be exercisable by the Board as if it were the absolute beneficial owner of the Fund.

**Delegation**

**16.** (1) The Board may, by instrument in writing delegate to any person, any function of the Board under this Act, other than this power of delegation.

(2) A function delegated under subsection (1) shall, when performed by the delegate in accordance with the instrument of delegation, be deemed, for the purposes of this Act, to have been performed by the Board.

**Power to make determinations**

**17.** The Board shall determine all questions or issues of doubt or difficulty in relation to—

- (a) the interpretation of any of the provisions of this Act relating to the Fund;
- (b) the rights of the members of the Fund under this Act; or
- (c) the management and administration of the Fund or the performance of the functions conferred on the Board.

**Appointment of investment managers**

**18.** (1) The Board may appoint a person as an investment manager of the Fund and, without limiting the generality of section 16, may delegate to an investment manager so appointed any of its functions under this Act or any other Act as to the investment of the Fund.

(2) The Board may cause or permit the title to any property forming part of the Fund to be registered in the name of an investment manager in trust.

**Appointment of secretary**

**19.** (1) The Board shall appoint a secretary of the Board.

(2) The secretary shall perform such duties and have such powers as the Board may from time to time determine.

### Appointment of actuary

20. The Board shall appoint as the actuary to the Fund any person who is, or any firm a member of which is, a Fellow of the Institute of Actuaries of Australia or any body formed in reconstruction of or in succession to that Institute.

### Officers of the Board

21. (1) In addition to the officers appointed under sections 18, 19 and 20, the Board may appoint such officers as it considers necessary for the purpose of enabling the functions of the Board properly to be carried out.

(2) Subject to any relevant order, award or agreement made under the *Industrial Relations Act 1979*, the Board may, after consultation with the Public Service Commissioner, determine the remuneration and other conditions of service of its officers.

(3) The *Public Service Act 1978* does not apply to officers of the Board.

### Assistance from State

22. The Board may, on such terms and conditions as may be agreed by the Board with the Minister and the Public Service Commissioner, make use, either full-time or part-time, of—

- (a) the services of any officer or employee employed in the Public Service of the State or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; and
- (b) any facilities, plant, machinery or equipment of a department of the Public Service of the State or a State agency or instrumentality,

for a period ending 12 months after the coming into operation of this Act, and thereafter, at the request of the Board, for such further period or periods as the Minister may determine.

### Actuarial review

23. (1) On or before the day 3 years after the commencement of this Act and thereafter at intervals of not more than 3 years the Board shall call on the actuary to conduct an actuarial review of the Fund.

(2) The Board shall provide the actuary with such information as he may require to conduct an actuarial review under subsection (1).



(3) As soon as is practicable, the actuary shall report to the Board in writing the result of an actuarial review conducted under subsection (1).

(4) The Board shall provide each employer with a copy of each report received by the Board under subsection (3).

### **Advice to the Board**

**24.** The Board may obtain the advice or opinion of any accountant, actuary, banker, legal practitioner, medical practitioner, stockbroker or other professional person and may act on the advice or opinion of such a person irrespective of whether or not the advice or opinion has been sought by the Board.

### **Records**

**25.** The Board shall ensure that a complete record is kept of—

- (a) all the members of the Fund and all other persons becoming entitled to a benefit from the Fund;
- (b) the deaths of members of the Fund; and
- (c) all other things necessary for the proper administration of the Fund.

### **Application of *Financial Administration and Audit Act 1985***

**26.** The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

### **Accounts of delegates**

**27.** (1) In this section “liabilities” does not include liabilities for the payment of benefits under the Fund.

(2) If the receipt or expenditure of money is delegated by the Board under section 16 or 18, the Board shall procure from the delegate, as soon as practicable after the end of each financial year, a full and true statement of account of all the moneys received and expended by the

delegate on behalf of the Board during that year and a statement of the assets and liabilities held or incurred by the delegate on behalf of the Board as at the end of that year.

#### PART 4—MISCELLANEOUS

##### **Employer's powers and liabilities in respect of termination not affected**

28. (1) Nothing in this Act shall affect the rights of an employer in relation to the termination of employment of a member of the Fund and the fact of being a member of the Fund shall not be taken in any respect as implying a guarantee of continued employment by an employer.

(2) Nothing in this Act and no right or expectation with respect to the accrual in the future of a benefit under this Act shall affect the quantum of damages in any action brought by a member of the Fund against an employer on account of the termination of his employment.

##### **Members' rights to compensation not to be affected**

29. (1) Nothing in this Act shall affect the rights of a member of the Fund in relation to any claim for damages or compensation that the member may have arising out of or with respect to his employment by an employer.

(2) A benefit to which a member of the Fund or any other person is entitled under this Act shall not be affected by any damages or compensation payable to or in respect of the member.

##### **General meeting of members**

30. (1) The Board shall call an annual general meeting of the members of the Fund.

(2) The Board may call a special general meeting of the members of the Fund whenever it thinks fit and shall call such a meeting at the request, in writing, of not less than 5 per cent of those members.

(3) Subject to the regulations the day on which, and time and place at which, a general meeting is held under this section shall be determined by the Board.

(4) A general meeting held under this section may make recommendations to the Board on the business considered by the general meeting.

(5) A general meeting held under this section shall be conducted in accordance with the prescribed procedures.

## **Regulations**

**31.** The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and in particular may make regulations—

- (a) providing for mine workers to be members of the Fund, and for continuity and cessation of membership;
- (b) as to contributions to the Fund by members and by employers;
- (c) as to the superannuation and related benefits to be paid from the Fund and the protection, adjustment, reduction, forfeiture and application of such benefits;
- (d) as to the manner in which a body specified in Schedule 1 may cease to be an employer for the purposes of the Fund and providing for the case of the winding up, dissolution, amalgamation or transfer of the engagements of an employer;
- (e) providing for the transfer of persons to or from other superannuation or like funds or schemes;
- (f) preventing the Board from effecting or maintaining a policy of insurance under section 13 if that policy does not comply with prescribed requirements;
- (g) as to general meetings under section 30;
- (h) requiring the Board to furnish reports to members of the Fund and prescribing the matters to be dealt with in such reports;
- (i) prescribing the manner in which notices may be served under this Act;
- (j) prescribing or providing for the approval of forms for the purposes of this Act;

- (k) prescribing requirements as to information to be given in or in connection with applications, returns, claims, elections, and other documents delivered or made for the purposes of this Act, and the evidence to be supplied in support.

### Review of Act

**32.** (1) The Minister shall carry out a review of the operation of this Act 5 years after the commencement of this Act, and in the course of such review the Minister shall consider and have regard to—

- (a) the effectiveness of the operations of the Board;
- (b) the need for the continuation of the functions of the Board; and
- (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review of this Act and shall, as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

### PART 5—CONSEQUENTIAL, REPEAL AND TRANSITIONAL PROVISIONS

#### Consequential amendments

**33.** (1) Schedule 1 to the *Financial Administration and Audit Act 1985\** is amended by inserting in the appropriate alphabetical position the following—

“ Coal Industry Superannuation Board ”.

[*Reprinted as at 4 March 1987 and amended by Acts Nos. 94 of 1986, 9, 32, 65, 88, 89, 91, 99 and 113 of 1987, 4, 19, 21 and 52 of 1988, 5 of 1989 and Gazettes of 30 June 1987 p. 2546, 25 September 1987 p. 3717, 4 December 1987 p. 4326, 8 April 1988 p. 1108, 16 December 1988 p. 4869, 9 June 1989 p. 1662 and 30 June 1989 p. 1896.*]

(2) The Schedule to the *Parliamentary Commissioner Act 1971\** is amended by inserting in the appropriate alphabetical position the following—

“ Coal Industry Superannuation Board established under the *Coal Industry Superannuation Act 1989.* ”.

[\**Reprinted as at 31 March 1989.*]

(3) Schedule V to the *Constitution Acts Amendment Act 1899\** is amended in Part 1 by inserting in the appropriate alphabetical position the following—

“ Chairman of the Coal Industry Superannuation Board. ”.

[*Reprinted as at 16 March 1989 .*]

### **Repeal**

34. The *Coal Mine Workers (Pensions) Act 1943\** is repealed.

[\**Reprinted as approved 7 November 1984 and amended by Acts Nos. 75 and 98 of 1985, 91 of 1986 and 63 of 1988.*]

### **Transitional**

35. Schedule 3 has effect.

#### SCHEDULE 1

(section 3)

##### EMPLOYERS

Griffin Coal Mining Pty Limited  
Western Collieries Ltd

#### SCHEDULE 2

(section 8)

##### PROVISIONS AS TO BOARD

### **Interpretation**

1. In this Schedule, unless the contrary intention appears—

“elected member” means a member of the Board elected by the members of the Fund and includes an alternate member so elected;

“appointed member” means a member of the Board appointed by the employers and includes an alternate member so appointed.

### **Elections**

2. (1) As soon as practicable after the commencement of this Act elections shall be conducted in the prescribed manner to fill the offices of elected members.

(2) Whenever the office of an elected member is vacant or is due to become vacant an election shall be conducted in the prescribed manner to elect a person to fill the vacancy.

**Appointments**

3. (1) As soon as is practicable after the commencement of this Act appointments shall be made in the prescribed manner to fill the offices of appointed members.

(2) Whenever the office of an appointed member is vacant or is due to become vacant an appointment shall be made in the prescribed manner to fill the vacancy.

**Terms of office**

4. (1) Subject to this Schedule—

(a) the chairman of the Board holds office for such period not exceeding 3 years as is specified in the instrument of appointment and is eligible for re-appointment;

(b) an elected member and an appointed member other than an alternate member hold office—

(i) where the member is elected or appointed to fill a vacancy occurring by effluxion of time—for a period ending 2 years after the occurrence of that vacancy;

(ii) where the member is elected or appointed to fill a vacancy occurring otherwise than by effluxion of time—for the remainder of the period for which that member's predecessor in office was elected or appointed,

and is eligible for re-election or re-appointment;

(c) an elected member and an appointed member who is an alternate member shall hold office—

(i) where the member is elected or appointed to fill a vacancy occurring by effluxion of time—for a period ending one year after the occurrence of that vacancy;

(ii) where the member is elected or appointed to fill a vacancy occurring otherwise than by effluxion of time—for the remainder of the period for which the member's predecessor in office was elected or appointed,

and is eligible for re-election or re-appointment.

(2) Subject to this Schedule but notwithstanding subclause (1), of the persons first elected after the coming into operation of this Act—

(a) the first elected shall hold office for a period ending 2 years after the election;

(b) the second elected shall hold office for a period ending one year after the election; and

(c) the third elected shall be the elected alternate member of the Board for a period ending one year after the election.

(3) If 2 elected members receive the same number of votes at the election or if an election is not necessary, the chairman of the Board shall determine by lot which of the members shall be appointed for one year or as the alternate member, as the case requires.

(4) Subject to this Schedule but notwithstanding subclause (1), of the persons first appointed after the coming into operation of this Act—

- (a) one shall hold office for a period of 2 years after the appointment;
- (b) one shall hold office for a period of one year after the appointment; and
- (c) one shall be the appointed alternate member for a period ending one year after the appointment.

#### **Publication**

5. The Board shall cause notice of—

- (a) the election of elected members to the Board;
- (b) the appointment of appointed members to the Board; and
- (c) the appointment of a chairman of the Board,

to be published for information in the *Gazette*.

#### **How vacancies occur**

6. (1) The office of a member of the Board becomes vacant if—

- (a) the member resigns his or her office by notice in writing delivered to the Board;
- (b) the member is removed from office under subclause (2) or (3);
- (c) the member is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (d) the member is absent without leave of the Board from 4 consecutive meetings of the Board of which the member has had notice;
- (e) the member fails to make a disclosure as required by clause 11; or
- (f) being an elected member who is a representative of the members of the Fund, the member ceases to be a member of the Fund.

(2) The Governor may remove a member of the Board on the grounds of misbehaviour, incompetence or mental or physical incapacity impairing the performance of his or her duties.

(3) An elected member may be removed from office by a motion passed in accordance with the regulations at a general meeting of members of the Fund held in accordance with the regulations.

(4) In this clause “member” includes an alternate member of the Board.

**Alternate members**

7. (1) If an elected member is absent from a meeting of the Board the elected alternate member of the Board is entitled to attend that meeting.

(2) If for any reason an elected member vacates the office of elected member before the expiry of the period for which the member was elected, the elected alternate member of the Board is, until the vacancy is filled, entitled to receive notice of and attend every meeting of the Board.

(3) If an appointed member is absent from a meeting of the Board the appointed alternate member of the Board is entitled to attend that meeting.

(4) If for any reason an appointed member vacates the office of appointed member before the expiry of the period for which the member was appointed, the appointed alternate member of the Board is, until the vacancy is filled, entitled to receive notice of and attend every meeting of the Board.

(5) An alternate member attending a meeting of the Board in accordance with this clause has all the functions of a member of the Board.

(6) No act or omission of an alternate member attending a meeting shall be questioned on the ground that the occasion for doing so had not arisen.

**Meetings of the Board**

8. (1) The chairman of the Board shall preside at all meetings of the Board at which the chairman is present but if the chairman is not present at a meeting the members of the Board present may elect one of their number to preside.

(2) The Board shall hold such meetings as are necessary for the performance of its functions.

(3) The secretary of the Board may convene a meeting of the Board at any time and shall on request in writing by a member of the Board convene such a meeting before the expiration of 30 days after the receipt of the request.

(4) The secretary of the Board shall notify each member of the Board of the time, date, and place of every meeting and adjourned meeting of the Board.

(5) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members of the Board present and voting.

(6) In the case of an equality of votes on a question the person presiding at the meeting shall not have a second or casting vote and the question shall be deemed to have been resolved in the negative.

(7) The Board shall cause to be kept a record of the proceedings of its meetings.

(8) Subject to this Act, the Board may regulate its own procedure.



**Quorum**

9. (1) Subject to subclauses (2) and (3) the quorum for a meeting of the Board shall be not less than 4 members.

(2) If a quorum is not present at a meeting of the Board, the meeting shall be adjourned for one week and if a quorum is not then present, the meeting shall be further adjourned for one week and, if a quorum is not then present, the members who are present shall, notwithstanding subclause (1), constitute a quorum for the purposes of the meeting.

(3) If as a result of vacancies in the offices of members of the Board it is not possible to obtain a quorum for a meeting of the Board, the remaining members or member may act for the purpose of—

- (a) paying benefits from the Fund;
- (b) calling a meeting of members of the Fund; or
- (c) conducting an election of an elected member of the Board,

but for no other purpose.

**Performance of functions by resolution**

10. (1) A resolution in writing, signed or assented to by each member of the Board by letter, telegram, telex or facsimile transmission shall be as valid and effectual as if it had been passed at the meeting of the Board.

(2) A resolution under subclause (1) may consist of several documents in like form, each signed or assented to by one or more members of the Board.

**Disclosure of interest**

11. (1) A member of the Board who has a direct or indirect pecuniary interest in a matter that is being or is about to be considered by the Board, otherwise than as a member of and in common with other members of the Fund—

- (a) shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of that interest at a meeting of the Board;
- (b) shall not take part in any deliberation or decision of the Board with respect to that matter.

Penalty: \$2 000.

(2) A disclosure made under subclause (1) (a) at a meeting of a Board shall be recorded in the record of proceedings of the Board.

(3) For the purposes of clause 9, a member who is precluded under subclause (1) (b) from taking part in any deliberation or decision of a Board with respect to a matter shall be deemed to be absent from the meeting while that matter is being deliberated or decided upon.

**Common seal**

12. (1) The form of the common seal of the Board shall be determined by the Board.

(2) The common seal of the Board shall not be affixed to any document except upon the resolution of the Board.

(3) The common seal of the Board shall only be affixed to an instrument in the presence of 2 members and each of them shall sign the document to attest that the common seal was so affixed.

(4) A document is duly executed by the Board if the common seal of the Board is affixed to it in accordance with subclauses (2) and (3).

**Allowances**

13. There shall be paid to the members of the Board such allowances as the Minister may, on the recommendation of the Board, approve.

**Indemnity**

14. No liability shall attach to the Board or to a member of the Board for any act or omission that occurred in good faith and in the performance or purported performance of their respective functions.

## SCHEDULE 3

(section 35)

## TRANSITIONAL PROVISIONS

**Interpretation**

1. In this Schedule unless the contrary intention appears—

“commencement day” means the day on which this Act comes into operation;

“former Act” means the *Coal Mine Workers (Pensions) Act 1943*;

“previous fund” means the Coal Mine Workers’ Pensions Fund established under the former Act;

“Tribunal” means the Pensions Tribunal constituted under the former Act.

**Transfer of assets, liabilities and records**

2. (1) All moneys standing to the credit of, and all investments forming part of, the previous fund immediately before the commencement day shall, on and after that day, stand to the credit of, or form part of the Fund for the purposes of this Act, and all liabilities of the previous fund immediately before that day, including contingent liabilities, shall on and after that day be liabilities of the Fund.

(2) On the commencement day all property acquired by the Tribunal for the purposes of the former Act shall, by force of this subclause, vest in the Board.

(3) On the commencement day the Board shall take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the Tribunal.

(4) Any moneys in the previous fund invested by the Tribunal before the commencement day shall be taken to have been invested in accordance with the former Act and to form part of the previous fund.

(5) Any question arising as to whether or not a provision of this clause applies to any particular asset, liability, property, register, paper, document, minute, receipt book of account or other record shall be determined by the Minister and the decision of the Minister is final.

#### **Transfer of operations**

3. (1) Any policy of insurance, agreement or instrument in force immediately before the commencement day to which the Tribunal is a party and which relates to the administration of the former Act shall, subject to this Act, continue in force for the purposes of the Fund as if—

- (a) the Board were substituted for the Tribunal as a party to the policy, instrument or agreement; and
- (b) any reference in the policy, instrument or agreement to the Tribunal were (unless the context otherwise requires) a reference to the Board.

(2) Where anything has been lawfully commenced by or under the authority of the Tribunal before the commencement day that thing may be carried on and completed by or under the authority of the Board.

(3) Without limiting the generality of subclause (2), any proceedings pending immediately before the commencement day to which the Tribunal is a party and which relate to the former Act may be continued after the commencement day with the Board, by force of this subclause, substituted as a party thereto in lieu of the Tribunal.

(4) Any question arising as to whether or not a provision of this clause applies to any particular policy, agreement, instrument or proceedings shall be determined by the Minister and the decision of the Minister is final.

#### **Claims preserved**

4. A claim for any benefits under the former Act that had not been finally dealt with immediately before the commencement date may be dealt with after the commencement day as if it were a claim for benefits from the Fund under this Act.

**Reciprocating States**

5. Where a proclamation declaring any other State to be a reciprocating State under section 4 of the former Act was in force immediately before the commencement day, that proclamation shall continue in force and this Act shall be deemed to be modified to the extent necessary to enable the agreement entered into under section 4 (2) of the former Act with such State to be carried into effect.

**Pensions**

6. (1) Where immediately before the commencement day a person was paid a pension, or pension and additional payments, under section 6, 7, 8, 9 or 10 of the former Act, the Board shall, subject to subclause (5), continue to pay that person that pension, or pension and additional payments, as the case may be, and such payments shall be made from the Fund.

(2) A person who receives a pension under subsection (1) shall be eligible to receive additional, or further additional, payments in the circumstances prescribed and where such payments are payable the Board shall make the payments from the Fund.

(3) A pension payable under section 6, 7 or 8 of the former Act and continued under this Act shall, subject to regulations made under subclause (5) (b), be payable to the mine worker until the death of the mine worker.

(4) Where a person, but for the repeal of the former Act, may have been eligible to be paid a pension under section 26 of the former Act, the Board may in its discretion pay that person a pension from the Fund.

(5) A pension or payment payable under this clause—

(a) shall be calculated as prescribed;

(b) shall not be payable or shall be suspended or revoked in the circumstances prescribed.

**Final reports on the operation of the Tribunal**

7. (1) The Board shall cause sections 66, 67 and 68 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the Tribunal in respect of the period between 1 July 1989 and the commencement day as soon as practicable after the commencement day.

(2) A report prepared under subclause (1) shall be deemed to be an annual report for the purposes of section 69 of the *Financial Administration and Audit Act 1985*.

**Regulations**

8. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Act.

(2) A provision made under subclause (1) may, notwithstanding section 25 (3) of the *Interpretation Act 1984*, be made to take effect on the day on which this Act receives the Royal Assent or on a later date.

(3) To the extent to which a provision made under subclause (1) takes effect on and from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate—

- (a) to affect, in a manner prejudicial to any person the rights of that person existing before the date of publication; or
  - (b) to impose a liability on any person in respect of any thing done or omitted before the date of publication.
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