

COAL INDUSTRY SUPERANNUATION AMENDMENT BILL 2013

Explanatory Memorandum

1. Purpose

The primary purpose of the Bill is to amend the *Coal Industry Superannuation Act 1989 (Act)*, which relates to coal miners in Western Australia. The Act currently allows for the provision of a superannuation fund for coal miners employed in the coal mining industry in Western Australia and for the administration of the fund by the Coal Industry Superannuation Board.

The original legislation was the *Coal Mine Workers' Pensions Act 1943*, which provided pensions for coal miners from age 60 (the age when they had to compulsorily retire) until they were eligible for the Federal age pension at age 65. That legislation was repealed and replaced by the *Coal Industry Superannuation Act* in 1990 for consistency with Federal Government changes to superannuation legislation, currently dealt with primarily by the Superannuation Industry (Supervision) Federal legislation (**SIS**).

Following extensive consultation between the Coal Industry Superannuation Board, the coal mining unions, the coal mining companies and the Coal Industry Superannuation Board's Actuary, it was proposed to amend the *Coal Industry Superannuation Act 1989* in the manner set out in the Bill.

The major reasons for the amendments are:

- to allow for a "successor fund transfer" of all member benefits and assets from the Coal Industry Superannuation Fund to another Federally (under SIS) regulated and complying superannuation fund (as recommended by the Coal Industry Superannuation Board to the responsible Minister). A successor fund transfer is a method provided for under SIS for superannuation fund members' benefits to be transferred from one fund to another without the members' consent, provided the members' rights to benefits are properly protected;
- once such successor fund transfer is complete, to wind up the Coal Industry Superannuation Fund and following completion of all associated requirements to terminate the Coal Industry Superannuation Board;
- to convert the existing statutory framework within the *Coal Industry Superannuation Act* so that benefits of the type currently provided through the Coal Industry Superannuation Fund can be provided through a newly designated fund – that is, the successor fund to which members' benefits will be transferred. To this end the existing superannuation benefits and contributions are to be documented under superannuation rules, made by enabling regulations. Following the transfer to the successor fund, the scheme providing for such benefits and contributions is to be provided through the successor fund rather than the Coal Industry Superannuation Fund ;

- to ensure that the *Coal Industry Superannuation Act* continues to preserve the core statutory defined benefit superannuation rights for Western Australian mine workers and the corollary statutory obligations of Western Australian mine worker employers to contribute to fund those benefits consistent with the current obligations set out in Regulations to the *Coal Industry Superannuation Act*.

Once all the amendment Parts contained in the Bill become operative, the *Coal Industry Superannuation Act* and accompanying Regulations will be simplified. The Act will accommodate the continuing provision of superannuation defined benefits for Western Australian mine workers through a new designated external regulated superannuation fund.

The Act will contain an express requirement for a full review of the legislation by the Treasurer as soon as reasonably practicable three years after the Bill becoming fully operative.

2. Overview

Part 1

Part 1 of the Bill deals with the short title and the commencement provisions in relation to each part of the Bill.

Part 1 commences when the Act receives Royal Assent; Part 2 on the day after Royal Assent; and Parts 3, 4 and 5 on days fixed by proclamation, recognising that different days may be fixed for each Part.

Part 2

Part 2 of the Bill deals with the enabling amendments to:

- (a) give power by regulations to establish rules governing the superannuation scheme constituted by the Act. Those rules will specify the superannuation benefits to be provided for Western Australian mine workers and provide for specified superannuation contributions to fund those benefits to be made by Western Australian employers of mine workers and by the mine workers themselves.

The superannuation scheme rules will also contain provisions dealing with classes of members, admission and withdrawal of members and other necessary matters;

- (b) give power by regulations to designate an external, SIS regulated superannuation fund, through which the scheme benefits are to be provided. Unless or until an external regulated superannuation fund is so designated, the scheme benefits will continue to be provided through the existing Coal Industry Superannuation Fund.

Another external fund cannot be designated unless:

- (i) the rules of the designated fund provide for the admission of scheme members and employers, the receipt of scheme contributions and the payment of scheme benefits; and
- (ii) it qualifies as a “successor fund” for SIS purposes. In order to qualify as a successor fund for SIS purposes, the designated fund must provide equivalent rights in respect of benefits for members whose benefits are transferred to that fund. The trustee of the designated fund must also agree with the Coal Industry Superannuation Board before any such transfer that it will provide equivalent rights in respect of benefits. A “successor fund” transfer is commonly used in the superannuation industry to facilitate bulk transfer of member benefits and assets where a fund rationalisation is to occur. A successor fund transfer is permitted without requiring individual member consent for the transfer of their benefits to the new fund.

Part 3

Part 3 of the Bill deals with the facilitative amendments when the successor fund transfer is ready to occur. The new (non fund specific) superannuation scheme rules

(defined benefits and contribution requirements) set out in the new regulations become operative. New regulations designating a new external fund through which superannuation scheme benefits will be provided in future, will include a commencement provision to come into operation when Part 4 of the Bill commences.

Part 4

Part 4 will commence when the regulations designating a new external fund for future provision of superannuation scheme benefits become operative. It makes amendments to the Act consequential on the transfer of benefits from the Coal Industry Superannuation Fund to the new designated fund. From the nominated effective day of that transfer, future service benefits will cease to accrue in the Coal Industry Superannuation Fund

Part 4 also provides for wind up of the Coal Industry Superannuation Fund.

Part 4 also replaces the current 5 yearly review of the Act with a new requirement that the Treasurer carry out a review of the Act after 3 years of the operation in its amended form.

Part 5

Part 5 of the Bill deals with amendments following the completion of the successor fund transfer and wind up of the Coal Industry Superannuation Board. Provisions that are redundant are removed.

3. Detail

The following provides an examination of the contents of the Bill on a clause by clause basis.

A. Part 1 – Preliminary

Clause 1 – Short Title

The title is the “Coal Industry Amendment Act 2013”.

Clause 2 – Commencement

This clause provides for the Parts to come into operation in the orders specified, including for Parts 3, 4 and 5 on a day to be fixed by proclamation, recognising that different days may be fixed for each Part.

Clause 3 – Act amended

This Act only amends the *Coal Industry Superannuation Act 1989*.

B. Part 2 – Immediate Amendments

Clause 4 – Section 3 amended

Clause 4(1) deletes the current definitions of “employer” and “mine worker” and replaces them with new definitions set out in section 3(1).

Clause 4(2) inserts new definitions into section 3(1):

- “employer” means a natural person, firm or body corporate that employs mine workers;
- “mine worker” – this term is described in more detail in section 4, as amended by clause 5;
- “scheme” means the superannuation scheme for mine workers, as constituted by this Act;
- “scheme benefits” means the superannuation related benefits to be paid to mine workers under the superannuation rules to be established by regulations made under new section 7A(1);
- “scheme contributions” means the contributions payable or paid under superannuation rules to be established by regulations made under new section 7A(1);
- “successor fund” has the meaning given in SIS;
- “superannuation fund” means a regulated superannuation fund within the meaning of SIS;
- “superannuation rules” means such rules as are made by regulations under new section 7A(1).

The definition of “employer”, as amended, will no longer refer to organisations listed in Schedule 1 to the Act.

Clause 5 – Section 4 amended

Clause 5 amends section 4(1) by simplifying and updating the existing definition of “mine worker” contained in section 4(1).

Clause 5(4) also updates and modernises the references to “industrial instrument” and “registered organisation” referred to in the definition of “mine worker” used in section 4(1) of the Act.

Clause 6 inserts Part 2 – Superannuation for Mine Workers

Clause 6 inserts a new Part 2 of the Act containing powers to make regulations under new sections 7A and 7B.

Under new section 7A(1), the Governor may, by regulation, make rules to govern the superannuation scheme to apply to mine workers. The rules are to deal with the matters contained in new section 7A(2), including:

- to provide for mine workers to become members of the scheme and their categories, admission and rights of membership;
- to require employers to participate in the scheme and to provide for their participation;
- to specify the superannuation benefits to be paid in respect of the members (including the current defined benefits provided);
- to provide for the protection, adjustment, reduction, forfeiture and application of scheme benefits;
- to require members and employers to pay contributions and to specify the amount or rate of contributions to be paid by members and employers respectively, or procedures by which the amount or rates of such contributions can be determined (consistent with the existing regulations and provision of benefits that currently apply under the Act and existing regulations).

New section 7A(3) also provides a general enabling power for any other rules made under section 7A(1) to include provisions necessary or convenient for achieving consistency with SIS.

Under new Section 7B(1) the Governor may also, by regulation, designate a superannuation fund as a fund to which the scheme contributions are to be made and from which the scheme benefits will be provided. Because of the definition of “superannuation fund” in section 3(1) (as amended), only a SIS regulated superannuation fund can be so designated.

In addition, no fund can be designated unless the Minister is satisfied, in accordance with section 7B(2) that its rules provide for it to receive the scheme contributions and pay the scheme benefits and unless it is a “successor fund”, as provided by SIS, with respect to each scheme member.

New section 7B(3) provides that regulations may not revoke the designation of a superannuation fund unless at the same time they also designate another regulated superannuation fund with effect from the date of revocation.

Clause 7

Clause 7 deletes section 10B. This section provided a power for the Coal Industry Superannuation Board to enter into a contract with the Coal Mining Industry (Long Service Leave) Corporation for the administration of the Commonwealth’s Long Service Leave Fund. That power has become redundant.

Similarly, clauses 8 and 9 remove other redundant provisions of the Act – Part 5 and Schedule 3.

C. Part 3 – Amendments when superannuation fund rules made

The Part 3 amendments can operate once superannuation fund rules to govern the scheme have been made under the regulation power contained in section 7A.

Part 3 of the current Act, contains provisions constituting and governing both the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund. The whole of Part 3 will eventually be repealed when both the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund have been fully wound up. In the interim, a number of amendments are made to the Act to enable the Board and the Fund to co-exist with the new superannuation scheme rules made under section 7A, and pending an external fund being designated by regulations made under section 7B.

Clause 10 accordingly amends section 9 of the Act to make provision for the interim period before a new external fund is designated under regulations made under new section 7B. During this period, the superannuation scheme provided for by the rules made under section 7A is provided through the Coal Industry Superannuation Fund. All members of the Coal Industry Superannuation Fund are deemed to be members of the scheme through new section 9(2A).

Consequential amendments are made to section 9(2) and section 9(3).

In summary, under amended section 9(2)(a), contributions made in accordance with the scheme will continue to be paid to the Coal Industry Superannuation Fund until an external fund is designated.

Furthermore, section 9(3) is amended so that the Coal Industry Superannuation Fund will have the power to transfer benefits to a successor fund in accordance with SIS (ie once an external fund has been designated through the issue of regulations in accordance with new section 7B).

Clauses 11, 12 and 13 make further consequential amendments reflecting the introduction of scheme rules by regulations made under new section 7A.

Clause 14 provides for the deletion of Schedule 1 of the Act, which had listed employers subject to the Act. Employers that are covered by the terms of the Act will now be determined exclusively under the definition of “employer” in section 3(1) of the Act, as amended i.e without being separately identified and listed in a Schedule.

D. Part 4 – Amendments when Benefits Transferred

Clause 15 introduces new sections 28A and 28B at the end of Part 3 of the Act.

New section 28A deals with the matters that take effect from the “fund transfer day” - that is, the date on which the first set of regulations under new section 7B are made and become operative to designate an external fund. Contributions accruing after the fund transfer day will not be accepted by the Coal Industry Superannuation Fund and no further retirement, death or disablement benefit entitlements will accrue within the Coal Industry Superannuation Fund in respect of events or service after that date.

New section 28A(4) provides for the wind-up of the Coal Industry Superannuation Fund by the Coal Industry Superannuation Board, and deals with:

- the delivery of relevant records to the successor trustee;
- transferring the assets of the successor trustee in accordance with the SIS Act;
- completing all outstanding returns, reports and accounts required under the Act or as required under SIS;
- delivering to the Director of State Records all records and information under its control which it has not delivered to the successor trustee and which would otherwise remain.

New section 28B provides that, as soon as reasonably practicable after the Coal Industry Superannuation Board is satisfied that the winding up of the Coal Industry Superannuation Fund is complete, it is required to notify the Minister accordingly.

Clause 16 provides for the current section 32(1) (which provides for a 5 yearly review of the Coal Industry Superannuation Board and the operation and effectiveness of the Act) to be deleted and replaced with a new review provision. Under the new section 32(1) the Treasurer is required to carry out a review of the operation of the Act as soon as reasonably practicable after the third anniversary of the date on which the first regulations have become operative under section 7B (i.e regulations which have designated an external fund to which scheme contributions are to be made and through which scheme benefits are to be provided). In the course of the review the Treasurer is to consider and have regard to:

- (a) the requirement for employers to pay contributions towards the scheme benefits (in respect of mine workers); and
- (b) such other matters as appear to the Treasurer to be relevant to the “operation and effectiveness of this Act”.

E. Part 5 – Amendments following winding up

When the Minister is satisfied that the wind-up of the Coal Industry Superannuation Fund is complete and that all outstanding matters have been attended to by the Coal Industry Superannuation Board, Part 5 can come into operation. Part 5 provides for removal of the provisions in the Act dealing with the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund that have become redundant.

Clause 17(1) provides for the deletion of redundant definitions relating to the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund and providers and advisers to those entities.

Clause 18 provides for the deletion of Part 3 in its entirety, as its provisions have no application following the winding up of the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund

Clause 19 similarly provides for deletion of sections 29A and section 30 as these provisions have no application following the winding up of the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund.

Clause 20 amends section 31 which enables the making of regulations under the Act. It removes provisions that have no application following the winding up of the Coal Industry Superannuation Board and the Coal Industry Superannuation Fund.

Clause 21 provides for the deletion of Schedule 2 of the Act, dealing with the operations of the Coal Industry Superannuation Board. These provisions have no application following the winding up of the Coal Industry Superannuation Board.