

AUSCOAL SUPERANNUATION FUND

WORKING COPY OF TRUST DEED AND RULES

This is a Working Copy of legal documents governing the Fund and sets out for convenience the provisions currently in force as at the date of preparation shown below.

The AUSCOAL Superannuation Fund Trust Deed dated 31 January 1995 amended by deeds dated:

28 September 1995	26 July 2006
8 February 1996	6 September 2006
8 February 1996	6 September 2006
28 June 1996	23 October 2006
20 May 1997	27 April 2007
31 July 1998	20 June 2007
1 February 2000	20 June 2007
12 July 2000	29 August 2007
31 March 2005	1 March 2008
13 August 2003	5 June 2008
4 August 2005	27 June 2008
26 April 2006	3 February 2009
26 April 2006	9 December 2009
26 July 2006	

If details of the provisions which applied prior to any amendment are required, reference will need to be made to the legal documents referred to above.

This Working Copy is produced for ease of reference only and should not be considered to be a replacement or substitute for the legal documents referred to above. In the event of any inconsistency between the Working Copy and the legal documents governing the Plan the legal documents will prevail. The original documents should be referred to and relied upon in all matters of legal interpretation.

PREPARED: November 2007

Index title amended
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

AUSCOAL SUPERANNUATION FUND
INDEX TO TRUST DEED

PREAMBLE

Index amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

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1 PART 1 OF TRUST DEED: GENERAL PROVISIONS

PRELIMINARY

1.1 Definitions

"ACSA" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

In the Deed, unless the contrary intention appears or the context requires otherwise –

"Actuary" means for any particular purpose under the Deed the person appointed for that purpose by the Trustee being –

- (a) a Fellow or Accredited Member of the Institute of Actuaries of Australia (or of any body which succeeds or replaces that Institute) or any other person who is recognised by the said Institute as being qualified to provide actuarial advice and reports in relation to a superannuation fund (a "qualified actuary");
- (b) a partnership one of the members of which is a qualified actuary;
- (c) a body corporate which employs or engages a qualified actuary for the purpose of providing actuarial advice.

"Alternate Director" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Alternate Director" means a person appointed by a Director as an alternative pursuant to Clause 1.5.10.

"AMWU" means The Amalgamated Metal Workers' Union or all or part of any registered organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction thereof.

"APESMA" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"APESMA" means the Association of Professional Engineers, Scientists & Managers, Australia, its successors and assigns.

"Approved Benefit Arrangement" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Approved Benefit Arrangement" means a fund or benefit arrangement other than the Fund, including without limitation another superannuation fund, an approved deposit fund, an eligible rollover fund and a deferred annuity arrangement to or from which benefits may be transferred in compliance with Relevant Law.

"Auditor" means the person appointed for the time being as Auditor of the Fund pursuant to Clause 1.9.

"Beneficiary" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Beneficiary" means a person (including as the context may require any Member, Spouse Member or Non Spouse Member) who has a beneficial interest in the Fund in accordance with the Deed.

"Binding Nomination" inserted by Amending Deed dated 23/10/06. Effective 1/7/06.

"Binding Nomination" means a nomination which requires the Trustee to pay any benefits in relation to the Member on or after the Member's death to the person or persons nominated **PROVIDED THAT:**

- (a) the nomination has been given to the Trustee by a Member;
- (b) the nomination is in a form acceptable to the Trustee;
- (c) the nominees are Dependants or the Legal Personal Representative of the Member; and
- (d) the nomination complies with the Relevant Law and any conditions specified by the Trustee from time to time.

"CEPU" inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

"CEPU" means the Communications, Electrical, Plumbers and Gas Fitters Union, incorporating the ETU, or all or part of any organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction thereof.

"CFMEU" inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

"CFMEU" means the Construction Forestry Mining and Energy Union, Mining and Energy Division, or all or part of any organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction thereof.

"Clause" means a Clause of this Deed.

"COSAF Superannuation Fund" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"COA" means The Colliery Officials Association of New South Wales, or all or part of any registered union of employees which is a successor to or formed as a result of amalgamation or reconstruction thereof.

"COSAF Superannuation Fund" means the superannuation fund of that name established by a trust deed dated 8 October 1988 (as subsequently amended), being Part 2 of this Deed.

"Commissioner" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Death and Disablement Levy" means, with respect to each Member, such amount as may be determined by the Trustee from time to time with the advice of the Actuary for the purposes of funding death and Total and Permanent Disablement benefits from the Self Insurance Reserve Account.

"Death and Disablement Levy" inserted by Amending Deed dated 8 February 1996. Effective 8 February 1996.

"Deed" means this Trust Deed, including the Rules contained in the Parts of this Deed, as amended, added to, deleted from or replaced from time to time.

"Deed of Adherence" means the deed entered into by an Employer with the Trustee under Clause 1.14 for the purposes of becoming a Participating Employer.

"Deferral Date" means the earliest to occur of –

"Deferral Date" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (a) the Member's death;
- (b) the retirement of the Member from the workforce because of permanent incapacity or permanent invalidity:
 - (i) if the Member has attained age 55, the date upon which the Member retires from gainful employment **PROVIDED THAT** the Trustee is reasonably satisfied that the person intends never again to be gainfully employed; or
 - (ii) if the person has attained age 60, the date upon which the Member retires from employment;
- (c) the date upon which the Member attains age 65;
- (d) the Trustee becoming satisfied that the Member is about to leave Australia permanently; and
- (e) such earlier date, if any, as the Trustee may determine for any particular purpose either generally or in any particular case, including without limitation for the purpose of permitting or ensuring immediate payment to a Member of any benefit or portion of a benefit which, by reason of its limited amount, does not have to be deferred or preserved after the Member has left the employ of the Employer to comply with any Relevant Law regarding the deferral or preservation of benefits,

being, in any case, a date as at which all or part of a benefit may be paid from the Fund without causing the Fund to fail to comply with or satisfy any Relevant Law.

"Dependent" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005. Further amended by Deed of Amendment dated 20/06/07. Effective 01/07/07.

"Dependant" for the purposes of any provision of the Deed has the meaning given to that term under Part 2, Part 3, Part 4 or Part 5 of the Deed as the context requires.

"Eligible Employee" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Director" means a person who has been appointed as a director pursuant to Clause 1.5.

"Employer" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Eligible Employee" has the meaning given to that term in Part 2 or Part 4 of the Deed, whichever is relevant.

"Employer Occupational Contribution Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Employer" means any Participating Employer and, in respect of an Eligible Employee, Mine Worker, Dormant Member or person entitled to a pension under Part 3 of the Deed, means the employer or Owner by whom the Eligible Employee, Mine Worker, Dormant Member or pensioner is or was for the time being employed, or, in respect of a former Eligible Employee, Mine Worker, Dormant Member or pensioner means the employer or Owner by whom the former Eligible Employee, Mine Worker, Dormant Member or pensioner was last employed.

"Employer Statutory Contribution Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Employer Occupational Contribution Account", in respect of a Part 4 Member, means an account provided for in Rule 4.5.1.

"Employer Voluntary Contribution Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Employer Director" means a person appointed as an Employer Director pursuant to Clause 1.5.

"Employer Statutory Contribution Account", in respect of a Part 4 Member, means an account provided for in Rule 4.5.2.

"ETU" deleted by Amending Deed dated 12 July 2000. Deleted by Amending Deed dated 1 March 2005. Effective 1 April 2005.

"Employer Voluntary Contribution Account", in respect of a Part 4 Member, means an account provided for in Rule 4.5.6.

"Family Law Arrangement" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Family Law Arrangement" means an agreement, order or other arrangement made, or entered into, pursuant to the Family Law Requirements.

"Family Law Requirements" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Family Law Requirements" means any requirements imposed on the Trustee under the Family Law Act 1975 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth), the Tax Act, and regulations made under these Acts, relating to the division of superannuation benefits and related matters in Family Law proceedings.

"Financial Year" means each successive period of twelve (12) months commencing on the first day of July and ending on the thirtieth day of June except that the last Financial Year shall be the broken period (if that be the case) ending on the date of termination of the trusts under this Deed and commencing on the first day of July preceding the date of termination.

"Flagging Order" has the same meaning as in the Family Law Requirements.

"FEDFA" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Flag Lifting Agreement" has the same meaning as in the Family Law Requirements.

"Flagging Order" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Fund" means the AUSCOAL Superannuation Fund (previously called the COALSUPER Retirement Income Fund) constituted according to the Deed and comprising the moneys and property held by and for the Trustee upon the trusts of the Deed.

"Fund Expenses" means, without limitation, all the costs and expenses of and incidental to the establishment, operation, management, administration and investment of the Fund and the discharge of all obligations by or on behalf of the Trustee.

"Flag Lifting Agreement" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Gainful Work" means engagement in any employment, occupation, vocation, profession, trade or business for remuneration or other reward in money or money's worth.

"FMMA" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Group Life Insurance" means any type or form of term or temporary insurance, whether on a group or individual basis.

"Fund" amended by Amending Deed dated 31 March 2005.

"Fund Expenses" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Income Entitlement" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Income Entitlement" means the amount calculated pursuant to Clause 1.12.2.

"Independent Director" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Independent Director" means a person who is not:

- (a) a Member;
- (b) a Participating Employer;
- (c) an official of a Participating Union; or
- (d) an official of the Minerals Council – Coal Committee or the QRC,

and is appointed by the Trustee pursuant to Clause 1.5.4 to hold office as a director in accordance with Relevant Law.

"Insurer" means an insurer from whom insurance is sought or with whom insurance is effected by the Trustee pursuant to the Deed.

"Legal Personal Representative" includes an executor or administrator of the estate of a deceased Member, the trustee of the estate of a Member under a legal disability, including, if the Trustee so determines, bankruptcy, or a person who holds a general power of attorney granted by a Member.

"Member" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member" means a person who is, or has been:

- (a) admitted to membership of Part 2, Part 3 or Part 4 of the Fund as provided in the Deed; or
- (b) a former QCOS Member, who became a member of the Fund on 1 April 2005 when QCOS merged into the Fund,

"Member Spouse" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

and includes a Mine Worker, Dormant Member, Spouse Member and person who is entitled to receive a pension under Part 3 of the Deed or in respect of whom the whole of the benefits provided by the Deed in respect of that Member have not been paid out of the Fund but not including a Non-Member Spouse.

"Member's Accounts" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member Director" means a person appointed as a Member Director pursuant to Clause 1.5.

"Member's Allocated Pension Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member Spouse" has the same meaning as in the Family Law Requirements.

"Member's Statutory Contribution Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's Accounts" has the meaning given in to that term in Part 2 or Part 4.

"Member's Voluntary Contribution Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's Allocated Pension Account" means, in respect of a Part 4 Member, the account provided for in Rule 4.5.8.

"Member's Transfer Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's Statutory Contribution Account" means, in respect of a Part 4 Member, the account provided for in Rule 4.5.3.

"Member's Voluntary Contribution Account" means, in respect of a Part 4 Member, the account provided for in Rule 4.5.4.

"Minerals Council – Coal Committee" inserted by Amending Deed dated 31 July 1998. Effective 31 July 1998. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's Transfer Account" means, in respect of a Part 4 Member, the account provided for in Rule 4.5.5.

"Minerals Council – Coal Committee" means the New South Wales Minerals Council-Coal Committee, its successors or assigns.

"Mine Worker" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Mine Worker" has the meaning given to that term in Part 3 or Part 4 of the Deed, as applicable.

"MMA" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Nominating Unions" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"No TFN Contributions Income" inserted by Amending Deed dated 20/6/07. Effective 1/7/07.

"NSWCA" deleted by Amending Deed dated 31 July 1998. Effective 31 July 1998.

"Non-Member Spouse" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Part 2 Member" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Part 3 Member" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Part 4 Member" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Part 3 Mine Worker" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Part 4 Mine Worker" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Participating Employer" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Participating Unions" amended by Amending Deed dated 12 July 2000. Effective 12 July 2000. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Payment Flag" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Payment Split" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Privacy Act Requirements" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"MMA" means the Mine Managers' Association of Australia Inc or all or part of any registered union of employees which is a successor to or formed as a result of amalgamation or reconstruction thereof.

"No TFN Contributions Income" has the same meaning as in the Income Tax Assessment Act 1997.

"Non-Member Spouse" has the same meaning as in the Family Law Requirements.

"Owner" has the meaning given to that term in Part 3 of the Deed.

"Part" means a Part of the Deed or a Part of the Fund as the context requires.

"Part 2 Member" means a Member to whom Part 2 applies.

"Part 3 Member" means a Member to whom Part 3 applies.

"Part 4 Member" means a Member to whom Part 4 applies.

"Part 3 Mine Worker" means a Mine Worker to whom Part 3 applies.

"Part 4 Mine Worker" means a Mine Worker to whom Part 4 applies.

"Participating Employer" means:

- (a) any person which has been admitted to participation in Part 2 or Part 4 of the Fund as a Participating Employer in accordance with Clause 1.14; and
- (b) an employer of a Former QCOS Member immediately before the QCOS Transfer Date, who thereafter participates in Part 4 of the Fund.

but not including any person who has ceased to participate in Part 2 or Part 4 of the Fund as a Participating Employer as provided in the Deed.

"Participating Unions" means, AMWU, COA, CEPU, APESMA, MMA and CFMEU.

"Payment Flag" has the same meaning as in the Family Law Requirements.

"Payment Split" has the same meaning as in the Family Law Requirements.

"Preserved Benefit" means any benefit (or part thereof) which is required by Relevant Law to be preserved for the Member in the Fund or in an Approved Benefit Arrangement under the Relevant Law.

"Privacy Act Requirements" means any requirements imposed on the Trustee under the Privacy Act 1988 and the State and Territory Privacy Acts, including those Acts dealing with health records.

"QCOS" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"QCOS" means the Queensland Coal and Oil Shale Mining Industry Superannuation Fund established by the QCOS Deed.

"QCOS Deed" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"QCOS Deed" means the trust deed dated 18 May 1988, as amended, governing QCOS from time to time up to the QCOS Transfer Date.

"QCOS Transfer Date" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"QCOS Transfer Date" means the date the benefits of members of QCOS were transferred to the Fund by way of successor fund transfer, being 1 April 2005.

"QRC" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Qualified Adviser" means an accountant, barrister, solicitor, actuary, medical practitioner or other professional person, an Insurer, and any other person considered by the Trustee in good faith to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise howsoever.

"Release Authority Amount" inserted by Amending Deed dated 20/6/07. Effective 1/7/07.

"QRC" means the Queensland Resources Council, its assigns or successors.

"Release Authority Amount" means an amount that has or will be released from the Fund by the Trustee in relation to a Member pursuant to a release authority (or transitional release authority) provided to the Trustee under Relevant Law.

"Relevant Law" replaced by Amending Deed dated 13 August 2003. Effective 13 August 2003. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Relevant Law" means the requirements set out in:

- (a) the Superannuation Industry (Supervision) Act 1993 (Cth);
- (b) the Income Tax Assessment Act 1936 (Cth);
- (c) the Income Tax Assessment Act 1997 (Cth);
- (d) the Superannuation (Resolution of Complaints) Act 1993 (Cth);
- (e) the Family Law Requirements;
- (f) the Privacy Act Requirements;
- (g) any regulations made under any of those Acts;
- (h) the Coal and Oil Shale Miners (Superannuation) Act 1941 (NSW);
- (i) the Coal and Oil Shale Mine Workers' Superannuation Act 1989 (Qld); and
- (j) any other present or future law, regulation or enforceable requirement of the Commonwealth of Australia or any State or Territory of Australia which the Trustee may determine to be a Relevant Law for the purposes of the Deed or with which the Trustee or a Participating Employer is required to comply in respect of the Deed or the Fund in order to avoid a penalty or other disadvantage.

"Regulator" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Regulator" means the Australian Securities and Investments Commission, Australian Prudential Regulation Authority, the Australian Commissioner of Taxation and such other authorities as may be responsible for the regulation of superannuation funds from time to time.

"Required Payment Date" amended by Amending Deed dated 20/6/07. Effective 1/7/07.

"Required Payment Date" means the date on which the Relevant Law requires a benefit to be paid or to commence to be paid to a Member.

"Rules" or "Rule" means the rules set out in the Parts of this Deed applicable to the category or categories of membership to which a Member is admitted.

"Secretary" means the person appointed by the Trustee as Secretary of the Fund pursuant to Clause 1.10 and includes any deputy or acting Secretary appointed there under.

"Severe Financial Hardship" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Severe Financial Hardship" has the same meaning as that term is defined in the Relevant Law.

"Splitting Order" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Spouse Member Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Spouse Member" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Superannuation Agreement" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"Tax Act" inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

"TFN Tax Offset Amount" inserted by Amending Deed dated 20/6/07. Effective 1/7/07.

"Transferee Member" inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

"UMFA" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Splitting Order" has the same meaning as in the Family Law Requirements.

"Spouse Member Account" means the account of that name established by the Trustee in respect of a Spouse Member under Rule 2.5.1(l) or Rule 4.

"Spouse Member" means the Spouse of a Member whom the Trustee has admitted to the Fund and on whose behalf the Member has made Eligible Spouse Contributions to the Fund.

"Superannuation Agreement" has the same meaning as in the Family Law Requirements.

"Tax" means any tax or other governmental impost which is or may become payable in connection with the Fund or the payment or transfer of any money or property to or from the Fund.

"Tax Act" means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 and regulations, rulings and determinations made under these acts.

"TFN Tax Offset Amount" means the amount of the tax credit to which the Trustee is entitled in relation to Tax paid to the Trustee in respect of No-TFN Contributions Income, where a Member has subsequently quoted their tax file number.

"Transferee Member" means a Member who has made an election, referred to in clause 4.1 of the 1999 Superannuation Agreement, to a conversion of his or her defined benefit under Part 3 of the Fund to an accumulation benefit under Part 2 of the Fund.

"Trustee" means the trustee for the time being of the Fund whether original, additional or substituted.

In this Part of the Deed, unless the contrary intention appears or the context requires otherwise the words defined in Part 2, Part 3 or Part 4 of the Deed shall have the same meaning as is given to them in those Parts.

1.2 Interpretation

Clause 1.1, paragraph beginning "In this Part of the Deed," amended by Amending Deed dated 31 March 2005.

1.2.1 Conflicts, Cross-references and Severance Within Deed

- (a) Except where a subsequent Part, appendix or schedule of the Deed expressly provides otherwise, if there is a conflict between a provision of Part 1 of the Deed and a provision of any other Part, appendix or schedule of the Deed, the relevant provision of Part 1 of the Deed shall prevail.
- (b) Notwithstanding that for convenience and ease of reference the Deed may expressly provide that a particular provision of the Deed (the "relevant provision") is subject to another specified provision of the Deed (the "specified provision"), the relevant provision may also be subject to another unspecified provision of the Deed and the express reference to the specified provision shall not of itself result in a contrary inference.
- (c) Should any provision of the Deed be held to be invalid in whole or in part or be required to be limited or read down in order to be valid, the provision shall be severed to the extent of the invalidity but the remainder of the provision shall continue in full force and effect.

1.2.2 Headings and Index

The headings in the Deed and any index are for convenience only and shall not affect the interpretation of the Deed.

1.2.3 Singular, Plural and Genders

In the Deed, unless the contrary intention appears or the context requires otherwise, words importing the singular number include the plural and vice versa and words importing one gender include the other genders.

1.2.4 Statutory Enactments

References to any statutory enactment, regulation, rule, by-law or other law or a provision thereof (hereinafter collectively called a “law”) shall include that law as amended or re-enacted from time to time and any law which replaces the same or has the same effect in whole or in part (whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any law previously in force) and shall also include any regulation, or any effective and enforceable determination or ruling, made under the authority of such a law.

1.2.5 Amended Provisions

All references to Clauses, sub-clauses, paragraphs, Parts, appendices and other provisions of the Deed shall be read as references to Clauses, sub-clauses, paragraphs, Parts, appendices and provisions as amended, added to, deleted from or replaced from time to time.

1.2.6 Particular Words

For the purposes of the Deed, unless the contrary intention appears or the context requires otherwise –

“insurance” includes assurance and vice versa and any type of annuity;

“person” and words importing a natural person include a body corporate and any other person recognised at law, a partnership and any other group or association of persons but the words “natural person” shall be given their normal meaning; and

“power” means a power, right, discretion or authority of whatsoever nature and howsoever arising (including the formation of an opinion) and, wherever a power is conferred on any person, the relevant provision of the Deed shall be read as if the words “at any time and from time to time” were added thereto.

1.2.7 Complaints, Inquiries and Disputes

(a) Subject to paragraph (b) if any doubt or dispute arises as to the interpretation of any of the provisions of the Deed or as to the rights or obligations of a Member or any other person hereunder, then (except to the extent otherwise expressly provided in the Deed or by Relevant Law) the decision of the Trustee shall be final and binding.

(b) The Trustee shall ensure that for so long as Relevant Law requires there are in force arrangements within the Fund that enable the Trustee to deal with Member complaints and inquiries in a manner and within the time provided by Relevant Law. The Trustee shall ensure that to the extent required by Relevant Law, any decision of a court or tribunal constituted by or under Relevant Law shall be followed.

1.2.8 Defined Terms

Whilst for convenience a particular word or group of words defined in the Deed may commence with capital or lower case letters, failure to use capital or lower

case letters in that word or group of words elsewhere in the Deed does not of itself mean that that word or group of words has a meaning different from the meaning assigned thereto in the relevant definition.

1.2.9 Directors' Resolutions

Where an Employer, a Trustee or other relevant person is or includes a body corporate, a resolution or directive by the directors (or the equivalent thereof) of that body, or by some of them acting as a board or a committee in accordance with its articles of association or like governing document, shall be deemed to be an effective resolution or directive by that body for the purposes of the Deed **PROVIDED THAT** nothing herein shall limit such body's powers of delegation and the Trustee or a servant or delegate thereof may accept as a binding direction or authorisation of such body any direction or authorisation given or purported to be given on behalf thereof by a person whom the Trustee or such servant or delegate shall reasonably believe is empowered to act for that body in the relevant circumstance.

1.2.10 Form of Resolutions

A written resolution made for the purposes of any provision of the Deed may take the form of one or more documents in like form or to like effect, each signed by one or more persons. In the case of an oral resolution made for the purposes of any provision of the Deed, a statutory declaration by a person (not necessarily being a party to such resolution) as to that person's presence at the time of the passage of such resolution and as to the contents of such resolution shall be acceptable as proof of the passage and contents of such resolution.

1.2.11 Bodies and Associations

References to authorities, institutes, associations and bodies whether statutory or otherwise shall, in the event of any such authority, institute, association or body ceasing to exist or being reconstituted, renamed or replaced or the powers or functions thereof being transferred to any other authority, institute, association or body, be deemed to refer respectively to the authority, institute, association or body established or constituted in lieu thereof and/or as nearly as may be succeeding to the powers or functions thereof. References to authorities and bodies, whether statutory or otherwise, shall be deemed to include references to the delegates of those authorities and bodies whether appointed by statute or otherwise.

Clause 1.2.11
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005

1.3 **Paramount Provision**

1.3.1 Compliance with Relevant Law

- (a) The Trustee and each Participating Employer shall comply with Relevant Law and are empowered to do and procure to be done such acts, matters and things as are necessary or desirable in order to comply with Relevant Law.
- (b) Any provision or requirement of a Relevant Law which is expressly required by Relevant Law to be included in the Deed in order to comply with or satisfy a requirement of Relevant Law shall be deemed to be included in the Deed from the date when compliance is required.

- (c) If there is a conflict between Relevant Law and any other provision of the Deed, Relevant Law shall prevail to the extent of the conflict.
- (d) Subject to Clause 1.2.7, if any doubt or dispute arises as to the existence, meaning, application or effect of any requirement of a Relevant Law, or if there is a conflict between requirements of Relevant Law, the decision of the Trustee shall be final and binding on all interested persons.

1.3.2 Discretions and Directions

Notwithstanding any other provision of the Deed but subject to Clause 1.3.1 -

- (a) any provision of the Deed which permits a discretion to be exercised by a person other than the Trustee shall be deemed to include a requirement to obtain the approval of the Trustee to the exercise of such discretion where such consent is required by Relevant Law; and
- (b) any provision which subjects the Trustee in the exercise of any of its powers under the Deed to direction by any person where such direction is prohibited by Relevant Law shall be construed as a discretion to be exercised by that person for which the consent of the Trustee shall be required.

1.3.3 Trustee

Notwithstanding any other provision of the Deed but subject to Clause 1.3.1 -

- (a) the Trustee of the Fund must be a constitutional corporation as that term is defined in the Relevant Law; or
- (b) if the sole or primary purpose of the Fund is to provide old-age pensions (as that term is defined in the Relevant Law) or the Deed is amended so that the sole or primary purpose of the Fund is to provide old-age pensions, natural persons may be appointed as Trustees of the Fund.

1.3.4 Previous Rights Protected

Notwithstanding any other provision of the Deed the Trustee shall ensure that a right that:

- (a) a Part 3 Mine Worker or a Dormant Member; or
- (b) a Dependant of a Part 3 Mine Worker or Dormant Member; or
- (c) a person receiving or entitled to a pension under Part 3 of the Deed,

had immediately before the date of effect of this Deed is not removed or restricted by the operation of this Deed **PROVIDED THAT** nothing in this Clause shall prevent the Trustee from conferring additional rights on a Part 3 Mine Worker, Dormant Member or any such Dependant or person.

For the avoidance of doubt, if the removal of any provision in Part 3 of the Deed has the effect of disentitling a Member of a benefit that he or she would otherwise have been entitled to, the Trustee may, in its absolute discretion, grant that benefit.

1.3.5 Deed Subject to Legislation

Notwithstanding any other provision of the Deed this Deed shall be subject to the provisions of the Coal and Oil Shale Mine Workers' Superannuation Act 1989 (Qld) in respect of Part 4 Members who are Mine Workers, and the provisions of

Clause 1.3.4
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005

Clause 1.3.5
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005

the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 (NSW) in respect of Part 2 and Part 3 Members who are Mine Workers.

MANAGEMENT OF FUND

1.4 Trustee

1.4.1 Constitution and Appointment

- (a) The Trustee of the Fund shall be a constitutional corporation as that term is defined in Relevant Law.
- (b) The Trustee of the Fund shall be constituted in accordance with Relevant Law.
- (c) If permitted by Relevant Law, the Trustee may appoint a replacement Trustee in its place which shall also be a constitutional corporation and constituted in accordance with Relevant Law.

1.4.2 Covenants

The covenants that are required by Relevant Law to be included in the Deed are deemed to be included in the Deed as covenants by the Trustee and by each Director of the Trustee for so long as and to the extent required by Relevant Law.

1.4.3 Term of Office

The Trustee shall hold office until the earliest of -

- (a) subject to Relevant Law, its removal from that office by both a majority vote of the Members and a majority vote of the Employers;
- (b) the date on which the Trustee's term of office expires or the Trustee's appointment to such office ceases;
- (c) its retirement from that office by written notice given to each of the Employers and each of the Participating Unions;
- (d) the appointment of a receiver, receiver and manager, administrator or liquidator in respect of it or the whole or any part of its property or the approval by a court of a scheme of arrangement providing for its dissolution other than for the purpose of reconstruction;
- (e) its disqualification from that office by operation of law; and
- (f) it becoming a disqualified person as that term is defined in Relevant Law,

and, upon the Trustee ceasing to hold office, the outgoing Trustee shall appoint another Trustee in its place pursuant to Clause 1.4.1.

If the office of Trustee becomes vacant and the outgoing Trustee has not or is not able to appoint a new Trustee, an Employer or a Member may apply to the Supreme Court of New South Wales for it to appoint a corporation to replace the Trustee.

1.4.4 Validity of Acts

The acts of the Trustee are valid notwithstanding any defect that may be discovered in its appointment.

1.4.5 Covenants

Clause 1.4.5 inserted by Amending Deed dated 20 May 1997. Effective 20 May 1997.

The Trustee shall:

- (a) act honestly in all matters concerning the Fund; and
- (b) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary, prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide.

1.5 **Constitutional Corporation**

1.5.1 Constitution of Trustee Board

Clause 1.5.1 amended by Amending Deed dated 31 July 1998. Effective 31 July 1998. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

The Directors of the Trustee which is a constitutional corporation shall consist of eight Directors of whom:

- (a) two (2) shall be appointed as Employer Directors by the Minerals Council – Coal Committee after nomination in accordance with Clause 1.5.2;
- (b) two (2) shall be appointed as Employer Directors by the QRC after nomination in accordance with Clause 1.5.2;
- (c) three (3) shall be appointed as Member Directors by the CFMEU after nomination in accordance with Clause 1.5.3(b); and
- (d) one (1) shall be appointed as a Member Director by the CFMEU after nomination by the Participating Unions in accordance with Clause 1.5.3(c).

1.5.2 Nomination and Removal of Employer Directors

Clause 1.5.2 amended by Amending Deed dated 31 July 1998. Effective 31 July 1998. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (a) Each Employer Director shall be aged at least 18 years, eligible to be appointed under Relevant Law and have been nominated in writing as provided for in this Clause.
- (b) The Employer Directors shall be nominated and may be removed in such manner, by such method and in accordance with such regulations and procedures as may be determined by the Minerals Council – Coal Committee or the QRC as the case may be, having regard to Relevant Law, including such matters as -
 - (i) the date as at which an Employer Director shall assume office and the term for which an Employer Director shall hold office, either generally or in any particular case;
 - (ii) eligibility, nominations and voting; and
 - (iii) the manner in which casual vacancies in the office of Employer Director shall be filled.
- (c) Failure to notify an Employer of or in relation to any matter relating to or affecting nomination of any Employer Director shall not render that nomination ineffective.
- (d) The Trustee may vary the methods, regulations or procedures for nominating and removing Employer Directors.

1.5.3 Nomination and Removal of Member Directors

Clause 1.5.3
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

- (a) Each Member Director shall be aged at least 18 years, eligible to be appointed under Relevant Law and have been nominated as provided in this Clause.
- (b) Three (3) Member Directors shall be nominated and may be removed in such manner, by such method and in accordance with such regulations and procedures as may be determined by the CFMEU, having regard to Relevant Law, including such matters as -
- (i) the date as at which a Member Director shall assume office and the term for which a Member Director shall hold office, either generally or in any particular case;
 - (ii) eligibility, nominations and voting; and
 - (iii) the manner in which casual vacancies in the office of a Member Director shall be filled.
- (c) The fourth Member Director shall be nominated by the following Participating Unions on a rotating basis in the order listed below:
- APESMA
CEPU
AMWU
COA
MMA
- and may be removed by the Participating Union which appointed the director. If the Member Director is removed more than 90 days prior to the expiry of their term as a director, the same Participating Union shall nominate a new Member Director to act in their place until the expiry of that term. If the Participating Union fails to nominate a new Member Director, the Participating Union next entitled to appoint a Member Director shall nominate a new Member Director for the expiry of that term, without prejudice to their entitlement to appoint a Member Director at the expiry of that term under this Clause.
- (d) Failure to notify a Member or Participating Union of or in relation to any matter relating to or affecting nomination of any Member Director shall not render that nomination ineffective.
- (e) The CFMEU may vary the methods, regulations or procedures for nominating and removing Member Directors under clause 1.5.3(b) and the Participating Unions may vary the methods, regulations or procedures for nominating the Member Director under clause 1.5.3(c) and the Trustee shall notify all Members of the methods, regulations and procedures in relation to the nomination, election and removal of Member Directors, (including any changes to those methods, regulations and procedures) as required or permitted by Relevant Law.

1.5.4 Varying the number of Directors and appointment of an Independent Director

Clause 1.5.4 inserted by Amending Deed dated 31 March 2005. Effective 1 April; 2005.

- (a) The Trustee may appoint an additional Independent Director if required to comply with Relevant Law or if all the Directors agree to that appointment.
- (b) If an Independent Director is to be appointed, the Trustee must determine regulations and procedures which apply to the appointment and removal of that Director.
- (c) The Trustee may vary the regulations and procedures for the appointment and removal of the Independent Director from time to time.
- (d) The Trustee must vary the number of Directors to comply with the Relevant Law and may otherwise vary the number of Directors at the request of all the parties entitled to appoint and remove the Directors, but subject to the requirements of the Relevant Law.

1.5.5 Term of Office

Clause 1.5.5 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.
 Clause 1.5.5 replaced by Amending Deed dated 26/7/06. Effective 26/7/06.

A Director shall hold office until the earliest of –

- (a) that Director's retirement from that office by notice in writing given to the Trustee;
- (b) the date on which that Director's term of office expires being –
 - (i) in the case of Employer Directors and the 3 Member Directors nominated by the CFMEU under Clause 1.5.3(b), a period of 4 years from the date on which the Director was appointed to that office; and
 - (ii) in the case of the Member Director appointed by the CFMEU after nomination by a Participating Union under Clause 1.5.3(c), a period of 2 years from the date on which the Director was appointed to that office,
 or the date on which that Director's appointment to such office otherwise ceases in accordance with Clause 1.5.3;
- (c) that Director's disqualification from that office by operation of law or that Director becoming a disqualified person as that term is defined in the Relevant Law;
- (d) that Director no longer meeting a condition of their appointment or no longer satisfying any eligibility criteria that had to be met for that Director to be appointed;
- (e) that Director failing, in the Trustee's opinion, to be a "fit and proper person" within the meaning of the Relevant Law subject to any policy that the Trustee may have in place from time to time;
- (f) that Director's death;
- (g) in the case of a Member Director, that Director's removal from office by the CFMEU in accordance with Clause 1.5.3; and
- (h) in the case of an Employer Director, that Director's removal from office by the Minerals Council or by the QRC, as appropriate, in accordance with Clause 1.5.2.

A Director who ceases to hold office pursuant to this Clause shall, if otherwise eligible, be entitled to again be nominated and appointed as a Director.

1.5.6 Casual Vacancies

Clause 1.5.6
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

In the event that a Director ceases to hold office otherwise than on the normal expiry of the Director's term of office -

- (a) in the case of a Member Director, a replacement Director shall be appointed by CFMEU after nomination in accordance with Clause 1.5.3; or
- (b) in the case of an Employer Director, a replacement Director shall be appointed by the Minerals Council – Coal Committee or by the QRC, as appropriate, in accordance, with Clause 1.5.2.

A person appointed to fill such a casual vacancy shall hold office for the unexpired portion of the term of office and otherwise on the same conditions as the Director in respect of whom the vacancy has occurred unless otherwise determined by the Trustee at the date of appointment.

1.5.7 Quorum

Clause 1.5.7
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

A quorum of Directors shall be –

- (a) two-thirds of the Directors in office for the time being which number of Directors shall include an equal number of Employer Directors and Member Directors; or
- (b) such other number or combination of Directors as may be determined by the Trustee from time to time being a number and combination which satisfies Relevant Law.

The Directors in office for the time being may continue to act notwithstanding any vacancy in their numbers, if there is a quorum of Directors.

1.5.8 Meetings and Resolutions

Clause 1.5.8
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

- (a) Except as otherwise provided in the Deed, the Directors may meet and adjourn and regulate their meetings as the Directors see fit and a meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the powers exercisable by the Trustee.
- (b) Except as otherwise provided in the Deed, all questions arising at a meeting of the Trustee shall be determined by resolution and a resolution is effective if carried by a majority comprising at least a quorum of Directors.
- (c) A written resolution signed by all Directors is as effective as a resolution passed at a meeting of the Trustee duly convened and held on the day and at the time when the document was last signed by a Director. Two or more separate documents each containing the same resolution in identical terms shall together be deemed to constitute one document signed on the respective days on which the Directors signed the separate documents.
- (d) A Director may indicate his or her approval of a written resolution by email sent to each other Director and the Secretary and will be considered for the purposes of this Clause 1.5.8 to be a signed resolution provided that the acceptance of that email as a written resolution, may be subject to such

reasonable enquiries as to its authenticity as the Secretary determines or as required under procedures approved by the Trustee.

- (e) A Director may participate in a meeting of the Trustee by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in such a meeting in this manner shall be deemed to constitute presence in person at such meeting.
- (f) A Director or the Secretary with the approval of a Director may at any time convene a meeting of the Trustee by giving not less than seven (7) days prior written notice to each of the Directors or other Directors, as the case may be PROVIDED THAT all of the Directors may determine that a meeting of the Trustee may be held at shorter notice or with no notice.

1.5.9 Chairman of Directors

Clause 1.5.9
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

The Directors shall elect one Director to the office of chairman for a period of two years, unless extended by the Directors. On the expiration of the term of office of a Director who has been elected chairman, the Directors shall elect a Director to be chairman of Directors on the basis that, unless the Directors otherwise determine, if the retiring chairman was an Employer Director the replacement chairman must be a Member Director and if the retiring chairman was a Member Director the replacement chairman must be an Employer Director. A Director so appointed as chairman of Directors shall hold office as chairman until -

- (a) that Director retires as chairman by written notice given to the other Directors;
- (b) that Director ceases to be a Director;
- (c) that Director is removed as chairman by a resolution of the Directors; or
- (d) the term of office expires.

Any casual vacancy caused by the chairman ceasing to act during the period of the chairman's appointment shall be filled at the next meeting of Directors by a replacement chairman on the basis that, unless the Directors otherwise determine, if the retiring chairman was an Employer Director the replacement chairman must be an Employer Director and if the retiring chairman was a Member Director the replacement chairman must be a Member Director. The replacement chairman shall hold office until the end of the period of appointment of the chairman who has ceased to act.

The chairman of Directors shall act as chairman of each meeting of the board of Directors attended by the chairman of Directors. If the chairman of Directors is not present at a meeting of the board of Directors, a Director may be appointed by those present to act as chairman of that meeting on the basis that, unless the Directors otherwise determine, if the chairman is an Employer Director, another Employer Director shall be appointed as the replacement chairman and if the chairman is a Member Director another Member Director shall be appointed as the replacement chairman.

Clause 1.5.10
inserted by Amending
Deed dated 31 March
2005. Effective 1
April 2005.

1.5.10 Alternate Directors

Subject to any alternative provisions in the Trustee's constitution:

- (a) a Director may, with the approval of the other Directors appoint an alternative to exercise some or all of the Director's powers for a specified period, which may include acting at one or more specified meeting of the Directors.
- (b) the Directors, as part of the approval referred to in paragraph (a) may determine rules and procedures which will apply to the Alternate Director when they are not acting as a Director, including their entitlement to receive Board papers and other confidential information in relation to the Trustee and the Fund, their use of that information and their attendance and conduct at meetings of the Trustee in the capacity as an observer.
- (c) an Alternate Director will be entitled to receive notices of meeting of the Trustee Board if the appointing Director so requests.
- (d) when the Alternate Director exercises the appointing Director's powers, the exercise of the powers will be as effective as if the powers were exercised by the appointing Director.
- (e) an appointing Director may terminate the Alternate Director's appointment at any time in writing, a copy of which must be given to the Trustee.

1.5.11 Voting

Each Director present at a meeting of the Trustee shall have one deliberative vote on any question. No Director shall have a second vote.

1.5.12 Minutes

The Trustee shall keep or cause to be kept -

- (a) minutes of all meetings of the Trustee. The minutes if signed by the chairman of such meeting or by the chairman of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in those minutes; and
- (b) any other records in relation to any other matters concerning its role as Trustee of the Fund which are required by Relevant Law.

1.5.13 Remuneration of Trustee and its Directors

- (a) The Trustee may deduct from the assets of the Fund an amount sufficient to provide remuneration to itself in respect of work done or services provided in the performance of its obligations as Trustee of the Fund.
- (b) The Trustee may apply some or all of the amount in (a) above to provide remuneration to the Directors of the Trustee in respect of the performance of their obligations as directors of the Trustee or as members of committees of the Board of the Trustee.
- (c) The quantum of the amount in (a) and the quantum of the aggregate amount in (b) must be:
 - (1) decided by a majority decision of the Directors of the Trustee after having received and given due consideration to independent expert remuneration advice; and
 - (2) approved by the shareholders of the Trustee.
- (d) Subject to (b) and (c) above, the allocation of remuneration between the Directors of the Trustee, in respect of the performance of their obligations

Clause 1.5.13 inserted by
Amending Deed dated 1
March 2008 .
Effective 12 February
2008 .

as directors of the Trustee or as members of committees of the Board of the Trustee, must be determined by a majority decision of the Directors of the Trustee.

- (e) The fee payable to the Trustee and the amount and allocation of the remuneration payable to the Directors must be reviewed in accordance with any policy approved by the shareholders or, in the absence of any such policy, at reasonable intervals as determined by the Directors being no less than 12 months and any increase in quantum, other than in accordance with a policy previously approved by the shareholders, may only be made after the Directors have complied with the requirements set out in paragraph (c) of this Clause 1.5.13.

1.6 Powers of Trustee

1.6.1 Absolute Discretions

Except to the extent otherwise expressly provided in the Deed, the Trustee shall have in the exercise or non-exercise or partial exercise of each and every power exercisable by the Trustee an absolute and uncontrolled discretion and shall not be bound to give to any person any reason for or explanation of the exercise, non-exercise or partial exercise of any such power. The powers conferred on or exercisable by the Trustee under the Deed are additional to and not in substitution for the powers conferred on or exercisable by the Trustee at law.

1.6.2 General Powers

Except to the extent otherwise expressly provided in the Deed, the Trustee shall have the complete management and control of all proceedings matters and things in connection with the Fund and may do all acts and things which the Trustee may consider necessary desirable or expedient for the proper administration maintenance and preservation of the Fund or any part thereof and in the exercise and performance of the powers and obligations of the Trustee under the Deed.

1.6.3 Specific Powers

Except to the extent otherwise expressly provided in the Deed and without limiting Clause 1.6.2 the Trustee shall have the following specific powers, that is to say power -

- (a) to make the irrevocable election necessary for Relevant Law to apply to the Fund;
- (b) to engage remove or suspend nominees, custodians and managers (including nominees, custodians and investment managers in respect of all or any of the moneys and assets of the Fund), administrators, clerks, agents, representatives and other servants and delegates; engage them for permanent, temporary or special services; determine their powers and duties and fix and pay from the Fund their salaries, fees, emoluments and charges; and require security from any such person in such instances and to such amount as the Trustee may think fit;
- (c) to institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund or the Deed generally and also to compound and allow time for payment or

Clause 1.6.3
amended by
Amending Deed
dated 12 July 2000.
Effective 12 July
.2000. Clause 1.6.3
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;

- (d) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (e) to determine who shall be entitled to give and sign in respect of the Fund or any part thereof receipts, acceptances, endorsements, releases, contracts and other documents (and the receipt of the Trustee or a duly authorised delegate of the Trustee is a sufficient discharge to the person to whom it is given);
- (f) to open bank accounts or accounts with other financial institutions and to make regulations for the operation of such accounts including the signing and endorsing of cheques in connection therewith;
- (g) to act on the advice or opinion of any Qualified Adviser (whether or not such advice or opinion was obtained by the Trustee) in relation to any relevant matter or question without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on such advice or opinion;
- (h) to give such undertakings and indemnities, enter into such contracts and incur all such obligations relating to the Fund or any part thereof as the Trustee may think fit, including without limitation giving one or more of a guarantee, warranty or indemnity in respect of any obligation assumed or undertaken by the Trustee or a delegate thereof in connection with the Fund;
- (i) to make rules and adopt procedures in relation to the calculation and rounding-off of contributions, benefits and interest, the determination of periods of time or to such other matters as shall be appropriate for the convenient administration of the Fund
- (j) to create, amend or delete reserves and accounts as the Trustee decides from time to time are necessary or desirable for the efficient management of the Fund; and
- (k) to the extent permitted by the Relevant Law, to borrow or to obtain temporary finance by way of overdraft accommodation from an eligible bank and to secure the payment of money and interest thereon by mortgage or charge over any asset of the Fund. Notwithstanding anything herein contained, the Trustee shall not pledge the assets of the Fund as security for a loan to any person other than the Trustee as provided for in this Deed.

1.6.4 Records

The Trustee shall keep or cause to be kept proper records for the Fund so as to satisfy the Relevant Law including proper records of the Participating Employers, Owners and Members of the Fund.

1.6.5 Cheques and Negotiable Investments

All promissory notes, cheques or other negotiable instruments shall be signed, drawn or accepted, endorsed or otherwise executed as the case may be, for or on behalf of the Trustee by one Employer Director and one Member Director, or in such other manner as the Directors may from time to time determine.

1.6.6 Confidentiality

Clause 1.6.6
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

- (a) Except to the extent reasonably necessary in the operation and administration of the Fund: and the proper application of the Deed, the Trustee, the Directors, the Secretary and each delegate of the Trustee shall, unless otherwise required by law, treat as confidential all information regarding the Trustee, Employers, Members and Beneficiaries which becomes known thereto in connection with the operation and administration of the Fund.
- (b) The Trustee shall use its best endeavours to ensure that persons who have access to information in the possession of the Trustee as to any of the affairs, accounts or transactions of the Trustee or any of the Employers or Members or Beneficiaries keep the information secret.

1.6.7 Attribution of Assets, Income and Expenses for Particular Purposes

Clause 1.6.7 inserted
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

The Trustee may for the proper operation and administration of the Fund including ensuring that there is an equitable allocation of Fund Expenses and Income Entitlement between the various Parts of the Fund, between different categories or classes of Member and between individual Members notionally treat the Fund's assets as attributable to different Parts of the Fund, to different categories or classes of Member or to different Members.

1.7 **Delegation by Trustee**

Subject to Relevant Law the Trustee may delegate any power exercisable by the Trustee (including a power which the Trustee may have a duty to exercise or perform and the power of delegation) and any duty of the Trustee to any person in any manner and upon any terms and conditions. The Trustee may vary or revoke any delegation and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.

1.8 **Indemnity of Trustee**

1.8.1 Indemnity

- (a) No Trustee or Director or other officer of the Trustee, or any other person authorised to act on behalf of the Trustee shall be liable for or in respect of, and a Trustee Director or other officer of the Trustee, or any other person authorised to act on behalf of the Trustee shall be indemnified out of the Fund against any claim, liability, cost, loss, damage or expense whatsoever incurred or arising in connection with any act, omission or mistake in connection with the Deed or the Fund or the exercise or performance of that person's powers and duties generally, including without limitation any matter falling within paragraph (b) **EXCEPT** to the extent that such claim, liability, cost, loss, damage or expense is a result of an act, omission or mistake involving that person's own personal fraud or dishonesty, intentional or reckless neglect or intentional or reckless default, or is a matter for which indemnification is not permitted under Relevant Law.
- (b) Subject to paragraph (a), the Trustee, Director or other officer of the Trustee, or any other person authorised to act on behalf of the Trustee shall not be liable or responsible for and shall be indemnified out of the Fund in

respect of any claim, liability, cost, loss, damage or expense whatsoever incurred or arising in connection with any act, omission or mistake arising in connection with -

- (i) the insufficiency of or deficiency in any manner or form of investment in which moneys of the Fund may be invested pursuant hereto;
- (ii) the bankruptcy or insolvency of or any fraudulent or negligent act by any servant or delegate of the Trustee or any person with whom any investment may be deposited;
- (iii) the payment of an amount or benefit to a person reasonably believed to be entitled thereto but who is in fact not so entitled; or
- (iv) any action taken or thing suffered in reliance upon any document, record, authority, representation, statement or evidence reasonably believed by the Trustee or a servant or delegate in good faith to be genuine, accurate and effective.

1.8.2 Fund Expenses

Clause 1.8.2 replaced by Amending Deed dated 4/8/05. Effective 31/3/03.

Subject to Clause 1.8.1, all Fund Expenses shall be paid out of the Fund and notwithstanding any other provision of this Trust Deed, the Trustee may, in its absolute discretion, determine to deduct Fund Expenses from the Income Entitlement or from Members' Accounts or from other amounts payable to a Member or Beneficiary or partially from the Income Entitlement and partially from Members' Accounts or other amounts payable to a Member or Beneficiary.

1.8.3 Action Notwithstanding Interest

A person may be a Director, Secretary or other officer, servant or delegate of the Trustee, and may exercise any power, discretion or duty exercisable by virtue of such office or position, notwithstanding that that person is, or is related to or associated with, an Employer, a Member or a Beneficiary.

1.9 **Accounting and Actuarial Requirements**

1.9.1 Appointment of Auditor

The Trustee shall appoint an Auditor of the Fund in accordance with Relevant Law. The appointment of the Auditor shall be on such terms as the Trustee may think fit and the Trustee may remove the Auditor at any time and appoint another person as Auditor. The remuneration of the Auditor shall be fixed by the Trustee and shall be payable out of the Fund.

1.9.2 Accounts and Audit

Clause 1.9.2 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

The Trustee shall maintain or cause to be maintained such records and accounts as are required under and for the purposes of the Deed and Relevant Law, and such other records and accounts as the Trustee may consider to be necessary or expedient. The records and accounts of the Fund shall be audited by the Auditor annually and at such other intervals and at such other times as the Trustee may determine. The Auditor shall certify to the Trustee the result of each such audit in writing.

1.9.3 Actuarial Valuation and Report

The Trustee shall cause an actuarial investigation of the Fund to be undertaken at such times and in such manner as may be required by Relevant Law. The Trustee shall provide such information as the Actuary shall require to make the report and the report shall contain such information as is required by Relevant Law.

1.9.4 Actuarial Review of Contingent Liability and Pensioners Reserve Account

No later than the 30th June 2007 and at least every three years thereafter the Trustee shall cause the Actuary to review the Contingent Liability and Pensioners Reserve Account and to report to the Trustee on the adequacy of the provision made in that account to meet –

- (a) liabilities for future payments to Existing Pensioners;
- (b) possible contingent liabilities to Members in accordance with Rule 4.6; and
- (c) any other liability or claim for which the Trustee or the Fund may become liable pursuant to Section 7(b) of the Mine Workers' Superannuation Act and for which moneys are not held in another account prescribed by this Deed.

Should the Actuary report that the balance of the Contingent Liability and Pensioners Reserve Account is more than adequate to meet the actual and contingent liabilities or claims covered by the Contingent Liability and Pensioners Reserve Account, the Trustee may in its absolute discretion determine that all or part of the balance shall be transferred from the Contingent Liability and Pensioners Reserve Account and added to the Income Entitlement determined in accordance with Clause 1.12 for distribution to the Members' Accounts in respect of each Member.

1.10 Appointment of Secretary

The Trustee may appoint as Secretary of the Fund (or acting or deputy Secretary). Any such appointment shall be on such terms as the Trustee may think fit and the Trustee may remove any such person from office and may appoint another Secretary. The Secretary shall perform such duties and have such powers as are provided by the Deed together with such other duties and powers as the Trustee may determine.

Title "Investment, Insurance and Income Entitlement" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

INVESTMENT, INSURANCE AND INCOME ENTITLEMENT

1.11 Investment Powers

1.11.1 Authorised Investments

Subject to Relevant Law and the following provisions of this Clause, the Trustee may in the name or under the control of the Trustee apply the whole or any part of the moneys or assets of the Fund which are not immediately required for any other purpose under the Deed in any manner or form which the Trustee may consider to be an investment and suitable for the Fund, including without limitation any manner or form in which the Trustee could invest if acting personally and not in a fiduciary capacity but with the sole and absolute legal and beneficial ownership of the moneys and assets of the Fund. The cost of acquisition or sale of any

authorised investment (including stamp duty, brokerage, commissions and Tax) shall be paid for by the Trustee out of the Fund.

1.11.2 Particular Powers

Rule 1.11.2 amended by
Amending Deed dated 28
June 1996. Effective 28
June 1996.

Without limiting Clause 1.11.1 but subject to Relevant Law the Trustee shall have the following particular powers, namely:

- (a) to investigate, negotiate for, promote, create, acquire, underwrite, sub-underwrite, dispose of, transfer, exchange, collect, realise, alter, convert, improve, exploit, insure, extend, reconstruct, develop, manage and otherwise deal with and turn to account any investment (wheresoever situated), any interest whatsoever therein and any right, contract, option or the like in respect thereof (whether or not producing income) in such manner, at such times, with or without security or liability, and subject to such conditions generally as the Trustee may think fit;
- (b) to enter into, grant, acquire, participate in or deal with in any manner (including for the purposes of risk management, enhancing investment return or substitution for physical holdings) any financial arrangement including without limitation any arrangement commonly known as a futures contract, forward contract, interest rate swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract or any other like contract and any hedging, swapping or like arrangement, whether or not related to any other property forming part of the Fund, including any instrument under which a right or an option in respect of a financial arrangement may be exercised;
- (c) to exercise and perform all powers appertaining or incidental to any manner or form of investment and to discharge from the Fund all costs of and incidental to the powers vested therein under this Clause, including without limitation the costs of the investigation of and negotiation for a prospective investment which does not become part of the Fund;
- (d) to borrow or raise money;
- (e) to enter into or acquire any investment either alone or in conjunction with any other person (including a Trustee acting as trustee or manager of another trust) and to mix money or property forming part of the Fund with any other money or property (excluding money or assets held or administered by the Trustee personally or money or assets of an Employer) but so long as at all times such separate and distinct records are maintained as will enable ready identification of the moneys and property attributable to the Fund;
- (f) to cause or allow any investment to be entered into, made and held in the name of the Trustee or of any other person acceptable to the Trustee, whether or not such other person acts for the Trustee alone or for the Trustee and any other person;
- (g) establish and maintain or remove one or more investment options under Clause 1.11.5; and
- (h) transfer assets between investment options but only at a value which is fair having regard to costs of acquiring the asset, the costs of acquiring the asset and the realisable value of the asset.

1.11.3 Specific Investment Arrangements

Subject to Relevant Law the Trustee may:

- (a) appoint an investment manager or investment managers and determine and redetermine the terms of any such appointment, including without limitation the powers, duties and remuneration of an investment manager;
- (b) allocate and re-allocate moneys and assets of all or any Part of the Fund to and between investment managers; and
- (c) revoke the appointment of an investment manager,

and, subject to the terms of its appointment (as varied from time to time), an investment manager so appointed may invest the moneys and assets of the Fund which are under its control in any manner or form in which the Trustee may invest the moneys and assets of the Fund, with power to cause or allow an investment to be entered into, made and held in the name of that manager or of a nominee or custodian which exclusively or normally acts in that capacity for that manager or any other nominee or custodian approved either generally or in any particular case by the Trustee.

1.11.4 No Loans to Members

No amount forming part of the assets of the Fund shall be advanced to or lent by the Trustee to any Member.

1.11.5 Member Directed Investments

Subject to such conditions as the Trustee may impose either generally or in a particular case:

- (a) the Trustee may establish one or more investment options within the Fund on such basis and within such parameters as the Trustee may consider appropriate and may invite a Member to direct the Trustee as to which investment option or options all or any part of one or more of the Member's Accounts shall be invested in;
- (b) at the invitation of or with the approval of the Trustee, a Member may elect to revoke or vary any previous direction made by the Member and may make further directions with effect from such date as the Trustee may in its absolute discretion determine;
- (c) no directions may be made by a Member pursuant to this clause other than in compliance with the Relevant Law and the Trustee shall ensure that any information required to be given to a Member prior to the Member making such direction is provided on the basis and within the time required by the Relevant Law;
- (d) the Trustee shall only be bound to comply with any Member's direction, or variation therefor, if it is practical for it to do so and, without limiting the generality hereof, the Trustee shall not be required to enter into any investment as a result of a Member's direction if to do so would, in the Trustee's opinion, disadvantage the Fund or other Members or would infringe any applicable requirements of the Relevant Law relating to the investment of the Fund's assets;
- (e) if the Trustee forms the opinion that the direction of a Member cannot be carried out for whatever reason, the Member will be requested to redirect

Clause 1.11.5 inserted by Amending Deed dated 28 June 1996. Effective 28 June 1996. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005. Further amended by Amending Deed dated 5 June 2008. Effective 5 June 2008.

the form of investment preferred by the Member. If a Member fails to redirect, the Trustee will invest the relevant portion of the Member's Accounts in accordance with the Trustee's investment strategy for the Fund as a whole; and

- (f) notwithstanding any of the other paragraphs in this Clause 1.11.5, and subject to Relevant Law, the Trustee:
- (i) is not bound to comply with a Member's direction; and
 - (ii) may transfer an amount referable to the part or whole of a Member's Account from one investment option to another in the absence of a Member direction (subject to any obligations under Relevant Law to notify the Member or otherwise).

Without limiting anything in this paragraph (f) the Trustee may transfer the part or whole of a Member's Account balance from one investment option to another following the death of a Member or Non-Member Spouse and make such consequential arrangements as it considers appropriate.

1.12 Income Entitlement

Rule 1.12 inserted by
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

1.12.1 Trustee to determine Income Entitlement

At the end of each financial year, and at such other times as the Trustee shall decide, the Trustee shall determine the Income Entitlement, which may be positive or negative, attributable to each Part of the Fund and to each Member.

1.12.2 Income Entitlement

Clause 1.12.2 replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

The Income Entitlement shall be the total of:

- (a) all interest, dividends, rent and other income from the investments of the Fund attributable to each Part of the Fund or Member, as the case requires, and realised and unrealised gains and losses on those investments;
- (b) in respect of Part 4 Members, an equitable proportion of any amount which the Trustee determines should be transferred from the Contingent Liability and Pensioners Reserve Account in accordance with Clause 1.9.4; and
- (c) any other amount received by the Fund which the Trustee determines shall be added to the Income Entitlement in respect of each Part of the Fund, or Member, as the case requires,

and from which shall be deducted:

- (d) negative investment returns;
- (e) Fund Expenses;
- (f) provision as appropriate for prepayments and allowance for doubtful debts;
- (g) provision for such other contingencies as in the opinion of the Trustee are necessary to bring to account in order that the Income Entitlement for the particular distribution period may fairly represent the results of that period;

- (h) in respect of Part 4 Members, any amount which the Trustee in its absolute discretion thinks proper to deduct from the Income Entitlement attributable to Part 4 Members in respect of the cost of maintaining an insurance policy with an insurer on behalf of the Members including but not limited to the premiums payable under that policy and any related expenses of administering the policy and which are not otherwise deducted from Members' Account; and
- (i) in respect of Part 4 members any amount paid in respect of a Member being the difference calculated pursuant to Rules 4.8.2(b)(ii) or 4.8.3(b)(ii), as the case may be and the total of the balances in the Member's accounts at that time.

1.12.3 Income Entitlement and Investment Fluctuation Reserve

(a) Total Members' Income Entitlements

The total of Members' Income Entitlements shall be the Income Entitlement for the year plus, any amount transferred from the Investment Fluctuation Reserve Account, or minus any amount transferred to the Investment Fluctuation Reserve Account.

(b) Investment Fluctuation Reserve Account

The Trustee may, in its absolute discretion:

- (i) create an Investment Fluctuation Reserve Account for the Fund as a whole or any Part of the Fund;
- (ii) transfer to that account, such amount as it thinks, appropriate, from the Income Entitlement Account in any year;
- (iii) transfer from that account such amount as it thinks appropriate to the Income Entitlement Account in any year,

for the purpose of smoothing the earning rate of the Fund or of this Part of the Fund by creating maintaining or using, a bank of retained earnings of this Part of the Fund.

1.12.4 Member's Income Entitlement.

- (a) A Member's Income Entitlement shall be such part of the total Member's Income Entitlements as the Trustee, in its absolute discretion, determines to be fair and reasonable, including taking into account the extent to which, if any, the Member has directed the Trustee as to the investment of the Member's Accounts under Clause 1.11.5.
- (b) Subject to the Relevant Law, the Trustee shall allocate such sum to each of the Member's Accounts, if more than one, in such proportions as the Trustee determines, taking into account the extent to which the Member has directed the Trustee as to the investment of the Member's Accounts under Clause 1.11.5 and the investment returns (whether notional or actual) achieved on those investments.

1.13 Insurance Arrangements

1.13.1 Effecting Insurance

Rule 1.13.1 amended
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

The Trustee may (and shall to the extent, if any, specified in the Deed) enter into or otherwise acquire any type of insurance policy or like arrangement (including any Group Life Insurance, reinsurance arrangement or trustee indemnity insurance with any person or fund) or any right or interest in respect thereof and with or subject to any option, right, benefit, term, condition or provision. The Trustee may pay out of the Fund and, in respect of Part 4 Members, the Members' Accounts (as defined in Rule 4.1) or Income Entitlement, all premiums and other outgoings in respect of such policy or arrangement and vary, surrender, terminate, assign or otherwise howsoever deal with the same as the Trustee may think fit.

1.13.2 Restrictions and Adjustments

Rule 1.13.2 amended
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

(a) If insurance is effected or sought to be effected by the Trustee with an Insurer in respect of any benefit which might become payable from the Fund in respect of a person or group of persons and

(i) that Insurer refuses to provide or increase insurance in respect of a person on its standard terms; or

(ii) that Insurer for any reason whatever fails to provide increase or maintain or reduces, terminates, limits, restricts or withholds insurance or does not admit or refuses to consider or defers a claim in whole or in part or refuses to pay a benefit in whole or in part,

then, unless otherwise determined by the Trustee, the benefits in respect of which insurance has been or would have otherwise been effected shall be reduced to the extent to which insurance has not been effected on standard terms or has otherwise not been obtained, increased or maintained or has been reduced, terminated, limited, restricted or withheld or such a claim is deferred or not admitted, and the Trustee may adjust any affected benefit in such manner as the Trustee considers appropriate in effecting such a reduction.

(b) If any event provided for in paragraph (a) occurs in relation to insurance sought or effected, the Trustee shall not be bound to seek alternative insurance with the same or another Insurer or, if the Trustee may decide to seek alternative insurance, the Trustee may limit that search to such Insurer or Insurers as the Trustee may see fit.

(c) In any case, the Trustee may adjust the amount, time for and basis of payment of all or part of a benefit in respect of which insurance has been effected in such manner as the Trustee may consider appropriate to take account of the terms and conditions upon which the proceeds of such insurance are payable by the relevant Insurer and the amount thereof.

(d) Any adjusted benefits provided pursuant to this Clause shall be in lieu of and in full satisfaction of the benefits which would or might have been or become payable but for the operation of this Clause.

(e) The Trustee may, subject to Clause 1.3.4 and the restrictions contained in Clause 1.40.1, to the extent necessary to reflect a partial payment of a benefit to a Member or Dependant or to otherwise prevent a double payment of some or all of a benefit to or in respect of a Member or

Rule 1.13.2(e)
inserted by Amending
Deed dated 13
August 2003.
Effective 13 August
2003.

Dependant, including as a result of a Member or Beneficiary receiving an alternative form of benefit under Clause 1.31.1 or a payment under Rule 2.6.6, adjust any benefit to the extent and in the manner considered appropriate by the Trustee.

1.13.3 Self-insurance of Benefits

If insurance is not sought by the Trustee in respect of the whole of a benefit which might become payable from the Fund in respect of a person but the Trustee believes that an event provided for in Clause 1.13.2(a) would or would likely have occurred if the Trustee had done so, then Clause 1.13.2 shall apply (subject to Relevant Law) as if -

- (a) the Trustee had in fact sought or effected insurance in respect of that benefit of such amount and on such conditions as shall be determined by the Trustee; and
- (b) such of the events provided for in Clause 1.13.2(a) as the Trustee shall determine had in fact occurred and for such reasons, in such circumstances and with such effect as the Trustee shall determine.

1.13.4 Additional Death Insurance and Total and Permanent Disablement Insurance

The Trustee may make arrangements under which insurance is made available to Members on different terms (including supplementary terms) to the terms otherwise provided for under the Deed.

Insurance cover to which this clause applies may relate to death, Total and Permanent Disablement or any other contingency by Relevant Law.

The Trustee will determine any special terms, conditions or restrictions that apply to such insurance, or the terms on which it is made available and may enter such arrangements as it considers appropriate with an Insurer for this purpose.

Rule 1.13.4 inserted by Amending Deed dated 28 June 1996. Effective 28 June 1996. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005. Further amended by Amending Deed dated 23/10/06. Effective 1/7/06. Rule 1.13.4 deleted and replaced by Amending Deed dated 3 February 2009. Effective 1 March 2009.

EMPLOYERS

1.14 Admission of Participating Employers

1.14.1 Employer Application to Participate

Every Employer desirous of becoming a Participating Employer in respect of Part 2 or Part 4 of the Fund shall make application to the Trustee, the application to be in or to the effect of the form set out in Appendix 1A or in or to the effect of such other form as the Trustee shall from time to time determine.

Rule 1.14.1 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

1.14.2 Trustee May Refuse Application

The Trustee may in its absolute discretion accept or refuse the application **PROVIDED ALWAYS THAT** the Trustee shall not accept an application for participation in the Fund unless:

- (a) the applicant is an Employer;
- (b) the applicant has agreed in writing to comply with and be bound by the Deed.

1.14.3 Trustee Must Exercise Discretion Promptly

The Trustee shall be under an obligation to exercise its discretion in respect of the acceptance or otherwise of an applicant within one (1) month of receipt of the application.

Clause 14.4.4
amended by
Amending Deed
dated 31 March 2005.
Effective 1 April 2005.
Further amended by
Amending Deed
dated 20/6/07.
Effective 20/6/07.

1.14.4 Acceptance of Application

- (a) Any Employer who has made an application in accordance with Clause 1.14.1 to become a Participating Employer shall become a Participating Employer on the date of acceptance by the Trustee of their application and shall be subject to the provisions of the Deed.
- (b) Upon acceptance of an Employer's application the Trustee shall forthwith, but in any event at the time of or before the first contribution being made in respect of Eligible Employees of the Employer, notify the Employer that the application has been accepted in respect of its participation in Part 2 or Part 4, as the case requires. However, a failure by the Trustee to do so will not affect the Employer's acceptance as a Participating Employer.

1.14.5 Participating Employer Shall Sign Deed of Adherence

The Trustee may require the Participating Employer to sign a Deed of Adherence to be in or to the effect of the form set out in Appendix 1B or in or to the effect of such other form as the Trustee shall from time to time determine. However, the failure of the Participating Employer to sign a Deed of Adherence will not void their obligation to comply with the Deed.

Clause 1.14.5
replaced by
Amending Deed
dated 20/6/07.
Effective 20/6/07

1.14.6 Effect of Deed of Adherence

- (a) Any such Deed of Adherence may be amended or replaced by way of a subsequent Deed of Adherence between the parties or in the manner provided in the Deed as if it was a part of the Deed.
- (b) If there is any conflict between this Part 1 of the Deed and such Deed of Adherence, this Part 1 shall prevail. Except where such a Deed of Adherence expressly provides otherwise, if there is any conflict between such a Deed of Adherence and any Part or provision of the Deed other than this Part 1, such Deed of Adherence shall prevail.
- (c) Subject to any conditions imposed under such agreement or the Deed of Adherence, such Eligible Employees of a Participating Employer as become eligible as provided in such Deed of Adherence shall be eligible to participate in the Fund.

1.14.7 Deed Binding

Every Participating Employer and all persons claiming through it shall be bound by the Deed.

1.15 Winding Up, Dissolution or Cessation of Business

1.15.1 Cessation of Business

If:

- (a) where a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for the winding up of that body or

a scheme of arrangement providing for the dissolution of that body is approved by a court; or

- (b) where a Participating Employer is or includes a partnership, that partnership is dissolved; or
- (c) where a Participating Employer is or includes a natural person or natural persons, that person or any of those persons becomes bankrupt;
- (d) a Participating Employer ceases to carry on business for any reason;
- (e) a Participating Employer ceases to qualify as an Employer by virtue of ceasing to employ Eligible Employees;
- (f) the Trustee gives one (1) month's notice in writing to a Participating Employer of its intention to terminate the Participating Employer's participation in the Fund; or
- (g) a Participating Employer in Part 4 of the Fund gives one month's notice in writing to the Trustee of its intention to cease participating in the Fund,

then in the circumstances described in (a), (b), (c) or (d), the Trustee may enter into an agreement with any person which the Trustee may consider succeeds the Employer in business for that successor to take the place of the Employer. Such an agreement shall be in a form acceptable to the Trustee and shall be binding on all interested persons and shall only be available where the successor qualifies as a Participating Employer under the terms of this Deed.

1.15.2 Participating Employer Not Replaced

If an event provided for in Clause 1.15.1 occurs in relation to a Participating Employer but no agreement is entered into as provided in that Clause within one (1) month (or such other period as the Trustee may think fit) after the date the relevant event occurred, the Trustee shall be deemed to have received on the last day of such period a notice from the Participating Employer pursuant to Clause 1.25 that it had decided to terminate all of its payments to and in respect of the Fund with effect on that last day.

1.16 Discontinuance of Part 2 or Part 4 of the Fund

1.16.1 Discontinuance of Part 2 or Part 4 of the Fund

The Trustee may resolve to discontinue Part 2 or Part 4 upon the happening of any of the following events in respect of the relevant Part, namely -

- (a) if the Trustee determines that Part of the Fund has failed in its ability to provide benefits for Members of that Part ;
- (b) if the Trustee determines that it has become impractical or that it is not expedient to carry on that Part of the Fund;
- (c) if there are no Participating Employers who are presently liable to make contributions to that Part of the Fund in accordance with Rule 2.4.1, Rule 4.4.1 or Rule 4.4.2, as applicable, and in the opinion of the Trustee it is unlikely that any Employer will apply to become a Participating Employer of that Part; or
- (d) if the Rules of Part 2 of the Fund are amended to reduce the Participating Employer contribution provided in Rule 2.4.1 to nil.

Rule 1.15.1 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

Clause 1.16 replaced by
Amending Deed dated
12 July 2000. Effective
12 July 2000. Amended
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

1.16.2 Consequences of Discontinuance

Should the Trustee resolve to discontinue Part 2 or Part 4 of the Fund in accordance with Clause 1.16.1 -

- (a) that Part of the Fund shall be closed to new entrants;
- (b) no further contributions shall be accepted by or in respect of the Members for the purposes of that Part of the Fund **PROVIDED THAT** payments due on or before the date of the resolution to discontinue that Part of the Fund shall not be affected;
- (c) the Trustee shall cause a valuation to be made of the Assets attributable to that Part of the Fund (after payment of all expenses incurred as a result of discontinuing that Part of the Fund);
- (d) the Trustee shall allocate the amount as ascertained by the valuation among the Members of that Part of the Fund in such shares and proportions and in such manner as it shall determine to be fair and equitable after considering such advice as it may require;
- (e) the amounts so allocated shall be held in trust and invested by the Trustee as authorised by this Deed;
- (f) the amounts so allocated to a Member plus any accretion and minus any diminution, shall, subject to the other provisions of this Deed, be paid to the Member only in the circumstances provided in that Part of the Deed for the payment of a benefit **PROVIDED THAT** if before a benefit becomes payable the Trustee may in lieu of dealing with the benefits under that Part of the Fund relating to the Member transfer the whole or part of the benefit in respect of that Member to the trustee of an Approved Benefit Arrangement **PROVIDED HOWEVER THAT** a transfer may be made in accordance with this Clause only if the Trustee is satisfied that:
 - (i) the rights of the Member or the Member's Dependants or Legal Personal Representative to receive the benefits arising from the benefits transferred are fully secured; and
 - (ii) benefits will not be paid from that Approved Benefit Arrangement to or in respect of the Member except in such circumstances as in the opinion of the Trustee are allowable under Relevant Law.

1.17 **Discontinuance or Allocation of Part 3 of the Fund**

1.17.1 Discontinuance

Subject to the Relevant Law, Part 3 of the Fund will be discontinued if:

- (a) legislation is enacted to discontinue or wind up Part 3;
- (b) there are no Members or other Beneficiaries of Part 3 and, in the opinion of the Trustee, all benefits which could become payable from Part 3 have been paid; or
- (c) there occurs an event that, in the opinion of the Trustee, makes the discontinuance of Part 3 necessary or appropriate.

Rule 1.17 replaced by
Amending Deed dated 12
July 2000. Effective 12
July 2000.

1.17.2 Priority of Claims

Rule 1.17.2 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

If Part 3 is discontinued in accordance with Clause 1.17.1 or the Trustee otherwise determines that it is necessary or appropriate to do so, the Trustee shall determine the priority of claims for payment from Part 3 of pensions, lump sum benefits, refunds of contributions and any other benefits required or authorised to be paid under the Current Act and the Deed.

1.17.3 Allocation of Part 3

Rule 1.17.3 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

After determining the priority of claims for payment from Part 3 in accordance with Clause 1.17.2, the Trustee shall:

- (a) if the Trustee decides that it is necessary or appropriate to do so, realise the assets of Part 3;
- (b) obtain advice from the Actuary as to the amount properly payable to each Member and other Beneficiary of Part 3 having regard to the amount of assets in Part 3; and
- (c) after payment of Fund Expenses properly payable from Part 3, allocate the proceeds of Part 3 in accordance with the priority determined under Clause 1.17.2 and the Actuary's advice obtained for that purpose.

1.17.4 Allocation of Surplus

Rule 1.17.4 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

If, when providing advice to the Trustee for the purposes of this Clause 1.17 or for any other purpose, the Actuary determines that there is a surplus in Part 3, the Trustee shall distribute that surplus, or such portion which the Trustee determines that it is prudent to do so if Part 3 is not to be discontinued, to those Employers and Mine Workers, who were contributing to Part 3 at the time of the Actuary's determination, on an equitable basis in proportion to the contributions which they have made to Part 3.

1.17.5 Form and Manner of Benefits to be Provided

Subject to the requirements of the Relevant Law, the Trustee may make such arrangements as it considers appropriate to provide for the benefit entitlements of Members and other Beneficiaries on the discontinuance of Part 3, including without limitation payment to the Member or Beneficiary, retention in the Fund until payment is permitted or required by the Relevant Law, payment to another superannuation arrangement for the benefit of the Member or other Beneficiary or the purchase of an annuity or similar product for the benefit of the Member or other Beneficiary.

MEMBERSHIP OF FUND: GENERAL PROVISIONS

1.18 Admission of Members

1.18.1 Application Procedures

- (a) Subject to paragraph (b) below -
 - (i) application to become a Member of Part 2 or Part 4 of the Fund shall be made to the Trustee in accordance with Rule 2.2 or Rule 4.3 or, in respect of a Spouse Member, on the basis and subject to such conditions as the Trustee may determine from time to time and an applicant whose application is accepted by the Trustee shall

Rule 1.18.1 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

become a Member on the date of acceptance or such earlier or later date as the Trustee may determine with the approval of the Participating Employer either generally or in any particular case;

- (ii) the Trustee may in its absolute discretion accept or refuse a person's application **PROVIDED THAT** the Trustee shall be under no obligation to exercise its discretion in respect of the acceptance or otherwise of the person's application within one (1) month of its receipt; and
 - (iii) when a person's application has been accepted by the Trustee, the Trustee shall, as soon as practicable, notify the person that the person's application has been accepted.
- (b) Without limiting Clause 1.18.2 or Clause 1.18.3, the Participating Employer may determine either generally or in any particular case that an Eligible Employee shall be deemed to become a Member on such date as is determined by the Participating Employer and notified to the Trustee but a person so deemed to be a Member shall not be required to contribute without that person's express consent.
- (c) Subject to such special terms and conditions, if any, as may be determined by the Trustee either generally or in any particular case for the purposes of Part 2 or Part 4 of the Fund –
- (i) if a person who, having previously left or is treated as having left the employ of the Participating Employer, rejoins the employ of the Participating Employer, then during and in respect of the period after the date the person rejoins the employ of the Participating Employer that person shall for all intents and purposes under the Deed be treated as if that person had never previously been in the employ of the Participating Employer or a Member of Part 2 or Part 4 of the Fund; and
 - (ii) if that person is already a Member of Part 2 or Part 4 of the Fund by reason of a deferred, preserved or other benefit secured under the Deed in respect of a previous period of membership of Part 2 or Part 4 of the Fund, the COSAF Superannuation Fund or QCOS, then, subject to any contrary agreement between the Trustee and that person, that person's rights and interests in respect of any such continuing benefit, and the conditions upon which that benefit is secured, shall not be affected by the recommencement of employment.

1.18.2 Special Conditions and Restrictions

Notwithstanding any other provision of the Deed the Trustee may after consultation with the Participating Employer -

- (a) admit an Eligible Employee as a Member of Part 2 or Part 4 of the Fund subject to special conditions, limitations or restrictions in relation to benefits; and
- (b) remove or reduce the effect of any such special conditions, limitations or restrictions,

Rule 1.18.2 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

and the rights and interests of such a Member (and the rights and interests of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstance affecting the Member) shall be subject to such special conditions, limitations or restrictions.

1.18.3 Provision of Information by Applicants and Members

Rule 1.18.2 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (a) Each Eligible Employee and each Member shall provide such information and evidence, sign such documents, undergo such medical examinations and tests, and generally satisfy such standards and requirements as and when the Trustee may consider necessary or desirable.
- (b) If -
 - (i) an Eligible Employee or a Member fails to comply with paragraph (a) or to satisfy any test, standard or requirement laid down thereunder to the satisfaction of the Trustee; or
 - (ii) any statement made or evidence provided by or in respect of an Eligible Employee or a Member (whether in connection with an application to become a Member or otherwise howsoever) is found to contain any mis-statement, error, mistake, inaccuracy or omission,

the Trustee may, after consultation with the Participating Employer -

 - (iii) in the case of an Eligible Employee, admit that person as a Member of Part 2 or Part 4 of the Fund subject to special terms, conditions or restrictions as to benefits or otherwise; or
 - (iv) subject to any contrary right, entitlement or provision arising under Part 3 of the Fund in the case of a Member, impose special terms, conditions or restrictions in respect of membership of and benefits under Part 3 of the Fund.

1.18.4 Deed Binding

Every Member and Beneficiary and all persons claiming through them shall be bound by the Deed.

1.18.5 Classification of Members

The Members may be divided into categories. The number and designation of categories and the conditions for entry to and exit from a particular category shall be as determined by the Trustee and at any particular time a Member shall be classified into one or more categories as determined by the Trustee.

1.18.6 Transfer Between Categories

- (a) A Member under Part 3 of the Deed may apply to the Trustee to become a Member under Part 2 of the Deed **PROVIDED THAT** -
 - (i) the Member makes the application to become a Member under Part 2 of the Deed in accordance with the requirements of Rule 2.2.2; and
 - (ii) unless Clause 1.18.2 applies, the Employer qualifies as a Participating Employer for the purposes of Part 2 of the Deed.
- (b) If the conditions set out in paragraph (a) of this Clause cannot be satisfied the Member under Part 3 of the Fund may apply to the Trustee for a

transfer of their benefit calculated under Part 3 of the Fund to an Approved Benefit Arrangement in accordance with the provisions of this Deed **PROVIDED THAT** such transfer is allowable under the Relevant Law.

Clause 1.18.6(c) inserted
by Amending Deed dated
26/4/06.
Effective 1/1/06.

- (c) Subject to paragraphs (a) and (b), the Trustee may transfer a Member between Parts of the Fund provided that the Trustee obtains the Member's consent to the transfer where the Member's rights under the Deed are adversely affected.

1.19 Information Regarding Fund

1.19.1 Information for Members and Beneficiaries

The Trustee shall provide such information to Eligible Employees, Members and Beneficiaries as is required by Relevant Law and may provide to Eligible Employees, Members and Beneficiaries such additional information, in such manner and at such times as the Trustee may consider to be necessary or appropriate.

A copy of the Deed shall be kept at the principal office of the Trustee and at such other places as the Trustee may determine. An Eligible Employee or Member may inspect a copy of the Deed during normal business hours upon reasonable notice.

1.19.2 Information for Participating Employers

Except for any matter which is the subject of a binding obligation of confidence imposed on the Trustee, the Trustee shall provide to a Participating Employer as and when requested by the Participating Employer –

- (a) a copy of the Deed;
- (b) a copy of the audited accounts of the Fund together with the accompanying audit report;
- (c) a copy of any actuarial report in relation to the Fund;
- (d) a copy of any written report or advice which the Trustee may obtain from any Qualified Adviser under any provision of the Deed or which the Trustee may be required to provide to any governmental authority under any provision of the Deed or at law; and
- (e) any other notice or information which the Trustee is obliged to give to the Employer in accordance with Relevant Law.

1.19.3 Information For Other Persons

Rule 1.19.3 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

The Trustee shall provide such information to the Regulator, Auditor, Actuary or other person as is required and in the time required by Relevant Law.

1.20 Transfer from One Employer to Another under Part 2 or Part 4 of the Fund

Rule 1.18.2 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

If a Member of Part 2 or Part 4 of the Fund transfers from the employ of one Participating Employer to the employ of another Participating Employer, then (unless the Participating Employer and the Trustee expressly agree otherwise) that transfer shall not be deemed to constitute a cessation of employment for the purposes of an entitlement to any benefit under Part 2 or Part 4 of the Deed.

1.21 Special Arrangements

1.21.1 Individual Agreements under Part 2 or Part 4 of the Fund

Rule 1.21.1 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (a) The Trustee may agree with an Eligible Employee and a Participating Employer that the Eligible Employee shall be admitted to membership of Part 2 or Part 4 of the Fund subject to special terms and conditions as to benefits, contributions or otherwise.
- (b) Such an agreement shall be evidenced in writing (in one or more documents) by the Trustee, Participating Employer and the Eligible Employee or Member concerned in a form acceptable to the Trustee, and may be varied, replaced or revoked by a subsequent written agreement between the parties in the manner provided for in the Deed as if it was actually part of the Deed;
- (c) if there is a conflict between such an agreement (as varied or replaced from time to time) and this Part 1 of the Deed, this Part 1 shall prevail (except where the agreement expressly provides otherwise). If there is a conflict between such an agreement and any provision of the Deed other than this Part 1, such agreement shall prevail;
- (d) if and to the extent that, in the opinion of the Trustee (after obtaining the advice of the Actuary), to give effect to such an agreement would cause a deficiency in Part 2 or Part 4 of the Fund, before giving effect to such an agreement or in the course of doing so the Trustee may require an undertaking from a Participating Employer that it shall contribute to Part 2 or Part 4 of the Fund such additional amounts or rates of contributions as the Trustee shall determine after obtaining the advice of the Actuary and, if any such undertaking is not given or is not fulfilled to the satisfaction of the Trustee, the Trustee may refuse to give effect to or to continue to give effect to that agreement in whole or in part.

1.21.2 Temporary Cessation of Employment

Rule 1.21.2 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

If a Member ceases to be in the employ of a Participating Employer in circumstances in which in the opinion of the Trustee it is reasonable to expect that cessation will only be of a temporary nature and that the Member will soon again become employed by a Participating Employer, the Trustee may determine that the Member's membership of Part 2 or Part 4 of the Fund may continue subject to such conditions as may be agreed upon by the Trustee, the Member and the Participating Employer.

1.21.3 Part-time Employment, Absence or Non-eligibility.

Rule 1.21.3 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (a) Subject to Clause 1.3.2 a Participating Employer and the Trustee may agree upon special terms, conditions and restrictions in relation to the contributions to be payable and the benefits to be provided in respect of a Member during and in respect of any period when in the opinion of the Trustee and Participating Employer the Member is employed by the Participating Employer in other than a full-time capacity, the Member is absent from active employment with the Participating Employer (whether with or without pay or the approval of the Participating Employer), or the Member remains in the employ of the Participating Employer but is not a person who is classified as an Eligible Employee for the purposes of Part 2 of the Deed.

- (b) (i) Without limiting the generality of paragraph (a) of this Clause 1.21.3, a Participating Employer and the Trustee may, subject to the agreement of the Insurer (where death and Total and Permanent Disablement benefits are insured with the Insurer) and on such terms and conditions as the Participating Employer and Trustee may agree, allow a Member of Part 2 of the Fund whom the Participating Employer confirms is on maternity or paternity leave or leave without pay to continue to be entitled to or insured for (as the case may be) death and Total and Permanent Disablement Benefits from the Fund for a period of 12 months from the commencement of the Member's leave or from such other time as the Trustee and Participating Employer may agree.
- (ii) The Death and Disablement Levy or the cost of such insurance (as the case may be) shall be deducted from the relevant Member's Special Account. Where there is no Member's Special Account for the Member or the Special Account is insufficient to meet the Death and Disablement Levy or the cost of that insurance (as the case may be), the Death and Disablement Levy or cost will be deducted from such other of the Member's accounts as the Trustee shall determine.

1.21.4 Interest Payments

The Trustee may, in its absolute discretion, increase a benefit payable pursuant to the Deed by an amount determined by it in respect of the period between the date the benefit first became payable and the actual date of payment of the benefit.

1.22 Taxation

Subject to Relevant Law the Trustee may take such actions as the Trustee considers appropriate in taking account of any Tax including without limitation -

- (a) adjusting the amount of and conditions governing any benefit or other amount payable into or out of the Fund;
- (b) making provisions in the accounts of the Fund and payments from the Fund to relevant government authorities; and
- (c) in respect of any No-TFN Contributions Income, Release Authority Amounts and TFN Tax Offset Amounts.

1.22A TFN Tax Offset Amounts

Where a TFN Tax Offset Amount is payable in respect of a former Member, who no longer has an account in the Fund, the Trustee must pay the TFN Tax Offset Amount in accordance with the former Member's directions or, in the absence of such instructions, to an eligible rollover fund.

Clauses 1.22(a) and (b) amended by Amending Deed dated 20/6/07. Effective 1/7/07

Clause 1.22(c) inserted by Amending Deed dated 20/6/07. Effective 1/7/07

Clause 1.22A inserted by Amending Deed dated 20/6/07. Effective 1/7/07

CONTRIBUTIONS: GENERAL PROVISIONS

1.23 Employer Contributions

1.23.1 Amount to be Contributed

Rule 1.23.1 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (a) A Participating Employer shall contribute from time to time to Part 2 or Part 4 of the Fund in respect of each Member of that Part of the Fund such amounts as determined pursuant to the Rules of that Part.
- (b) An Owner shall contribute from time to time to Part 3 of the Fund in respect of each Member of Part 3 of the Fund such amounts as determined pursuant to the Rules in Part 3 of the Deed.

1.23.2 Manner and Timing of Payment

Rule 1.23.2(a) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Clause 1.23.2(b) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005. Further amended by Amending Deed dated 26/4/06. Effective 1/7/06.

- (a) The contributions payable by an Employer shall be paid to the Trustee in the manner and at the times specified under the Rules.
- (b) Where the manner or timing of contributions are not specified in Part 2 or Part 4 then contributions shall be due and payable with respect to each Member by the Employer of that Member no later than 21 days after the end of the month to which those contributions relate or such other date as the Trustee may agree with that Employer.
- (c) If, for any reason, an Employer ceases to be required to participate under any Part of this Deed this cessation shall not of itself relieve the Employer from any obligation the Employer has to contribute under any other Part of this Deed.

1.23.3 Additional Voluntary Contributions

In addition to any contributions expressly provided for elsewhere in the Deed, an Employer may contribute further amounts in respect of particular Members or groups of Members, and any such additional contributions shall be applied in respect of the Members concerned on such basis as the Employer shall direct.

1.23.4 Contributions Other than in Cash

Subject to Relevant Law the Trustee may accept contributions other than in cash including, without limitation, contributions by way of voucher arising as a result of a superannuation guarantee shortfall.

1.23.5 Late Payment Contributions

Without limiting the powers of the Trustee under Clause 1.25, where an Employer fails to pay the contributions payable by the Employer on the date specified under any Part of this Deed, the Employer must, in addition to the outstanding contributions, pay -

- (a) interest on the outstanding contributions from the date the payment was due to the date on which the payment is made at a rate determined by the Trustee based on the actual or estimated rate of investment return on the Fund's assets during that period; and
- (b) reasonable costs incurred by the Trustee in obtaining the outstanding contributions from the Employer.

1.24 Member Contributions

1.24.1 Manner and Timing of Payment

Rule 1.24.1 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (a) A Member shall make contributions to the Fund if required by the Rules applicable to that Member, or by the Relevant Law. A Member may, with the agreement of the Trustee, make contributions if permitted by the Rules and the Relevant Law.
- (b) Unless the Participating Employer otherwise determines or the law does not so allow, the contributions, if any, payable by a Member shall be deducted by the Participating Employer from each payment of or on account of the Member's remuneration from that Participating Employer, and shall be paid by the Participating Employer to the Fund as agreed by the Trustee and the Participating Employer and in accordance with Relevant Law.
- (c) If the Participating Employer determines not to make deductions in respect of a Member's contributions, or if the law does not allow the deduction of contributions, the Member shall pay contributions to the Fund as and when the Member receives each payment of or on account of the Member's remuneration in such manner as the Trustee may determine.
- (d) Unless otherwise specified in the Deed or agreed between the Trustee, the Participating Employer and the Member concerned, no contributions shall be payable by a Member after the date the Member ceases to be in the employ of the Participating Employer.

1.25 Termination, Non-payment or Inadequacy of Participating Employer Payments

1.25.1 Notice by Employer

Rule 1.25.1 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

Without limiting any power vested in any Participating Employer under any other provision of the Deed to terminate or vary the amount or rate of a Participating Employer's contributions, a Participating Employer may at any time by written notice to the Trustee and either generally or in respect of any person or persons named or described in such notice (or then or thereafter falling within a group or class of persons described in such notice) -

- (a) terminate all or any of its payments to the Fund; or
- (b) reduce or suspend all or any of its payments to the Fund to the extent and either indefinitely or for the period specified in that notice,

and any such notice shall take effect on the later of the date that notice is received by the Trustee and the date specified therein for such purpose, but nothing herein shall affect that Participating Employer's liability in respect of payments due before the effective date of that notice.

1.25.2 Non-payment or Inadequacy of Participating Employer Payments

If-

- (a) a Participating Employer has given a notice pursuant to Clause 1.25.1;
- (b) a Participating Employer fails for any reason to pay an amount to the Fund as and when required under the Deed; or

Rule 1.25.2 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (c) having been requested by the Trustee to investigate Part 2 or Part 4 of the Fund, the Actuary notifies the Trustee that, having regard to the payments being made and expected to be made to Part 2 or Part 4 of the Fund and the actual and expected assets of Part 2 or Part 4 of the Fund, in the opinion of the Actuary Part 2 or Part 4 of the Fund is inadequate to provide for the actual and expected liabilities of Part 2 or Part 4 of the Fund and that the Trustee should take action under this Clause 1.25.2,

then -

- (i) in the case of a notice of termination of payments, unless otherwise determined by the Trustee, no contributions shall be accepted from a person, and no person shall be admitted as a Member, during or in respect of any period when a Participating Employer's payments are or would be terminated in respect of that person pursuant to such a notice;
- (ii) in any other case, the Trustee may refuse to accept contributions from a person, and refuse to admit a person as a Member of Part 2 or Part 4, of the Fund, during or in respect of any period when this Clause 1.25.2 applies in respect of the Participating Employer of that person;
- (iii) in any case, the Trustee, after obtaining the advice of the Actuary, may adjust any benefit which is or may become payable to or in respect of any person whom the Trustee may consider is affected by such termination, failure or inadequacy to such extent and in such manner as the Trustee may consider appropriate and equitable **PROVIDED THAT** no such adjustment shall increase the amount of the benefits which, in the opinion of the Trustee after obtaining the advice of the Actuary, have accrued for and in respect of any person immediately prior to the effective date of that adjustment in respect of the period up to that date or improve the basis upon which benefits accrue during or in respect of any period after that date; and
- (iv) the participation of the Participating Employer in Part 2 or Part 4 (as relevant) of the Fund shall then cease.

1.25.3 Adjustment Procedures

Any adjusted benefit determined in respect of a person under this Clause 1.25 may be provided in such manner and form, by way of such arrangements and subject to such conditions as the Trustee may think fit either generally or in any particular case, and shall be in lieu of and in full satisfaction of any benefit which would or might have been or become payable from Part 2 or Part 4 of the Fund but for the operation of this Clause 1.25.

1.25.4 Revocation of Notice or Remedy of Failure or Inadequacy

With the approval of the Trustee and subject to such conditions as the Trustee may impose, a Participating Employer may -

- (a) revoke or vary any notice given by that Participating Employer pursuant to Clause 1.25.1; or

Rule 1.25.3 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (b) remedy a failure or inadequacy which has occurred or arisen in terms of Clause 1.25.2,

and, in such event and subject to such conditions, the Trustee (after obtaining the advice of the Actuary) may adjust the rights, obligations and benefits of the persons whom the Trustee may consider to be affected by such revocation, variation or remedy to such extent and in such manner as the Trustee may consider appropriate and equitable.

1.26 Overriding Restrictions on Contributions

Clause 1.26 amended by Amending Deed dated 20/6/07 and 29/08/07. Both effective 1/7/07
Further amended by Amending Deed dated 27/6/2008
Effective 1 July 2006.

Notwithstanding anything in the Deed the Trustee shall only accept any contributions or other payments in accordance with Relevant Law and to the extent that the Trustee receives contributions contrary to Relevant Law, the Trustee shall take such action in respect of that contribution as the Trustee considers necessary, or as required or permitted by Relevant Law, including without limitation repaying the contribution to the person or entity who paid the contribution and adjusting the amount of the contribution that it returns to take into account:

- (a) the investment earnings or investment losses in relation to the contribution; and
- (b) to the extent permitted by the Relevant Law, Fund Expenses.

1.26A Contributions permitted by Relevant Law

Clause 1.26A inserted by Amending Deed dated 5 June 2008.
Effective 5 June 2008.

The Trustee may accept contributions in respect of Members and Non-Member Spouses in any circumstances permitted by Relevant Law on such terms as the Trustee may decide from time to time.

BENEFITS: GENERAL PROVISIONS

1.27 Payment of Benefits

Rule 1.27 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

A benefit payable from the Fund shall be payable at such place and in such manner (including payment in specie or in kind) as specified in Part 2, Part 3 or Part 4 of the Deed or otherwise as the Trustee shall determine or approve and every person to whom a benefit is payable (whether in that person's own right or for and on behalf of another person) shall upon request by the Trustee provide such information and do such acts and things as the Trustee may consider necessary, desirable or expedient.

1.28 Proofs

Whenever it shall be necessary for the Trustee to decide questions of fact the Trustee may act upon such proofs or presumptions as the Trustee may deem satisfactory whether they are strictly legal proofs or legal presumptions or not.

1.29 No Claim Apart From Deed

No Member or Beneficiary or person claiming in respect or on behalf of a Member or Beneficiary or as a Dependant or Legal Personal Representative of a Member or Beneficiary shall be entitled to require any payment from the Fund except as may be expressly provided in the Deed.

1.30 Proof of Qualification for Benefits

Any person appearing, purporting or claiming to be qualified or entitled to any benefit from the Fund shall on request produce to the Trustee or a nominee of the Trustee such evidence, do such acts and execute such documents as and when the Trustee may reasonably require. If a person fails to do so to the Trustee's reasonable satisfaction, the Trustee may refuse to consider any claim to a benefit or suspend or terminate a benefit, as the Trustee considers appropriate in the circumstances.

1.31 Special Arrangements and Adjustments

1.31.1 Alternative Forms of Benefits

- (a) Subject to any contrary provisions under Part 2, Part 3 or Part 4 of the Deed and subject further to such terms and conditions as the Trustee may impose -
- (i) a Member or Beneficiary may elect that (in lieu of the normal or specified terms and conditions of payment) all or part of a benefit to which that person is or may otherwise become entitled shall be replaced by a benefit payable in other circumstances or in another manner and form or shall be paid upon other terms and conditions;
 - (ii) any such election shall be final and binding on all interested persons (including without limitation all persons who may be or become contingently entitled to receive a benefit in respect of the Member or Beneficiary making such election); and
 - (iii) in giving effect to and taking account of such an election, the Trustee may adjust the benefits which are or would or might otherwise become payable to or in respect of that Member or Beneficiary or any other person then or thereafter claiming under or in respect of the Member or Beneficiary in such manner and to such extent as the Trustee may think fit.
- (b) Where permitted by Relevant Law, the Trustee, after obtaining the advice of the Actuary, may unilaterally commute to a lump sum any pension or instalment benefit which is or would otherwise become payable from the Fund if, in the opinion of the Trustee, the amount of that benefit is or would be trivial.
- (c) Any benefit which pursuant to an agreement made under this Clause 1.31.1 is due and payable after the death of a person shall be payable by the Trustee in the manner provided in Clause 1.32 unless the terms provide otherwise.

1.31.2 Augmentation of Benefits

Where permitted by Relevant Law:

- (a) the Trustee may, in its absolute discretion in such circumstances as it shall see fit, pay or produce a benefit or other amount greater than would otherwise be provided under the Deed; and
- (b) the Employer may direct the Trustee to pay or provide a benefit or other amount greater than would be provided but for such a direction. The Trustee shall act on such a direction **PROVIDED THAT** if and to the

Rule 1.31.1(a) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Rule 1.31.2 replaced by Amending Deed dated 8 February 1996. Effective 8 February 1996. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

extent that, in the opinion of the Trustee (after obtaining the advice of the Actuary), to act on such a direction would cause a deficiency in the Fund, before acting on such a direction or in the course of doing so the Trustee may require an undertaking from an Employer that it shall contribute to the Fund such additional amounts or rates of contribution and at such times as the Trustee shall determine after obtaining the advice of the Actuary. If any undertaking required by the Trustee as aforesaid is not given or, having been given, is not fulfilled to the satisfaction of the Trustee, the Trustee may refuse to pay or provide (or to continue to pay or provide) the greater benefit or amount to which the undertaking relates.

1.32 Payment of Death Benefits

1.32.1 Basis of Application

Subject to Relevant Law any benefit payable from the Fund on or after the death of a Member and which under the Deed is not expressed to be payable to or for the benefit of some other specified person or persons shall be paid or applied by the Trustee to or for the benefit of –

- (a) such one or more of –
 - (i) the Member's Dependants; and
 - (ii) the Member's Legal Personal Representatives,
 to the exclusion of the other or others of them and in such form, manner, proportions and subject to such conditions as the Trustee may determine; or
- (b) any other person where the Trustee, after reasonable inquiry, has not found any Dependant or Legal Personal Representative of the deceased Member.

1.32.2 Discharge of Trustee

The receipt of the person to whom an amount is paid under Clause 1.32.1 shall be a complete discharge to the Trustee in respect of the amount paid to that person and the Trustee shall not be bound to see to the application thereof.

1.32.3 Application of Unpaid Benefits

Without prejudice to the foregoing but subject to Relevant Law, if a Beneficiary dies before the whole of a benefit which is payable to that Beneficiary has been paid, the amount of the unpaid benefit shall be paid or applied in accordance with Clause 1.32.1 as if the Beneficiary was a Member at the time of death.

1.33 Beneficiary Under Disability

If it appears to the Trustee that a Beneficiary is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with an amount otherwise payable to the Beneficiary from the Fund, the Trustee may pay or apply the whole or part of any benefit payable to the Beneficiary in such one or more of the following ways as the Trustee may think fit, namely:

- (a) for or towards the maintenance, education, advancement or otherwise howsoever for the benefit of the Beneficiary in such form and manner and subject to such terms and conditions as the Trustee may think fit; and

Rule 1.33(a) amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (b) without limiting the generality of paragraph (a), to a person who appears to the Trustee to be a trustee for (including a trustee appointed by the Trustee under a separate trust established by the Trustee, which trust may be subject to such trusts and powers as the Trustee may think fit) or a representative, spouse, child, parent or guardian of, or to have for the time being the care or custody of, the Beneficiary or to have the financial expense of the care or custody of the Beneficiary.

The receipt of any person to whom payment may be made by the Trustee as aforesaid shall be a complete discharge to the Trustee and the Trustee shall not be bound to see to the application of such payment. The Trustee shall not be under any duty to have recourse to this Clause or to consider whether recourse should be had hereto, notwithstanding that a Trustee may have actual notice of any infirmity, lack of fitness or other relevant matter provided for herein.

1.34 Deductions and Forfeiture

1.34.1 Debts or Defalcation

Rule 1.34.1 amended by Amending Deed dated 13 August 2003. Effective 13 August 2003.

Subject to Relevant Law, the Trustee may deduct from a Member's, Non-Member Spouse's or Beneficiary's interest in the Fund or from any moneys which but for this Clause 1.34.1 would be payable to or for the benefit of the Member, Non-Member Spouse or Beneficiary or any person claiming through or under a deceased Member, Non-Member Spouse or Beneficiary, and may retain in the Fund, any amount which the Trustee may determine is owing to the Trustee or the Fund by that Member, Non-Member Spouse or Beneficiary either solely or in conjunction with any other person on any account whatever, including without limitation -

- (a) any amount which the Trustee may consider necessary to reimburse or compensate the Fund or the Trustee in respect of any loss or damage suffered thereby as a result of the fraud, dishonesty or other misconduct of the Member, Non-Member Spouse or Beneficiary; and
- (b) interest at such rate and in respect of such period as the Trustee may consider appropriate.

1.34.2 Benefits Strictly Personal

Rule 1.34.2(a) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (a) Subject to Relevant Law and paragraph (b), no benefit payable out of the Fund shall be assignable at law or in equity either in whole or in part and (except as otherwise expressly provided in the Deed) if any Member, Non-Member Spouse or Beneficiary who is or who may become entitled to such benefit does or causes or permits to be done any act or thing or if some event shall happen whereby all or any part of the Member's, Non-Member Spouse's or Beneficiary's interest in the Fund or a benefit to which the Member, Non-Member Spouse or Beneficiary may be or become entitled would, whether by the Member's, Non-Member's Spouse or Beneficiary's own act or by operation of the law or otherwise, become payable to or vested in any other person or persons, then such interest or benefit shall be forfeited and neither the Member, Non-Member Spouse or Beneficiary nor any person claiming under or in respect thereof shall have any further claim or right in respect of that interest or benefit.

Clause 1.34.2(b) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005. Replaced by Amending Deed dated 20/6/07. Effective 1/7/07.

- (b) In the event that a Member, Non Member Spouse or Beneficiary becomes bankrupt, commits an act of bankruptcy or executes a deed of assignment or deed of arrangement under the Bankruptcy Act 1966 (Cth), paragraph (a) will only apply to cancel, forfeit, reduce or otherwise qualify the interest of the Member, Non Member Spouse or Beneficiary or confer a discretion relating to that interest to the extent that the interest is subject to an order or notice under the Bankruptcy Act 1966 (Cth). The Trustee shall take such action in respect of a Member's Non Member Spouse's or Beneficiary's Accounts as the Trustee considers necessary to comply with an order or notice under the Bankruptcy Act 1966 (Cth).
- (c) In the event of forfeiture under paragraph (a), the Trustee may pay or apply as the Trustee may see fit for the benefit of the Member, Non-Member Spouse or Beneficiary concerned or the Dependants thereof (or any one or more of them to the exclusion of the other or others as the Trustee may determine) any sum or sums not exceeding altogether the amount which would have been payable to or in respect of that Member, Non-Member Spouse or Beneficiary if such forfeiture had not occurred.

Rule 1.34.2(c) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

1.34.3 Consequential Adjustments

Rule 1.34.3 amended by Amending Deed dated 13 August 2003. Effective 13 August 2003.

- (a) The Trustee may adjust the rights, benefits and interests of a Member, Non-Member Spouse or Beneficiary (and of any person otherwise entitled to claim under or in respect of the Member, Non-Member Spouse or Beneficiary) in such manner and to such extent as the Trustee may consider appropriate and equitable in effecting and taking account of any deduction or forfeiture under Clause 1.34.1 or Clause 1.34.2.
- (b) If a forfeiture occurs in respect of a Member, Non-Member Spouse or Beneficiary in accordance with Clause 1.34 and, in the opinion of the Trustee, the event or circumstance giving rise to that forfeiture has ceased to affect that person or that person's property, the Trustee (after obtaining the advice of the Actuary and taking account of any benefit provided under Clause 1.34.2(c)) may re-adjust the rights, benefits and interests of the Member, Non-Member Spouse or Beneficiary (and of any person otherwise entitled to claim under or in respect thereof) so as to secure in respect thereof under the Deed such benefits as the Trustee may consider appropriate, not exceeding the benefits which would have applied if such forfeiture had not occurred.

Rule 1.34.3(b) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

1.35 **Overriding Restrictions on Benefits**

1.35.1 Overriding Restriction on Benefits

Notwithstanding anything in the Deed the Trustee shall only pay any benefit or other payment in accordance with Relevant Law.

1.35.2 Preservation of Benefits

Without limiting the generality of Clause 1.35.1 but subject to any contrary provision of Part 3 of the Deed which is not contrary to the Relevant Law, the Trustee -

- (a) must not pay a Preserved Benefit to a Member prior to that Member's Deferral Date;

Rule 1.35.2 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (b) must pay or commence to pay a benefit to a Member when that Member attains the Required Payment Date, and on payment of that benefit the Member shall cease to be a Member;
- (c) may pay a benefit to a Member who has attained age 65 on the request of that Member notwithstanding that the Member remains an employee and on payment of that benefit the Member shall cease to be a Member; and
- (d) may pay a benefit to a Member for the purpose of relieving Severe Financial Hardship in the manner and not exceeding in any particular case the amount determined by the Regulator in accordance with the Relevant Law.

MISCELLANEOUS

1.36 Employers: Miscellaneous Provisions

1.36.1 Employer's Powers Not Affected

Nothing in the Deed shall be deemed to affect prejudice or alter in any way the powers of an Employer with regard to the dismissal or remuneration of or any dealings whatsoever with any of its officers or employees. Any benefits to which a person may be or may claim to be entitled under the Deed shall not be used or alleged or claimed as damages or as grounds for increasing damages in any action or claim by that person or by anyone claiming through or under that person against an Employer in respect of any such dismissal or dealing or otherwise and shall not affect the rights of an employee or any person claiming through or under that person, to claim damages or compensation at common law or under a Worker's Compensation Act or any other statute in force governing compensation to an employee and the amount payable from the Fund shall not be reduced by reason of payment of such damages or compensation except as provided under this Deed.

1.36.2 Employer's Discretions

Subject to Relevant Law, except to the extent otherwise expressly provided in the Deed, in the exercise, non-exercise or partial exercise of each and every power exercisable by it under the Deed, or any benefit to be provided from the Fund each Employer -

- (a) has an absolute and uncontrolled discretion and is not required to give to any person any reason for or explanation of the exercise, non-exercise or partial exercise of that power; and
- (b) is not under any fiduciary or like duty and may act entirely in its own interests and without regard to the interests of any other person.

1.36.3 Employer's Decision Final

If any doubt or dispute arises as to the date on which a person entered or left the employ of an Employer, whether or not an Employee is actively employed, an employee's remuneration, or the terms and conditions of an employee's employment generally, the Trustee shall be entitled to act upon the decision of the Employer on the matter.

1.36.4 Appointment of Receiver

If at any time a receiver, receiver and manager, official manager, administrator, liquidator, provisional liquidator or trustee in bankruptcy is appointed in respect of an Employer or the whole of the property thereof or if an Employer is placed under the official management of a person or a committee of management (such receiver, receiver and, manager, official manager, administrator, liquidator, provisional liquidator, trustee or person or committee appointed as official manager being hereinafter in this Clause called the "Receiver") then all the powers vested in or exercisable by that Employer in any capacity (including that of a Trustee) shall be deemed to be vested in or exercisable by the Receiver until the Receiver is discharged from or otherwise ceases to hold office and references in the Deed to that Employer shall be deemed to be references to the Receiver until the Receiver is discharged from or otherwise ceases to hold office.

1.36.5 Information from Employers

An Employer shall, as and when requested by the Trustee, give to the Trustee all information in its power or possession which may be reasonably necessary for the management and administration of the Fund. The Trustee may act upon and shall not be required to verify any information given to the Trustee by an Employer pursuant to the Deed.

1.37 Notices

1.37.1 Normal Procedures

A notice, cheque or other written matter (all of which are in this Clause 1.37 collectively referred to as "notice") may be given to the Trustee, an Employer, an Eligible Employee, a Member, a Beneficiary or any person claiming or entitled to claim a benefit from the Fund by handing it to that person personally or by leaving it at that person's address last known to the person given such notice (which, in respect of an Eligible Employee, includes the Eligible Employee's last known place of employment) or by sending it to that address by ordinary prepaid post (including, in the case of the Trustee or an Employer which is a body corporate, their registered office) or facsimile number or electronic address.

1.37.2 Other Procedures

Notification of any matter may instead be given -

- (a) to an Eligible Employee (whether or not a Member), or a Member by way of a notice placed on a notice board normally utilised for information dissemination purposes at the workplace of such Eligible Employee or Member; and
- (b) to an Eligible Employee, a Member, a Beneficiary or any other interested person, by way of a notice placed in a newspaper circulating in such place or places as the Trustee may consider appropriate in the circumstances.

1.37.3 Receipt

A notice shall be deemed to have been received -

- (a) in the case of a notice given or served by hand, at the time of delivery;
- (b) in the case of a notice given or served by post, at the expiration of two business days after posting;

Rule 1.37 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

Rule 1.37.3 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (c) in the case of a notice placed on a notice board as provided in Clause 1.37.2(a), on the normal working day on which the notice is placed on the notice board or, if the date of placement is not a normal working day of the recipient, the normal working day of the recipient next following the placement thereof;
- (d) in the case of a notice published in a newspaper as provided in Clause 1.37.2(b), two days after the date such newspaper is published; or
- (e) in the case of a notice sent by fax or electronic means, service of the notice is to be taken to be effected on the day after the date it is sent,

or, in any case, at such later date (if any) as the Trustee may determine to be appropriate in the circumstances.

1.38 Australian Currency

Except as otherwise expressly provided in the Deed or as otherwise determined by the Trustee either generally or in any particular case, all monetary liabilities and obligations imposed on the Fund, the Trustee, a Member or any other person under the Deed (including contributions and benefits payable under the Deed) shall be calculated and expressed in Australian currency using such basis of conversion into Australian currency as the Trustee may consider appropriate having regard to applicable exchange rates from time to time.

1.39 Proper Law and Jurisdiction

1.39.1 Proper Law of Deed

Without limiting Clause 1.39.2, the Deed shall be governed and construed and shall take effect in accordance with the laws of New South Wales.

1.39.2 Other Relevant Laws

Notwithstanding Clause 1.39.1, the Trustee may adjust the powers, entitlements and obligations of any Member or Beneficiary or any other person under the Deed to such extent and in such manner as the Trustee may consider strictly necessary to comply with any law or governmental requirement of any jurisdiction and not just the jurisdiction the laws of which apply for the time being under Clause 1.39.1.

1.39.3 Jurisdiction

Unless otherwise determined by the Trustee, no action, claim, dispute or proceedings against the Trustee under or in connection with the Fund shall be taken, made, commenced, instituted or conducted other than in the jurisdiction of the Commonwealth of Australia.

AMENDMENTS

1.40 Amendment Powers and Procedures

1.40.1 Power to Amend

The Trustee by deed or by oral or written resolution may amend, add to, delete or replace all or any of the provisions of the Deed including this Clause, but excluding Rule 2.4.1, as the Trustee sees fit and any such amendment addition, deletion or replacement (“amendment”) shall take effect on the date the deed or

resolution is executed or made on such earlier or later date as may be specified therein for that purpose **PROVIDED THAT**-

- (a) no amendment shall be made other than in accordance with Relevant Law; and
- (b) following any amendment the Fund continues to comply with section 15C of the Coal and Oil Shale Mine Workers (Superannuation) Act 1941(NSW) and the Coal and Oil Shale Mine Workers' Superannuation Act 1989 (Qld); and
- (c) no amendment shall take effect in respect of a Member or Beneficiary in any way which restricts or removes a right that -
 - (i) a Part 3 Mine Worker or a Dormant Member; or
 - (ii) a Dependant of a Part 3 Mine Worker or a Dormant Member; or
 - (iii) a person entitled to a pension under Part 3 of the Deed or Part 2 of the Deed,

had before the amendment **PROVIDED THAT** nothing shall prevent an amendment to confer additional rights on such a Part 3 Mine Worker, Dormant Member, Dependant or person; and

- (d) no amendment shall take effect in respect of a Member or Beneficiary of Part 4 of the Deed unless:
 - (i) it is in the opinion of the Trustee necessary or expedient to comply with a requirement of any statute, ordinance, regulation or by-law or of any law made under the authority of any statute, ordinance, regulation or by-law or is the requirement of any competent statutory authority,
 - (ii) it is in the opinion of the Trustee made to correct a manifest error or is of a formal technical or administrative nature only,
 - (iii) in the opinion of the Trustee will enable the Fund to be more conveniently, advantageously, profitably or economically administered or managed, or
 - (iv) in the opinion of the Trustee will enable the Fund, Members or beneficiaries to either reduce or be exempted from liability to pay stamp duty, or probate, estate or other duties in consequence of the death of a Member or former Member or the spouse of such Member or former Member.
- (e) the Trustee may only amend Rule 4.4.1 to accord with any industrial award or industrial agreement entered into by or applying to a Participating Employer or the Members of Part 4.
- (f) no amendment shall take effect in respect of a Member or Beneficiary unless -
 - (i) the Actuary determines that such amendment will not reduce the amount of the benefits presently or prospectively payable in respect of the Member or Beneficiary to the extent that such benefits have accrued or have or shall become payable in respect of

the period up to the date the deed is executed or the resolution is made; or

- (ii) such amendment is approved by the Regulator in writing or is required by Relevant Law; or
- (iii) such amendment is approved by that Member or Beneficiary in writing.

1.40.2 Amendments to Rule 2.4.1

Subject to any approval required by Relevant Law the Trustee shall be entitled from time to time by deed supplemental to this Deed to vary the provisions of Rule 2.4.1 to accord with any industrial award or industrial agreement entered into by or applying to or legislation binding upon the Participating Employers or Members.

PORTABILITY OF BENEFITS

1.41 Transfers from Approved Benefit Arrangements

Subject to Relevant Law the Trustee may make or carry into effect an arrangement with the trustee of, or other person responsible for, an Approved Benefit Arrangement or any person who is a participant or former participant in an Approved Benefit Arrangement whereby an agreed sum or agreed assets shall be paid or transferred to the Fund and such participant or former participant, if not already a Member, shall, if an Eligible Employee, be admitted as a Member under Part 2 or Part 4 of the Fund and shall have such rights to benefits and such obligation (if any) to contribute (whether additional to or in lieu of the rights or obligation otherwise provided for under the Deed) as shall be determined by the Trustee and notified to the Member in writing.

Rule 1.41 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

1.42 Transfers to Approved Benefit Arrangements

1.42.1 Transfer While in Employment

While a Member of Part 2 or Part 4 of the Fund is in the employ of the Participating Employer -

- (a) with the consent of the Member and the Participating Employer, the Trustee may pay or transfer to or towards an Approved Benefit Arrangement an amount agreed or determined in a manner agreed between the Trustee and the Participating Employer but not exceeding the amount of the Member's benefit calculated under Part 2 or Part 4 of the Deed, as relevant; or
- (b) if in accordance with Part 2 of the Deed all contributions by and in respect of the Member have terminated, the Trustee shall, if so directed by the Participating Employer, but without the need to obtain the Member's consent, pay or transfer to or towards an Approved Benefit Arrangement an amount equal to the amount of the Member's benefit calculated under Part 2 of the Deed.

Rule 1.42.1 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

1.42.2 Transfers of Benefits

In lieu of providing all or part of a benefit from Part 2 or Part 4 of the Fund in respect of a Beneficiary and, where permitted by Relevant Law, in respect of a

Rule 1.42.2 amended by
Amending Deed dated 1
February 2000. Effective
1 January 2000. Further
amended by Amending
Deed 31 March 2005.
Effective 1 April 2005.

benefit under Part 3 of the Fund, the Trustee may with the consent of the Beneficiary (or, where permitted by Relevant Law, without obtaining the Beneficiary's consent) pay or transfer to or towards an Approved Benefit Arrangement in which the Beneficiary participates or is eligible to participate an amount representing the value of all or that part of the benefit, as determined by the Trustee from Part 2, Part 3 or Part 4 of the Fund.

PROVIDED ALWAYS THAT the lump sum value of the additional pension amounts payable from 1 January 2000 as listed in Column 5 of Appendix 3A shall be determined by the Trustee after obtaining the advice of the Actuary on the equitable distribution of the Fund's assets which has accumulated in respect of the additional pensions.

1.42.3 Transfer to an Approved Benefit Arrangement - Part 4 Member

(a) If a Participating Employer in Part 4 is permitted under a Relevant Law to contribute to another Approved Benefit Arrangement in respect of its Eligible Employees, the Employer may apply to the Trustee for that Approved Benefit Arrangement to which it is a party to be approved to receive contributions in respect of its Eligible Employees in compliance with that Relevant Law; and

(b) If the Trustee approves such Approved Benefit Arrangement,

the Participating Employer shall nominate to the Trustee those of its Eligible Employees who are Members of the Fund in respect of whom the Participating Employer intends to make contributions to that Approved Benefit Arrangement and the Trustee will, following a request from any such Member in writing in such form as the Trustee may prescribe from time to time, transfer such portion of the amounts in the Member's Accounts, with the exception of the Member's Allocated Pension Account.

1.42.4 Commutation and transfer to other funds

The Trustee will, following a written request from a Member or Dependant of a Member to whom an allocated pension is payable in accordance with Part 4, in such form and on such terms as the Trustee may prescribe from time to time, pay or transfer for the benefit of the Member or Dependant of the Member the balance of the Member's Allocated Pension Account to an Approved Benefit Arrangement requested by the Member or Dependant.

1.42.5 Method and Effect of Transfers Out

(a) The Trustee may effect a payment or transfer under this Clause 1.42.5 by way of payment of money and/or transfer of assets. The receipt of the trustees of, or of any other person responsible for, an Approved Benefit Arrangement (including in the case of an annuity effected in respect of a Member, the body providing that annuity) shall be a sufficient discharge to the Trustee and neither the Trustee nor any Employer shall be in any way responsible for the application or disposal by such other trustees or responsible person of money or assets so transferred.

(b) Unless otherwise agreed between the Trustee and the Employer, upon the completion of a payment or transfer in respect of a Member or Beneficiary under this Clause 1.42.5 all of the rights and interests of that Member or Beneficiary under the Deed (and all of the rights and interests of any person otherwise entitled to claim in respect of the Member or Beneficiary

Rule 1.42.3 inserted
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

Rule 1.42.4 inserted
by Amending Deed
dated 31 March 2005.
Effective 1 April 2005.

or on the occurrence of any event or circumstance affecting the Member or Beneficiary) shall be entirely extinguished.

1.42.6 Transfers Required or Authorised by Relevant Law

Notwithstanding any other provision of the Deed but subject to Clause 1.3.1 the Trustee -

- (a) shall transfer a Member's or Beneficiary's benefits out of the Fund as required by the Relevant Law; and
- (b) may transfer a Member's or Beneficiary's benefits out of the Fund as permitted by the Relevant Law,

and shall not be required to obtain the consent of the Member or Beneficiary to effect such transfers unless the Relevant Law so requires.

1.42.7 Privacy Act Requirements

- (a) The Trustee must provide information to Members or any other person as required or permitted by the Privacy Act Requirements.
- (b) Subject to the Relevant Law, the Trustee may allocate or impose fees or charges it considers appropriate in relation to compliance with a request for information under the Privacy Act Requirements.

Rule 1.41.7 inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

FAMILY LAW PROVISIONS

1.43 Family Law Provisions

1.43.1 Definitions and interpretation

For the purposes of this Clause 1.43:

- (a) terms that are defined in the Family Law Requirements have the same defined meanings in this Clause; and
- (b) where there is a conflict between the meaning of:
 - (i) the terms defined by this Deed or other laws; and
 - (ii) the terms defined in the Family Law Requirements,

unless the context otherwise requires, the terms will have the meaning given in the Family Law Requirements.

1.43.2 Trustee's powers

The Trustee is empowered to do or arrange to be done, all acts, matters and things which the Trustee considers appropriate to comply with or satisfy the provisions of the Family Law Requirements, including, but not limited to:

- (a) providing information to an eligible person, as that terms is defined in the Family Law Requirements;
- (b) dealing with Superannuation Arrangements;
- (c) dealing with Flag Lifting Agreements;
- (d) dealing with Splitting Orders;
- (e) dealing with Flagging Orders;

Rule 1.43 inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

- (f) dealing with any other agreement or order imposed or made under the Family Law Requirements in relation to a Member's benefit or a Member's future benefit.

1.43.3 Provision of information

The Trustee must provide information to Members, Non-Member Spouses and any other person as required by the Relevant Law.

1.43.4 Alteration of benefits or debits from Member's Accounts

As required or permitted by the Family Law Requirements, the Trustee may:

- (a) on the advice of the Actuary, if necessary, adjust any benefit payable under the Deed by the amount of any payment to or in respect of a Non-Member Spouse and any relevant fees; and/or
- (b) where no benefit is currently payable, debit the Member's accounts or the accounts maintained with respect to any other Beneficiary by the amount of any payment to or in respect of a Non-Member Spouse and any relevant fees.

1.43.5 Fees or charges for compliance with the Family Law Requirements

- (a) Subject to the Relevant Law, the Trustee may allocate or impose any fees or charges it considers appropriate in relation to compliance with or administration of the Family Law Requirements. Subject to the Relevant Law, the fees and charges may be allocated or imposed in such manner or in such proportions, as the Trustee considers appropriate, upon:
 - (i) a Member;
 - (ii) a Member Spouse;
 - (iii) a Non-Member Spouse;
 - (iv) a Beneficiary; or
 - (v) any other person as permitted under the Relevant Law.
- (b) The fees referred to in Clause 1.43.5(a) may be deducted from any benefit or deducted from a payment, or charged directly to a Member, Non-Member Spouse or a Beneficiary or any other person permitted by the Family Law Requirements.

Rule 1.43.5(a) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

1.43.6 Transfers

Subject to the Relevant Law, the Trustee may, at its discretion, pay, transfer or rollover any benefits or amounts, in accordance with the Family Law Requirements, to:

- (a) a Non-Member Spouse; or
- (b) an Approved Benefit Arrangement chosen by the Non-Member Spouse; or
- (c) an Approved Benefit Arrangement chosen by the Trustee.

1.43.7 Compliance with Family Law Requirements

Subject to the Relevant Law, the Trustee may require a Member and/or a Non-Member Spouse to act in accordance with the Family Law Requirements, including, but not limited to, the provision of such information as the Trustee may require under the Family Law Requirements.

1.43.8 Duties to Non-Member Spouses

The Trustee owes no duties to a Non-Member Spouse, other than those imposed by the Family Law Requirements.

Rule 1.43.9 inserted by Amending Deed dated dated 31 March 2005. Effective 1 April 2005.

1.43.9 Benefit Entitlements of a Non-Member Spouse

- (a) If a Non-Member Spouse requests the payment of a benefit in respect of their interest in the Fund, the Trustee will pay that benefit in accordance with that request subject to satisfying the Family Law Requirements and the Relevant Law.
- (b) On the death of a Non-Member Spouse having an entitlement in the Fund, the Trustee must pay a benefit in relation to that interest:
 - (i) in accordance with Rule 2.6.4(b), 2.6.4A, 2.6.4B, 4.8.8, 4.8.8A or 4.8.8B, as the case may be, as if the references to the Member were to the Non-Member Spouse; or
 - (ii) as otherwise required by the Family Law Requirements.

Clause 1.43.9(b)(i) replaced by Amending Deed dated 26 April 2007. Effective 1 July 2007.

1.43.10 Contributions in respect of Non-Member Spouses

Subject to Relevant Law, the Trustee may accept contributions by or in respect of a Non-Member Spouse of such amounts and on such terms as are decided by the Trustee from time to time.

Clause 1.43.10 inserted by Amending Deed dated 5 June 2008. Effective 5 June 2008.

APPENDIX 1A

CLAUSE 1.14.1

**APPLICATION TO BECOME A PARTICIPATING EMPLOYER OF THE AUSCOAL
SUPERANNUATION FUND**

To the Trustee:

..... (Name of Employer)

hereby apply to become a Participating Employer of Part 2 / Part 4 (*please indicate*) of the
AUSCOAL Superannuation Fund.

We certify that we are an Employer of Eligible Employees as defined in the Deed.

We wish our participation to commence from ___/___/20__.

If accepted as a Participating Employer we agree to comply with and be bound by the terms and
conditions of the Trust Deed and Rules.

Employer's Address:

Office Contact: Telephone:

For use by a Company:

THE COMMON SEAL of
(was hereto affixed in
the presence of:

..... (Director)

..... (Secretary)

For use by a Partnership or Sole Proprietor:

SIGNED by the said
in the presence of: (the Employer)

.....
(Name) (Signature) (Witness)

.....
(Name) (Signature) (Witness)

.....
(Name) (Signature) (Witness)

.....
(Name) (Signature) (Witness)

APPENDIX 1B

CLAUSE 1.14.5

THIS DEED OF ADHERENCE is made the day of 20

BETWEEN:

(the "Employer") of the one part

AND: **AUSCOAL Superannuation Pty Ltd** ACN 003 566 989 a company having its registered office at 472 The Esplanade Warners Bay in the State of New South Wales (the "Trustee") of the other part

WHEREAS:

- A. The Trustee is the Trustee of the AUSCOAL Superannuation Fund (the "Fund") pursuant to a trust deed made the day of 20 (the "Trust Deed").
- B. Words and expressions used in this Deed of Adherence which are defined in the Trust Deed shall bear the same meaning as so defined.
- C. Pursuant to Clause 1.14.1 of the Trust Deed, any Employer wishing to become a Participating Employer for the purposes of Part 2 or Part 4 of the Fund may make application to the Trustee and upon being accepted by the Trustee and executing a Deed of Adherence in the form of this Deed may become a Participating Employer.
- D. The Employer wishes to become a Participating Employer and has applied to the Trustee to be accepted as a Participating Employer which the Trustee has agreed to do subject to the Employer executing this Deed of Adherence.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Trustee hereby accepts the Employer as a Participating Employer of Part []* of the Fund.
2. The Participating Employer covenants and agrees with the Trustee to comply with and be bound by the Trust Deed and Rules thereto as a Participating Employer.
3. The Employer agrees that it shall bear and pay all costs of preparation, execution and stamping of this Deed of Adherence.

IN WITNESS WHEREOF the parties have executed this Deed on the day and year first written above.

THE COMMON SEAL of **AUSCOAL**)
Superannuation Pty Ltd ACN 003 556 989)
was hereunto affixed by authority of a resolution)
of its Board of Directors in the presence of:)

.....Director

..... Secretary

* Part 2 or Part 4

SIGNED SEALED AND DELIVERED)
by the said)
as Employer in the presence of:)

.....

THE COMMON SEAL of)
was hereunto affixed by authority of a resolution)
of its Board of Directors in the presence of:)

.....Director

.....Secretary

2 PART 2 OF TRUST DEED

RULES IN RESPECT OF FORMER MEMBERS OF THE COSAF SUPERANNUATION FUND, NEW MEMBERS AFTER 2 JANUARY 1993 AND TRANSFEREE MEMBERS

2.1A Definitions

Heading for Part 2 amended by Amending Deed dated 12 July 2000. Effective 12 July 2000.

In the Deed, unless the contrary intention appears or the context requires otherwise -

"Allot" inserted by Amending Deed dated 06/09/06. Effective 1/1/06

"Allot" has the same meaning as that term has under the *Superannuation Industry (Supervision) Regulations 1994*.

"Approved Valuer" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Approved Valuer" means a person appointed by the Trustee and who is independent of the Trustee and who is experienced in relation to the valuation of assets or investments of the kind required to be valued and in the case of a valuation of land, such person shall be a member of the Australian Institute of Valuers (or if such institute has ceased to exist of some other institute or body having substantially the same objects).

"Assets of this Part of the Fund" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Assets of this Part of the Fund" means the holdings of Authorised Investments held by the Trustee upon the trusts of this Part of the Fund from time to time and includes:

- (a) all contributions to this Part of the Fund pursuant to the provisions of this Part of the Deed;
- (b) all income derived from the Assets of this Part of the Fund;
- (c) cash;
- (d) amounts owing to this Part of the Fund by debtors (excluding any bad debts);
- (e) income accruing from Authorised Investments to the extent not included in the preceding paragraphs of this definition; and
- (f) any pre-payment of expenses.

"Authorised Investments" means the investments described in Clause 1.11.1 which are applicable to this Part of the Fund.

"Cessation of Membership" means the date on which a Member has ceased to be a Member of this Part of the Fund. A Member shall cease to be a Member of this Part of the Fund on the Required Payment Date.

"Contribution" or "Contributions" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Contribution" or "Contributions" means any or all of:

- (a) in respect of a Member - the Member's Voluntary Contributions under Rule 2.4.9;
- (b) in respect of a Participating Employer - the Participating Employer's Contributions under Rule 2.4.1.

"Contribution Splitting Amount" inserted by Amending Deed dated 6/9/06. Effective 1/1/06.

"Contribution Splitting Amount" means an amount of contributions made by or for a Member to Part 2 of the Fund, excluding a Guarantee Amount that, on a Member's request, the Trustee decides to:

- (a) rollover or transfer to another Approved Benefit Arrangement; or
 - (b) allot to a Spouse Member Account,
- for the benefit of the Member's spouse.

“COSAF Superannuation Fund” means the superannuation fund of that name established by a trust deed dated 6 October 1988 (as subsequently amended).

“Dependant” in relation to a Member includes:

- (a) a person who is or was the spouse of the Member (the word “spouse” shall include the de facto spouse of a Member at the date of the Member's death);
- (b) a child, adopted child or step child of the Member;
- (c) a person with whom the Member has at the relevant date an interdependency relationship as defined in section 302-200 of the Income Tax Assessment Act 1997;
- (d) any other person who in the opinion of the Trustee is or was at the relevant date wholly or partially dependent upon the Member for maintenance and support; and
- (e) any other person who satisfies the definition of “dependent” in the Superannuation (Industry) Supervision Act 1993.

“Eligible Employee” means for the purposes of this Part of the Deed -

- (a) a person who, immediately before the date of effect of this Deed was a member of the COSAF Superannuation Fund or, but for that membership, would have been entitled to be a Member of or participate in Part 3 of the Fund; or
- (b) any person who comes within the meaning of a “Mine Worker” under Part 3 of the Deed; or
- (c) a person who, but for the repeal of the Tasmanian Miners' Pension Act, 1982, would have been entitled to be a member of the Miners' Pension Fund established pursuant to the provisions of that Act before its repeal; or
- (d) a person whose terms and conditions of employment are prescribed by awards and other industrial instruments applicable at Mines Rescue Stations; or
- (e) a person who is an employee of AUSCOAL Superannuation Pty Ltd (previously known as COALSUPER Pty Limited) and its successors and assigns; or
- (f) a person who is an employee of AUSCOAL Services Pty Ltd (previously known as COALSUPER Services Pty Limited) or AUSCOAL Financial Planning Pty Ltd (previously known as COALSUPER Financial Planning Services Pty Ltd) and its successors and assigns; or
- (g) a person who is an employee of any of the Participating Unions and who is employed in the Industry or in or about a coal mine; or
- (h) a person who in the opinion of the Trustee is an employee of an Employer engaged in activities related to or associated with the coal industry; or

“Current Pension Liability”
Account deleted by
Amending Deed dated
26/4/06.
Effective 1/1/06.

“Dependant” amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005. Further
amended by Amending
Deed dated 26/4/06.
Effective 1/1/06. Deleted
and replaced by
Amending Deed dated 3
February 2009. Effective
1 March 2009.

“Eligible Employee”
amended by Amending
Deed dated 31 March
2005. Effective 1 April
2005

“Eligible Employee” (i)
amended by
Amending Deed
dated 31 July 1998.
Effective 31 July
1998.

"Employer's Contribution Account" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Eligible Spouse Contribution" inserted by Amending Deed dated 26/4/06. Effective 1/1/06.

"Eligible Spouse Contributions" inserted by Amending Deed dated 6/9/06. Effective 1/1/06.

"Guarantee Amount" inserted by Amending Deed dated 6/9/06. Effective 1/1/06.

"Income Entitlement" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Investment Fluctuation Reserve Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's Accounts" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's Additional Employer Contributory Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's EHN Company Contribution Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Member's EHN Contributory Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (i) any other person who is an employee of a Participating Employer and who the Trustee determines is an Eligible Employee and any other person the Trustee decides is appropriate or desirable to be deemed to be an Eligible Employee.

"Eligible Spouse Contribution" has the same meaning as that term has under the Relevant Law.

"Eligible Spouse Contributions" has the same meaning as that term has under the Relevant Law.

"Guarantee Amount" means any contribution made by or for a Member:

- (a) to the Member's Special Salary Sacrifice Account;
- (b) to the Member's Special Account unless the Trustee decides to allow contributions made to a Member's Special Account to be split; or
- (c) that the Trustee considers has been made to fund a benefit (or a component of a benefit) that is a guarantee that:
 - (i) the member will receive a benefit (or a component of a benefit) of a certain amount; and
 - (ii) has been provided to the Member as a result of the Member transferring to Part 2 of the Fund.

"Industry" means the industry in which, in the opinion of the Trustee, Mine Workers are employed or engaged.

"Injury" means personal injury which in the opinion of the Trustee arises out of or in the course of employment and includes:

- (a) a disease which is contracted by a worker in the course of employment and to which the employment was a contributing factor; and
- (b) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration; and
- (c) a dust disease, as defined by the Workers' Compensation (Dust Diseases) Act 1942, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined.

"Investment Fluctuation Reserve Account" means the account of that name established in accordance with Clause 1.12.3(b).

"Member's Accounts" means in respect of a Member the accounts provided for in Rule 2.5.1 and any other accounts maintained by the Trustee for the purposes of providing benefits under Part 2 of the Deed.

"Member's Additional Employer Contributory Account" means the account established in respect of the Member pursuant to Rule 2.5.1(g).

"Member's EHN Company Contribution Account" means the account established in respect of the Member pursuant to Rule 2.5.1(i).

"Member's EHN Contribution Account" means the account established in respect of the Member pursuant to Rule 2.5.1(h).

"Member's Income Entitlement" amended by

"Member's Insurance Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Member's Special Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Member's Transfer Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Member's Voluntary Contribution Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Non-Industry Member" inserted by Amending Deed dated 28 June 1996. Effective 28 June 1996

"Pension" inserted by Amending Deed dated 26/4/06. Effective 1/1/06.

"Restructuring Agreement" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Self Insurance Reserve Account" amended by Amending Deed dated 26/4/06. Effective 1/1/06

"Special Account" amended by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Special Salary Sacrifice Account" inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

"Standard Account" inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005

"Total & Permanent Disablement" replaced by Amending Deed dated 13 August 2003. Effective 3 January 1993. Further amended by Amending Deed dated 23/10/06. Effective 1/7/06.

"Member's Income Entitlement" means, in respect of a Member, the total amount credited or debited to that Member's "Member's Accounts" pursuant to Clause 1.12.

"Member's Insurance Account" means the account established in respect of the Member pursuant to Rule 2.5.1(f).

"Member's Special Account" means the account established in respect of the Member pursuant to Rule 2.5.1(e).

"Member's Transfer Account" means the account established in respect of the Member pursuant to Rule 2.5.1(c).

"Member's Voluntary Contribution Account" means the account established in respect of the Member pursuant to Rule 2.5.1(c).

"Mine Worker" has the same meaning as under Part 3 of the Deed.

"Non-Industry Member" means a person whom the Trustee deems to be an Eligible Employee under paragraph (i) of the definition of Eligible Employee and who is admitted to the Fund in accordance with Rule 2.2.

"Non-Industry Member's SG Account" means the account established in respect of a Non-Industry Member pursuant to Rule 2.5.1.

"Pension" means an Allocated Pension, Term Allocated Pension, Non-Commutable Allocated Pension or Non-Commutable Term Allocated Pension payable under Part 5 of the Trust Deed.

"Register of Members" means the list of current Members of this Part 2 of the Fund maintained by or on behalf of the Trustee.

"Restructuring Agreement" has the same meaning as under the Coal and Oil Shale Mine Workers (Superannuation) Act 1941(NSW).

"Self Insurance Reserve Account" means the Account established pursuant to Rule 2.5.3.

"Special Account" in relation to a Member means the account in this Part of the Fund which is in the name of a Member and to which the contributions payable to the Fund under the Restructuring Agreement pursuant to Rule 2.4.5 are credited.

"Special Salary Sacrifice Account" means the account established in respect of a Member pursuant to Rule 2.5.1(j).

"Standard Account" means the account established in respect of the Member pursuant to Rule 2.5.1(a).

"Total & Permanent Disablement" means:

- (a) where the incapacity occurred on or before 30 June 2006, that the person, in the opinion of the Trustee, having regard to such medical evidence as the Trustee considers appropriate, has ceased employment because of incapacity and 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; or
- (b) where the incapacity occurs after 30 June 2006, the meaning given to that term in the policy of insurance effected by the Trustee to provide a benefit to members absent from work due to total and permanent disablement.

“Total and Permanent Disablement (Category “A”)” means Total and Permanent Disablement in respect of a Member who has completed not less than ten (10) years service in the Industry.

“Total and Permanent Disablement (Category “B”)” means Total and Permanent Disablement in respect of a Member who has completed less than ten (10) years service in the Industry.

“Transferred Benefits Accounts” means the account established in respect of a Member pursuant to Rule 2.5.1(k).

“Transfer Value” means with respect to Transferee Members the actuarial value of a Transferee Member’s accrued benefit in Part 3 of the Fund calculated by the Actuary as at 30 June 2000 using Professional Standard 402 of the Institute of Actuaries of Australia or such other formula recommended by the Actuary and agreed in writing by the parties to the 1999 Superannuation Agreement but subject to a minimum of the Member’s vested benefit in Part 3 at that date.

The terms defined under Part 1 and Part 3 of the Deed shall have the same meaning as is given to them in those Parts.

“Transferred Benefits Accounts” inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

“Transfer Value” inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

2.1 Eligibility and Application for Participation

2.1.1 Eligibility to participate

Participation in this Part of the Fund will be restricted to:

- (a) Employers who apply to the Trustee for acceptance as Participating Employers and who are accepted by the Trustee as a Participating Employer in this Part 2 of the Deed;
- (b) Eligible Employees of Participating Employers who are or who have been nominated by their Employer as Members and for whom payments into this Part of the Fund have been made by that Participating Employer; and
- (c) Eligible Employees who apply to the Trustee for acceptance as Members and who are accepted by the Trustee in accordance with Clause 1.18.

Rule 2.1.1(a) replaced by Amending Deed dated 20/6/07. Effective 20/6/07.

Rule 2.1.1(b) amended by Amending Deed dated 20/6/07.

Rule 2.1.2 deleted by Amending Deed dated 20/6/07. Effective 20/6/07.

Rule 2.1.3 deleted by Amending Deed dated 20 June 2007. Effective 20 June.

2.2 Admission of Members

2.2.1 Nomination by Employer

Each Participating Employer shall nominate to the Trustee in such form as may be provided by the Trustee from time to time such of its Eligible Employees as it wishes to be admitted by the Trustee as Members of this Part of the Fund.

2.2.2 Application

Each Participating Employer shall require each Eligible Employee whom it has nominated to complete an application to become a Member, the application to be in or to the effect of the form, set out in Appendix 2A, or in or to the effect of such other form as the Trustee shall from time to time determine, and shall forward the completed forms to the Trustee either at the time of nomination or as soon as possible thereafter having completed the declaration also set out in Appendix 2A in respect of the Eligible Employee.

2.2.3 Evidence of Age

The Trustee may require a Member at the time that person becomes a Member, or at any time thereafter, to produce proof to the Trustee's satisfaction of the date of the Member's birth.

2.2.4 Special arrangements

Should, at the time of acceptance of the nomination of Member by a Participating Employer, there be any matter which shall have been advised to the Trustee as being pertinent to the participation of the Member in this Part of the Fund, the Trustee may make such arrangements about that matter as it thinks proper with the Member, the Participating Employer, or any previous Employer of the Member or the trustee of any Approved Benefit Arrangement of which the Member was a member or any of them **PROVIDED THAT** in the opinion of the Trustee the matter is incidental to or consequent upon the participation of such Member in this Part of the Fund and the Trustee will confirm in writing with the Participating Employer and/or the Member as the case provides the arrangements so made.

2.3 Conditions of Participation

It shall be a condition of the acceptance by the Trustee of the nomination of any Eligible Employee as a Member that, if so requested by the Trustee, the Member shall advise the Trustee of the particulars of any benefits and levels of contributions paid on the Eligible Employee's behalf in any other Approved Benefit Arrangement and of the value of any benefit previously received from any Approved Benefit Arrangement.

2.4 Contributions

2.4.1 Employer Contributions

Each Participating Employer employing Mine Workers shall contribute to this Part of the Fund the greater of:

- (a) an amount that is not less than 9% of ordinary time earnings within the meaning of the Relevant Law;
- (b) such other minimum amount of employer contributions that may be prescribed from time to time under Relevant Law;
- (c) such higher amount than the amounts referred to in paragraphs 2.4.1(a) or (b) required to be contributed under clause 37 of Schedule 2 to the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* (NSW); or
- (d) such higher amounts than the amounts referred to in paragraphs 2.4.1(a), (b) or (c) that is prescribed under any applicable industrial instrument including without limitation an industrial agreement or award contemplated by Clause 1.40.2 of this Deed,

in respect of each Member who is a Mine Worker in the service of the Participating Employer.

2.4.2 Additional Employer Contributions

Each Participating Employer may in respect of each Member in the service of the Participating Employer, in addition to the contribution referred to in Rule 2.4.1 (if

Rule 2.4.1 amended by
Amending Deed dated 28
June 1996. Effective 28
June 1996.
Further amended by
Amending Deeds dated:
* 31 July 1998. Effective 31
July 1998;
* 31 March 2005. Effective
1 April 2005.
* 27 June 2008. Effective 1
July 2006.

Rule 2.4.2 replaced
by Amending Deed
dated 31 July 1998.
Effective 31 July
1998.

any), make such further contribution or such other contribution to this Part of the Fund as the Participating Employer considers appropriate or agrees with the Member and the Trustee.

Rule 2.4.3 amended by Amending Deed dated 12 July 2000. Effective 12 July 2000. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

2.4.3 Agreement in Respect of Restructuring Agreement [1992 Agreement]

An Employer may pay to this Part of the Fund for credit to a Member's Special Account any contribution payable under the Restructuring Agreement.

Rule 2.4.4 amended by Amending Deed dated 23/10/06. Effective 1/7/06.

2.4.4 Arrangements with Workers Compensation Insurers

The Trustee may accept contributions in respect of a Member from any licensed insurer (as defined) under the Workers Compensation Act 1987 provided those contributions are in substitution for contributions which would otherwise be payable on behalf of that Member by that Member's Employer.

2.4.5 Arrangements with Employers in Respect of the Restructuring Agreement

- (a) The Trustee may make such arrangements as it thinks fit with any Employer to accept from any Employer, for any Eligible Employee, contributions on account of contributions payable under the Restructuring Agreement.
- (b) Subject to any such arrangements, the Trustee may receive such contribution from any Employer.

2.4.6 Contributions from the EHN Fund

The Trustee may accept contributions:

- (a) by a Member; or
- (b) by a Participating Employer in respect of a Member,

made as a consequence of or in connection with an obligation arising under the trust deed for the Elcom Huntley Newcom Mineworkers Superannuation Fund.

Rules 2.4.7 inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

2.4.7 Agreement in Respect of the 1999 Superannuation Agreement.

An Employer may pay to this Part of the Fund for credit to a Member's Special Account any contribution payable under the 1999 Superannuation Agreement.

2.4.8 Arrangements with Employers in Respect of the 1999 Superannuation Agreement

- (a) The Trustee may make such arrangements as it thinks fit with any Employer, separate or in addition to those arrangements made with the Employer under Rule 2.4.5, to accept from an Employer, for any Eligible Employee, contributions on account of contributions payable under the 1999 Superannuation Agreement.
- (b) Subject to any such arrangements, the Trustee may receive such contributions from any Employer.

Rules 2.4.8 inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

2.4.9 Member's Voluntary Contributions

A Member may make voluntary contributions to this Part of the Fund of amounts acceptable to the Trustee as follows:

- (a) with the agreement of the Member's Employer by regular deductions from payroll and remittance to the Trustee of an amount which amount must be notified to the Employer by the Member and can be varied only in June of

each subsequent year excepting for emergent reasons, acceptable to the Trustee;

- (b) single contributions of amounts in excess of one hundred dollars (\$100.00) or such larger amount as may be prescribed by the Trustee from time to time, direct from the Member to the Trustee.

2.4.10 Deduction of Annual Fee from Preserved Accounts

Rule 2.4.10 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Where contributions are not made on behalf of a Member in accordance with Rule 2.4.1 by reason of resignation from this Part of the Fund and no benefit is payable in accordance with Rule 2.6 and the Member's entitlement is preserved in accordance with the provisions of Rule 2.6.5, then the Trustee shall be entitled to deduct from each of the accounts the amount standing to the credit of the Member being -

- (a) the Standard Account;
- (b) the Member's Voluntary Contribution Account; and/or
- (c) the Member's Transfer Account;

an annual fee equal to seventy-five per cent (75%) of the amount of the annual fees payable on a Member's Employer Contribution Account calculated as the sum of fifty-two (52) payments of the weekly fee for the preceding twelve months.

Such fee is to be calculated and debited to the Member's preserved benefits, biannually, commencing from the date of commencement of the preservation of benefits and adjusted pro rata for the final annual period up to and including the date of withdrawal.

2.4.11 Contributions for New Member

Rule 2.4.11 replaced by Amending Deed dated 27 June 2008. Effective 1 July 2006.

- (a) Notwithstanding the foregoing the Trustee must not commence accepting contributions in respect of a New Member:
 - (i) unless the Member is employed part time or full time; or
 - (ii) unless the contributions are made by the Employer of that Member in relation to the Member in accordance with the provisions of this Deed.
- (b) For the purposes of this Rule "New Member" means any Member in respect of which the Trustee has not previously received a contribution either from:
 - (i) the Member; or
 - (ii) the Member's Employer.

2.4.12 Contributions Required under the Coal and Oil Shale Mine Workers' (Superannuation) Act 1941 (NSW) Act

Rule 2.4.12 inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

To the extent not otherwise provided for in this Part, an Employer must pay to the Trustee for crediting to this part of the Fund those contributions prescribed under Section 19 of the Coal and Oil Shale Mine Workers' (Superannuation) Act 1941 (NSW) Act to be credited to this Part.

2.5 Member's Accounts

2.5.1 Trustee to establish Accounts

Rule 2.5 ("Income Entitlement") deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Rule 2.5.1(a) replaced by Amending Deed dated 6/9/06. Effective 31/1/95.

(a) Standard Account

The Trustee shall establish and maintain in respect of each Member a Standard Account and shall credit to that account:

- (i) all contributions made by the Employer in respect of the Member pursuant to Rule 2.4.1;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

and shall debit to that account:

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Fund to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed;
- (vii) any Tax payable under the Relevant Law;
- (viii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (x) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account;
- (xi) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5,

which the Trustee determines should be debited to this account.

(b) Non-Industry Member's SG Account

The Trustee shall establish and maintain in respect of each Non-Industry Member a Non-Industry Member's SG Account and shall credit to that account all contributions made by the Employer in respect of the Non-Industry Member in accordance with the Superannuation Guarantee (Administration) Act 1992 and shall credit and debit such amounts as the Trustee determines are fairly attributable to that account.

Rule 2.5.1(b) inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

(c) Member's Voluntary Contribution Account

Rule 2.5.1(c) replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

The Trustee shall establish and maintain in respect of each Member from whom it has received a voluntary contribution to this Part of the Fund a Member's Voluntary Contribution Account and shall credit to that account:

- (i) all voluntary contributions made by the Member pursuant to Rule 2.4.9;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

and shall debit to that account:

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Fund to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed;
- (vii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (viii) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account;
- (x) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5,

which the Trustee determines should be debited to this account.

(d) Member's Transfer Account

Rule 2.5.1(d) replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

The Trustee shall establish and maintain in respect of each Member in respect of whom an amount is received into this Part of the Fund pursuant to Clause 1.41 a Member's Transfer Account and shall credit to that account:

- (i) any monies received into this Part of the Fund in respect of the Member pursuant to Clause 1.41;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

and shall debit to that account:

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Fund to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed;
- (vii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (viii) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account;
- (x) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5,

which the Trustee determines should be debited to this account.

(e) Member's Special Account

The Trustee shall establish and maintain in respect of each Member in respect of whom an amount is received into this Part of the Fund pursuant to Rule 2.4.5 and Rule 2.4.7 a Member's Special Account and shall credit to that account:

- (i) any monies received into this Part of the Fund in respect of the Member pursuant to Rule 2.4.5;
- (ii) any monies received into this Part of the Fund in respect of the Member pursuant to Rule 2.4.7;
- (iii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account;

- (iv) any amount transferred from the Self Insurance Reserve Account,

and shall debit to that account:

- (v) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (vi) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (vii) any amount transferred from Part 2 of the Fund to an Approved Benefit Arrangement pursuant to Clause 1.42;

Rule 2.5.1(e) replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

- (viii) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed;
- (ix) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (x) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (xi) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member to be credited to the Self Insurance Reserve Account;
- (xii) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5,

which the Trustee determines should be debited to that account.

(f) Member's Insurance Account

The Trustee shall establish and maintain in respect of each Member in respect of whom insurance is effected pursuant to Clause 1.13 a Member's Insurance Account and shall, subject to Rule 2.6.3, credit to that account:

- (i) the proceeds of policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member to the extent that they are referable to premiums referred to in Rule 2.5.1(a)(viii), Rule 2.5.1(c)(vii), Rule 2.5.1(d)(vii), Rule 2.5.1(e)(ix), Rule 2.5.1(g)(vii), Rule 2.5.1(h)(vii), Rule 2.5.1(i)(vii), Rule 2.5.1(j)(vii) or Rule 2.5.1(k)(vii) or premiums deducted from a Member's Spouse Member Account or Non-Industry Member's SG Account and to the extent that the Trustee determines that they should be credited to the Member's Insurance Account in respect of that Member; and
- (ii) in relation to Members who were first members of the Fund on or before 30 June 2006, such amount or amounts as the Trustee may from time to time determine should be credited to the Member's Insurance Account as a benefit arising out of the death or Total and Permanent Disablement of the Member;

and shall debit to that account:

- (iii) any benefit paid or payable in respect of that Member in respect of the death or Total and Permanent Disablement of that Member which the Trustee determines should be debited to that account;
- (iv) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5.

Rule 2.5.1(f) amended by Amending Deed dated 8 February 1996. Effective 8 February 1996. Further amended by Amending Deeds dated 12 July 2000 (effective 12 July 2000) and 31 March 2005 (effective 1 April 2005).

Rule 2.5.1(f)(ii) amended by Amending Deed dated 23/10/06. Effective 1/7/06.

Rule 2.5.1(f)(iv) inserted by Amending Deed dated 13 August 2003. Effective 13 August 2003.

(g) Member's Additional Employer Contribution Account

The Trustee shall establish and maintain in respect of each Member in respect of whom an amount is received into this Part of the Fund pursuant to Rule 2.4.1 a Member's Additional Employer Contribution Account and shall credit to that account -

- (i) any monies received into this Part of the Fund in respect of the Member pursuant to Rule 2.4.2;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

and shall debit to that account -

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Deed to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed,
- (vii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed
- (viii) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account;
- (x) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5.

which the Trustee determines should be debited to this Account.

(h) Member's EHN Contribution Account

The Trustee shall establish and maintain in respect of each Member in respect of whom an amount is received into this Part of the Fund pursuant to Rule 2.4.6 a Member's EHN Contribution Account and shall credit to that account -

- (i) any monies received into this Part of the Fund from the Member pursuant to Rule 2.4.6;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

Rule 2.5.1(g) replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

Rule 2.5.1(h) replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

and shall debit to that account –

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Deed to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed;
- (vii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (viii) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account;
- (x) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5,

which the Trustee determines should be debited to this Account.

(i) Member's EHN Company Contribution Account

The Trustee shall establish and maintain in respect of each Member in respect of whom an amount is received into this Part of the Fund from an amended Employer pursuant to Rule 2.4.6 a Member's EHN Company Contribution Account and shall credit to that account –

- (i) any monies received into this Part of the Fund from an Employer pursuant to Rule 2.4.6;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

and shall debit to that account –

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Deed to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed,

Rule 2.5.1(i) replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

- (vii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed,
- (viii) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account;
- (x) any amount paid, transferred or rolled out under Part 2 of the Deed in relation to the Member pursuant to a Family Law Arrangement and any relevant fees and charges, including those referred to in Clause 1.43.5,

which the Trustee determines should be debited to this Account.

(j) Special Salary Sacrifice Account

The Trustee shall establish and maintain in respect of each Member in respect of whom an amount is received into this Part of the Fund pursuant to Rule 2.4.8 a Member's Special Salary Sacrifice Account and shall credit to that account:

- (i) any monies received into this Part of the Fund from the Member pursuant to Rule 2.4.8;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

and shall debit to that account:

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Deed to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed;
- (vii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (viii) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account,

which the Trustee determines should be debited to this Account.

Rule 2.5.1(j) replaced
by Amending Deed
dated 6/9/06.
Effective 31/1/95.

(k) Transferred Benefits Account

The Trustee shall establish and maintain in respect of each Transferee Member a Member's Transferred Benefits Account and shall credit to that account:

- (i) the Member's Transfer Value;
- (ii) such part of the Member's Income Entitlement as the Trustee has determined pursuant to Clause 1.12 should be allocated to this account,

and shall debit to that account:

- (iii) such part of the Member's Income Entitlement as is debited to this account pursuant to Clause 1.12;
- (iv) any benefit paid or payable in respect of the Member under Part 2 of the Deed;
- (v) any amount transferred from Part 2 of the Deed to an Approved Benefit Arrangement pursuant to Clause 1.42;
- (vi) any other payment made in respect of the Member pursuant to the provisions of this Part of the Deed;
- (vii) any amount to pay premiums on policies of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (viii) any amount that the Trustee in its discretion determines for the purpose of the Trustee providing benefits on the death or Total and Permanent Disablement of the Member under Part 2 of the Deed;
- (ix) the amount or any portion of the Death and Disablement Levy (if any) with respect to the Member, to be credited to the Self Insurance Reserve Account,

which the Trustee determines should be debited to this Account.

(l) Spouse Member Account

The Trustee shall establish in respect of each Spouse Member an account to which shall be credited any Eligible Spouse Contributions contributed to the Fund in respect of that Member, any Contribution Splitting Amounts which the Trustee decides to credit to this account, any other contributions which may be contributed to the Fund in respect of that Member, including the Member's Income Entitlement, which the Trustee determines is attributable to that account and from which shall be debited any amounts, including Fund Expenses, which the Trustee determines attributable to that account of that Member.

2.5.2 Contributions under Rule 2.4.4.

The Trustee shall credit contributions received on behalf of a Member under Rule 2.4.4 to such of the Member's Accounts as the payments for the contributions made by the licensed insurer are in substitution.

Rule 2.5.1(k) replaced by Amending Deed dated 6/9/06. Effective 31/1/95.

Rule 2.5.1(l) inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.. Replaced by Amending Deed dated 6/9/06. Effective 31/1/95.

Rule 2.5.2 deleted by Amending Deed dated 26/4/06. Effective 1/1/06.

Rule 2.5.2 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

2.5.3 Self Insurance Reserve Account

The Trustee may in its absolute discretion:

- (a) create a Self Insurance Reserve Account;
- (b) transfer to that Self Insurance Reserve Account with respect to each Member the Death and Disablement Levy from:
 - (i) the Member's Special Account; and/or
 - (ii) any other account of the Member;
- (c) transfer from that Self Insurance Reserve Account such amount or amounts as the Trustee thinks appropriate, to any Member's Insurance Account the Trustee determines, to provide death or Total and Permanent Disablement benefits to any such Member.

2.5.4 Contributions Split with a Spouse Member

Rule 2.5.4 inserted by Amending Deed dated 6/9/06 as Rule 2.5.5. Effective 1/1/06. Incorrect numbering corrected by Amending Deed dated 20/6/07. Effective 1/7/07.

- (a) At the Member's request, the Trustee may rollover or transfer out of Part 2 of the Fund to another Approved Benefit Arrangement or Allot to the Spouse Member Account of the Member's Spouse a Contribution Splitting Amount.
- (b) The Trustee will debit from the relevant Member's Accounts of the Member the Contribution Splitting Amount referred to in Rule 2.5.5(a).

2.5.5 Tax Adjustments

Rule 2.5.5 inserted by Amending Deed dated 20/6/07. Effective 1/7/07

In addition to the credits and debits to a Member's Accounts provided for in the preceding provisions of Rule 2.5, the Trustee must make such adjustments to a Member's Accounts as the Trustee considers appropriate to take into account any No-TFN Contributions Income tax, Release Authority Amounts and TFN Tax Offset Amounts in respect of the Member.

2.6 **Notification and Payment of Benefits**

2.6.1 Notification of Benefits Payable

Upon claim or notification to the Trustee by or in respect of a Member in such form or forms as the Trustee shall prescribe that a benefit is due to be paid in respect of that Member the Trustee shall, subject to Rule 2.6.5, determine the benefit in accordance with the provisions of Rule 2.6.2 hereof.

2.6.2 Amount of Benefit

The benefit in respect of the Member shall be:

Rule 2.6.2 amended by Amending Deed dated 12 July 2000. Effective 12 July 2000. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (a) the balance in the Standard Account; plus
- (b) the balance (if any) in the Member's Voluntary Contribution Account; plus
- (c) the balance (if any) in the Member's Transfer Account; plus
- (d) the balance (if any) in the Member's Special Account; plus
- (e) subject to Rule 2.6.3 the balance (if any) in the Member's Insurance Account; plus
- (f) the balance (if any) in the Member's Additional Employer Contribution Account; plus

- (g) the balance (if any) in the Member's EHN Contribution Account; plus
- (h) the balance (if any) in the Member's EHN Company Contribution Account; plus
- (i) the balance (if any) in the Member's Special Salary Sacrifice Account; plus
- (j) the balance (if any) in the Member's Transferred Benefits Account; plus
- (k) the balance (if any) in any other Member's Accounts.

2.6.3 Payments to Members' Insurance Accounts

Rule 2.6.3 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005. Further amended by Amending Deed dated 23/10/06. Effective 1/7/06.

Note: The reference in Rules 2.6.3(a)(i) and 2.6.3(b)(i) to Rule 2.5(a)(viii) is in the Amending Deed. The correct reference should be to Rule 2.5.1(a)(viii).

- (a) Where a Member dies, the Trustee shall credit the Member's Insurance Account:
 - (i) with the proceeds of policies of insurance effected to provide benefits on the death of the Member to the extent that they are referable to premiums referred to in Rule 2.5(a)(viii), Rule 2.5.1(c)(vii), Rule 2.5.1(d)(vii), Rule 2.5.1(e)(ix), Rule 2.5.1(g)(vii), Rule 2.5.1(h)(vii), Rule 2.5.1(i)(vii), Rule 2.5.1(j)(vii), Rule 2.5.1(k)(vii) or to premiums deducted from a Member's Spouse Member Account or Non-Industry Member's SG Account and to the extent that the Trustee determines that they should be credited to the Member's Insurance Account in respect of that Member; and
 - (ii) in relation to Members who were first members of the Fund on or before 30 June 2006, with such amount or amounts as the Trustee may from time to time determine, should be credited to the Member's Insurance Account as a benefit arising out of the death of the Member.
- (b) Where a Member satisfies the criteria for Total and Permanent Disablement (Category "A"), the Trustee shall credit the Member's Insurance Account:
 - (i) with the proceeds of policies of insurance effected to provide benefits on the Total and Permanent Disablement of the Member to the extent that they are referable to premiums referred to in Rule 2.5(a)(viii), Rule 2.5.1(c)(vii), Rule 2.5.1(d)(vii), Rule 2.5.1(e)(ix), Rule 2.5.1(g)(vii), Rule 2.5.1(h)(vii), Rule 2.5.1(i)(vii), Rule 2.5.1(j)(vii), Rule 2.5.1(k)(vii) or to premiums deducted from a Member's Spouse Member Account or Non-Industry Member's SG Account and to the extent that the Trustee determines that they should be credited to the Member's Insurance Account in respect of that Member; and
 - (ii) in relation to Members who were first members of the Fund on or before 30 June 2006, with such amount or amounts as the Trustee may from time to time determine, should be credited to the Member's Insurance Account as a benefit arising out of the Total and Permanent Disablement of the Member.
- (c) Where a Member satisfies the criteria for Total and Permanent Disablement (Category "B"), the Trustee shall credit the Member's Insurance Account with the amount referred to in Rule 2.6.3(b)(i) and the

Specified Proportion (as defined in Rule 2.6.3(d)) of the amount referred to in Rule 2.6.3(b)(ii).

- (d) The Specified Proportion is:
- (i) ten percent (10%) plus
 - (ii) a further ten percent (10%) for each year of completed service in the Industry,

PROVIDED THAT the Specified Proportion shall not exceed an amount equal to one hundred percent (100%).

2.6.4 Payment of Benefits

Rule 2.6.4 amended by Amending Deed dated 8 February 1996. Effective 8 February 1996. Further amended by Amending Deed dated 13/8/2003. Effective 13/8/2003.

Rule 2.6.4(b) amended by Amending Deed dated 23/10/06. Effective 1/7/06.

Rule 2.6.4 replaced by Amending Deed dated 5 June 2008. Effective 5 June 2008.

Subject always to the provision of Rule 2.6.5 hereof and any obligation that the Trustee might have to make a payment to a Non-Member Spouse in accordance with a Family Law Arrangement, upon determination of the benefit, the Trustee shall pay in accordance with the Relevant Law an amount equal to the Member's benefit in the following manner:

- (a) where one of the following events has occurred:
- (i) the Member having suffered Total and Permanent Disablment; or
 - (ii) the Member having retired from the work force and having attained an age of not less than 55 years or at such other age or upon such other condition which complies with the Relevant Law,
- then, unless Rule 2.6.3(n)(ii) applies, the Trustee shall pay the benefit to the Member;
- (b) where one of the following events has occurred:
- (i) the Member's death; or
 - (ii) a benefit has become payable for any other reason but the Member has died before receiving his benefit;

the Trustee shall, subject to Rule 2.6.4B, pay the benefit as a lump sum to the Dependants of the Member or to any one or more of them to the exclusion of the other or others of them as the Trustee in its absolute discretion determines **PROVIDED THAT**, in the event that the Trustee is unable to determine any Dependants to whom any portion of the benefit should be paid, such portion shall be paid to the Member's Legal Personal Representative or, in the event that the Trustee is unable to determine any Legal Personal Representative, the benefit may be paid to any other person;

- (c) where circumstances occur other than those described in paragraphs (a) and (b) of this Rule and a benefit is payable the Trustee shall pay the benefit to the Member;

PROVIDED THAT benefits shall not be paid to the Member, Dependants of the Member or the Legal Personal Representative or any other person until the Trustee has received such information as it considers satisfactorily evidences the entitlement of the Member, Dependant or Legal Personal Representative of the Memembr to receive the benefit in accordance with the provisions of this Rule or any information which the Trustee may require under the Family Law Requirements.

2.6.4A Non-binding beneficiary nomination

Rule 2.6.4A inserted by
Amending Deed dated
23/10/06.
Effective 1/7/06

- (a) A Member may at any time, in a manner acceptable to the Trustee:
 - (i) nominate a Dependant or Dependents to receive any benefit payable on the Member's death; and
 - (ii) specify the proportions and manner in which the benefit referred to in paragraph (i) is to be paid.
- (b) A Member may vary any nomination or specification given under Rule 2.6.4A(a) in a manner acceptable to the Trustee.
- (c) A nomination made under this Rule 2.6.4A is not binding on the Trustee, however the Trustee may consider a nomination when exercising the discretions granted to it under the Rules of this Part 2.

2.6.4B Binding beneficiary nomination

Rule 2.6.4B inserted by
Amending Deed dated
23/10/06.
Effective 1/7/06
Rule 2.6.4B amended by
Amending Deed dated 29
August 2007.
Effective 1/7/07.

- (a) A Member may give, at any time, the Trustee a Binding Nomination.
- (b) The Binding Nomination will cease to be binding if:
 - (i) the Member revokes the Binding Nomination or gives the Trustee a new Binding Nomination; or
 - (ii) the Binding Nomination ceases to be binding under the Relevant Law.
- (c) If all Relevant Law requirements have been satisfied, the Trustee must pay any benefits in respect of a Member in accordance with any Binding Nomination.

2.6.5 Preservation of Benefit

- (a) The restrictions applying to the payment of benefits under Clause 1.35 of the Deed shall apply to benefits calculated under this Part 2 of the Deed.
- (b) No amount shall be transferred from the Member's Accounts except to an Approved Benefit Arrangement in accordance with Clause 1.42 of the Deed.

2.6.6 Payments Permitted or Required by Relevant Law

Rule 2.6.6(a)
amended by
Amending Deed
dated 13 August
2003. Effective 13
August 2003.

- (a) In certain circumstances the Relevant Law may require or permit the Trustee to pay all or part of a benefit to a Member, a Non-Member Spouse or to an Approved Benefit Arrangement for the benefit of a Non-Member Spouse, notwithstanding that the Member remains in employment, and in those circumstances the Trustee will be empowered to pay all or part of that benefit to the Member, the Non-Member Spouse or for the benefit of the Non-Member Spouse to an Approved Benefit Arrangement.

- (b) Notwithstanding any other provision of the Deed to the contrary -
 - (i) If the Relevant Law permits or requires the Trustee to pay to a Member the whole of the Member's benefit during employment then that benefit, if paid, shall be in lieu of any other entitlement which the Member may have had in the Plan. The Member will cease to be a Member from the date of payment.
 - (ii) If the Relevant Law permits or requires the Trustee to pay part of a Member's benefit to the Member, a Non-Member Spouse or to an

Rule 2.6.6(b)(i) amended
by Amending Deed dated
23/10/06.
Effective 1/7/06

Rule 2.6.6(b)(ii)
amended by
Amending Deed
dated 13 August
2003. Effective 13
August 2003.

Approved Benefit Arrangement for the benefit of a Non-Member Spouse during employment the Trustee may or shall (as the case requires) pay that partial benefit to the Member or to or for the benefit of the Non-Member Spouse. The Member will remain a Member of the Plan but the Trustee will adjust the Member's future entitlements from the Plan to the extent which the Trustee decides is appropriate to take into account the partial payment.

- (c) If the Relevant Law permits, but does not require the Trustee to pay the whole or part of a Member's benefit during employment, the Trustee may decline to pay or may impose such conditions on such payment as the Trustee in its absolute discretion may determine, including (without limiting the generality of the Trustee's discretion) any service charges to be deducted from the payment, the minimum or maximum amount of that payment or the number or frequency of such payments.

Rule 2.8 "Disentitling Event" deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005

2.7 Mode of Payment of Benefit

Subject to Relevant Law -

- (a) the benefit referred to in Rule **Error! Reference source not found.** and **Error! Reference source not found.** shall be paid to the Member (as the Member so elects):
- (i) wholly as a pension;
 - (ii) partly as a lump sum and partly as a pension; or
 - (iii) wholly as a lump sum; or
 - (iv) in such other manner as the Trustee and the Member agree.
- (b) The election referred to in Rule 2.7(a) shall be made in such form and in such manner and at such time as the Trustee from time to time determines. Any such election shall be made before the benefit is paid to the Member. In default of the Trustee receiving the Member's election under Rule 2.7(a) the Trustee shall pay the benefit to the Member wholly as a lump sum.
- (c) To the extent that the benefit is to be paid:
- (i) wholly as a Pension; or
 - (ii) partly as a Pension;
- (the "Pension Amount") the Trustee shall credit the Member's Pension Current Pension Liability Account under Part 5 with an amount equal to the Pension Amount and shall debit the Member's Accounts, or one or more of them as the Trustee determines, with an amount or amounts totalling the Pension Amount.
- (d) If as at 26 April 2006 a Member has an amount in the Member's Current Pension Liability Account then on that date the Member is transferred to Part 5 and the amount held in the Member's Current Pension Liability Account is credited to the Member's Pension Account under Part 5.

Rule 2.7(c) replaced by Amending Deed dated 26/4/06. Effective 1/1/06.

Rules 2.7(e) to (l) deleted by Amending Deed dated 26/4/06. Effective 1/1/06.

2.8 Benefit Guarantee for Transferees

2.8.1 Retirement or Retrenchment

Rule 2.8 inserted by
Amending Deed dated 12
July 2000. Effective 12
July 2000.

On the retirement or retrenchment of a Transferee Member on whose behalf contributions have been made to their Special Salary Sacrifice Account continuously from 1 July 2000 up until the date of retirement or retrenchment, the Transferee Member will be entitled to receive, in addition to the benefits which the Transferee Member is entitled to receive from Part 2, the difference, if any, between:

- (a) the defined retirement entitlement which the Transfer Member would have received under Rule 3.12 of Part 3 if they had not agreed to a conversion of their Part 3 entitlement to an accumulation benefit in Part 2; and
- (b) the sum of their Special Salary Sacrifice Account and Transfer Benefits Account,

with the amount of that difference to be paid from Part 3.

2.8.2 Death or Total and Permanent Disablement

On the death or Total and Permanent Disablement of a Transferee Member on whose behalf contributions have been made to their Special Salary Sacrifice Account continuously from 1 July 2000 up until their death or Total and Permanent Disablement, the Trustee may, when determining the amount to credit to the Member's Insurance Account, act on the basis that Rule 2.8.1 would have applied if the Member had retired or was retrenched.



Membership Application AUSCOAL Super Part 2 (Coalsuper)

APPENDIX 2A

RULE 2.2.2

Appendix 2A replaced by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

Please complete in **BLOCK** letters and return to your Payroll Officer.

1. Personal Details

Mr Mrs Ms Miss *(please circle one)*

First name/s Surname

Postal address

Suburb State Postcode

Date of birth Home phone number

Employer's name Start date / /

2. Member Declaration

Once you have completed this form, please sign the declaration.

- I have received and read the Fund's Privacy Policy. I understand that my personal information will be handled by the Fund to provide and manage my superannuation and without this information the Fund may not be able to provide my superannuation benefits and choices, other than benefits required by law. For this purpose my personal information may pass between the Fund and the Fund's administrator and professional advisers, insurers, government bodies, my employer and other parties as required, including the Trustee of any other fund I transfer to. More information on our Privacy Policy is detailed overleaf.
- By signing this application form I agree to be bound by the terms and conditions of the Trust Deed & Rules. The statements above are true and complete, to the best of my knowledge.

Member's signature

Date

 / /



Membership Application

AUSCOAL Super Part 2 (Coalsuper)

3. Privacy Statement

In order to provide you with superannuation benefits, including death and disability benefits, and to properly manage the Fund, your Fund holds personal information about you that identifies you as a member and typically includes your name, address, date of birth, gender, occupation, salary, tax file number and any other required information.

The Fund generally collects this information either from you or your employer. Your personal information may be disclosed to the fund's administrator and professional advisers, insurers, government bodies, your employer and other parties as required, including the trustee of any other fund you may transfer to.

By becoming a member of the Fund, it is assumed that you consent to this handling of your personal information. If you do not provide the Fund with your personal information, the Fund may not be able to provide your superannuation benefits and choices other than benefits, required by law.

You can access your personal information held by the Fund. Should any of your personal information be incorrect, you may have the opportunity to correct it. There are, however, some circumstances where you may be denied access to your information. The Fund's Privacy Officer will advise if any of these circumstances apply.

The Fund abides by the National Privacy Principles under the Privacy Act 1988 (Commonwealth) and has adopted a Privacy Policy which sets out in more detail the way in which it handles members' personal information. If you would like a copy of the Fund's Privacy Policy please contact the Funds Privacy Officer at Level 1, 472 The Esplanade, Warners Bay NSW 2282 – Telephone: 1300 366 212.

Office use only

Member number Return number

Letter sent

Employer Declaration
deleted by Amending
Deed dated 31 March
2005. Effective 1 April
2005

3 PART 3 OF TRUST DEED

RULES IN RESPECT OF BENEFITS PREVIOUSLY PROVIDED UNDER THE COAL AND OIL SHALE MINeworkERS (SUPERANNUATION) ACT 1941

3.1 Definitions

3.1.1 Part 3 - Definitions

- (a) In the Deed, unless the contrary intention appears or the context requires otherwise –

“Approved Deposit Fund” has the same meaning as in the Superannuation Industry (Supervision) Act 1993 of the Commonwealth.

“AUSCOAL Services Pty Ltd sub-account” inserted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

“AUSCOAL Services Pty Ltd sub-account” means the account established under Section 18(3)(b) of the Current Act (referred to in the Current Act as the Approved Company sub-account) and is a continuation of the account referred to as the “Pension Account” immediately before 1 July 2000.

“child” inserted by Amending Deed dated 9 December 2009. Effective 1 July 2009.

“Authorised Period”, in relation to a person, means a period declared by the Trustee under Rule 3.2.4 to be, with respect to that person, an authorised period for the purpose of this Part of the Fund.

“Column 5 pension” inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

“child” has the same meaning as in the Superannuation Industry (Supervision) Act 1993 (Cth).

“Column 5 pension” means a pension payable under this Part 3 at the rate specified as at 31 December 1999 in Column 5 of Appendix 3A.

“Column 5 pensions increase and indexation sub-account” inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

“Column 5 pensions increase and indexation sub-account” means the account established under Section 18C(1)(b) of the Current Act as at 1 July 2000 for the purposes of accepting pension CPI contributions.

“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.

“Current Act” amended by Amending Deed dated 12 July 2000. Effective 12 July 2000. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

“Current Act” means the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 (NSW) in force after the commencement of the Further Amendment Act including the amendments made by the Coal and Oil Shale Mine Workers (Superannuation) Agreement (1999 Superannuation Agreement) Act 2000.

“Deferred Annuity” means a deferred annuity to which Part 5 of the Superannuation Industry (Supervision) Regulations applies.

“Dormant Member” amended by Amending Deed dated 12 July 2000. Effective 12 July 2000.

“Dormant Member” means a former contributor to the Fund under the Principal Act:

- (i) whose last period of service as a Mine Worker ceased due to retrenchment, resignation or dismissal; and

- (ii) who has not taken a benefit from this part of the Fund under the Principal Act or under the Rules of this Part; and
- (iii) who may become entitled:
 - (A) for the purposes of this Part of the Fund, to be credited with past service on being re-employed as a Mine Worker; or
 - (B) to a payment from this Part of the Fund.

“Fund under the Principal Act” means the Fund as it was originally known – as the Coal and Oil Shale Mine Workers Superannuation Fund – originally established by section 18 of the Principal Act.

“Further Amendment Act” means the Coal and Oil Shale Mine Workers (Superannuation) Further Amendment Act 1994 (NSW).

“Injury” has the meaning given to that expression in the Workers Compensation Act 1987.

“Mine Worker” means –

- (i) a person engaged in the coal or oil shale mining industries in New South Wales who was, immediately before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990, contributing to the Fund under the Principal Act; or
- (ii) a person who, after that commencement, becomes employed by an Owner in or about a coal or oil shale mine in New South Wales (whether underground or above ground); or
- (iii) a person who is engaged in the coal or oil shale mining industries, either before or after that commencement, and in respect of whom the Trustee has made a determination under section 15B of the Current Act declaring the person to be a Mine Worker for the purposes of this Part of the Fund; or
- (iv) a person in respect of any period during which the person was the holder of a permit in force under section 2E of the Coal and Oil Shale Mine Workers Act (as in force before the commencement of Schedule 3 of the Further Amendment Act) or Rule 3.12 of this Deed authorising the person to be employed in some industry, other than the coal or oil shale mining industries, specified in the permit; or
- (v) a person who is engaged in work declared by a determination in force under section 2J of the Current Act to be a mine work, but does not include such a person who is ordinarily so engaged or employed for less than 10 hours per week,

but for benefit entitlement purposes does not include a Transferee Member.

“1999 Superannuation Agreement” means the 1999 Superannuation Agreement made on 23 December 1999 between the parties to the Restructuring Agreement or their successors.

“Joint Coal Board sub-account” deleted by Amending Deed dated 31 March 2005. Effective 1 April 2005.

“Mine Worker” amended by Amending Deed dated 12 July 2000. Effective 12 July 2000.

“1999 Superannuation Agreement” inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

“Owner” means any person who is the immediate proprietor, the lessee or the occupier of a coal or oil shale mine, and includes:

- (i) where a coal or oil shale mine is being worked by a person who is an official liquidator, receiver, manager or other person authorised by law to carry on the business of working the mine – that person;
- (ii) where a coal or oil shale mine belongs to, or is held in trust for, the Crown, a department of the Government or a statutory authority – the Crown, the department or the statutory authority, as the case may be; and
- (iii) where a coal or oil shale mine is being worked by a contractor – in addition to any other person, the contractor,

but, except as provided by subrule (g), does not include a person who merely receives a royalty, rent or fine from a coal or oil shale mine or is merely holding the property on or in which a coal or oil shale mine is situated subject to any lease, grant or licence to, or contract with, another person for the working of the coal or oil shale mine.

“Pension Account” replaced by Amending Deed dated 12 July 2000. Effective 12 July 2000. Amending by Amending Deed dated 31 March 2005. Effective 1 April 2005.

“Pension” means a pension payable under this Part of the Fund and includes any amounts payable as an addition to a pension.

“Pension Account” means the account established under Section 18(3)(b)(i) of the Current Act which consists of the AUSCOAL Services Pty Ltd sub-account and the Column 5 pensions increase and indexation sub-account.

“pension CPI contributions” inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

“pension CPI contributions” means a contribution calculated at the pension CPI rate.

“pension CPI rate” inserted by Amending Deed dated 12 July 2000. Effective 12 July 2000.

“pension CPI rate” means the rate determined under Section 19AD of the Current Act.

“Principal Act” means the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 (NSW) as in force before the commencement of the Schedule 2 of the Further Amendment Act.

“Principal Act” amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

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

“Reciprocating State” means Queensland, Tasmania or Western Australia.

“Reference Rate” amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

“Reference Rate”, as at any particular time, means such rate as the Trustee declares in a determination under subrule (e) in force as at that time to be the specified rate for the purposes of this definition.

“Restructuring Agreement” amended by Amending Deed dated 12 July 2000. Effective 12 July 2000. Further amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

“Restructuring Agreement” means the New South Wales Coal Mining Industry Statutory Fund (Restructuring) Agreement made on 25 June 1992 as varied by the 1999 Superannuation Agreement.

“Retrenched”, in relation to a Mine Worker or Dormant Member, means –

- (i) that the employment of the Mine Worker or Dormant Member was 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); or
- (ii) in a way determined by the Trustee to have been an involuntary termination if the Trustee also determines that, having regard to all the circumstances, the Mine Worker or Dormant Member is to be entitled to a benefit from this Part of the Fund as if the employment had been terminated in a way referred to in paragraph (i) of this definition.

“Special Account”, in relation to a Mine Worker or Dormant Member, means the account in Part 2 of the Fund which is in the name of the Mine Worker or Dormant Member and to which the contributions payable to Part 2 of the Fund under the Restructuring Agreement are credited.

“spouse” has the same meaning as in the Superannuation Industry (Supervision) Act 1993 (Cth).

“Subsidy Account” means the account established under Rule 3.6.2 of this Deed.

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

“Tribunal” means the Coal and Oil Shale Mine Workers Superannuation Tribunal constituted by the Principal Act.

Further Definitions and Interpretation

- (b) A person shall, for the purposes of this Part of the Fund, be deemed to be “engaged in the coal or oil shale mining industries”:
- (i) for any period during which he is employed as a Mine Worker;
 - (ii) for any period during which he is unemployed, if, immediately before the date upon which he so became unemployed:
 - (A) he was employed (whether underground or above ground) in or about a coal or oil shale mine in New South Wales by the Owner of the mine; or
 - (B) he was a member of a permanent rescue corps established at a central rescue station pursuant to the Mines Rescue Act 1925:

PROVIDED THAT a person shall not be deemed to be “engaged in the coal or oil shale mining industries” by reason of the operation of paragraph (ii) unless the Trustee is satisfied that his employment was terminated otherwise than for misconduct and that his failure to obtain other employment was through no fault on his part.

Provided further that the period for which any such person is unemployed shall be deemed not to be interrupted by periods during which he is employed upon relief work or upon other work of a casual nature;

- (iii) for any period during which he is employed pursuant to a request by the Trustee to accept available employment under and in accordance with Section 19F of the Current Act.
- (c) A reference in any provision of this Part of the Fund to the “date of retirement” shall, in the application of that provision to or in respect of any particular Mine Worker, be construed as a reference to the date on and after which the employment of that Mine Worker as a Mine Worker would be disallowed under Section 5 of the Current Act:

PROVIDED THAT where any Mine Worker, who is continued in employment as a Mine Worker under and in accordance with a certificate issued by the Trustee under subsection (4) of Section 5 of the Current Act, retires or is retired from such employment, a reference in any provision of this Part of the Fund to the “date of retirement” shall, in the application of that provision to and in respect of that Mine Worker, be construed as a reference to the date upon which he so retires or is retired.

- (d) * * * * *
- (e) Where there is a variation in the weekly rate of wage prescribed for 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), the Trustee:
 - (i) shall, in and by a determination published in the Gazette as soon as practicable after the variation is made:
 - (A) subject to subparagraph (B) - specify that rate as so varied and declare it to be the specified rate for the purposes of the definition of “Reference Rate” in subrule (a); or
 - (B) where there are 2 or more such rates so prescribed - specify one of those rates as so varied and declare it to be the specified rate for the purposes of that definition; and
 - (ii) shall, in the determination, specify the date as from which the determination takes effect, being the date as from which the specified rate became or becomes payable as wages to loadermen or any class of loadermen,

and any previous determination made under this subrule shall not be in force in respect of any period commencing on or after the date so specified.

- (f) A reference in this Part of the Fund to a pension:
 - (i) at the single man's rate is a reference to a pension payable at a rate specified in Column 1 Item (1) of Appendix 3A; or
 - (ii) at the married man's rate is a reference to a pension payable at a rate specified in Column 1 Item (2) of Appendix 3A.
- (g) For the purposes of Section 19 and Section 19D of the Current Act, if a Mine Worker is employed by a person who is not an Owner as defined in subrule (a), a reference to an Owner includes a reference to the employer of the Mine Worker.
- (h) Subrule (g) does not apply to a Mine Worker who is:
 - (i) a check-weigher or district check inspector; or
 - (ii) an elected official of an industrial or trade union of employees or of an association of employees registered as an organisation under the Industrial Relations Act of the Commonwealth, of which union or organisation the membership is principally confined to persons who are employed in or about a coal or oil shale mine (whether underground or above ground).
- (i) If a person was, immediately before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990, a Mine Worker by virtue of section 2A, 2B, 2C, 2F, 2H or 2K of the Principal Act (as in force before that commencement) or of any regulation made under section 2D of the Principal Act (as so in force), and the retiring age of the person was, by virtue of a provision of the section or regulation by which the person became a Mine Worker, 65 years of age, the following provisions apply in respect of the person despite the repeal of those sections by that Act:
 - (i) the retiring age of the person continues to be 65 years;
 - (ii) the person may retire or be retired at any time after attaining 60 years of age and before attaining 65 years of age;
 - (iii) a reference in any provision of this Part of the Fund to “date of retirement” is to be read, in relation to the person, as a reference to the date on which the person retires or is retired or, as the case may be, is to retire or to be retired;
 - (iv) a reference in Section 5 or 6 of the Current Act or 3.9.2 of this Part of the Deed, express or implied, to “the commencement of this Part” is to be read, in relation to the person, as a reference to the date of commencement of the section or regulation by virtue of which the person originally became a Mine Worker;

Sub-rule 8A deleted by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (v) a reference in Section 5 of the Current Act (subsection (6) excepted) to the age of 60 years is to be read, in relation to the person, as a reference to the age of 65 years;
- (vi) a reference in section 6 to the age of 60 years is to be read, in relation to the person, as a reference to the age of 65 years or, if the person retires or is retired before attaining 65 years of age, the age at which the person retires or is retired.

3.1.2 Further extension of the definition of “Mine Worker” under the Current Act

Section 2J of the Current Act, and any determination made by the Trustee for the purposes of Section 2J of the Current Act (including determinations of work to be regarded as mine work or persons, or a class of persons, are to be regarded as Mine Workers) shall apply to this Part of the Fund.

3.1.3 Interpretation of “marriage”, “remarriage”, “married man”, “wife”, “husband” and “de facto wife”

For the purpose of this Part, the Trustee must treat any reference to:

- (a) a “husband”, “married man”, wife” or “de facto wife” as being to a person of either sex who falls within the meaning of “spouse” as defined in this Part; and
- (b) “marriage” or “remarriage” as being a reference to a relationship between two persons where each person is the “spouse” of the other person within the meaning of “spouse” as defined in this Part.

3.2 Interpretation

3.2.1 Notices under section 2K of the Current Act

- (a) Subject to Rule 3.2.2, 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 Trustee a written notice that complies with subrule (b).
- (b) The notice is to contain the following particulars:
 - (i) the name and address of the employer, or proposed employer, of the person;
 - (ii) the proposed date of commencement of the work;
 - (iii) the terms of any contract for doing the work;
 - (iv) the number of persons who will be doing the work;
 - (v) the nature of the work;
 - (vi) each location at which it is proposed that the work be done;
 - (vii) 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

Rule 3.1.2 replaced by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Rule 3.1.2 replaced by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Rule 3.1.2 inserted by Amending Deed dated 9 December 2009. Effective 1 July 2009.

Rule 3.2.1 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

employees under Part IX of the Industrial Relations Act 1988 of the Commonwealth; and

(viii) the period for which it is proposed that the work be performed.

3.2.2 Notices given under the Current Act

A Notice given to the Trustee for the purposes of Section 2K of the Current Act shall satisfy the Owner's obligation under Rule 3.2.1.

3.2.3 Special provisions as to calculation of periods of employment

- (a) Any Mine Worker who is absent from New South Wales or from his employment upon war service, as defined in the Defence Act 1903 of the Commonwealth or upon any kind of work or service in connection with any war in which Australia is, for the time being, engaged, shall be deemed to have been continuously resident in New South Wales and to have been employed in or about a coal or oil shale mine, as the case may be, during the period of such absence.
- (b) Any Mine Worker who is lawfully absent from work on an award holiday or on annual leave or through sickness or accident not due to his own fault shall be deemed to have actually worked in or about a coal or oil shale mine, as the case may be, during the period of such absence.
- (c) Continuous residence in New South Wales shall be deemed not to have been interrupted by occasional absences not exceeding in the aggregate one-tenth of the total period of residence, and for the purposes of this Part of the Fund, the period of any such absence shall be counted as a period of residence in New South Wales.
- (d) Any elected official in the coal division of an industrial or trade union of employees or of an association of employees registered as an organisation under the Industrial Relations Act 1988 of the Commonwealth shall, for the purposes of this Part of the Fund, be deemed to have actually worked in or about a coal or oil shale mine in New South Wales or in Australia, as the case may be, for the whole of the period during which he held office as such elected official.
- (e) Any member of a permanent rescue corps established at a central rescue station or any superintendent or instructor appointed pursuant to the Mines Rescue Act 1925 shall, for the purposes of this Part of the Fund, be deemed to have actually worked in or about a coal or oil shale mine in New South Wales for the whole of the period during which he was such a member or superintendent or instructor.
- (f) For the purposes of this Part of the Fund, the work of persons of the following classes is to be taken to be work in or about a coal or oil shale mine:
 - (i) a person who is or was, on or after 8 October 1941, employed by the Owner of a coal or oil shale mine in New South Wales and who, in the course of that employment, is or was principally

engaged in the transport of coal or oil shale from the mine to the point of delivery by the Owner;

- (ii) a person who is or was, on or after 8 October 1941, a person who is or was, on or after 8 Oct check-weigher or district check inspector;
- (iii) a person who is or was, on or after 16 October 1949, engaged in clerical work in connection with a coal or oil shale mine and who, though not employed in or about a coal or oil shale mine by the Owner of the mine, is or was employed by the Owner of the mine at any mine office situated outside the confines of the coal or oil shale mine holding, if:
 - (A) the mine office is or was in close proximity to that mine holding; and
 - (B) there is or was no other mine office within those confines; and
 - (C) the duties performed by the person are or were of a similar nature to those performed by a person engaged in clerical work who is or was a Mine Worker;
- (iv) an officer of the Department of Mineral Resources:
 - (A) who, on or after 16 October 1949 but before 1 July 1994 was the holder of a first class certificate of competency, and who was performing inspectorial duties, under the Coal Mines Regulation Act 1982; and
 - (B) who became an officer of a predecessor of that Department on or before 9 December 1957.
- (v) a person:
 - (A) who is or was, on or after 16 October 1949, employed by the Owner of a coal or oil shale mine in New South Wales; and
 - (B) who, in the course of that employment, is or was principally engaged in the transport of overburden or detritus from the mine;
- (vi) a person:
 - (A) who was employed on the South Maitland Railway by the South Maitland Railways Proprietary Limited as an engine-driver, fireman, guard or fettler; and
 - (B) who, on 16 October 1949 or at the commencement of the person's employment, whichever is the later, had not attained 55 years of age;
- (vii) a person:

- (A) who was employed in the making of coke, otherwise than as an employee of any person supplying or distributing gas for lighting, heating, motive power or other purpose or of the Broken Hill Proprietary Company Limited or of Australian Iron & Steel Ltd., or of any other person whose employees the Governor, by proclamation published in the Gazette, has declared not to be Mine Workers; and
 - (B) who, on 16 October 1949 or at the commencement of the person's employment, whichever is the later, had not attained 55 years of age;
- (viii) a person:
- (A) who is or was, on or after 17 December 1950, employed by the Owner of a coal or oil shale mine in New South Wales; and
 - (B) who, in the course of that employment, is or was principally engaged in screening, washing or loading coal or oil shale at the point of delivery;
- (ix) a person (not being a Mine Worker referred to in paragraph (iv)) who was, on or after 9 December 1957 but before 1 July 1994, an officer of the Department of Industrial Relations, or its successor and who:
- (A) was engaged in or about a coal or oil shale mine in the performance of duties under the Coal Mines Regulation Act 1982 (or any Act which that Act replaced) relating to the safety of persons employed in or about coal or oil shale mines; and
 - (B) was, immediately before being appointed as such an officer, a contributor to the Fund under the Principal Act; and
 - (C) elected to continue to contribute to the Fund under the Principal Act and not to a superannuation scheme administered by the State Authorities Superannuation Board (or any of its predecessors) by notice given to the Secretary of that Department and to the Registrar under the Principal Act within 21 days of being appointed as an officer of that Department or within such longer period as the Tribunal under the Principal Act may in the particular circumstances have allowed.
- (g) Notwithstanding anything in this Part of the Fund contained where any Mine Worker is continued in employment as a Mine Worker under and in accordance with a certificate issued by the Tribunal under the Principal Act or the Trustee under the Current Act under subsection (4) of Section 5 the period of any such employment under and in accordance with such

certificate shall be disregarded in determining the eligibility of such Mine Worker for a pension.

- (h) Where a Mine Worker ceases to be engaged in the coal or oil shale mining industries for any period not exceeding three (3) months, or for any periods none of which exceed three (3) months, the Trustee may, if it is just and equitable to do so, disregard that period or those periods for the purpose of determining continuity of engagement in those industries: **PROVIDED THAT** the Trustee shall not disregard a period under this subrule unless the Mine Worker became engaged in those industries upon the expiration of the period.
- (i) Rule 3.3.1 applies to the interpretation of this Rule.

3.2.4 Authorised Periods before 3 January 1993

- (a) Where the Trustee is satisfied that:
- (i) a Mine Worker has not been engaged in the coal or oil shale mining industries for a period (whether commencing before, on or after 26th March 1978) because his engagement in the industries has been terminated by reason of retrenchment or cavil out or act of God (including fire or flood) or by reason of ill health or imprisonment (including penal servitude) of the Mine Worker;
- (ii) he did not become eligible for a lump sum benefit payment under the Principal Act by virtue of that termination; and
- (iii) either:
- (A) he became engaged in the industries at the earliest reasonable opportunity after that termination; or
- (B) no such opportunity arose before the date of retirement or the date of death of the Mine Worker, whichever first occurs,
- the Trustee may declare that period to be, with respect to that Mine Worker, an authorised period for the purposes of this Part of the Fund.
- (b) The Trustee may refuse to make a declaration under subrule (a) if for any reason the Trustee thinks it proper to do so or if, in the case of a period referred to in subrule (f) ending after 25th March 1978 or a period referred to in subrule (g) ending after the date of assent to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1983:
- (i) the Mine Worker, as soon as reasonably practicable after the termination of his engagement in the coal or oil shale mining industries, did not notify the Tribunal under the Principal Act of that termination; and

- (ii) he did not satisfy the Tribunal or the Trustee, as required from time to time by the Tribunal or the Trustee, that he has taken reasonable steps to secure further employment in the industries.
- (c) A declaration may be made under subrule (a) subject to such terms and conditions as the Trustee thinks proper and, if any such term or condition is not complied with, the Trustee may revoke the declaration either wholly or with respect to any period.
- (d) Where a period is, with respect to a Mine Worker, an Authorised Period, he shall, for the purposes of this Part of the Fund (Rules 3.10.1 and 3.11 excepted), be deemed to have-been during that period:
 - (i) engaged in the coal or oil shale mining industries; and
 - (ii) engaged in work in or about a coal or oil shale mine.
- (e) For the purposes of this Rule, an apprentice whose employment as a Mine Worker is terminated on completion of his apprenticeship shall be deemed to have been retrenched.
- (f) The Trustee may not make a declaration under subrule (a) in relation to a period during which a Mine Worker has not been engaged in the coal or oil shale mining industries because the engagement of the Mine Worker in the industries has been terminated by reason of retrenchment or cavil out or act of God (including fire or flood) or by reason of ill health of the Mine Worker unless the Mine Worker has, apart from this Rule, been engaged in the coal or oil shale mining industries after 25th March 1978.
- (g) The Trustee may not make a declaration under subrule (a) in relation to a period during which a Mine Worker has not been engaged in the coal or oil shale mining industries because the engagement of the Mine Worker in the industries has been terminated by reason of imprisonment (including penal servitude) of the Mine Worker unless:
 - (i) the Mine Worker has, apart from this Rule, been engaged in the coal or oil shale mining industries after 25th March 1978;
 - (ii) the Mine Worker had not died before 28th January 1983; and
 - (iii) the Mine Worker had not attained the age at which the Mine Worker is obliged to before 28th January 1993.
- (h) This Rule does not apply to service in the coal or oil shale mining industries that occurs after 2 January 1993.

3.2.5 Certain periods not to be counted as engagement in coal or oil shale mining industry

For the purposes of Rules 3.10 and 3.11, a Mine Worker shall not be deemed to be “engaged in the coal or oil shale mining industries” by reason of the operation of Rule 3.1.1(b)(ii) or (iii).

Rule 3.2.5 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

3.2.6 Definition

Rule 3.2.6 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

For the purposes of Rules 3.9.21, 3.12.6 and 3.12.7 -

“contributions” means contributions paid to the Fund under the Principal Act 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 of the Principal Act).

3.3 **Application**

3.3.1 Persons in Reciprocating State

Special provisions for persons engaged in the coal mining industry in a Reciprocating State

(a) In this Rule:

- (i) a reference to the applicable provisions is a reference to Rule 3.2.3(h) and Rule 3.9.6(b), and to Rule 3.12, except Rule 3.12.8; and
- (ii) a reference to a person to whom this Rule applies is a reference to a person whose last period of service as a Mine Worker was in a Reciprocating State, who has had prior service in the coal or oil shale mining industries in New South Wales and:
 - (A) who has applied for a benefit under the Principal Act or this Part of the Fund; or
 - (B) who has died and in respect of whom application has been made for such a benefit.

(b) For the purposes of the applicable provisions and of qualifying for a benefit under this Part of the Fund, a person to whom this Rule applies is taken to have been a Mine Worker if he or she:

- (i) is or was, on or after 3 January 1993, employed in the coal mining industry in a Reciprocating State; and
- (ii) by the operation of Rule 3.1.1(b), 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.

(c) The provisions of Rule 3.2.3(a), 3.2.3(c) and 3.2.3(d) apply to a person taken by this Rule to have been a Mine Worker and so apply as if a reference in those provisions to New South Wales included a reference to a Reciprocating State.

(d) Rule 3.9.2 applies to a person taken by this Rule to have been a Mine Worker and so applies as if:

Rule 3.3.1(a) amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

Rule 3.3.1(b) amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (i) a reference in that Rule 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 a Reciprocating State; and
 - (ii) a reference in that Rule 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 a Reciprocating State; and
 - (iii) a reference in that Rule 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 a Reciprocating State.
- (e) If a person dies or is incapacitated while employed in the coal mining industry in a Reciprocating State, 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.

3.3.2 Contributions and benefits payable on and after 3 January 1993

This Part of the Fund applies:

- (a) to a pension under the Principal 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.

3.3.3 Pre 3 January 1993 former Mine Workers

If a Mine Worker resigned, or was retrenched or dismissed, before 3 January 1993 and had not applied for a benefit under the Principal Act before that date, this Part of the Fund 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.

3.3.4 1978 and 1988 Plan Benefits after 3 January 1993

On or after 3 January 1993, a benefit is not to be paid under Rules 3.10 or 3.11 to, or in relation to, a Mine Worker unless the payment was due, but had not been made, before that date.

3.3.5 Mine Workers Records of employment

- (a) A Mine Worker shall, within 14 days after becoming employed as a Mine Worker by any Owner, cause a notice that complies with subrule (b) to be given to the Owner of the Mine Worker's age and past employment.
- (b) A notice referred to in subclause (a) shall –

- (i) be in or to the effect of Appendix 3B; and
 - (ii) be signed by the Mine Worker concerned.
- (c) As soon as practicable after being furnished with a notice referred to in subclause (a), an Owner shall forward the notice to the Trustee.

3.4 Member Contributions

A Mine Worker is not entitled or liable to contribute to this Part of the Fund.

3.5 Owner Contributions

3.5.1 Contributions to Fund

Rule 3.5.1 replaced by Amending Deed dated 12 July 2000. Effective 12 July 2000.

An Owner must pay to the Trustee for crediting to this part of the Fund those contributions prescribed under Section 19 of the Current Act to be credited to this Part.

3.5.2 Records and notices relating to employment of Mine Worker

An Owner must keep records regarding the matters and in the form prescribed under Section 19AA of the Current Act and give written notice to the Trustee at the time and in the form prescribed by Section 19AA of the Current Act.

3.5.3 Returns to be provided by Owners

- (a) An Owner must provide the Trustee with the return as prescribed under Section 19AB of the Current Act within the time prescribed by that Section.
- (b) In addition to the report required by Section 19AB of the Current Act each Owner will be obliged to provide to the Trustee within three months after 30 June in each year a certificate from an auditor confirming that the Owner has made the contributions to the Fund with respect to the preceding twelve months required of that Owner by the Current Act.

3.5.4 Information to be provided to Trustee

Rule 3.5.4 amended by Amending Deed dated 26/4/06. Effective 1/7/06

An Owner must provide the Trustee with such information as the Trustee may reasonably require as prescribed under Section 19AC of the Current Act.

3.5.5 Contributions to Subsidy Account

- (a) The Trustee is authorised to receive amounts required to be contributed by Owners to the Subsidy Fund under Section 19C and 19D of the Current Act into this Part of the Fund.
- (b) The Trustee may invest the money it receives under this Rule in any manner authorised for the investment of trust funds. The Trustee may also invest that money in any manner in which it is authorised to invest under Clause 1.11.
- (c) The Trustee may pay any amount which it determines to be payable under Part 4A of the Current Act out of any amounts received into this Part of the Fund pursuant to this Rule. Any such payments shall be subject to the

same terms and conditions applicable to such payments as prescribed in Part 4A of the Current Act.

3.5.6 Recovery of unpaid Contributions from Owners

The Trustee is entitled to recover unpaid contributions and any other money payable by the Owner to Part 2 or Part 3 of the Fund that has not been paid by the due date pursuant to Section 24 of the Current Act.

3.6 Accounts

3.6.1 The Pension Account

Rule 3.6.1 replaced by Amending Deed dated 12 July 2000. Effective 12 July 2000. Amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (a) The Trustee shall establish and maintain the pension account in the form of two sub-accounts being:
 - (i) the AUSCOAL Services Pty Ltd sub-account; and
 - (ii) the Column 5 pension increase and indexation sub-account, in accordance with Section 18C(1) of the Current Account.
- (b) The AUSCOAL Services Pty Ltd sub-account will consist of the balance of what immediately prior to 1 July 2000 was called the Pension Account in these Rules and the Current Act and additional amounts contributed by AUSCOAL Services Pty Ltd to this sub-account after 1 July 2000 in accordance with Section 18C of the Current Act plus such interest as may be credited to that sub-account under Rule 3.7.1(b).
- (c) The Column 5 pension increase and indexation sub-account will be credited with pension CPI contributions and such interest as may be credited to that sub-account under Rule 3.7.1(b).
- (d) The Trustee must ensure that all pensions are paid from this part of the Fund and are, subject to subrule (e) below, debited from the AUSCOAL Services Pty Ltd sub-account.
- (e) The Trustee shall debit from the Column 5 pension increase and indexation sub-account the cost of:
 - (i) the pension increases agreed under clause 10 of the 1999 Superannuation Agreement and which were made on 1 July 2000; and
 - (ii) the indexation of pensions in accordance with Section 19AD of the Current Act.

3.6.2 Subsidy Account

The Trustee shall maintain and administer a Subsidy Account in respect of moneys received and paid from the Subsidy Fund in accordance with Rule 3.5.5.

3.6.3 Other Accounts

The Trustee may establish such other accounts as it sees fit for the purposes of this Part of the Fund.

3.7 Investments

3.7.1 Investment of Fund

- (a) Money in this Part of the Fund which is not immediately required for the purposes of this Part of the Fund may, subject to subrule (b), be invested by the Trustee in accordance with Clause 1.11, in such manner as the Trustee may, in its absolute discretion from time to time determine.
- (b) Any investment made as referred to in subrule (a) will be adjusted from time to time having regard to positive or negative investment returns.
- (c) The Trustee must not, from the assets of this Part of the Fund or in obtaining financial accommodation:
- (i) lend money to a contributor for, or to a person entitled to or receiving, a benefit under this Part of the Fund, either by lending the money directly or by lending it under arrangements entered into in the exercise of a general power of investment of the assets of this Part of the Fund; or
 - (ii) borrow money or maintain an existing borrowing of money, whether by way of a secured or unsecured loan, otherwise than as permitted by Relevant Law; or
 - (iii) invest any of the assets of the Fund otherwise than on an arms-length basis, unless it is an investment in an in-house asset within the meaning of Section 71 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth.
- (d) The Trustee may, whether or not after consultation with AUSCOAL Services Pty Ltd, make investments under this Rule of money in this Part of the Fund that is money to which the Pension Account relates.

Rule 3.7.1(b) replaced by Amending Deed dated 6/9/06. Effective 31/1/95

Rule 3.7.1(d) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Rule 3.8 deleted by Amending Deed dated 26/7/06. Effective 1/7/06

3.8 * * * * *

3.9 Pension Benefits - 1942 Plan

3.9.1 Application of this Rule

Notwithstanding anything in this Part of the Fund, where, but for this Rule, a person would be entitled to a pension under this Part of the Fund, he shall not be eligible for it unless:

- (a) in the case of a pension under Rule 3.9.2:
 - (i) he became eligible for the pension before 26th March 1978; or
 - (ii) he is entitled to no benefit under Rule 3.10.1;
- (b) in the case of a pension under Rule 3.9.6 - he is entitled to no benefit under Rule 3.10.3 and his incapacity referred to in Rule 3.9.6 arose before 26th March 1978;
- (c) in the case of a pension under Rule 3.9.7:

- (i) the date of retirement of the person is before 26th March the date 1978; or
 - (ii) he is entitled to no benefit under Rule 3.10.3 and the Trustee is of the opinion that the pension should be awarded to him on account of an incapacity which arose before 26th March 1978; or
- (d) in the case of a pension under Rule 3.9.10 or Rule 3.9.11:
- (i) the death of the person in consequence of which the pension is payable occurred before 26th March 1978; or
 - (ii) the death of the pensioner in consequence of which the pension is payable occurred on or after 26th March 1978.

3.9.2 Pensions - Mine Workers who are retired

- (a) Any Mine Worker who is employed as a Mine Worker at the date upon which he attains the age of sixty (60) years or who though not so employed had, during the twelve (12) months immediately preceding the date upon which he attained the age of sixty (60) years, whichever is the later, actually worked as a Mine Worker for not less than sixty (60) days in all during the said period of twelve (12) months, shall be eligible, as from the date of retirement, to a pension of the appropriate amount per week referred to in Rule 3.9.12 if he establishes to the satisfaction of the Trustee that:
- (i) he has been continuously resident in New South Wales during the five (5) years immediately preceding the date of retirement, and
 - (A) he has actually worked in or about a coal or oil shale mine in New South Wales for not less than three hundred (300) days during the said period of five (5) years; or
 - (B) before the date upon which he attained the age of sixty (60) years he has been engaged in the coal or oil shale mining industries in New South Wales for a period of not less than twenty (20) years in all; or
 - (ii) he has been resident in New South Wales for not less than five (5) years out of the seven (7) years immediately preceding the date of retirement; and
 - (A) he has actually worked in or about a coal or oil shale mine in Australia for not less than five hundred days during such period of seven years; or
 - (B) before the date upon which he attained the age of sixty (60) years he has been engaged in the coal or oil shale mining industries in New South Wales for a period of not less than twenty (20) years in all.

Where a Mine Worker's date of retirement is later than the commencement of section 3 of the Coal and Oil Shale Mine

Workers (Superannuation) Amendment Act 1971, any period for which he was engaged in the coal or oil shale mining industries in New South Wales before the eighth day of October 1941 shall be disregarded in determining his eligibility for a pension pursuant to this subrule.

- (b) Any person who becomes a Mine Worker after the commencement of the Coal and Oil Shale Mine Workers (Pensions) Amendment Act 1949 and who, during the period of twelve months immediately preceding the date upon which he attained the age of sixty years, had actually worked as a Mine Worker for not less than one hundred days in all during the said period of twelve months, shall be eligible, as from the date of retirement, for a pension of the appropriate amount per week referred to in Rule 3.9.12 if he establishes to the satisfaction of the Trustee that:
- (i) he has been continuously resident in New South Wales for a period of not less than five years immediately preceding the date of retirement, and
 - (A) he has, during such period, been continuously engaged in the coal or oil shale mining industries in New South Wales, and actually worked in or about a coal or oil shale mine in New South Wales for not less than five hundred days; or
 - (B) he has been engaged in the coal or oil shale mining industries in New South Wales for a continuous period of not less than twenty years immediately preceding the date upon which he attained the age of sixty years; or
 - (ii) he has been resident in New South Wales for not less than five years out of the seven years immediately preceding the date of retirement; and
 - (A) he has, during such period of seven years, been continuously engaged in the coal or oil shale mining industries in Australia, and actually worked in or about a coal or oil shale mine in Australia for not less than seven hundred days; or
 - (B) he has been engaged in the coal or oil shale mining industries in New South Wales for a continuous period of not less than twenty years immediately preceding the date upon which he attained the age of sixty years.

Any person who became a Mine Worker after the commencement of the Coal and Oil Shale Mine Workers (Pensions) Amendment Act 1949 and before the commencement of section 3 of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1971, or who becomes a Mine Worker after the commencement of that section, shall be deemed never to have been eligible, and shall not be eligible, for a pension pursuant to subrule (a).

- (c) Any Mine Worker who was, at the commencement of Part 2 of the Principal Act, of or above the age of sixty years and who had, during the twelve months immediately preceding such commencement, actually worked as a Mine Worker for not less than sixty days in all, but who is unable to satisfy the conditions contained in paragraph (i) or paragraph (ii) of subrule (a), shall be eligible as from the date of retirement for a pension of the appropriate amount per week referred to in Rule 3.9.12:

PROVIDED THAT the Trustee shall not award a pension under this subrule to any Mine Worker unless, in its opinion, the employment of such Mine Worker was bona fide, and was not arranged solely or mainly for the purpose of enabling such Mine Worker to become eligible for a pension pursuant to this subrule.

- (d) Any Mine Worker who, at the date of retirement, is not eligible, pursuant to subrule (a), subrule (b) or subrule (c), for a pension, shall be eligible, as from the date of retirement, for a pension of the appropriate amount per week referred to in Rule 3.9.12 if he establishes to the satisfaction of the Trustee :

(i) *****

- (ii) that before the commencement of Part 2 of the Principal Act or the date upon which he attained the age of sixty years, whichever is the later, he has been engaged in the coal or oil shale mining industries in New South Wales for a continuous period of not less than twenty years. After the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1968, a Mine Worker shall not be eligible for a pension pursuant to the foregoing provisions of this subrule if his date of retirement is later than that commencement.

Any Mine Worker who, at the date of retirement, is not eligible pursuant to subrule (a), subrule (b) or subrule (c) or this subrule, for a pension shall be eligible as from the date of retirement for a pension of the appropriate amount per week referred to in Rule 3.9.12 if he establishes to the satisfaction of the Trustee that before the date of retirement he has, during the ten years immediately preceding such date, been engaged in the coal or oil shale mining industries in New South Wales and during such period has actually worked in the coal or oil shale mining industries of New South Wales for a period of not less than six hundred days in all.

3.9.3 New entrants not eligible for pension under Rule 3.9.2

A Mine Worker shall not be eligible for a pension pursuant to Rule 3.9.2 if he is a new entrant within the meaning of Rule 3.9.4.

3.9.4 Pensions - Mine Workers who are retired - new entrants

- (a) In Rule 3.9.3, “new entrant” means a Mine Worker whose date of retirement is later than the commencement of section 3 of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1971 and:
- (i) who was not engaged in the coal or oil shale mining industries immediately before that commencement; or
 - (ii) who was so engaged immediately before that commencement but ceased to be so engaged for any period after that commencement and before the date of retirement.
- (b) For the purposes of this Rule, a Mine Worker shall not be deemed to be “engaged in the coal or oil shale mining industries” by reason of the operation of paragraph (ii) or (iii) of subrule (b) of Rule 3.1.1.

3.9.5 Rule 3.9.4 not to apply in certain cases

- (a) Where, but for this subrule, a Mine Worker would not be deemed to be engaged in the coal or oil shale mining industries for any particular period, he shall, for the purposes only of paragraph (i) or (ii) of the definition of “new entrant” in Rule 3.9.4(a), be deemed to have been so engaged for that period if the Trustee, under subrule (b), declares, in relation to that Mine Worker, that that period is a period to which this subrule applies.
- (b) The Trustee may, in relation to a Mine Worker, declare that a period is a period to which subrule (a) applies if the Trustee is satisfied that:
- (i) he was employed as a Mine Worker at any time after 1st January 1942;
 - (ii) that period commenced when his employment as a Mine Worker was terminated by reason of retrenchment or cavil out, slackness of trade or act of God (including fire or flood);
 - (iii) if his employment was so terminated before 26th March 1978 - a permit was not issued to him under Section 2E of the Principal Act by virtue of that termination of his employment and it was not so issued because:
 - (A) he did not satisfy the requirements set out in section 2E (3) (a), (b) or (c) of the Principal Act; or
 - (B) he was unable to obtain employment in respect of which the Tribunal would issue a permit under Section 2E of the Principal Act; and
 - (iv) either:
 - (A) he became engaged in the coal or oil shale mining industries at the earliest reasonable opportunity after that termination of his employment; or
 - (B) no such opportunity arose before the date of retirement.

Rule 3.9.5(b)(iii) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

(c) Where a Mine Worker was declared under Section 6B of the Principal Act as in force immediately before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1976 not to be a new entrant that declaration shall be deemed to be a declaration made under subrule (b) in relation to that Mine Worker that the period:

- (i) commencing with the termination of his employment as a Mine Worker by reason of retrenchment or caving out, slackness of trade or act of God (including fire or flood); and
- (ii) ending with his next becoming engaged in the coal or oil shale mining industries,

is a period to which subrule (a) applies.

(d) Anything that:

- (i) was done by the Tribunal before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1976;
- (ii) would have been invalid had subsection 6C (4) of the Principal Act not been enacted;
- (iii) and would have been valid had the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1976 been in force at that time,

is validated.

Rule 3.9.5(d) amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

3.9.6 Pension - permanent incapacity

(a) A Mine Worker shall, subject to this Rule, be eligible for a pension of the appropriate amount per week referred to in Rule 3.9.12 if he proves to the satisfaction of the Trustee:

- (i) that he has been incapacitated by injury as a Mine Worker and that such incapacity arose after the twenty-first day of November 1941; and
- (ii) that by reason of such incapacity he is unable to continue in employment as a Mine Worker; and

(iii) that:

(A) in any case where the Mine Worker is of or above the age of sixty years, the incapacity continued until the date of his application for a pension under this section; or

(B) in any case where the Mine Worker is under the age of sixty years, the incapacity is likely to be permanent:

PROVIDED THAT a Mine Worker shall not be eligible for a pension under this subrule where the injury giving rise to the incapacity was an intentional self-inflicted injury.

- (b) A Mine Worker shall, subject to this Rule, be eligible for a pension of the appropriate amount per week referred to in Rule 3.9.12 if he proves to the satisfaction of the Trustee:
 - (i) that he is permanently incapacitated for work; and
 - (ii) that by reason of such incapacity he is unable to continue in employment as a Mine Worker; and
 - (iii) that he has been engaged in the coal or oil shale mining industries for a continuous period of not less than twenty years immediately preceding his cessation of employment as a Mine Worker by reason of such incapacity; and
 - (iv) that he has paid contributions for a period of at least five years to one or more of the following funds, that is to say, the Coal Mine Workers' Pensions Fund, the Oil Shale Mine Workers' Pensions Fund, the Coal and Oil Shale Mine Workers Superannuation Fund and the Queensland Coal Mine Workers' Pensions Fund.

A Mine Worker shall be deemed to be permanently incapacitated for work if the degree of his permanent incapacity for work is not less than eighty-five per centum (85%).

The Trustee may require any applicant for a pension under this subrule to submit himself to a medical board for examination as to the degree of incapacity.

A Mine Worker shall not be eligible for a pension under this subrule where the permanent incapacity is due to his own fault.

- (c) Rule 3.3.1 applies in the interpretation of this Rule.

3.9.7 Trustee Discretion

- (a) Subject to Rule 3.9.1 the Trustee may award a pension of the appropriate amount per week referred to in Rule 3.9.12 to any Mine Worker even though he may not possess the qualifications required by any other provision of Rules , 3.9, 3.10, 3.11, 3.12 or 3.14 where the Trustee is satisfied that the granting of such a pension would not be inconsistent with the purpose of those Rules and that, having regard to all the circumstances of the particular case, it is just and equitable to award a pension to such Mine Worker.

- (b) * * * * *

3.9.8 Entitlement to Mine Worker's pension at the married man's rate

- (a) A person who is in receipt of, or eligible to receive, a pension under Rules 3.9.2, 3.9.6 or 3.9.7 is entitled to receive that pension at the married man's rate:
 - (i) if he is a married man; or

Rule 3.9.7(a) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

- (ii) if he is not so entitled by virtue of paragraph (a), and if one female is dependent on his earnings, and if she:
 - (A) is an adult and is caring for any child or step-child of the Mine Worker under the age of 16 years; or
 - (B) is a member of the Mine Worker's family and is over the age of 16 years,

but only until her death or marriage or until she ceases to be such a dependant.

- (b) For the purposes of this Rule, a person is dependent on a Mine Worker during any period only if the Trustee is satisfied that the person was totally or mainly dependent for financial support on the Mine Worker during that period.

3.9.9 Pensions - additional payments in respect of dependants

- (a) Where a Mine Worker becomes eligible for a pension under Rules 3.9.2, 3.9.6 or 3.9.7, he shall also be eligible for an addition to such pension consisting of the following amounts:

- (i) * * * * *
- (ii) the appropriate amount per week referred to in Rule 3.9.12 in respect of each child or step-child, which amount shall be payable only during any period of dependency until such child attains the age of sixteen years.

This paragraph applies in respect of any child or step-child whether born before or after the commencement of section 3 of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1971 and whether born before or after the date on which such Mine Worker becomes eligible for such pension, and whether legitimate or illegitimate:

- (iii) * * * * *
- (iv) the appropriate amount per week referred to in Rule 3.9.12 in respect of each brother and sister under the age of sixteen years who is totally dependent on his earnings, which amount shall be payable until such brother or sister shall attain the age of 16 years.

- (b) * *
- (c) * *
- (d) Notwithstanding anything in subrule (a) the Trustee may award or continue a pension under paragraph (ii) or paragraph (iv) of that subrule in respect of any child who has attained the age of 16 years if by reason of any physical or mental defect such child is totally incapacitated from earning a living.

Rule 3.9.9(a)(ii) amended by Amending Deed dated 9 December 2009. Effective 1 July 2009.

- (e) Notwithstanding anything in any other provision of this Rule the Trustee may, if in the circumstances of any case it thinks fit so to do, regard as a child within the meaning of this Rule any child, who, though not within the relationships mentioned in this Rule, is maintained as a member of the family of a Mine Worker.
- (f) Where any amount is paid under Rules 3.9, 3.10, 3.11, 3.12 or 3.14 in respect of any child under 16 years of age, the Trustee may in its discretion, for the purpose of assisting in the further education of the child, continue the pension for such period as it thinks fit not exceeding two (2) years after the child has attained the age of 16 years.
- (g) Where a Mine Worker, who becomes eligible for or has been awarded a pension under Rules 3.9.2, 3.9.6 or 3.9.7, and whose pension is payable to him at the married man's rate specified in Column 5 of Item (2) of Appendix 3 A, proves to the satisfaction of the Trustee that his wife is an invalid and that by reason thereof he employs a female over the age of 16 years (whether or not such female is a member of the Mine Worker's family) to care for his wife or for any child or step-child of the Mine Worker under the age of 16 years, or that his wife is permanently incapable of performing her domestic duties and that by reason thereof he employs a female over the age of 16 years (whether or not such female is a member of the Mine Worker's family) to perform the domestic duties of his household which his wife would but for such incapacity have been capable of performing, and where he proves to the satisfaction of the Trustee that his monetary circumstances warrant an addition to his pension pursuant to this subrule, the Trustee may award to the Mine Worker an addition to his pension of such amount as the Trustee may determine not exceeding eight dollars per week in respect of such female.

The addition to a pension under this subrule whether awarded before or after the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1954 may from time to time be reduced, increased or revoked by the Trustee in any circumstances it deems desirable: **PROVIDED THAT** no such increase shall operate so as to increase the amount of any such addition beyond eight dollars per week.

- (h) Where a Mine Worker, who becomes eligible for or has been awarded a pension under Rules 3.9.2, 3.9.6 or 3.9.7 and whose pension is payable to him at the single man's rate specified in Column 5 of Item (1) of Appendix 3A, proves to the satisfaction of the Trustee that he is an invalid or is through permanent sickness or disability unable to care for himself, and that by reason thereof he employs a female over the age of 16 years to care for him, and that his monetary circumstances warrant an addition to his pension the Trustee may award an addition to his pension of such amount as the Trustee may determine not exceeding eight dollars per week in respect of such female. The addition to a pension under this subrule whether awarded before or after the Commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1954 may from

Rule 3.9.9(f) amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

time to time be reduced increased or revoked by the Trustee in any circumstances it deems desirable: **PROVIDED THAT** no such increase shall operate so as to increase the amount of any such addition beyond eight dollars per week.

- (i) Where a pension is awarded to a Mine Worker pursuant to Rules 3.9.2, 3.9.6 or 3.9.7 the Trustee may, in its discretion, for the purpose of assisting in the further education of any child of the Mine Worker who is, at the date of the award, of or above the age of 16 years, award an addition to such pension of the appropriate amount per week referred to in Rule 3.9.12 in respect of such child for such period as it thinks fit not exceeding two (2) years from the date of the award of the pension.

3.9.10 Pension payable to dependants

- (a) Upon the death of:
- (i) a person who has been awarded a pension pursuant to Rules 3.9.2, 3.9.6 or 3.9.7; or
- (ii) a Mine Worker whose death has been found to have been due to injury as a Mine Worker (not being an intentional self-inflicted injury),

the widow of such person or Mine Worker or the female in respect of whom such person or Mine Worker, if he had remained alive, would have been entitled to his pension at the married man's rate, shall be eligible for a pension of the appropriate amount per week referred to in Rule 3.9.12, which shall be payable until the death, remarriage or marriage of such widow or female, as the case may be, and the persons referred to in paragraphs (ii) and (iv) of subrule (a) and in subrules (d), (e), (f) and (i) of Rule 3.9.9 shall also be eligible for pensions of an amount equal to the amounts referred to in those paragraphs and subrules and for the periods specified in those paragraphs and subrules.

- (b) The Trustee may award a pension to the widow of any Mine Worker who dies on or after the twenty-first day of November 1941 (being the day appointed and notified for the commencement of Part 2 of the Principal Act).
- (c) The Trustee may award a pension to the widow of any person who was, at any time after the first day of January one thousand nine hundred and twenty (1920) engaged in the coal or oil shale mining industries in New South Wales, and who died before the commencement of the Principal Act, where the Trustee is satisfied that the granting of such a pension would not be inconsistent with the purpose of Rules 3.9, 3.10, 3.11, 3.12 or 3.14 and that, having regard to all the circumstances of the particular case, it is just and equitable to award a pension to such widow.
- (d) The amount of any pension awarded to a widow under subrule (b) or subrule (c) shall be the appropriate amount per week referred to in Rule

Rule 3.9.10(a)(i)
amended by Amending
Deed dated 23/10/06.
Effective 1/7/06

Sub-rule 3.9.10(c) amended
by Amending Deed dated 12
July 2000. Effective 12 July
2000. Further amended by
Amending Deed dated 31
March 2005. Effective 1 April
2005.

3.9.12 and such pension shall be payable until the death or remarriage of such widow.

- (e) Where a female (other than a widow) of or above the age of sixteen years who has been awarded a pension under subrule (a) whether before or after the commencement of section 3 of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1971 has not attained the age of thirty years at the date of such commencement or of such award, whichever is the later, the pension payable to such female shall, notwithstanding anything contained in the said subrule, cease to be payable upon the expiration of a period of twelve months after the date of such commencement or award, as the case may be, or such further period as the Trustee may from time to time determine.
- (f) Where any female who becomes eligible for or has been awarded a pension under this Rule proves to the satisfaction of the Trustee that she is an invalid, and that by reason thereof she is permanently incapable of performing her domestic duties and employs a female over the age of sixteen years to care for her, and that her monetary circumstances warrant an addition to her pension the Trustee may award an addition to her pension of such amount as the Trustee may determine not exceeding eight dollars per week.

The addition to a pension under this subrule whether awarded before or after the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1954 may from time to time be reduced, increased or revoked by the Trustee in any circumstances it deems desirable: **PROVIDED THAT** no such increase shall operate so as to increase the amount of any such addition beyond eight dollars per week.

- (g) Upon the death of a Mine Worker who at any time has been a contributor to the Coal Mine Workers' Pensions Fund or the Oil Shale Mine Workers' Pensions Fund or the Coal and Oil Shale Mine Workers Superannuation Fund the Trustee may award to the persons referred to in paragraphs (ii) and (iv) of subrule (a) and in subrules (d), (e), (f) and (i) of Rule 3.9.9 in respect of whom such Mine Worker, if he had remained alive, would have been eligible for an addition to his pension under any of the said paragraphs or subrules pensions of an amount equal to the amounts referred to in those paragraphs and subrules and for the periods specified in those paragraphs and subrules.

3.9.11 De facto wife

- (a) Where the Trustee is satisfied that:
 - (i) at the date upon which a Mine Worker was awarded a pension under this Part of the Fund; or
 - (ii) at the date of the death of:
 - (A) a person who had been awarded a pension under Rules 3.9.2, 3.9.6 or 3.9.7; or

- (B) a Mine Worker whose death has been found to have been due to injury as a Mine Worker (not being an intentional self-inflicted injury),

any female was recognised as the wife of such Mine Worker or person although not legally married to him, the Trustee may award an addition under Rule 3.9.9 or a pension under Rule 3.9.10 as if such female were the wife or widow of such Mine Worker or person:

PROVIDED THAT no such award shall be made where an addition under Rule 3.9.9 as in force at any time before 26th March 1978 or a pension under Rule 3.9.10 has been awarded to or in respect of the wife or widow of such Mine Worker or person.

- (b) For the purposes of Rule 3.9.8, where the Trustee is satisfied that at the date upon which a Mine Worker is awarded a pension under this Part of the Fund any female was recognised as his wife although not legally married to him, she shall, if the Trustee so approves, be deemed to be his wife.
- (c) The Trustee may award a pension to any female who at the date of the death of any Mine Worker on or after the twenty-first day of November 1941, was recognised as the wife of such Mine Worker although not legally married to him:

PROVIDED THAT no such award shall be made where a pension has been awarded under Rule 3.9.10 to the widow of such Mine Worker.

- (d) The amount of any pension awarded to a female under subrule (c) shall be the appropriate amount per week referred to in Rule 3.9.12 and such pension shall be payable until the death, marriage or remarriage of such female.
- (e) Where a female who has been awarded a pension under this Rule whether before or after the commencement of section 3 of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1971 has not attained the age of thirty (30) years at the date of such commencement or of such award, whichever is the later, the pension payable to such female shall, notwithstanding anything contained in this Rule, cease to be payable upon the expiration of a period of twelve months after the date of such commencement or award, as the case may be, or such further period as the Trustee may from time to time determine.
- (f) Where any female who has been awarded a pension under this Rule proves to the satisfaction of the Trustee that she is an invalid, and that by reason thereof she is permanently incapable of performing her domestic duties and employs a female over the age of 16 years to care for her, and that her monetary circumstances warrant an addition to her pension the Trustee may award an addition to her pension of such amount as the Trustee may determine not exceeding eight dollars per week.

The addition to a pension under this subrule whether awarded before or after the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1954 may from time to time be reduced, increased or revoked by the Trustee in any circumstances it deems desirable:

PROVIDED THAT no such increase shall operate so as to increase the amount of any such addition beyond eight dollars per week.

- (g) For the purposes of this Rule 3.9 and notwithstanding anything contained therein, the Trustee shall, as far as practicable, treat a couple, whether married or not, in such a way as, in the opinion of the Trustee, is consistent with the way they are treated for the purposes of the Social Security Act 1947 of the Commonwealth or any other prescribed law of the Commonwealth.

3.9.12 Appropriate amounts of pensions and additions to pensions

- (a) For the purposes of any provision of this Part of the Fund in which there is a reference to the appropriate amount per week payable as a pension or addition to a pension, the appropriate amount per week payable to or in respect of a person who is described in Column 3 of Appendix 3A shall:
- (i) in the case of a person who is in receipt of, or eligible to receive, the pension or addition referred to in any such description on 26th March 1978 be, as from that date; or
 - (ii) in the case of a person who becomes eligible therefor after that date be, as from the date on which he becomes so eligible, as follows:
 - (iii) until:
 - (A) except in the case of a person referred to in subparagraphs (B), (C) or (D) - the day immediately preceding the first Mine Workers' pension pay period occurring after the expiration of the period of 5 years commencing on the date on which the pension concerned became payable;
 - (B) in the case of a person who is in receipt of a pension under Rules 3.9.6 or 3.9.7 and who has not attained the age of 65 years - the day immediately preceding the first Mine Workers' pension pay period occurring after the day on which he attains that age;
 - (C) in the case of a person who is in receipt of a pension at the special rate provided under section 24 of the Veterans' Entitlements Act 1986 of the Commonwealth, or of any other prescribed class of pension under a law of the Commonwealth, and who has not attained the age of 65 years - the day immediately preceding the first Mine Workers' pension pay period after the day on which he attains that age; or

- (D) in the case of a person who is in receipt of a pension referred to in Column 3 of Item (3) of Appendix 3A and who is, at the first Mine Workers' pension pay period occurring after the expiration of the period of 5 years referred to in subparagraph (A), not, solely by reason of age, eligible for a pension under a law of the Commonwealth - the day immediately preceding the first Mine Workers' pension pay period occurring after the day on which the person becomes, by reason of age, so eligible, the amount specified in Column 4 of Appendix 3A opposite the relevant description; and
- (iv) thereafter, the rate specified in Column 5 of Appendix 3A opposite that description.
- (b) * * * * *
- (c) For the purposes of subrule (a)(iii)(A), a pension shall be deemed to have become payable on the date of commencement of the period for which payment of the pension is first made from this Part of the Fund.
- (d) If:
 - (i) a person referred to in subparagraph (B) of subrule (a)(iii); or
 - (ii) the spouse of the person, receives or becomes entitled to receive an invalid pension or a wife's pension under the Social Security Act 1947 of the Commonwealth before the day referred to in that subparagraph, the amount to which the person would be entitled under subrule (a)(iii) but for this subrule is, for the period during which that pension is payable, to be reduced by the amount of that pension.
- (e) * * * * *
- (f) * * * * *
- (g) * * * * *
- (h) For the purposes of determining any period of 5 years referred to in subrule (a)(iii):
 - (i) any period during which a person received a pension at the single man's rate shall be deemed also to be a period during which he received a pension at the married man's rate;
 - (ii) any period during which a person received a pension at the married man's rate shall be deemed also to be a period during which he received a pension at the single man's rate; and
 - (iii) any period during which a person received a subsidy under Part 4A of the Principal Act or the Current Act or a pension shall be deemed also to be a period during which his widow, or a female treated under this Part of the Fund as his wife, received a pension.

- (i) Nothing in this section affects anything contained in Rule 3.9.17.

3.9.13 Amendment of Appendix 3A following variation in Reference Rate

- (a) Where there is a variation in the amount of the Reference Rate, the Trustee shall, by a determination published in the Gazette as soon as practicable after the variation:
- (i) amend Column 4 of Appendix 3 A:
- (A) by omitting the reference to the amount in Item (1) and by inserting instead a reference to the amount that equals 35 per cent of the Reference Rate;
- (B) by omitting the reference to the amount in Item (2) and by inserting instead a reference to the amount that equals 55 per cent of the Reference Rate;
- (C) by omitting the reference to the amount in item (3) and by inserting instead a reference to the amount that equals 35% of the Reference Rate; and
- (D) by omitting the reference to the amount in Item (4) and by inserting instead a reference to the amount that equals 5 per cent of the Reference Rate; and
- (ii) amend Column 5 of Appendix 3A by omitting the reference to the amount in Item (4) and by inserting instead a reference to the amount that equals 5 per cent of the Reference Rate.
- (b) As soon as practicable after 1st March and 1st September in every year, the Trustee, shall, by a determination published in the Gazette, amend Column 5 of Appendix 3A:
- (i) by omitting the reference to the amount in Item (1) and by inserting instead a reference to the amount calculated by reducing the amount that, as at that 1st March or 1st September, equalled 35 per cent of the Reference Rate by the amount of the maximum weekly rate of age pension payable, as at that 1st March or 1st September, under the Social Security Act 1947 of the Commonwealth for a single pensioner;
- (ii) by omitting the reference to the amount in Item (2) and by or inserting instead a reference to the amount calculated by, reducing the amount that, as at that 1st March or 1st September, equalled 55 per cent of the Reference Rate by the amount of the maximum weekly rate of the age pension payable, as at that 1st March or 1st September, under the Social Security Act 1947 of the Commonwealth for married couple pensioners;
- (c) For the purpose of calculating the amount required by subrule (b) to be inserted in an Item in Column 5 of Appendix 3A, where, but for this subrule, the amendment of the Item would result in a decrease in the pension payable to the person described in Column 3 of that Item because

Rule 3.9.13, sub-paragraph (1)(a)(iii) replaced by Amending Deed dated 12 July 2000. Effective 12 July 2000

Rule 3.9.13(c) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

the amount of the maximum weekly rate of the age pension specified in subrule (b) in relation to that Item has increased since the date as at which the amount specified in that Item was calculated but, since that date, the Reference Rate has not increased or, as the case may be, has not increased sufficiently to compensate for the increase in the amount of the maximum weekly rate of that age pension, then:

- (i) where the Reference Rate has not increased - the amount of the maximum weekly rate of that age pension shall be deemed not to have so increased; or
 - (ii) where the Reference Rate has increased - the amount of the maximum weekly rate of that age pension shall be deemed to have so increased only by the same amount as the amount that equals the percentage of the Reference Rate specified in subrule (b) in relation to that Item has increased by reason of the increase in the Reference Rate.
- (d) Where, after making a determination under subrule (b), the Trustee makes a determination under Rule 3.1.1(e) varying the Reference Rate, being a determination in which it specifies that the determination takes effect as from, or as from a date before, the date as at which the amounts inserted in Column 5 of Appendix 3A by the determination under subrule (b) were calculated, the Reference Rate shall, for the purposes only of subrule (b) and (c), be deemed to have been varied on the day following the date as at which those amounts were calculated.
- (e) If, but for this subrule, a variation in the amount of the Reference Rate would result in a decrease in the amount of pension payable to a person described in Column 3 of Appendix 3A to a level below that at which the pension was first paid to that person, the amount of pension payable to the person is in no case to be reduced below the level at which it was first so paid.
- (f) The Trustee, shall, in a determination made under this Rule, specify the date as from which any amendment to Appendix 3A effected in pursuance of this Rule shall take effect.
- (g) In a determination made under this Rule, different dates may be specified for the purposes of subrule (d) in respect of different classes of pensioners or pensions or additions to pensions, and the dates so specified may be dates before, on or .after the date of publication of the determination in the Gazette.
- (h) * * * * *
- (i) Nothing in this Rule affects anything contained in Rule 3.9.17.
- (j) * * * * *
- (k) Notwithstanding anything in this Rule, any amount to be inserted in Appendix 3A in pursuance of this Rule may be rounded off in such

Rule 3.9.13(d) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

manner as the Trustee thinks proper, but so that the variation authorised by this subrule does not exceed 5 cents.

3.9.14 Construction of references to date of retirement upon certain increases in pension

Where any provision of this Part of the Fund relates to a person's eligibility for a pension under this Part of the Fund from the date of retirement, that provision shall, in respect of a person who is described in Item (1) or (2) of Appendix 3A and who is in receipt of, or eligible to receive, the pension referred to in that description on:

- (a) 26th March 1978; or
- (b) the day on which any amendment to that Item effected in pursuance of Rule 3.9.13 takes effect,

whichever day is the later or the latest, be read and construed as if the reference to the date of retirement were omitted therefrom and a reference to that day were substituted therefor.

3.9.15 Suspension of part of pension in certain circumstances

- (a) Notwithstanding anything in this Rule 3.9, where a person entitled to receive a pension under this Part of the Fund would, in the opinion of the Trustee thereby be prejudicially affected in respect of any benefits otherwise receivable by that person, the amount of the pension payable is if the person so directs, to be reduced to such lesser amount than that provided for under this Rule 3.9 as the Trustee from time to time determines.
- (b) * * * * *

3.9.16 Pensions - special provisions

- (a) Where a Mine Worker becomes eligible for a pension pursuant to Rule 3.9.2, 3.9.6 or 3.9.7 the pension shall, subject to this Part of the Fund, be payable to the Mine Worker for life unless it is earlier commuted under Rule 3.9.19.
- (b) No Mine Worker shall be paid more than one pension under this Part of the Fund.
- (c) * * * * *
- (d) * * * * *

3.9.17 Income from employment

- (a) If any person to whom a pension has been awarded under Rules 3.9.6 or 3.9.7 (in this section referred to as the "pensioner") engages in employment (including self employment) during any quarter then the amount of pension payable to such pensioner during that quarter shall be reduced by the amount by which the average weekly income from such employment of such pensioner, averaged over that quarter, exceeds the

Rule 3.9.17(a) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

sum of the pension which but for this subrule would be payable to that pensioner.

- (b) In this section “quarter” means the period from:
 - (i) the first day of January to the thirty-first day of March next following;
 - (ii) the first day of April to the thirtieth day of June next following;
 - (iii) the first day of July to the thirtieth day of September next following; or
 - (iv) the first day of October to the thirty-first day of December next following.
- (c) The provisions of this Rule shall not apply to a pensioner who has at the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1970 attained the age of sixty (60) years, or who thereafter attains that age.
- (d) Where a person to whom subrule (a) applies is elected to office as a member of a local government or other public or local authority constituted by an Act or has been elected and holds office as such a member, any fees or remuneration paid to him for his services as such a member shall in calculating his average weekly income be disregarded.

3.9.18 Power to cancel pensions

- (a) Where a person has been awarded a pension pursuant to Rule 3.9.7 the Trustee may, from time to time, review the case, and may, if satisfied that, having regard to a change in the circumstances of the particular case, it is just and equitable so to do, cancel the pension.
- (b) Where a person has been awarded a pension pursuant to Rule 3.9.6 the Trustee may, from time to time, review the case, and may, notwithstanding that when he was awarded the pension he possessed the necessary qualifications for eligibility therefor, cancel the pension if the Trustee is satisfied that, having regard to a change in the circumstances of the particular case, it is just and equitable to do so.
- (c) The Trustee may cancel any pension or addition to a pension awarded under this Part of the Fund where it is satisfied that the award of the pension or addition was improperly obtained or that the award of the pension or addition was contrary to the provisions of this Part of the Fund.

3.9.19 Commutation of pension

- (a) The Trustee 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 Trustee and payable on conditions so determined.
- (b) Such an offer must state the amount of the lump sum and the conditions upon which acceptance of the offer would be given effect.

- (c) An election by a pensioner or prospective pensioner to accept an offer made under this Rule is to be made as indicated by the Trustee when making the offer.
- (d) The amount of a lump sum payable under this section is to be an amount that is determined by the Trustee after taking into consideration the advice of an Actuary and the requirements of the Superannuation Industry (Supervision) Regulations of the Commonwealth.
- (e) If:
 - (i) a pensioner who makes an election under this Rule dies before it is given effect; or
 - (ii) a prospective pensioner who makes an election under this Rule 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 Trustee is to pay the lump sum to the personal representatives of the deceased.
- (f) A pension does not become payable, or ceases to be payable, if it is commuted under this Rule.
- (g) If a pension is commuted under this Rule by a person who subsequently dies and is survived by dependants or a de facto wife, a pension is not payable under Rule 3.9.10 to the dependants or under Rule 3.9.11 to the de facto wife.
- (h) An election made under this Rule by a prospective pensioner is not to be given effect by the Trustee before the award of the pension would, but for the election, have taken effect.
- (i) The lump sum value of the additional pension amounts payable from 1 January 2000 as listed in Column 5 of Appendix 3A shall be determined by the Trustee after obtaining the advice of the Actuary on the equitable distribution of the Fund's assets which has accumulated in respect of the additional pensions.

Rule 3.9.19(i) inserted
by Amending Deed
dated 1 February
2000. Effective 1
January 2000.

3.9.20 Applications for pensions

- (a) Every application for a pension:
 - (i) shall be in or to the effect of a form approved by the Trustee;
 - (ii) shall contain such particulars as may be approved by the Trustee;
 - (iii) shall be verified by statutory declaration; and
 - (iv) shall be lodged with or forwarded to the Trustee.
- (b) Upon receipt of any such application the Trustee shall make or cause to be made such investigations as appear to it desirable.

- (c) The Trustee shall consider the application after the completion of its investigations.
- (d) If, after considering the application, the Trustee is satisfied that the applicant is entitled to a pension under the provision of this Part of the Fund specified in the application, the Trustee must allow the application, but, if it is not so satisfied, it must disallow the application or adjourn its consideration of the application until the production of further information by the applicant.
- (e) Where the Trustee allows the application it shall, in its determination, specify the rate of pension (including any additional amounts) awarded, and the date (whether before or after the date of the application) as from which the pension is to be payable.
- (f) Any such determination shall be embodied in a determination and a copy thereof shall be filed with the records of the Trustee.

3.9.21 Refund of shortfall

- (a) If:
 - (i) for any reason a pension payable to or in respect of a Mine Worker under a provision of Rule 3.9.1 is, except by commutation, cancelled or otherwise terminated, and
 - (ii) there is no dependant of the Mine Worker who is entitled to a pension under any other provision of that Rule; and
 - (iii) the total benefit paid as pension under that Rule (being the reduced amount if the pension has been reduced under that Rule) is less than the amount of refund that would have been payable in respect of the Mine Worker under Rule 3.12.6,

the Trustee must, on the appropriate application being made, refund to the applicant the difference between the 2 amounts referred to in paragraph (iii).
- (b) For the purposes of this Rule an appropriate application is an application made by:
 - (i) the Mine Worker concerned, unless the Mine Worker has died; or
 - (ii) a dependant of the Mine Worker, if the Mine Worker has died; or
 - (iii) the personal representatives of the Mine Worker, if the Mine Worker has died without dependants.
- (c) If for any reason the amount of a lump sum benefit payable under this Rule 3.9 would be less than the amount of refund that would have been payable to, or in relation to, the Mine Worker under Rule 3.12.6 had that Rule been applicable:
 - (i) the Mine Worker is; or

Rule 3.9.21(c) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

- (ii) 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.

3.9.22 Trustee to Notify Claimants

Rule 3.9.22 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

The Trustee shall notify any applicant under Rule 3.9.20 for a pension, benefit or subsidy

of its decision in relation to the application and of the reasons for that decision.

3.9.23 Certificate of Pension Entitlements

Where the Trustee allows an application for a pension or a subsidy pursuant to Rule 3.9.2, it shall issue to the applicant a certificate which specifies -

- (a) the amount of the pension or subsidy payable to him;
- (b) the name, age and address of each of his dependents in respect of whom an additional payment is payable to him and the amount of each additional payment so payable;
- (c) the date on and from which the pension or subsidy is payable; and
- (d) the manner in which it is proposed that the pension or subsidy be paid.

3.10 1978 Plan Benefits

3.10.1 Lump sum benefit payments to certain Mine Workers who retired on or after 26 March 1978 and before 3 January 1993

- (a) Rule 3.2.5 applies to the definition of a Mine Worker for the purposes of this Rule 3.10.
- (b) A Mine Worker whose date of retirement is on or after 26th March 1978 and before 3 January 1993 is, on retirement, entitled to a lump sum benefit payment at the rate prescribed by this Rule:
 - (i) if every part of the period of 10 years immediately before the date of retirement was either a period when he was engaged in the coal or oil shale mining industries or an Authorised Period; and
 - (ii) if he has been engaged in the industries for a period of not less than 10 years or for 2 or more periods together amounting to not less than 10 years.
- (c) A person entitled to a lump sum benefit under this Rule is entitled to payment thereof at the rate of the prescribed amount for each completed calendar month of service in the coal or oil shale mining industries.
- (d) In subrule (c), “the prescribed amount”, in relation to a person entitled to a lump sum benefit payment under this Rule, means the prescribed amount under section 14B of the Principal Act (as in force before its repeal), as at that person's date of retirement.

- (e) The amount of any lump sum benefit payment otherwise payable to any person under this Rule shall not include payment for any period of engagement in the coal or oil shale mining industries before 21st November 1941 unless evidence of his engagement in those industries satisfactory to the Trustee has been furnished to the Trustee.
- (f) If a person was engaged in the coal or oil shale mining industries before becoming a Mine Worker for the purposes of this Part of the Fund, the amount of any lump sum benefit payment otherwise payable to or in respect of that person under this Rule is not to include payment for the period of the person's engagement in the coal or oil shale mining industries before the person became liable to contribute, and began contributing, to the Fund under the Principal Act.
- (g) The amount of any lump sum benefit payment otherwise payable to any person under this Rule shall not include payment for any period of engagement in the coal or oil shale mining industries in respect of which:
 - (i) a pension or addition thereto is or was payable under this Part of the Fund to or in respect of him or consequent upon his death; or
 - (ii) a lump sum benefit payment has already been made under this Part of the Fund to or in respect of him.
- (h) The amount of any lump sum benefit payment otherwise payable to any person under this Rule shall not include payment for:
 - (i) any period of engagement in the coal or oil shale mining industries in respect of which a refund of his contributions has been made under the Principal Act or this Part of the Fund; or
 - (ii) any period before that referred to in paragraph (i).

3.10.2 Lump sum benefit payment on death of Mine Worker on or after 26 March 1978 and before 3 January 1993

"child" deleted by
Amending Deed dated 9
December 2009.
Effective 1 July 2009.

- (a) In this Rule:

“prescribed dependent amount”, in relation to a Mine Worker referred to in subrule (c), means the amount that equals 240 times the amount that is the prescribed amount under section 14B of the Principal Act (as in force before its repeal) as at the date of the Mine Worker's death;

“relative” means brother, sister, step-brother, step-sister, grandmother, grandfather, grandson, grand-daughter or a child over 18;

- (b) Where a Mine Worker dies on or after 26th March 1978 and before 3 January 1993 while engaged in the coal or oil shale mining industries or during an Authorised Period, and a lump sum benefit has not been paid or is not payable under any other section of Division 3 of Part 2 of the Principal Act or Rules 3.10 or 3.11 of this Part of the Fund to or in respect of the Mine Worker or consequent upon the Mine Worker's death:

"spouse" deleted by
Amending Deed dated 9
December 2009.
Effective 1 July 2009.

Rule 3.10.2 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (i) where the Mine Worker dies before 3 July 1988, his widow is entitled to a lump sum benefit payment of the prescribed dependent amount;
- (ii) where the Mine Worker dies on or after 3 July 1988 and before 3 January 1993, the Mine Worker's spouse is entitled to:
 - (A) a lump sum benefit payment of the prescribed dependent amount; or
 - (B) a lump sum benefit payment equal to a lump sum benefit payment payable to the Mine Worker under Rule 3.11.4 (if such a payment had been payable),
 whichever is the greater;
- (iii) if a benefit is payable under paragraphs (i) or (ii) - each of the Mine Worker's dependent children is entitled to a lump sum benefit payment as follows:
 - (A) where there are not more than 3 dependent children - the lump sum benefit for each such child is an amount equal to one-third of the prescribed dependent amount; or
 - (B) where there are more than 3 dependent children - the lump sum benefit for each such child is an amount equal to the prescribed dependent amount divided by the number of such dependent children;
- (iv) if a benefit is not payable under paragraphs (i) or (ii) each of the Mine Worker's dependent children is entitled to a lump sum benefit payment as follows:
 - (A) where there are not more than 3 dependent children - the lump sum benefit for each such child is an amount equal to two-thirds of the prescribed dependent amount; or
 - (B) where there are more than 3 dependent children -the lump sum benefit for each such child is an amount equal to twice the prescribed dependent amount divided by the number of such dependent children; and
- (v) if there are fewer than 3 dependent children:
 - (A) each of the Mine Worker's dependent parents is entitled to a lump sum benefit payment of three-quarters of the prescribed dependent amount;
 - (B) each of the Mine Worker's dependent relatives is entitled to a lump sum benefit payment of one-half of the prescribed dependent amount; and
 - (C) each of the Mine Worker's other dependants is entitled to a lump sum benefit payment of one-quarter of the prescribed

dependent amount, unless entitled to a benefit under any other provision of this subrule.

- (c) For the purposes of this section, a person is dependent on a Mine Worker referred to in subrule (b), only if the Trustee is satisfied that the person was totally or mainly dependent for financial support on the Mine Worker at the date of the Mine Worker's death or, in the case of a child of the Mine Worker, that the child had not attained the age of 16 years at that date.
- (d) Where the spouse of a Mine Worker referred to in subrule (b) dies:
- (i) at the same moment as the Mine Worker dies or in circumstances rendering it uncertain which of them survived the other; or
 - (ii) within 48 hours before the Mine Worker dies,
- the spouse shall, for the purposes of this section, be deemed to have been alive at the time of the Mine Worker's death.
- (e) * * * * *
- (f) The lump sum benefit to which a child is entitled under this Rule is payable to one of the child's parents or guardians for the child's support and education or to the child as soon as practicable after his attaining the age of 18 years.
- (g) Subject to subrule (i), the maximum total amount payable under this Rule consequent upon the death of a Mine Worker shall not exceed double the prescribed dependent amount, and where, but for this subrule, that amount would be exceeded, the benefits payable under subrule (b)(v) shall, to the necessary extent, be reduced proportionately or, if necessary, not be paid.
- (h) If no benefit is payable in respect of a deceased Mine Worker under this section (other than this subrule), the benefit which would have been payable under Rule 3.11.4 had the Mine Worker been entitled to such a benefit is payable to the legal personal representatives of the deceased Mine Worker.
- (i) If:
- (i) a Mine Worker:
 - (A) has, while actually engaged in performing work as a Mine Worker on or after 1 August 1990, sustained an injury that is wholly or partly the result of an accident; and
 - (B) has died within 6 months after the day on which the injury was sustained and before 3 January 1993; and
 - (ii) the death resulted directly or indirectly from the injury; and
 - (iii) the Mine Worker is survived by a spouse,
- the spouse is entitled to receive a lump sum benefit of an amount equal to 90 times the prescribed amount under section 14B of the Principal Act (as in force before its repeal), as at the date of the Mine Worker's death.

- (j) For the purposes of subrule (i), “accident” includes an event, act or omission that is the result of the negligence or misconduct of any person (including the deceased Mine Worker).
- (k) A benefit is payable under subrule (i) in addition to any other benefit that is payable in respect of the Mine Worker under this Part.

3.10.3 Lump sum benefit payment for disabled Mine Workers

- (a) Where a Mine Worker:
 - (i) proves to the satisfaction of the Trustee:
 - (A) that he has been incapacitated by injury during a period when he was engaged in the coal or oil shale mining industries;
 - (B) that by reason of his incapacity he is unable to continue his engagement in those industries and that the date of his disability was on or after 26th March 1978; and
 - (C) that the incapacity is likely to be permanent and is of a major and effectively disabling kind;
 - (ii) has not been awarded a pension under Rule 3.9.2, and is not entitled to a lump sum benefit payment under Rule 3.10.1, in respect of the incapacity;
 - (iii) has submitted himself to any examination required under subrule (c); and
 - (iv) except where the Trustee is satisfied that the incapacity was caused by injury as a Mine Worker - would have been entitled to as lump sum benefit payment under Rule 3.10.1 had he continued being engaged in those industries until the date of retirement,

he is entitled to a lump sum benefit payment of the amount determined under subrule (b).
- (b) The amount of a lump sum benefit payable under this Rule is:
 - (i) where the Trustee is satisfied that the incapacity was caused by injury as a Mine Worker - an amount equal to the amount that would have been payable to him under Rule 3.10.1:
 - (A) had he continued being engaged in the coal or oil shale mining industries until the date of retirement;
 - (B) had section 14A (1) (a) and (b) of the Principal Act (which was in force before Rule 3.10.1) not been enacted; and
 - (C) had the reference in section 14A (3) to his date of retirement been a reference to the date of his disability; or
 - (ii) in any other case - an amount equal to a percentage of the amount referred to in paragraph (i), being 10 per cent of that amount,

together with a further 10 per cent for each completed year of his engagement in the coal or oil shale mining industries before the date of his disability, to a maximum of 100 per cent.

- (c) The Trustee may require an applicant for payment of a lump sum benefit under this Rule to submit himself to examination by a panel of 3 medical practitioners nominated by the Trustee and the Trustee shall, in making any such nomination, have regard to any representations made in regard thereto by the applicant.
- (d) A person is not entitled to a lump sum benefit payment where the incapacity was caused by his act or default intended by him to produce that incapacity.
- (e) For the purposes of this Rule, the date on which a person's incapacity arises and the date of his disability shall be deemed to be such date or dates as may be determined by the Trustee, and the Trustee shall, in making a determination under this subrule, have regard to all the circumstances of the case, including:
 - (i) his medical and employment history; and
 - (ii) the date on which he ceased to be able to be effectively employed as a Mine Worker.
- (f) In this Rule, a reference to:
 - (i) injury includes a reference to illness;
 - (ii) the date of a Mine Worker's disability is a reference to the date on which he becomes unable to continue his engagement in the coal or oil shale mining industries by reason of incapacity referred to in this Rule; and
 - (iii) the date of retirement in relation to a Mine Worker, is (except in subrule (b)(i)(C)) a reference to the date on which the Mine Worker would be required by the Current Act to retire were he not to retire or be retired before that date.
- (g) This Rule does not apply to or in respect of a Mine Worker whose engagement in the coal or oil shale mining industries is terminated on or after 3 July 1988 as a result of the Mine Worker's disability.
- (h) A person who makes an application under section 14H of the Principal Act (as in force before its repeal) for a lump sum benefit payment under this Rule may include in the application an application for a lump sum benefit payment under Rule 3.11.4, but, if the person becomes entitled to receive a benefit payment under Rule 3.11.4, the person is not entitled to receive a lump sum benefit payment under this Rule.
- (i) If:
 - (i) any person has, before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990,

made an application for a lump sum benefit payment under this Rule (or Section 14E of the Principal Act before its repeal); and

- (ii) the application has not been determined before that commencement (including the disposal of any appeal under section 23A of the Principal Act),

the application is to be taken to include, as an alternative to such a benefit payment, an application for a lump sum benefit payment under section 14FB of the Principal Act.

3.11 1988 Plan Benefits

3.11.1 Lump Sum benefit payments to certain other Mine Workers who retired on or after 3 July 1988 and before 3 January 1993

- (a) Rule 3.2.5 applies to the definition of a Mine Worker for the purposes of this Rule 3.11.
- (b) A Mine Worker whose date of retirement is on or after 3 July 1988 and before 3 January 1993 and who is not entitled to a lump sum benefit payment under Rule 3.10.1 is, on retirement, entitled to a lump sum benefit payment at the rate prescribed by this Rule.
- (c) A person entitled to a lump sum benefit payment under this Rule is entitled to payment thereof, at the rate of the prescribed amount, for each completed calendar month of service in:
 - (i) any period, immediately before the date of retirement, during which the person was continuously engaged in the coal or oil shale mining industries; and
 - (ii) any other period during which the person was continuously engaged in the coal or oil shale mining industries, being a period which was immediately followed by an Authorised Period which ended:
 - (A) on the commencement of the period referred to in paragraph (i) (or another period referred to in this paragraph); or
 - (B) on the date of retirement.
- (d) In subrule (c), “the prescribed amount”, in relation to a person entitled to a lump sum benefit payment under this Rule, means the prescribed amount for the purposes of Rule 3.10.1 as at that person's date of retirement.
- (e) If a person was engaged in the coal or oil shale mining industries before becoming a Mine Worker for the purposes of this Part of the Fund, the amount of any lump sum benefit payment otherwise payable to or in respect of that person under this Rule is not to include payment for the period of the person's engagement in the coal or oil shale mining industries before the person became liable to contribute, and began contributing, to the Fund under the Principal Act.

- (f) The amount of any lump sum benefit payment otherwise payable to any person under this Rule shall not include payment for any period of engagement in the coal or oil shale mining industries in respect of which:
 - (i) a pension or addition thereto is or was payable under this Part of the Fund to or in respect of the person consequent upon the person's death; or
 - (ii) a lump sum benefit payment has already been made under the Principal Act or this Part of the Fund to or in respect of the person.
- (g) The amount of any lump sum benefit payment otherwise payable to any person under this Rule shall not include payment for:
 - (i) any period of engagement in the coal or oil shale mining industries in respect of which a refund of the person's contributions has been made under the Principal Act or this Part of the Fund; or
 - (ii) any period before that referred to in paragraph (i).

3.11.2 Lump sum benefit payment on death of Mine Worker on or after 26 March 1978 and before 3 January 1993

The provisions of Rule 3.10.2 shall, to the extent applicable, also apply to this Rule 3.11.

3.11.3 Lump sum benefit payment for total and permanent incapacity on and after 3 July 1988 and before 3 January 1993

- (a) Where a Mine Worker:
 - (i) proves to the satisfaction of the Trustee:
 - (A) that the Mine Worker has been incapacitated by injury during a period when the Mine Worker was engaged in the coal or oil shale mining industries; and
 - (B) that by reason of the Mine Worker's incapacity the Mine Worker is unable to continue the Mine Worker's engagement in those industries and that engagement was terminated on or after 3 July 1988 and before 3 January 1993 as a result of the Mine Worker's disability; and
 - (C) that the Mine Worker is permanently unable, by reason of that incapacity, to be engaged, or to be employed, in any remunerative occupation in which it would be otherwise reasonable to expect the Mine Worker to engage; and
 - (ii) has not been awarded a pension under Rule 3.9.2, and is not entitled to a lump sum benefit payment under Rule 3.10.1 or Rule 3.11.1, in respect of the incapacity; and
 - (iii) has submitted to any examination required under subrule (d),
 - (iv) * * * * *

the Mine Worker is entitled to a lump sum benefit payment of the amount determined under subrule (c).

- (b) The Trustee is not entitled to be satisfied as to the incapacity of a Mine Worker as referred to in subrule (a) unless, in addition to any other proof that it may require, it is provided with a certificate or certificates signed by at least 2 medical practitioners 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.
- (c) The amount of a lump sum benefit payable under this Rule is:
- (i) where the Trustee is satisfied that the incapacity was caused by injury as a Mine Worker - an amount equal to the amount that would have been payable to the Mine Worker under Rule 3.10.1 or Rule 3.11.1:
- (A) if the Mine Worker was:
- (1) under the age of 55 years at the date of the disability - had the Mine Worker continued being engaged in the coal or oil shale mining industries until the Mine Worker had attained the age of 55 years; or
- (2) 55 years or over at the date of the disability - had the Mine Worker retired on the date of disability; and
- (B) had the reference in Rule 3.10.1(b) or Rule 3.11.1(b) to the Mine Worker's date of retirement been a reference to the date of the Mine Worker's disability; or
- (ii) in any other case - an amount equal to:
- (A) the amount to which the Mine Worker would have been entitled under Rule 3.11.4(b) had the Mine Worker qualified for a benefit under that Rule; or
- (B) a percentage of the amount referred to in paragraph (i), being 10 per cent of that amount, together with a further 10 per cent for each completed year of the Mine Worker's engagement in the coal or oil shale mining industries before the date of the Mine Worker's disability, to a maximum of 100 per cent,
- whichever is the greater.
- (d) The Trustee may require an applicant for payment of a lump sum benefit under this Rule to submit to examination by a panel of 3 medical practitioners nominated by the Trustee and the Trustee shall, in making any such nomination, have regard to any representations made in regard thereto by the applicant.

Rule 3.11.3(c) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

- (e) A person is not entitled to a lump sum benefit payment where the incapacity was caused by the person's act or default intended by the person to produce that incapacity.
- (f) For the purposes of this Rule, the date on which a person's incapacity arises and the date of the person's disability shall be deemed to be such date or dates as may be determined by the Trustee, and the Trustee shall, in making a determination under this subrule, have regard to all the circumstances of the case, including:
 - (i) the person's medical and employment history; and
 - (ii) the date on which the person ceased to be able to be effectively employed as a Mine Worker.
- (g) In this Rule, a reference to:
 - (i) injury includes a reference to illness;
 - (ii) the date of a Mine Worker's disability is a reference to the date on which the Mine Worker becomes unable to continue the Mine Worker's engagement in the coal or oil shale mining industries by reason of incapacity referred to in this Rule;
 - (iii) the date of retirement in relation to a Mine Worker is (except in subrule (c)(i)(B)) a reference to the date on which the Mine Worker would be required by the Current Act to retire were the Mine Worker not to retire or be retired before that date.

3.11.4 Lump sum benefit payment for partial and permanent incapacity before 3 January 1993

- (a) Where a Mine Worker:
 - (i) proves to the satisfaction of the Trustee:
 - (A) that the Mine Worker has been incapacitated by injury during a period when the Mine Worker was engaged in the coal or oil shale mining industries; and
 - (B) that the Mine Worker is permanently unable, by reason of that incapacity, to continue the Mine Worker's engagement in those industries and that engagement was terminated as a result of the Mine Worker's disability before 3 January 1993; and
 - (ii) has not been awarded a pension under Rule 3.9.2, and is not entitled to a lump sum benefit payment under Rule 3.10.1 or Rule 3.11.1, in respect of the incapacity; and
 - (iii) has submitted to any examination required under subrule (c).
 - (iv) *****

the Mine Worker is entitled to a lump sum benefit payment of the amount determined under subrule (b).

- (b) The amount of a lump sum benefit payable under this Rule is an amount equal to the amount that would have been payable to the Mine Worker under Rule 3.10.1 or Rule 3.11.1:
 - (i) had the Mine Worker retired on the date of disability; and
 - (ii) had the reference in Rule 3.10.1(b) or Rule 3.11.1(b) to the date of retirement been a reference to the date of disability.
- (c) The Trustee may require an applicant for payment of a lump sum benefit under this Rule to submit to examination by a panel of 3 medical practitioners nominated by the Trustee and the Trustee shall, in making any such nomination, have regard to any representations made in regard thereto by the applicant.
- (d) A person is not entitled to a lump sum benefit payment where the incapacity was caused by the person's act or default intended by the person to produce that incapacity.
- (e) For the purposes of this Rule, the date on which a person's incapacity arises and the date of the person's disability shall be deemed to be such date or dates as may be determined by the Trustee, and the Trustee shall, in making a determination under this subrule, have regard to all the circumstances of the case, including:
 - (i) the person's medical and employment history; and
 - (ii) the date on which the person ceased to be able to be effectively employed as a Mine Worker.
- (f) In this Rule, a reference to:
 - (i) injury includes a reference to illness;
 - (ii) the date of a Mine Worker's disability is a reference to the date on which the Mine Worker becomes unable to continue the Mine Worker's engagement in the coal or oil shale mining industries by reason of incapacity referred to in this Rule;
 - (iii) the date of retirement in relation to a Mine Worker is (except in subrule (b)(ii)) a reference to the date on which the Mine Worker would be required by the Current Act to retire were the Mine Worker not to retire or be retired before that date.

3.12 1993 Plan Benefits

3.12.1 Lump sum benefit for a Mine Worker on retirement and for a retrenched Dormant Member

- (a) A lump sum benefit is payable under this Rule to:
 - (i) a Mine Worker who on 2 January 1993 was a contributor to the Fund under the Principal Act and who retires after 2 January 1993 at the age of 55 or more; and

Rule 3.12 amended by Amending Deed dated 28/09/1995. Effective 31/1/1995. Rule 3.12.1(b) further amended by Amending Deed dated 12/7/2000, Effective 12/7/2000. Rule 3.12.1 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005 (numbering).

- (ii) a person who on 2 January 1993 was a Dormant Member but who, having become a Mine Worker after that date, later retires at the age of 55 or more; and
 - (iii) a person who:
 - (A) is a Dormant Member whose last period of service as a Mine Worker was terminated by retrenchment after 25 March 1978; and
 - (B) is aged 55 or more; and
 - (C) applies for the benefit after 2 January 1993;
 - (iv) a person to whom Rule 3.3.1 applies:
 - (A) who at any time after 25 March 1978 has been retrenched while employed in the coal mining industry in a Reciprocating State; and
 - (B) who, having reached the age of 55, applies for the benefit after 2 January 1993.
- (b) A person to whom this Rule applies is entitled to payment from this Part of the Fund of a lump sum benefit equal to the benefit provided by subrule (c). However, the person is entitled to payment from this Part of the Fund of a lump sum benefit provided by subrule (d) if:
- (i) contributions were being paid to the person's Special Account (if any) immediately before the person's retirement or retrenchment as a Mine Worker; and
 - (ii) the benefit under subrule (d) would provide the person with a greater amount than the benefit under subrule (c) - The benefit provided by this subrule 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 person retired as a Mine Worker or, being a retrenched Dormant Member, applied for the benefit.

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 person before 3 January 1993; and
- in respect of which contributions have been paid to the Fund under the Principal Act or are taken by the Trustee to have been paid to this Part of the Fund.

- (c) The benefit provided by this subrule is the amount calculated in accordance with the formula:

$$\left(Ax \frac{B}{C} x E\right) - F$$

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 person retired as a Mine Worker or, being a 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 person have been, or are taken by the Trustee to have been, paid to this Part of the Fund and, in respect of the period after 2 January 1993, have been paid to the person's Special Account (if any).

F is the amount standing to the credit of the person's Special Account in Part 2 of the Fund.

- (d) If a person dies before a benefit to which the person would otherwise have been entitled under this Rule has been paid, the Trustee must, on application being made to it by the person's personal representatives, pay the benefit to those representatives.

3.12.2 Lump sum benefit payable on death of Mine Worker or retrenched Dormant Member

- (a) If no other benefit is payable or has been paid under this Rule 3.12, a lump sum benefit, determined in accordance with this Rule, is payable as provided by Rule 3.12.3 on the death after 2 January 1993 of:

- (i) a Mine Worker who on that date was a contributor to the Fund under the Principal Act; or
 - (ii) a person who on that date was a Dormant Member but who became a Mine Worker after that date,
- and who in either case was a Mine Worker at the time of death.
- (b) If no other benefit is payable or has been paid under this Rule 3.12, then, at the discretion of the Trustee, a lump sum benefit, determined in accordance with this Rule, is payable as provided by Rule 3.12.3 on the death after 2 January 1993 of a person who, not having reached the age of 60 at the time of death, was on that date:
- (i) a Mine Worker who was a contributor to the Fund under the Principal Act but who subsequently became a Dormant Member as a result of retrenchment; or
 - (ii) a Dormant Member whose latest period of service as a Mine Worker was terminated by retrenchment after 25 March 1978,
- and who in neither case was a Mine Worker at the time of death.
- (c) The lump sum benefit payable under this Rule on the death after 2 January 1993 of:
- (i) a person referred to in subrule (a)(i) or (ii) who, immediately before death, was a Mine Worker in respect of whom contributions were being paid to the person's Special Account (if any); or
 - (ii) a person referred to in subrule (b)(i) who, immediately before ceasing to be a Mine Worker, was a Mine Worker in respect of whom contributions were being paid to the person's Special Account (if any),
- is the greater of the amounts determined in accordance with subrules (f) and (g).
- (d) The lump sum benefit payable under this Rule on the death after 2 January 1993 of a person referred to in subrule (b)(ii), or a person referred to in subrule (a)(i) or (ii) or (b)(i) in respect of whom there is no Special Account, is the amount determined in accordance with subrule (f) or, if the Trustee in its discretion so decides, subrule (g).
- (e) Except as provided by subrules (c) and (d), the lump sum benefit payable under this Rule is the benefit provided by subrule (f).
- (f) The benefit provided by this subrule is the amount calculated in accordance with the following formula:

$$Ax \frac{B}{C} x D$$

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 person 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 person before 3 January 1993;. and
- in respect of which contributions have been paid to the Fund under the Principal Act or are taken by the Trustee to have been paid to this Part of the Fund.

- (g) The benefit provided by this subrule is the amount calculated in accordance with the formula:

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

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 , person died.

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 person in his or her Special Account in Part 2 of the Fund.

G is 240 multiplied by the total number of benefit units determined in respect of the deceased person in accordance with Rule 3.12.3.

H is the amount of insurance (if any) that, on the death of the person, is payable from Part 2 of the Fund in association with the person's Special Account in the Accumulation Fund.

3.12.3 Payment of benefit on death of a person to whom Rule 3.12.2 applies

Sub-rule 3.12.3(a)
replaced by Amending
Deed dated 20 May 1997.
Effective 31 January
1995.

- (a) For the purposes of this Rule and Rule 3.12.2, “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 meaning as in Rule 3.12.2.

- (b) A dependant of a deceased person in respect of whom a benefit is payable under Rule 3.12.2 is entitled to:

- (i) such proportion of the benefit as the dependant's entitlement under this Rule bears to the sum of all the entitlements under this Rule that relate to the benefit; or
- (ii) if the Trustee makes a special determination in respect of the benefit - such proportion of the benefit as the Trustee specifies in the determination.

- (c) The entitlement of the deceased person's spouse is:

- (i) 1 benefit unit; or
- (ii) if the deceased person's actual service exceeds 240 months - the number of benefit units calculated by dividing the number of months of that service by 240.

- (d) If the deceased person is survived by a spouse and dependent children, the entitlement of each child is:

- (i) one-third of a benefit unit if there are no more than 3 dependent children; or
- (ii) 1 benefit unit divided by the number of children if there are more than 3 dependent children.

- (e) If the deceased person is not survived by a spouse but is survived by no more than 3 dependent children, the entitlement of each child is the greater of the following:

- (i) (A) if there are three surviving dependent children, two-thirds of a benefit unit; or
- (B) if there are one or two surviving dependent children, one benefit unit.
- (ii) the number of benefit units determined in accordance with the following calculation:

$$BU = \frac{NM}{240} \times \frac{1}{DC}$$

where:

BU represents the number of benefit units to be determined;

Sub-rule 3.12.3(e)
replaced by Amending
Deed dated 20 May 1997.
Effective 2 January 1993.

NM represents the number of months of the deceased person's actual service;

DC represents the number of surviving dependent children.

- (f) If the deceased person is not survived by a spouse but is survived by more than 3 dependent children, the entitlement of each child is 2 benefit units divided by the number of dependent children.
- (g) If the deceased person is survived by fewer than 3 dependent children and is also survived by dependent parents, dependent relatives or other dependants, then whether or not there is a surviving spouse:
 - (i) the entitlement of each of the dependent parents is three- quarters of a benefit unit; and
 - (ii) the entitlement of each of the dependent relatives is one- half of a benefit unit; and
 - (iii) the entitlement of each of the other dependants is one- quarter of a benefit unit (except where the dependant is entitled to a benefit unit or a fraction of a benefit unit under another provision of this section).
- (h) For the purposes of this Rule and Rule 3.12.2, a person (including a parent or relative) is a dependant of the deceased person only if the Trustee is satisfied:
 - (i) that the person was totally or mainly dependent on the deceased person for financial support when the deceased person died; or
 - (ii) where the person is a child of the deceased person - that the child was under 16 years of age when the deceased person died.
- (i) If the spouse of the deceased person dies either:
 - (i) at the same time as the deceased person or in such circumstances as to make it uncertain which of them survived the other; or
 - (ii) within 48 hours before the death of the deceased person,

the spouse is, for the purposes of this section, taken to have been alive at the time of the deceased person's death.
- (j) The entitlement under this Rule of a child who has not reached 18 years of age is for the support and education of the child and is payable:
 - (i) to a parent or guardian of the child (as determined by the Trustee); or
 - (ii) if the Trustee decides that the entitlement should be paid to some other person - to that other person.

The entitlement under this Rule of a child who has reached 18 years of age is payable to the child.

Sub-rule 3.12.3(k)
replaced by Amending
Deed dated 20 May 1997.
Effective 2 January 1993.

- (k) If the deceased person sustained an Injury (including an Injury resulting from the negligence or misconduct of any person, including the deceased person) and died either directly or indirectly as a result of the Injury within six months of the date on which the Injury was sustained, then an additional three-eighths of a benefit unit is payable to either:
- (i) the spouse, if the spouse survived the deceased person; or
 - (ii) the deceased person's legal personal representative, if the spouse did not so survive.
- (l) The number of benefit units applicable to a deceased person under this Rule cannot exceed 2 except when subrule (k) applies.
- (m) The entitlements under subrule (g) are to be reduced proportionally or eliminated if the total number of benefit units (excluding any entitlement under subrule (k)) would otherwise exceed 2.
- (n) If no person has an entitlement under this Rule, the benefit under Rule 3.12.2:
- (i) must be paid to the personal representatives of the deceased person; and

Sub-rule 3.12.3(n)
replaced by Amending
Deed dated 20 May 1997.
Effective 2 January 1993.

- (ii) in that case, is to be the greater of:
 - (A) the amount calculated in accordance with Rule 3.12.1 as if the deceased person had retired on the date of death with an entitlement to a benefit payable under that Rule; and
 - (B) the amount calculated in accordance with subrule (c) as if the deceased person had a spouse at the date of death.

"child" deleted by
Amending Deed dated 9
December 2009.
Effective 1 July 2009.

- (o) In this Rule:
- “relative” means a brother, sister, step-brother, step-sister, grandfather, grandmother, grandson, grand-daughter or child over 18 years of age and who is financially dependent on the deceased person;

Rule 3.12.3(o) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

3.12.4 Competing Claims for spouse's benefits

"spouse" deleted by
Amending Deed dated 9
December 2009.
Effective 1 July 2009.

- (a) This Rule applies to a benefit that is payable under Rule 3.12.2 to the spouse of a deceased person.
- (b) If a benefit under Rule 3.12.2 would be payable to more than one person because the deceased person has left more than one spouse, then, despite any other provision of this Part of the Fund:
 - (i) the benefit is payable in accordance with a determination made by the Trustee and not otherwise; and
 - (ii) the total amount of benefit payable to the spouses at any time must not exceed the amount of benefit that would be payable if there were only one spouse.

Sub-rule 3.12.4 amended
by Amending Deed dated
20 May 1997. Effective
31 January 1995.

- (c) For the purposes of subrule (b)(i), the Trustee may determine in relation to a benefit:
 - (i) that the benefit is not payable to such of the spouses concerned as it specifies; or
 - (ii) that the benefit is to be apportioned between those spouses in such manner as it specifies.
- (d) The Trustee may withhold the payment of any part of a benefit payable under Rule 3.12.2:
 - (i) until 30 days after the death of the person in respect of whom the benefit is payable; or
 - (ii) if an application for the benefit has been made by more than one person, until it is satisfied that only one of those persons is entitled to the benefit or until the Trustee has made a determination under this Rule in relation to the matter.
- (e) If, after 30 days from the death of a person in respect of whom a benefit under Rule 3.12.2 is payable, the whole or a part of the benefit is paid to a spouse of the deceased person, the following provisions apply:
 - (i) if the whole of the benefit has been paid - no benefit is payable under that Rule to any other spouse of the deceased person;
 - (ii) if a part of the benefit has been paid - no more than the balance of the benefit is payable to any other spouse of the deceased person.
- (f) For the purposes of subrule (e), an amount paid in good faith by the Trustee to a person purporting to be a spouse of the deceased person is taken to have been paid to a spouse of the deceased person.
- (g) If, after 30 days from the death of a person in respect of whom a benefit under Rule 3.12.2 is payable, an amount is so paid:
 - (i) to the deceased person's personal representatives; or
 - (ii) to such other persons as the Trustee may determine,
 any benefit that is payable under that Rule to the spouse of the deceased person is to be reduced by the amount paid.

3.12.5 Lump sum benefit payable for incapacity of Mine Worker

- (a) A benefit equal to the amount applicable under subrule (d) is payable to a person who:
 - (i) on 2 January 1993 was a Mine Worker contributing to the Fund under the Principal Act or after that date is a Mine Worker who on that date was a Dormant Member; and
 - (ii) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and

- (iii) had that employment terminated after 2 January 1993 as a result of his or her disability; and
- (iv) has, in respect of the incapacity, neither been awarded a pension under Rule 3.9.2 nor become entitled to a lump sum benefit under Rule 3.12.1; and
- (v) has submitted to any medical examination required under this Rule; and
- (vi) has satisfied the Trustee 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,

PROVIDED THAT a benefit equal to the amount applicable under subrule (e) is payable if it would provide the person with a greater amount than the benefit otherwise payable under subrule (a).

- (b) A benefit equal to the greater of the amounts applicable under subrules (d) and (e) is payable to a person who:
 - (i) on 2 January 1993 was a Mine Worker contributing to the Fund under the Principal Act or after that date is a Mine Worker who on that date was a Dormant Member; and
 - (ii) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
 - (iii) as a result of his or her disability, had that employment terminated after 2 January 1993 by an Owner contributing to the COSAF Superannuation Fund or Part 2 of the Fund in respect of the Mine Worker; and
 - (iv) has, in respect of the incapacity, neither been awarded a pension under Rule 3.9.2 nor become entitled to a lump sum benefit under Rule 3.12.1; and
 - (v) has submitted to any medical examination required under this Rule; and
 - (vi) has satisfied the Trustee in accordance with subrule (j) 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,

PROVIDED THAT a benefit equal to the amount applicable under subrule (d) is payable if it would provide the person with a greater amount than the benefit otherwise payable under subrule (b).

- (c) A benefit equal to the greater of the amounts applicable under subrules (d) and (e) is payable to a person who:

- (i) on 2 January 1993 was a Mine Worker contributing to the Fund under the Principal Act or after that date is a Mine Worker who on that date was a Dormant Member; and
- (ii) became incapacitated by injury or illness before, on or after 2 January 1993 while employed in the coal or oil shale mining industries; and
- (iii) as a result of his or her disability, had that employment terminated after 2 January 1993 by an Owner contributing to the COSAF Superannuation Fund or Part 2 of the Fund in respect of the Mine Worker; and
- (iv) has, in respect of the incapacity, neither been awarded a pension under Rule 3.9.2 nor become entitled to a lump sum benefit under Rule 3.12.1; and
- (v) has submitted to any medical examination required under this Rule; and
- (vi) has satisfied the Trustee 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,

Rule 3.12.5(c) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

PROVIDED THAT a benefit equal to the amount applicable under subrule (d) is payable if it would provide the person with a greater amount than the benefit otherwise payable under subrule (c).

- (d) The amount of a lump sum benefit payable under this Rule to a Mine Worker referred to in subrule (a) is the amount that would have been payable to the Mine Worker under Rule 3.12.1(c) if:
 - (i) the Mine Worker had retired on the date of disability; and
 - (ii) Rule 3.12.1(c) 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.
- (e) The amount of a lump sum benefit payable to a Mine Worker referred to in subrule (b) or (c) is an amount equal to the amount calculated in accordance with the following formula:

$$\left(Ax \frac{B}{C} xD\right) - F - H$$

where:

A, C, F and H have the same meanings as they would have in Rule 3.12.2(g) if references in that subrule:

- (i) to the death of a Mine Worker (however expressed) were references to a disabled Mine Worker; and
- (ii) 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 the Principal Act as in force immediately before 3 January 1993.

- (f) In the explanation of the symbol “D” in subrule (e), 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:
 - (i) in accordance with subrule (g), in the case of a Mine Worker referred to in subrule (b) as to whom the Trustee is satisfied that the incapacity was caused by injury or illness while a Mine Worker; or
 - (ii) as if the Mine Worker had retired on the date of the disability, in the case of a Mine Worker referred to in subrule (c).
- (g) The maximum period of service for the purposes of subrule (f) is to be determined:
 - (i) 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
 - (ii) if the Mine Worker is aged 55 or more at the date of disability - as if the Mine Worker had retired on that date.
- (h) If the Trustee is not satisfied that the incapacity or illness of a person referred to in subrule (b) was caused by injury sustained while engaged in performing work as a Mine Worker, then, instead of the amount applicable under subrule (e), the amount of the lump sum benefit payable to the person is the greater of:
 - (i) the amount that would have been payable to the person under subrule (c) if the person had qualified for a benefit of the kind referred to in that subrule; and
 - (ii) 10 per cent of the amount that would have been payable to the person under subrule (e) if the person had been a Mine Worker to whom subrule (f)(i) applied, together with a further 10 per cent of that amount for each completed year of the person's engagement in the coal or oil shale mining industries that has elapsed before the person's date of disability (up to a maximum of 100 per cent of that amount).
- (i) The Trustee may require an applicant for a lump sum benefit under this Rule to submit to an examination by a panel of 3 medical practitioners nominated by the Trustee after considering any representations made by the applicant in relation to the membership of the panel.

- (j) The Trustee is not to be satisfied as to the incapacity of a Mine Worker referred to in subrule (b) 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.
- (k) A person is not entitled to a lump sum benefit under subrule (b) or (c) if the cause of the incapacity claimed was an act or default of the person that was intended to produce the incapacity.
- (l) 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 Trustee which, in making the determination, is to have regard to all the circumstances of the case, including:
 - (i) the person's medical and employment history; and
 - (ii) the date on which the person ceased to be able to be effectively employed as a Mine Worker.
- (m) 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 Trustee under subrule (l).
- (n) If a Mine Worker to whom this Rule applies dies after making an application for a benefit under this Rule but before the benefit has been paid, the Trustee may, on application being made to it by the Mine Worker's personal representatives, pay the benefit to those representatives. This subrule applies in respect of a Mine Worker even though the Mine Worker's application may have been made before the commencement of this subsection (14) of Section 14L of the Principal Act.

3.12.6 2 January 1993 Members and Dormant Members without other benefits

- (a) This Rule applies to the following persons:
 - (i) a Mine Worker:
 - (A) who on 2 January 1993 was contributing to the Fund under the Principal Act; and
 - (B) who ceases to be a Mine Worker before reaching the age of 55 because of resignation or dismissal or in any other circumstances determined by the Trustee for the purposes of this Rule;
 - (ii) a person:
 - (A) who on 2 January 1993 was a Dormant Member; and

- (B) who, having become a Mine Worker after that date, later ceased to be a Mine Worker before reaching the age of 55 because of resignation or dismissal or in any other circumstances determined by the Trustee for the purposes of this Rule;
- (iii) a Dormant Member whose last period of service as a Mine Worker ceased because of resignation or dismissal or in any other circumstances determined by the Trustee for the purposes of this Rule.
- (b) However, this Rule does not apply to a person referred to in subrule (a) if the person has previously received a benefit from the Fund under the Principal Act or this Part of the Fund in respect of service in the coal or oil shale mining industries.
- (c) A benefit is payable under this Rule in respect of a person to whom this Rule applies, if no pension or lump sum benefit is payable under this Part of the Fund in respect of service for which contributions have been made to the Fund under the Principal Act by the person.
- (d) The benefit in respect of a person to whom this Rule applies, is payable:
- (i) to the person on application to the Trustee, unless the person dies before the payment is made; or
 - (ii) to the personal representatives of the person, on application to the Trustee, if the person applies for the benefit and dies before it is paid; or
 - (iii) to the personal representatives of the person on application to the Trustee, if the person dies without applying for the benefit.
- (e) The benefit payable under this Rule is a refund of the contributions of the person made before 3 January 1993 in respect of the period or periods during which the person was engaged in the coal or oil shale mining industries until:
- (i) the date of resignation, in the case of a Mine Worker; or
 - (ii) in the case of a Dormant Member, the date of resignation or dismissal.
- (f) There is to be added to a refund of contributions a reasonable allocation of interest.
- (g) 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 Rule if a pension or lump sum benefit payment is, after termination of the engagement, otherwise payable under this Part of the Fund by reference to that period.
- (h) If contributions made by a person to whom this Rule applies in respect of a period are refunded under this Rule, the person is, for the purposes of Rule

Rule 3.12.6(f) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

3.9, taken not to have been during that period engaged in the coal or oil shale mining industries.

- (i) A reference in this Rule to contributions to the Fund under the Principal Act is a reference to those contributions reduced by an amount equal to so much of them as has previously been refunded under this Rule or Section 19J or 19L of the Principal Act and has not, after being refunded, been repaid to the Fund under the Principal Act under Section 10AA of the Principal Act.
- (j) This section does not prevent preservation of a benefit in this Part of the Fund by a Mine Worker who resigns.

3.12.7 Refund of shortfall

- (a) If:
 - (i) for any reason a pension payable to or in respect of a Mine Worker under a provision of Rule 3.9 is, except by commutation, cancelled or otherwise terminated, and
 - (ii) there is no dependant of the Mine Worker who is entitled to a pension under any other provision of that Rule; and
 - (iii) the total benefit paid as pension under that Rule (being the reduced amount if the pension has been reduced under that Rule) is less than the amount of refund that would have been payable in respect of the Mine Worker under Rule 3.12.6,

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

- (b) For the purposes of this Rule an appropriate application is an application made by:
 - (i) the Mine Worker concerned, unless the Mine Worker has died; or
 - (ii) a dependant of the Mine Worker, if the Mine Worker has died; or
 - (iii) the personal representatives of the Mine Worker, if the Mine Worker has died without dependants.
- (c) If for any reason the amount of a lump sum benefit payable under this Rule 3.12 would be less than the amount of refund that would have been payable to, or in relation to, the Mine Worker under Rule 3.12.6 had that Rule been applicable:
 - (i) the Mine Worker is; or
 - (ii) 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.

Rule 3.12.7(a) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

Rule 3.12.7(c) amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

3.12.8 Retrenchment before age 55

- (a) In this Rule, a reference to an affected person is a reference
- (i) a Mine Worker who:
 - (A) was a contributor to the Fund under the Principal Act on 2 January 1993; and
 - (B) before attaining the age of 55, is retrenched as a Mine Worker; and
 - (C) elects to take a benefit under this Rule; and
 - (ii) a person who:
 - (A) on 2 January 1993 was a Dormant Member; and
 - (B) having become a Mine Worker after that date, is later retrenched before attaining the age of 55; and
 - (C) elects to take a benefit under this Rule; and
 - (iii) 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 Rule.
- (b) The benefit payable to an affected person under this Rule is a benefit equal to that which would be applicable to the affected person under Rule 3.12.1 if the affected person had retired on the date of election and that Rule had been amended:
- (i) by omitting from Rule 3.12.1(a)(i) the words “and who retires after 2 January 1993 at the age of 55 or more”; and
 - (ii) by omitting Rule 3.12.1(a)(iii)(B).
- (c) A benefit under this Rule may be paid to an affected person on the occurrence of any of the following events or circumstances:
- (i) if the Trustee is satisfied that the person, having attained the age of 55, has permanently retired from all employment;
 - (ii) if the Trustee is satisfied that the person, although not having attained the age of 55, has permanently ceased to be employed in any capacity because of the person's physical or mental incapacity;
 - (iii) if the Trustee is satisfied that the Regulator has approved payment of the benefit;
 - (iv) if the Trustee approves payment of the benefit in accordance with guidelines laid down by the Regulator;
 - (v) if the Trustee is satisfied that the person has left or is about to leave Australia permanently;

Rule 3.12.8(c) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

Rule 3.12.8(d) amended
by Amending Deed dated
31 March 2005. Effective
1 April 2005.

- (vi) if the Superannuation Industry (Supervision) Regulations prescribe any other event or circumstance when a preserved benefit can be paid - on the occurrence of that event or circumstance.
- (d) If, in the case of a benefit other than a benefit payable to an affected person as provided by subrule (c), the amount of the benefit exceeds the amount calculated in accordance with Rules 3.12.6(e) and 3.12.6(f), the excess may, at the request or with the agreement of the person:
 - (i) be transferred to an Approved Deposit Fund or to another superannuation fund; or
 - (ii) be used to purchase a Deferred Annuity,
but only if the Trustee is satisfied that the fund or annuity complies with the Superannuation Industry (Supervision) Regulations.
- (e) If the affected person so elects, the Trustee is to deal with the whole of the benefit payable under this Rule as if it were an excess amount under subrule (d).
- (f) If an affected person elects to take a benefit under this Rule and dies before the election takes effect, the benefit is payable to the personal representatives of the affected person.
- (g) A person who makes an election under this Rule is not entitled to any other benefit under this Part of the Fund, except a benefit under Part 4A of the Current Act.
- (h) If the amount by which a benefit payable under this Rule exceeds the amount calculated in accordance with Rules 3.12.6(e) and 3.12.6(f) is less than the amount prescribed by the Superannuation Industry (Supervision) Regulations as the amount below which the preservation standards set out in those Regulations do not apply, then:
 - (i) subrules (c) and (d) do not apply to the benefit; and
 - (ii) the benefit is payable on the application of the person entitled to it.

Rule 3.12.8 deleted by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

3.12A Minimum Benefits

Rule 3.12A inserted
by Amending Deed
dated 26/7/06.
Effective 1/7/06

The minimum benefit payable to or in respect of a Member from Part 3, together with any other benefit payable to or in respect of a Member from any other Part of this Fund, must, when taken into account with any other benefit received by the Member from any other Approved Benefit Arrangement to which an Employer contributes on behalf of the Member, be no less than the minimum benefit required to be provided by that Employer in respect of that Member in accordance with the Superannuation Guarantee (Administration) Act 1992 or by any other State or Commonwealth legislation in order to avoid or minimise the imposition of any penalty, charge or Tax on the Employer by that legislation, by the Superannuation Guarantee Charge Act 1992, or by any related legislation.

3.13 Subsidy Benefits

The Trustee may pay any amount which it determines to be payable under Part 4A of the Current Act out of the Subsidy Account as referred to in Rule 3.5.5. Any such payments shall be subject to the same terms and conditions applicable to payments from the Subsidy Fund as prescribed in Part 4A of the Current Act.

3.14 General Provisions for Benefit Payments

3.14.1 Certain periods not to be counted

For the purposes of this Rule 3.14, Rule 3.1.1(b)(ii) and (iii) are taken to have been repealed.

Rule 3.14 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

3.14.2 Application for lump sum benefit

- (a) An application for a lump sum benefit under this Part of the Fund is to be in a form approved by the Trustee, is to be verified by statutory declaration and is to be lodged with, or forwarded to, the Trustee.
- (b) On receipt of such an application, the Trustee is to cause to be made such investigations as appear to the Trustee to be desirable.
- (c) After considering the application and the result of the investigations, the Trustee is to approve or refuse the application or adjourn its consideration until further information required by the Trustee is produced by the applicant.
- (d) If the Trustee 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.
- (e) The Trustee is to notify an applicant under this Rule of its decision on the application.

3.14.3 Only one payment to be made for one period of engagement

A lump sum benefit payable to or in respect of a person under Rule 3.14 must not include an amount attributable to any period of engagement in the coal or oil shale mining industries for which:

- (a) a pension or an addition to a pension is payable or has been paid under Part 2 of the Fund under the Principal Act or Rules 3.9, 3.10, 3.11, 3.12 or 3.14 of this Part of the Fund; or
- (b) another lump sum benefit is payable or has been paid under Part 2 of the Fund under the Principal Act or Rules 3.9, 3.10, 3.11, 3.12 or 3.14 of this Part of the Fund; or
- (c) a refund of contributions is payable or has been paid under Part 2 or Part 4B of the Fund under the Principal Act or under this Part of the Fund,

or to any such period that occurred before the period for which such a pension, addition, benefit or refund has been paid.

Rule 3.14.3 amended by Amending Deed dated 31 March 2005. Effective 1 April 2005.

3.14.4 No refund for person whose engagement in the coal or oil shale mining industries ceased before 25 May 1971

A person whose engagement in the coal and oil shale mining industries was terminated before 25 May 1971 is not, and has never been, entitled to a refund of contributions paid by the person to the Fund under the Principal Act.

3.14.5 Refund of contributions under this Part and Part 4B to be reduced in certain cases

- (a) An amount that, but for this subrule, would be payable as a refund of contributions under Rule 3.12.6 or Section 19J or 19L of the Principal Act to or in respect of a person is to be reduced by an amount equal to all contributions made to the Fund under the Principal Act by the person in respect of the period during which the person was engaged in the coal or oil shale mining industries before 25 May 1971.
- (b) An amount that, but for this subrule, would be payable as a refund under Rule 3.12.6 or Section 19J or 19L of the Principal Act to or in respect of a person is to be reduced:
- (i) by an amount equal to so much of the person's, contributions to the Fund under the Principal Act as has been refunded to the person under any of those Rules or sections and has not since been repaid to this Part of the Fund or the Fund under the Principal Act; and
 - (ii) by the amount of any pension or addition to a pension paid to the person under the Principal Act or this Part of the Fund for any period after the commencement of section 10 of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1971.

3.14.6 Pensions to be inalienable

Subject to this Part of the Fund, a pension shall be absolutely inalienable, whether by way or in consequence of sale, assignment, charge, execution, insolvency, or otherwise howsoever:

PROVIDED THAT, if permitted by Relevant Law, nothing herein shall be construed to prevent the Trustee with or without the consent of the pensioner, from paying the whole or any portion of the pension to any other person for the use of the pensioner or in satisfaction to the extent thereof of any of his just debts or liabilities.

3.14.7 Suspension of pension rights in certain events - alternative pensions to dependants

- (a) Where any person who has been awarded a pension pursuant to this Part of the Fund is sentenced to imprisonment for any period in excess of one month, his pension rights pursuant to this Part of the Fund shall be suspended during the period of such imprisonment, and any person who would, if such pensioner were dead, have been eligible for a pension under Rule 3.9.10 or Rule 3.9.11, shall be eligible for a pension in accordance with Rule 3.9.10 or Rule 3.9.11, as the case may be, during the period of such imprisonment as if such pensioner were dead.

Rule 3.14.5 amended by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

- (b) (i) While any Mine Worker who is eligible for or who has been awarded a pension pursuant to this Part of the Fund is a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983, his pension rights pursuant to this Part of the Fund shall, if the Trustee so orders, be suspended and, while an order under this paragraph is in force any person who would, if the Mine Worker were dead, have been eligible for a pension under Rule 3.9.10 or Rule 3.9.11 shall be eligible for a pension in accordance with Rule 3.9.10 or Rule 3.9.11, as the case may be, as if the Mine Worker were dead and shall be entitled to retain the whole of the pension for his own use and benefit absolutely, the provisions of any other Act notwithstanding.
- (ii) While any person who is eligible for or who has been awarded a pension under Rule 3.9.10 or Rule 3.9.11 (whether upon the death of a Mine Worker or by reason of the operation of paragraph (b)(i)) is a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983, the pension rights of that person pursuant to this Part of the Fund shall, if the Trustee so orders, be suspended.
- (iii) Notwithstanding the foregoing provisions of this subrule the period during which the pension rights of any temporary patient or continued treatment patient within the meaning of the Mental Health Act 1958, any forensic patient within the meaning of the Mental Health Act 1983 or any protected person within the meaning of the Protected Estates Act 1983 shall be suspended as aforesaid shall not, if the Trustee so directs, include any period during which such patient is on leave from any admission centre, mental hospital, or authorised hospital, within the meaning of those Acts prior to his discharge.
- (iv) Upon any direction of the Trustee under paragraph (c) the eligibility of any person for a pension in accordance with Rule 3.9.10 or Rule 3.9.11 and the rights conferred upon any such person by the operation of the foregoing provisions of this subrule shall cease and determine.
- (c) The wife of any Mine Worker eligible for or in respect of a pension under this Part of the Fund who has been deserted by her husband or has been left by him without means of support and who satisfies the Trustee:
- (i) that she has taken proceedings against her husband for an order for the provision of maintenance under the Family Law Act 1975 of

Rule 3.14.7(b)(ii)
amended by Amending
Deed dated 31 March
2005. Effective 1 April
2005

Rule 3.14.7(3) deleted by
Amending Deed dated 31
March 2005. Effective 1
April 2005.

the Commonwealth and either that she has failed to obtain an order or that the order, if made, has not been complied with; and

(ii) that the whereabouts of her husband are not known,

shall be eligible for a pension in accordance with Rule 3.9.10, as if the Mine Worker were dead, during the period for which she is so deserted or left without means of support.

Where a pension is awarded to a deserted wife pursuant to this subrule the Trustee may suspend the pension payable to the Mine Worker.

3.14.8 Appointment of person to receive pension or lump sum benefit payment

Where a person entitled to payment of a pension or a lump sum benefit payment under this Part of the Fund is for any cause unable to give a valid receipt for such payment the Trustee may direct that payment be made to some person on his behalf, and the receipt of such person for any payment so made shall be a valid discharge.

3.14.9 Recovery of overpayments of pensions

- (a) Where it is found that any pension or instalment of a pension or any lump sum benefit payment or any part thereof which is not payable has been paid or that any sum paid by way of pension or instalment of pension or lump sum benefit payment is in excess of the amount so payable, the amount wrongly paid may be recovered by the Trustee or, where it is practicable so to do, the Trustee may make any necessary adjustments to any instalments of the same or any other pension thereafter becoming payable.
- (b) Nothing in this Rule shall relieve the person wrongly receiving any such payment from any other liability in respect of any fraud committed by him.

3.14.10 Interest payable where payment of benefit is delayed

- (a) Whenever there has been a delay in making payment of a pension or lump sum benefit under this Part of the Fund (for whatever reason) to or in respect of a person who was a Mine Worker, the Trustee may, in its discretion, award interest on the amount of pension or lump sum from the date on which the person ceased to be a Mine Worker to the date of payment of the pension or lump sum benefit.
- (b) This Rule applies to or in respect of any person who ceased to be a Mine Worker on or after 4 December 1989.

3.14.11 Double benefits

Except where otherwise prescribed, a person is not eligible for benefits under both Rule 3.9 and Rule 3.10 or 3.11 of Part 2 in respect of the same period, or for 2 or more benefits under Rules 3.10 or 3.11 in respect of the same period.

3.14.12 Deductions from Pensions and Subsidies

Any person to whom a pension or subsidy is payable under this Part of the Fund shall, in such manner and at such times as the Trustee may direct, make full and complete disclosure to the Trustee of any circumstances pursuant to which any amount is required to be deducted from the pension or subsidy so payable.

APPENDIX 3A

(RULE 3.1.1(f))

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Class	Description of person	Amount of pension or addition: initial rate	Amount of pension or addition: subsequent rate \$
(1)	Mine Worker (single man's rate)	A person who is in receipt of, or eligible to receive, a pension under Rules 3.9.2, 3.9.6 or 3.9.7 or who becomes eligible therefor, being a person who is not entitled under Rule 3.9.8 to a pension at the married man's rate.	176.75	36.15 plus \$10.00 from 1 January 2000
(2)	Mine Worker (married man's rate)	A person who is in receipt of, or eligible to receive, a pension under Rule 3.9.2, 3.9.6 or 3.9.7 or who becomes eligible therefor, being a 2000 person who is entitled under Rule 3.9.8 to a pension at the married man's rate.	277.75	49.70 plus \$10.00 from 1 January 2000
(3)	Widow, etc	A person who is in receipt of, or eligible to receive, a pension under Rule 3.9.10 (except subrule (f)), whether by virtue of the operation of Rule 3.9.11 (a) or otherwise, or Rule 3.9.11 (except subsection (f)), or who becomes eligible therefor, not being a person referred to in Item (4).	161.70	21.10 plus \$25.05 from 1 January 2000
(4)	Child, etc.	A person: <ul style="list-style-type: none"> (a) who is in receipt of, or eligible to receive, an addition under Rule 3.9.9(e), (f), (g), (h) or (i) or who becomes eligible therefor; or (b) who is in receipt of, or eligible to receive a pension equal to an addition referred to in paragraph (a) by virtue of Rule 3.9.10(a) or (g) or who becomes eligible therefor. 	25.25	25.25

PROVIDED THAT the amounts of pension listed in Column 5 shall be increased on 1 January each year commencing on 1 January 2000 by the rate of increase in the Consumer Price Index (All Groups Sydney) over the year to the previous September quarter.”

APPENDIX 3B

(Rule 3.3.5)

RETURN OF EMPLOYMENT OF MINE WORKER AUSCOAL SUPERANNUATION FUND

This notice should be completed and returned within 14 days after you become employed.

Surname (block letters):

Other names (in full):

Address:

Date and year of birth:

Country and place of birth:

Proof of age (e.g. birth certificate) is attached*/will be forwarded*.

Tax File Number (TFN):

Name of colliery at which now employed:

Starting date:

Present classification

Prior to my employment with my present employer have been employed as a mine worker in Australia at the following collieries:-

.....colliery, from to

.....colliery, from to

.....colliery, from to

.....colliery, from to

.....colliery, from to

.....colliery, from to

At present I am a financial member of the Union*/Association*.

The above statements are true and complete to the best of my knowledge.

Signature of mine worker:

Date:

*Delete whichever is inapplicable.

Your Tax File Number

You are not obliged to provide your tax file number (TFN) to the Trustee.

If you provide your TFN to the Trustee, you should know:

- your TFN is confidential;
- the Trustee is authorised to collect your TFN by tax laws, the *Superannuation Industry (Superannuation) Act 1993* and the *Privacy Act 1988*.

If you provide your TFN to the Trustee, the Trustee will use it only for legal purposes including:

- taxing eligible termination payments at concessional rates;
- finding and amalgamating your superannuation benefits where insufficient information is available;
- passing your tax file number to the Australian Taxation Office (ATO) where you receive a benefit or have unclaimed superannuation money after reaching the aged pension age;
- allowing the Trustee to provide your TFN to another superannuation fund or Retirement Savings Account (RSA) provider receiving any benefits you may transfer. The Trustee won't pass your tax file number to any other fund or RSA provider if you tell the Trustee in writing that you don't want the Trustee to pass it on; and
- allowing the Trustee to quote your tax file number to the ATO when reporting details of contributions for the purposes of the Superannuation Contributions Tax (surcharge).

It is not an offence if you choose not to quote your TFN. However, if you do not provide us with your TFN, either now or later, the consequences may include the following:

- you may pay more tax on your superannuation benefits than you have to (you will get this back at the end of the financial year in your income tax assessment);
- it may be more difficult to find your superannuation benefits in the future if you change address without notifying your fund or to amalgamate any multiple superannuation accounts; and
- surcharge may apply to your superannuation contributions (in some circumstances the surcharge may be reclaimed through the ATO).

The lawful purposes for which your tax file number can be used and the consequences of not quoting your tax file number may change in future as a result of legislative change.

For more information, please contact your financial adviser, the Trustee or the ATO Superannuation Hotline (13 10 20).

4 PART 4 OF TRUST DEED

RULES IN RESPECT OF FORMER MEMBERS OF THE QUEENSLAND COAL AND OIL SHALE MINING INDUSTRY SUPERANNUATION FUND AND NEW PART 4 MEMBERS

4.1 Definitions

In this Part of the Deed:

“Allocated Pension Account” means the account provided for in Rule 4.5.8.

“Allot” inserted by
Amending Deed dated
6/9/06.
Effective 1/1/06

“Allot” has the same meaning as that term has under the *Superannuation Industry (Supervision) Regulations 1994*.

“Associated Employer” means an employer of an Eligible Employee who is not a Mine Worker.

“Associated Employer Contribution Account” means the account provided for in Rule 4.5.7.

“Compassionate Grounds” has the same meaning as that term is defined in the Relevant Law.

“Contingent Liability and Pensioners Reserve Account” means the account provided for in Rule 4.6.

“Contribution Splitting
Amount” inserted by
Amending Deed dated
6/9/06.
Effective 1/1/06

“Contribution Splitting Amount” means an amount of contributions made by or for a Member to Part 4 of the Fund that, on a Member’s request, the Trustee decides to:

- (a) rollover or transfer to another Approved Benefit Arrangement; or
- (b) Allot to a Spouse Member Account,

for the benefit of the Member’s Spouse.

“Contributor” means a Mine Worker who prior to the date of commencement of the Mine Worker’s Superannuation Act:

- (a) has contributed to the Pensions Fund;
- (b) has not had all of their contributions to the Pensions Fund refunded; and
- (c) has not received a pension, lump sum benefit or lump sum withdrawal payment under the Pensions Act except where that mine worker has subsequently contributed to the Pensions Fund.

“Date of Disablement” means the date determined by the Trustee as the date of the Members’ Total and Permanent Disablement for the purposes of Rule 4.7.

“Dependant” deleted and
replaced by Amending
Deed dated 3 February
2009. Effective 1 March
2009.

“Dependant” in relation to a Member includes:

- (a) a person who is or was the spouse of the Member (the word “spouse” shall include the de facto spouse of a Member at the date of the Member’s death or Total and Permanent Disablement);
- (b) a child, adopted child or step child of the Member;

- (c) a person with whom the Member has at the relevant date an interdependency relationship as defined in section 302-200 of the Income Tax Assessment Act 1997;
- (d) any other person who in the opinion of the Trustee is or was at the relevant date wholly or partially dependent upon the Member for maintenance and support; and
- (e) any other person who satisfies the definition of “dependant” in the Superannuation (Industry) Supervision Act 1993.

“Eligible Spouse Contribution” has the same meaning as that term has under the Relevant Law.

“Eligible Employee” means:

- (a) a person who at the date of the commencement of the Mine Worker’s Superannuation Act was a Contributor; or
- (b) a person employed in the coal mining industry in Queensland in or about a coal mine in Queensland in a calling which falls within the definition of ‘Mine Worker’ under the Mine Workers Superannuation Act; or
- (c) an elected official of an industrial or trade union of employees or of an association of employees registered as an organisation under the Commonwealth Conciliation and Arbitration Act of 1904 of the Parliament of the Commonwealth or under the Industrial Conciliation and Arbitration Act 1932 of which union or organisation the membership is principally confined to persons falling within the class of employee referred to in paragraph (b) of this definition, PROVIDED THAT no Member of the Fund shall cease to be an Eligible Employee by virtue of his election as an authorised industrial officer of an industrial organisation of employees registered in accordance with Section 15.2 of the Industrial Relations Act of 1990 of the State of Queensland, which industrial organisation of employees is respondent to a coal mining industry award operative in the State of Queensland and that the authorised industrial officer is in the opinion of the Trustee engaged principally in duties in connection with members employed in the coal mining industry in the said State of Queensland; or
- (d) any employee of an Associated Employer; or
- (e) (i) A person employed in a mining operation in connection with a coal or oil shale mine in Queensland by a person or a body corporate (the “contractor”) to carry out duties or perform work (which if carried out or performed as an employee of the owner of the mine would constitute the person as a Mine Worker under this deed), under either:
 - (A) a certified agreement approved or registered by the Coal Industry Tribunal or the Australian Industrial Relations Commission in respect of the coal mining industry to which the contractor is a party in carrying on the mining operation; or
 - (B) another type of agreement to which the contractor is a party relating to the performance of work by the person,

and where the contractor is not the owner of the mine but carries on the mining operation pursuant to an agreement made between the owner of the mine and the contractor.

- (ii) Paragraph (e) of this definition does not constitute the contractor the owner of the mine within the meaning of this Deed and the Trustee may declare any operation to be a mining operation in connection with a coal or oil shale mine for the purposes of paragraph (e) of this definition.

“Existing Pensioner” means a person who is receiving a Statutory Pension under the Deed because as at the date of commencement of the Mine Workers’ Superannuation Act that person was receiving or was entitled to receive a pension under the Pensions Act.

“Former QCOS Member” is a Member who has been admitted to this Part 4 of the Fund in accordance with Rule 4.3.1 and, for the avoidance of doubt, includes:

- (a) an Existing Pensioner;
- (b) a person who at the date of commencement of the Mine Workers’ Superannuation Act was not in the service of a Participating Employer but in respect of whom the Tribunal had transferred an amount to QCOS;
- (c) a Member who before the QCOS Transfer Date was in receipt of an allocated pension from QCOS;
- (d) a person who, immediately before the QCOS Transfer Date, was a “Spouse Member” of QCOS.

“Full Time”, in relation to being gainfully employed, means gainfully employed for at least 30 hours each week.

“Housekeeper” means in relation to an Existing Pensioner, the person in the Existing Pensioner’s family being totally or mainly maintained by the Existing Pensioner and who is recognised by the Trustee as the Housekeeper of the Existing Pensioner because the Existing Pensioner either:

- (a) does not have a spouse; or
- (b) has a spouse who in the opinion of the Trustee is or was at the relevant date wholly or partially dependent upon the Member for maintenance and support.

“Insured Benefit” means the amount of proceeds of any policy of insurance arranged in respect of a Member pursuant to Clause 1.13.

“leaves the industry” means a situation where a Member has ceased to be employed by a Participating Employer.

“Member’s Accounts” means each of the accounts provided for in Rule 4.5.

“Mine Worker” has the meaning given to that term in section 3 of the Mine Workers’ Superannuation Act.

“Mine Workers’ Superannuation Act” means the Coal and Oil Shale Mine Workers’ Superannuation Act 1989 (Qld) which commenced on 25 December 1989.

“Minimum Benefit Amount” means in respect of a person who was a member of QCOS on 30th June 1998, the amount of benefit that would have been payable on

the death or Total and Permanent Disablement of that Member pursuant to Rule 4.2.1 of the QCOS Deed as it applied prior to 1st July 1998.

“Part Time”, in relation to being gainfully employed, means gainfully employed for at least 10 hours, and less than 30 hours, each week.

“Participating Employer”
deleted by Amending Deed
dated 20/6/07.
Effective 20/6/07

“Pensions Act” means the former Coal and Oil Shale Mine Workers (Pensions) Act (Qld) 1941.

“Pensions Fund” means The Coal Mine Workers’ Pensions Fund which was established pursuant to section 17 of the Pensions Act.

“Prescribed Amount” means an amount which the Trustee shall from time to time determine taking into consideration such factors that the Trustee may consider necessary, and without limiting the generality of the foregoing, the Trustee may take any or all of the following factors into consideration:

- (a) the advice of the Actuary;
- (b) the balance of any accounts; and
- (c) whether a person is married or single and the married rate or single rate of the aged pension payable by the Commonwealth of Australia.

“Reversionary Pension” means a pension payable to a Dependant nominated by the Member in accordance with Rule 4.8.10(f).

“Shortfall Component” has the same meaning assigned to that expression in the *Superannuation Guarantee (Administration) Act 1992*.

“Statutory Pension” means a pension payable under Rule 4.9 of the Deed and includes any amounts payable as an addition to a Statutory Pension.

“Total and Permanent Disablement” in relation to a Member means:

- (a) where all or part of the benefit payable on Total and Permanent Disablement is insured, the meaning given to that term or a corresponding term in the policy of insurance effected by the Trustee to provide a benefit for that Member on his termination of employment due to permanent incapacity or invalidity;
- (b) where the Member is not covered by any policy of insurance arranged by the Trustee as provided in paragraph (a) and the Member was a Member on 30th June 1998, and continued to be a Member up to the date of injury or illness causing the incapacity, that the Member proves to the satisfaction of the Trustee that he is permanently incapacitated for work in the coal mining industry PROVIDED THAT the Trustee is reasonably satisfied that such loss, injury or illness causing the incapacity was not incurred or inflicted for the purposes of obtaining a Benefit from the Fund and PROVIDED FURTHER THAT the Trustee is satisfied the disablement has occurred as a result of an accident or illness which would be regarded as compensatable under the Workers Compensation Act 1990 of the State of Queensland; or
- (c) otherwise, in relation to a Member having been absent from employment for 6 consecutive months due to an illness or injury or such shorter periods as in the circumstances the Trustee considers appropriate such illness or injury being, in the opinion of the Trustee sufficiently serious so as to render the Member unlikely to ever engage in his own occupation or any

occupation for which he is reasonably suited by education, training or experience.

“Tribunal” means the Pensions Tribunal which was constituted under the Pensions Act.

“Unpaid Leave” means any period of absence from employment, with the consent of the relevant employer, taken by a Member in respect of which the Member receives no remuneration and includes parental leave, compassionate leave and special leave, but excludes:

- (a) sick leave taken while a Member is in receipt of salary, wages or other remuneration from the Member’s employer; or
- (b) leave while a Member is in receipt of statutory workers’ compensation payments pursuant to the *Workcover Queensland Act 1996*.

4.2 Eligibility and application for participation

Participation in this Part of the Fund will be restricted to:

- (a) Employers who apply to the Trustee for acceptance as Participating Employers and who are accepted by the Trustee as a Participating Employer in this Part 4 of the Deed;
- (b) Eligible Employees of Participating Employers who are nominated by their Employer as Members of this Part and for whom payments into the Fund have been made by that Participating Employer;
- (c) a spouse of a Member of this Part; and
- (d) Existing Pensioners.

Rule 4.2(a) replaced by
Amending Deed dated
20/6/07.
Effective 20/6/07

4.3 Admission of Members

4.3.1 Former Members of QCOS

- (a) Members of QCOS immediately before the QCOS Transfer Date are admitted as Members of this Part 4 of the Fund on and from the Transfer Date.
- (b) When each Member’s Employer has been admitted as a Participating Employer under Clause 1.14.1, that Employer will be deemed to have agreed, subject to the provisions of the Deed, to contribute to the Fund in respect of each such Member on the same basis as the Employer contributed to QCOS immediately prior to the QCOS Transfer Date.

4.3.2 Nomination by Participating Employer

Each Participating Employer may nominate to the Trustee in such form as may be provided by the Trustee from time to time such of its Eligible Employees as it wishes to be admitted by the Trustee as Members of Part 4 of the Fund and shall nominate whether the Member is a Member in respect of whom the Participating Employer wishes to make Contributions pursuant to Rule 4.4.1 only, Rule 4.4.2 only, Rule 4.4.7 only or any combination of Rules 4.4.1, 4.4.2 and 4.4.7,

4.3.3 Eligible Employees to complete application form

Each Participating Employer shall cause each Eligible Employee whom it has nominated to be admitted as a Member to complete an application to be in or to

the effect of the form set out in Appendix 4A or in or to the effect of such other form as the Trustee shall from time to time determine, and shall forward the completed forms to the Trustee either at the time of nomination or as soon as possible thereafter.

4.3.4 Evidence of Age and other details

The Trustee may require a person eligible to participate in the Fund under Rule 4.2 at the time he becomes a Member or former Member or at any time thereafter to produce proof to the Trustee's satisfaction of the date of the Member's birth and such other details as the Trustee may from time to time request.

4.3.5 Acceptance under special arrangements

If at the time of acceptance of a Member as a Member of Part 4 any matter has been advised to the Trustee as being pertinent to the participation of the Member in the Fund, the Trustee may make such arrangements about that matter as it thinks proper with the Member, the Participating Employer, or any previous employer of the Member or the trustee of any Approved Benefit Arrangement of which the Member was a member or any of them PROVIDED THAT in the opinion of the Trustee the matter is incidental to or consequent upon the participation of such Member in the Fund and the Trustee will confirm in writing with the Participating Employer and/or the Member as the case provides the arrangements so made.

4.3.6 Death and Total and Permanent Disablement Insurance

Each Participating Employer who nominates an Eligible Employee as a Member in respect of whom the Participating Employer wishes to contribute shall advise the Trustee as to whether the Participating Employer wishes the Trustee to effect a policy of insurance in respect of the death or Total and Permanent Disablement of the Member and, subject to the agreement of the Trustee, the level of benefit to be provided under the said policy.

4.4 **Contributions**

4.4.1 Employer Occupational Contributions

Each Participating Employer shall contribute to the Fund the amount determined in accordance with the following Table:

From 18/4/88 to 30/6/89	Fourteen Dollars (\$14.00) per week
From 1/7/1989 to 30/6/90	Fourteen dollars 30 cents (\$14.30) per week
From 1/7/1990 to 5/5/91	Fifteen dollars 20 cent (\$15.20) per week
From 6/5/1991 to 2/5/92 week	Twenty-three dollars 20 cents (\$23.20) per week
From 3/5/1992	Thirty-one dollars 20 cents (\$31.20) per week

in respect of each Member whom the Employer has nominated in accordance with Rule 4.3.2 as a Member in respect of whom the Employer wishes to make contributions pursuant to this Rule 4.4.1 and who is in the service of the Participating Employer unless during the whole of that week:

- (a) the Member is employed in a calling other than one which falls within the definition of Eligible Employee in Rule 4.1; or
- (b) the Member is absent from his employment because of the suspension of operations at the mine in connection with which he is employed by reason of an industrial dispute, PROVIDED THAT a Participating Employer may notify the Trustee that a Member is no longer a Member for whom the Participating Employer wishes to make contributions in accordance with this Rule 4.4.1 and on receipt of that notification by the Trustee this Rule 4.4.1 shall not apply to that Participating Employer in respect of that employee; or
- (c) Rule 4.4.9 applies and the Participating Employer elects not to make the contribution.

4.4.2 Employer Statutory Contributions

Each Participating Employer who has applied to participate in the Fund in accordance with Clause 1.14 as a Participating Employer who wishes to make Employer Statutory Contributions to the Fund, shall contribute to the Fund in respect of each Member whom the Participating Employer has nominated in accordance with Rule 4.3.2 as a Member in respect of whom the Participating Employer wishes to make contributions pursuant to this Rule 4.4.2 and who is in the service of the Participating Employer the amount provided from time to time as the Participating Employer's weekly contribution in the Mine Workers' Superannuation Act unless during the whole of that week:

- (a) the Member is employed in a calling other than one which falls within the definition of Eligible Employee in Rule 4.1;
- (b) the Member is absent from his employment because of the suspension of operations at the mine in connection with which he is employed by reason of an industrial dispute; or
- (c) Rule 4.4.9 applies and the Participating Employer elects not to make the contribution ,

4.4.3 Member Statutory Contributions

Each Member in respect of whom a Participating Employer has made a contribution for any week in accordance with Rule 4.4.2 shall contribute to the Fund the amount provided from time to time as the Member's weekly contribution in the Mine Workers' Superannuation Act unless during the whole of that week:

- (a) the Member is employed in a calling other than one which falls within the definition of Eligible Employee in Rule 4.1,
- (b) the Member is absent from his employment because of the suspension of operations at the Mine in connection with which he is employed by reason of an industrial dispute, or
- (c) Rule 4.4.9 applies and the Participating Employer elects not to make the contribution.

4.4.4 Members Voluntary Contributions

A Member may make voluntary contributions to the Fund of amounts acceptable to the Trustee as follows:

- (a) With the agreement of his Participating Employer by regular deduction from payroll and remittance to the Trustee of such amount as determined by the Trustee and which must be notified to the Participating Employer by the Member in September of any year to apply from the first pay period in October of that year and can be varied only in September of each subsequent year except for emergent reasons, acceptable to the Participating Employer; and
- (b) Single contributions of amounts in excess of one hundred dollars (\$100) or such larger amount as may be prescribed by the Trustee from time to time direct from the Member to the Trustee.

4.4.5 Contributions for Spouse Members

Rule 4.4.5 deleted and replaced by Amending Deed 5 June 2008. Effective 31 March 2005.

Subject to Relevant Law:

- (a) a Spouse Member;
- (b) a spouse of a Spouse Member; and
- (c) any other person permitted by Relevant Law to make contributions in respect of a Spouse Member, including, but not limited to, an employer of the Spouse Member,

may make contributions to the Fund in respect of the Spouse Member of such amounts and on such terms as are decided by the Trustee from time to time. At least one of the contributions made in accordance with paragraph (b) of this Rule 4.4.5 must be an Eligible Spouse Contribution.

4.4.6 Participating Employer Voluntary Contributions

A Participating Employer may, subject to the Trustee's approval, make voluntary contributions to the Fund in respect of any Member whom the Participating Employer has nominated (in the form for the time being approved by the Trustee) of amounts acceptable to the Trustee, the manner and time of these contributions to be as agreed between the Participating Employer and the Trustee.

4.4.7 Associated Employer Contributions

An Associated Employer may make contributions to the Fund in respect of any Member whom the Associated Employer has nominated (in the form for the time being approved by the Trustee) of amounts determined by the Associated Employer to discharge its obligations under any industrial award or agreement, any law of the Commonwealth or of a State, or any contract of employment PROVIDED THAT any contribution which an Associated Employer is required to make under Rule 4.4.1 or 4.4.2 hereof shall be accepted by the Trustee under those respective rules only and not under this Rule 4.4.7.

4.4.8 Acceptance of Shortfall Components

The Trustee may accept a Shortfall Component as a contribution in respect of a Member.

4.4.9 Member on Unpaid Leave

The obligation upon:

- (a) an Employer under Rules 4.4.1 and 4.4.2; and
- (b) a Member under Rule 4.4.3,

ceases if the Member is on Unpaid Leave.

4.5 Members' Accounts

4.5.1 Employer Occupational Contribution Account

Rule 4.5 replaced by
Amending Deed dated
6/9/06.
Effective 31/3/05

The Trustee shall establish and maintain in respect of each Member an Employer Occupational Contribution Account and shall credit to that account:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the Member's "Employer Occupational Contribution Account" under the QCOS Deed immediately before the QCOS Transfer Date.
- (b) all contributions made by the Employer in respect of the Member pursuant to Rule 4.4.1;
- (c) any Income Entitlement in respect of the Member to be credited to this account; and
- (d) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account,

and shall debit to that account:

- (e) any Income Entitlement in respect of the Member to be deducted from this account;
- (f) any amount of tax which the Trustee is or will be liable to pay in respect to the Employer contribution to this account;
- (g) any benefit paid or payable in respect of the Member;
- (h) any amount transferred to the Member's Allocated Pension Account in accordance with Rule 4.5.8;
- (i) any amount transferred to another Approved Benefit Arrangement or any other organisation pursuant to Clause 1.42; and
- (j) any other payment made in respect of the Member pursuant to the provisions of this Deed,

which the Trustee determines should be debited to this account.

4.5.2 Employer Statutory Contribution Account

The Trustee shall establish and maintain in respect of each Member an Employer Statutory Contribution Account and shall credit to that account:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the "Member's Employer Statutory Contribution Account" under the QCOS Deed immediately before the QCOS Transfer Date;
- (b) any amount which the Trustee shall transfer to this account from the Contingent Liability and Pensioners Reserve Account pursuant to the provisions of Rule 4.6;
- (c) all contributions made by the Employer in respect of the Member pursuant to Clause 4.4.2;

- (d) any Income Entitlement in respect of the Member to be credited to this account; and
- (e) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account,

and shall debit to that account:

- (f) any Income Entitlement in respect of the Member to be deducted from this account;
- (g) any amount of tax which the Trustee is or will be liable to pay in respect to the Employer Contribution to this account;
- (h) any benefit paid or payable in respect of the Member;
- (i) any amount transferred to the Member's Allocated Pension Account in accordance with Rule 4.5.8;
- (j) any amount transferred to another Approved Benefit Arrangement or any other organisation pursuant to Clause 1.42; and
- (k) any other payment made in respect of the Member pursuant to the provisions of this Deed,

which the Trustee determines should be debited to this account.

4.5.3 Member's Statutory Contribution Account

The Trustee shall establish and maintain in respect of each Member a Member's Statutory Contribution Account and shall credit to that account:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the "Member's Statutory Contribution Account" under the QCOS Deed immediately before the QCOS Transfer Date;
- (b) all contributions made by the Member pursuant to Rule 4.4.3,
- (c) any Income Entitlement in respect of the Member to be credited to this account,
- (d) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account,

and shall debit to that account

- (e) any Income Entitlement in respect of the Member to be deducted from this account;
- (f) any benefit paid or payable in respect of the Member;
- (g) Any amount transferred to the Member's Allocated Pension Account in accordance with Rule 4.5.8;
- (h) any amount transferred to another Approved Benefit Arrangement or any other organisation pursuant to Clause 1.42; and
- (i) any other payment made in respect of the Member pursuant to the provisions of the Deed,

which the Trustee determines should be debited to this account.

4.5.4 Member's Voluntary Contribution Account

The Trustee shall establish and maintain in respect of each Member Fund a Member's Voluntary Contribution Account and shall credit to that account:

- (i) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the "Member's Voluntary Contribution Account" under the QCOS Deed immediately before the QCOS Transfer Date;
- (ii) all voluntary contributions made by the Member pursuant to Rule 4.4.4;
- (iii) any Income Entitlement in respect of the Member to be credited to this account; and
- (iv) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account,

and shall debit to that account:

- (v) any Income Entitlement in respect of the Member to be deducted from this account;
- (vi) any benefit paid or payable in respect of the Member;
- (vii) any amount transferred to the Member's Allocated Pension Account in accordance with Rule 4.5.8;
- (viii) any amount transferred to another Approved Benefit Arrangement or any other organisation pursuant to Clause 1.42; and
- (ix) any other payment made in respect of the Member pursuant to the provisions of this Deed,

which the Trustee determines should be debited to this account.

4.5.5 Member's Transfer Account

The Trustee shall establish and maintain in respect of each Member in respect of whom an amount is received into the Fund pursuant to Clause 1.41 a Member's Transfer Account and shall credit to that account:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the "Member's Transfer Account" under the QCOS Deed immediately before the QCOS Transfer Date;
- (b) any Income Entitlement in respect of the Member to be credited to this account; and
- (c) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account,

and shall debit to that account:

- (d) any Income Entitlement in respect of the Member to be deducted from this account;
- (e) any benefit paid or payable in respect of the Member;
- (f) any amount transferred to the Member's Allocated Pension Account in accordance with Rule 4.5.8;

- (g) any amount transferred to another Approved Benefit Arrangement or any other organisation pursuant to Clause 1.42; and
- (h) any other payment made in respect of the Member pursuant to the provisions of this Deed,

which the Trustee determines should be debited to this account.

4.5.6 Employer Voluntary Contribution Account

The Trustee shall establish and maintain in respect of each Member an Employer Voluntary Contribution Account and shall credit to that account:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the Member's "Employer Voluntary Contribution Account" under the QCOS Deed immediately before the QCOS Transfer Date;
- (b) all voluntary contributions made by the Employer in respect of the Member pursuant to Rule 4.4.6;
- (c) any Income Entitlement in respect of the Member to be credited to this account; and
- (d) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account,

and shall debit to that account:

- (e) any Income Entitlement in respect of the Member to be deducted from this account;
- (f) any benefit paid or payable in respect of the Member;
- (g) any amount transferred to the Member's Allocated Pension Account in accordance with Rule 4.5.8;
- (h) any amount transferred to another Approved Benefit Arrangement or any other organisation pursuant to Clause 1.42; and
- (i) any other payment made in respect of the Member pursuant to the provisions of this Deed,

which the Trustee determines should be debited to this account.

4.5.7 Associated Employer Contribution Account

The Trustee shall establish and maintain in respect of each Member an Associated Employer Contribution Account and shall credit to that account:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the Member's "Associated Employer Contribution Account" under the QCOS Deed immediately before the QCOS Transfer Date;
- (b) all contributions made by the Employer in respect of the Member pursuant to Rule 4.4.7;
- (c) any Income Entitlement in respect of the Member to be credited to this account; and
- (d) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account;

and shall debit to that account:

- (e) any Income Entitlement in respect of the Member to be deducted from this account;
- (f) any benefit paid or payable in respect of the Member;
- (g) any amount transferred to the Member's Allocated Pension Account in accordance with Rule 4.5.8;
- (h) any amount transferred to another Approved Benefit Arrangement or any other organisation pursuant to Clause 1.42 ; and
- (i) any other payment made in respect of the Member pursuant to the provisions of this Deed,

which the Trustee determines should be debited to this account.

4.5.8 Member's Allocated Pension Account

The Trustee shall establish and maintain in respect of each Member in respect of whom the Trustee has agreed to pay an allocated pension in accordance with Rule 4.8.10 a Member's Allocated Pension Account and shall credit to that account:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of the balance in the Member's "Allocated Pension Account" under the QCOS Deed immediately before the QCOS Transfer Date;
- (b) at the time of commencement of the pension the total dollar amount nominated by the Member to be transferred from the Member's:
 - (i) Employer Occupational Contribution Account;
 - (ii) Employer Statutory Contribution Account;
 - (iii) Member's Statutory Contribution Account;
 - (iv) Member's Voluntary Contribution Account;
 - (v) Member's Transfer Account;
 - (vi) Employer Voluntary Contribution Account;
 - (vii) Associated Employer Contribution Account; and
 - (viii) any other account or accounts established pursuant to Rule 4.5.10, PROVIDED, where the total amount nominated by the Member to be transferred to the Member's Allocated Pension Account is less than the total of the amounts held in respect of the Member in the accounts mentioned in (i) to (viii) above, the amount transferred from each account shall be determined by the Trustee;
- (c) any Income Entitlement in respect of the Member to be credited to this account;
- (d) any other amount received by the Trustee in respect of the Member which the Trustee determines should be credited to this account,

and shall debit to that account at such time or times as the Trustee shall determine (including at the time of establishment of the Member's Allocated Pension Account):

- (e) any Income Entitlement in respect of the Member to be deducted from this account;
- (f) any regular pension payment, paid or payable in respect of the Member or Dependant of the Member;
- (g) any amount transferred to another superannuation fund or any other organisation pursuant to Clause 1.42; and
- (h) any other payment made in respect of the Member pursuant to the provisions of this Deed, including the amount of any fees paid by the Trustee, whether calculated as a fixed dollar amount or as a percentage of the balance in the Member's Allocated Pension Account or as a combination of both, in relation to the investment or administration of that account,

which the Trustee determines should be debited to this account.

4.5.9 Spouse Member Account

The Trustee shall establish and maintain in respect of each Spouse Member an account to which shall be credited:

- (a) in the case of a Former QCOS Member, the amount received from QCOS in respect of that Member;
- (b) any Eligible Spouse Contributions contributed to the Fund in respect of that Member;
- (c) any other contributions which may be contributed to the Member in respect of that Member; and
- (d) any other amounts, including the Member's Income Entitlement which the Trustee determines is to be credited to that account,

and from which shall be debited:

- (e) any Income Entitlement in respect of the Member to be deducted from this account;
- (f) Fund Expenses; and
- (g) any other amounts which the Trustee determines are attributable to that account or that Member.

4.5.10 Other Accounts

The Trustee may establish and maintain in respect of each Member such other accounts as it considers appropriate and may credit and debit to such accounts any amounts that the Trustee considers should be credited or debited to those accounts.

4.5.11 Contributions Split with a Spouse Member

- (a) At the Member's request, the Trustee may rollover or transfer out of Part 4 of the Fund to another Approved Benefit Arrangement or Allot to the Spouse Member Account of the Member's spouse a Contribution Splitting Amount.
- (b) The Trustee will debit from the relevant Member's Accounts of the Member the Contribution Splitting Amount referred to in Rule 4.5.11(a).

Rule 4.5.11 inserted by
Amending Deed dated
6/9/06.
Effective 1/1/06

4.5.12 Tax Adjustments

Rule 4.5.12 inserted by
Amending Deed dated
20/6/07.
Effective 1/7/07

In addition to the credits and debits to a Member's Accounts provided for in the preceding provisions of Rule 4.5, the Trustee must make such adjustments to a Member's Accounts as the Trustee considers appropriate to take into account any No-TFN Contributions Income tax, Release Authority Amounts and TFN Tax Offset Amounts in respect of the Member.

4.6 **Contingent Liability and Pensioners Reserve Account**

Rule 4.6 replaced by
Amending Deed dated
6/9/06.
Effective 31/3/05

The Trustee shall establish a Contingent Liability and Pensioners Reserve Account and shall credit to that account:

- (a) the amount received from QCOS in respect of the balance in the "Contingent Liability and Pensioners Reserve Account" under the QCOS Deed immediately before the QCOS Transfer Date; and
- (b) any Income Entitlement determined by the Trustee to be credited to this account,

and shall debit to that account:

- (c) any Income Entitlement in respect of the Member to be deducted from this account;
- (d) any payments made to or in respect of Existing Pensioners and their Dependants pursuant to Rule 4.9;
- (e) any amounts transferred from this account to the Employer Statutory Contribution Account in respect of any Member and to any Member's Statutory Contribution Account in accordance with Rule 4.7;
- (f) any payments by the Trustee arising from liabilities or claims on the Tribunal or the Pensions Fund to the exclusion of the Pension Fund in accordance with section 7 of the Mine Workers' Superannuation Act for which payments are not available from any other account of the Fund; and
- (g) any amount determined by the Trustee on the advice of the Actuary pursuant to clause 1.9.4.

4.7 **Additional entitlements of certain members**

Should a Member:

Rule 4.7 replaced by
Amending Deed dated
6/9/06.
Effective 31/3/05

- (a) who was not in the employment of a "Participating Employer" for the purposes of the QCOS Deed at the date of commencement of the Mine Workers Superannuation Act (being 25 December 1989); and
- (b) for whom an amount had been transferred from the Pensions Fund and credited to a "Members Statutory Contribution Account" in QCOS, and
- (c) for whom no amount had been transferred from the Pensions Fund and credited to an "Employers Statutory Contribution Account" in QCOS in respect of that Member,

resume employment in the coal mining industry in Queensland or in any State with which a reciprocal agreement was in force on the day prior to the date of commencement of the Mine Workers' Superannuation Act in accordance with the provisions of the Coal and Oil Shale Mine Workers' (Pensions) Act 1941,

- (d) for a period of or periods aggregating twelve months; or
- (e) such lesser period as would have been necessary together with his previous periods of employment to meet the qualification requirements for a lump sum benefit from the Pensions Fund; or
- (f) such lesser period as the Trustee in its absolute discretion shall determine if the Members period of employment ceases as a result of a genuine reduction of hands,

the Trustee shall transfer from the Contingent Liability and Pensioners Reserve Account to the Employer Statutory Contribution Account in respect of that Member and to that Member's Statutory Contribution Account the amounts which were advised by the Tribunal or determined by the QCOS Trustee on the commencement of the Mine Workers Superannuation Act to be the additional amounts to which the Member would become entitled on fulfilling the conditions of this Rule 4.7 and increased or decreased by an amount of Income Entitlement calculated on the same basis as the amounts credited by the Trustee to Members' Accounts from the date of commencement of the Mine Workers' Superannuation Act to the date on which the Member becomes entitled to the transfer of those amounts.

4.8 Notification and payment of benefits

4.8.1 Notification of Benefits Payable

- (a) Upon notification to the Trustee by or in respect of a Member in such form or forms as the Trustee shall prescribe that a benefit is due to be paid in respect of that Member as a consequence of his retirement, his death, his Total and Permanent Disablement, his withdrawal from the Fund, his leaving the industry, on grounds of Severe Financial Hardship or on Compassionate Grounds, the Trustee shall determine the benefit in accordance with the provisions of Rule 4.8.2, Rule 4.8.3, Rule 4.8.4, Rule 4.8.5 or Rule 4.8.6 as appropriate, PROVIDED however that if the Member is an Existing Pensioner his benefit shall be determined and paid in accordance with the provisions of Rule 4.9 and PROVIDED FURTHER that a benefit shall only be payable on the grounds of Severe Financial Hardship if the Member has provided to the Trustee such documentary evidence as the Trustee deems necessary and as is required by the Relevant Law.
- (b) PROVIDED FURTHER THAT subject to the Relevant Law the Trustee may determine that a benefit is payable to the Member in circumstances other than as previously prescribed in Rule 4.8.1(a).
- (c) Notwithstanding any other provision in this Deed, a Spouse Member, for whom contributions are not being made by a Participating Employer, shall be entitled to a benefit in such circumstances as the Relevant Law permit and the Trustee determines.

4.8.2 Amount of Benefit – Total and Permanent Disablement

The benefit in respect of a Member on his Total and Permanent Disablement shall, subject to Clause 1.13 be:

- (a) where paragraph (a) of the definition of Total and Permanent Disablement in Rule 4.1 applies, the greater of the Minimum Benefit Amount and the sum of:
 - (i) the balance of the Member's Accounts, and
 - (ii) the Insured Benefit payable in respect of the Member; or
- (b) where paragraph (b) of the definition of Total and Permanent Disablement in Rule 4.1 applies the sum of:
 - (i) the balance of the Member's accounts; and
 - (ii) where contributions have been received as required by Rules 4.4.2 and 4.4.3 up to the time of an injury or illness forcing the Member to leave his position of employment, an additional amount (which must be a positive number) being the difference produced by deducting the amount described in sub-paragraph B from the amount described in sub-paragraph A of this Rule 4.8.2(b)(ii):
 - (A) an amount equal to eighty (80) times the weekly award rate for the coal cutting machineman (Southern Division) as set out in The Coal Mining Industry (Miners) Award 1982, Queensland or any award made in amendment of or in substitution therefore at the 1st of July immediately prior to his Date of Disablement less any benefit previously paid from his Employer Statutory Contribution Account and his Member's Statutory Contribution Account and less any benefit previously paid to the Member under this paragraph (b) of Rule 4.8.2; and
 - (B) the sum of the Member's Statutory Contribution Account and the Employer Statutory Contribution Account; or
- (c) where paragraph (c) of the definition of Total and Permanent Disablement in Rule 4.1 applies, the balance of the Member's Accounts.

4.8.3 Amount of Benefit - death

The benefit in respect of a Member on his death shall subject to Clause 1.13 be:

- (a) where the Member is covered under any policy of insurance arranged in respect of that Member, the greater of the Minimum Benefit Amount and the sum of:
 - (i) the balance of the Member's Accounts; and
 - (ii) the Insured Benefit payable in respect of the Member; or
- (b) where the Member is not covered by any policy of insurance arranged in respect of the Member and the Member died prior to gaining any such coverage and where the Member was a Member on 30 June 1998 and continued to be a Member up to the date of death, the sum of:
 - (i) the balance of the Member's Accounts, and
 - (ii) where contributions have been received as required by Rules 4.4.2 and 4.4.3 up to the time of death, an additional amount, (which must be a positive number) being the difference produced by

deducting the amount described in sub-paragraph B from the amount described in sub-paragraph A of this Rule 4.8.3(b)(ii):

- (A) an amount equal to eighty (80) times the weekly award rate for the coal cutting machineman (Southern Division) as set out in The Coal Mining Industry (Miners) Award 1982, Queensland or any award made in amendment of or in substitution therefore at the 1st July immediately prior to his date of death less any benefit previously paid from his Employer Statutory Contribution Account and his Member's Statutory Contribution Account and less any benefit previously paid to the Member under paragraph (b) of Rule 4.8.2 or under this paragraph (b) of Rule 4.8.3; and
- (B) the sum of the Member's Statutory Contribution Account and the Employer Statutory Contribution Account; or
- (c) otherwise, the balance of the Member's Accounts.

4.8.4 Amount of benefit – retirement or leaving industry

The benefit in respect of a Member who retires or leaves the industry or who is eligible for payment of a benefit under the provisions of Rule 4.8.1(b) shall be so much of the balance standing to the credit of the Member's Accounts as the Member requests and as is permitted to be paid by the Relevant Law and the Trustee agrees from time to time, may be drawn down PROVIDED THAT:

- (a) the Member must apply for payment for an amount to be drawn down in a form approved by the Trustee;
- (b) the dollar amount that the Member requests to be drawn down be no less than the amount prescribed from time to time by the Trustee;
- (c) any amounts in the Member's accounts required to be preserved not be drawn down prior to the requirements of Rule 4.8.9 being satisfied; and
- (d) the whole of the amounts in the Member's accounts be paid out on the earlier request by the Member or if required by the Relevant Law.

4.8.5 Amount of Benefit – Severe Financial Hardship

The benefit in respect of a Member who suffers Severe Financial Hardship shall be so much of the balance standing to the credit of the Member's Accounts as:

- (a) in the case of an amount required to be preserved under Rule 4.8.9, the Trustee determines may be paid from the Fund provided that the amount is as prescribed by the Relevant Law;
- (b) in the case of an amount not required to be preserved under Rule 4.8.9, the Trustee determines may be paid from the Fund

for the purpose of relieving Severe Financial Hardship.

4.8.6 Amount of Benefit – Compassionate Grounds

The benefit in respect of a Member which becomes payable on Compassionate Grounds shall be so much of the balance standing to the credit of the Member's Accounts as the Regulator specified in its determination should be released to the Member.

4.8.7 Amount of Benefit – Spouse Member

Notwithstanding any other provision in this Deed, a Spouse Member's benefit under Rule 4.8.1(c) shall be equal to the sum of the Spouse Member's Accounts PROVIDED THAT the benefit is to be increased by any Insured Benefit paid in respect of the Spouse Member.

4.8.8 Payment of Benefit

Subject always to the provision of Rule 4.8.9 hereof, the Trustee shall pay within one (1) month of the determination of the benefit an amount equal to the benefit in the following manner:

- (a) where the Member becomes entitled to a benefit as a result of his having suffered Total and Permanent Disablement or having attained age 55 and ceased to be gainfully occupied or upon such other age or condition that the Regulator shall approve pay the benefit to the Member;
- (b) where the Member becomes entitled to a benefit:
 - (i) as a result of his death; or
 - (ii) for any other reason but the Member has died before receiving the whole of his benefit,

subject to Rule 4.8.8B, pay the benefit to the Dependants of the Member or to the Legal Personal Representative of the Member or to any one or more of them to the exclusion of the other or others of them as the Trustee in its absolute discretion determines or, subject to the conditions in this Rule 4.8.8, to persons who are not the Dependants or the Legal Personal Representatives of the Member and without limit to the generality of the foregoing, the Trustee shall have power to apply the benefit or any part thereof to a fund to be held on trust (contingent or otherwise) for any one or more of the Dependants to the exclusion of the other or others of them as the Trustee determines and the receipt of such Dependant or Dependants or of the Member's Legal Personal Representative shall be a complete discharge to the Trustee in respect of any payment so made and the Trustee shall not be bound to see to the application thereof,

PROVIDED THAT benefits shall not be paid to the Member, Dependants of the Member or the Legal Personal Representative until the Trustee has received such information as it considers satisfactorily evidences the benefit is properly payable in accordance with the provisions of this Rule.

- (d) benefits in terms of Rule 4.8.8(b) of this Rule shall:
 - (i) only be paid to Dependents of a Member when such Dependents are able to provide a valid discharge to the Trustee in respect of such payment; and
 - (ii) only be paid to persons who are not Dependents or Legal Personal Representatives of a Member when:
 - (A) the Trustee has not, after making possible enquiries, found either a Legal Personal Representative or a Dependant of the Member; and
 - (B) the value of the benefits does not exceed such amount as may be permitted by the Relevant Law; and

Rule 4.8.8(b) amended by
Amending Deed dated
23/10/06.
Effective 1/7/06

Rule 4.8.8(c) deleted by
Amending Deed dated 27
April 2007.
Effective 1 July 2007.

Rule 4.8.8(e) deleted by
Amending Deed dated 27
April 2007.
Effective 1 July 2007.

- (C) the person in whose favour the benefits are paid is an individual.

4.8.8A Non-binding beneficiary nomination

Rule 4.8.8A inserted by
Amending Deed dated
23/10/06.
Effective 1/7/06

- (a) A Member may at any time, in a manner acceptable to the Trustee:
- (i) nominate a Dependant, Dependants or the Legal Personal Representative to receive any benefit payable on the Member's death; and
 - (ii) specify the proportions and manner in which the benefit referred to in paragraph (i) is to be paid.
- (b) A Member may vary any nomination or specification given under Rule 4.8.8A(a) in a manner acceptable to the Trustee.
- (c) A nomination made under this Rule 4.8.8A is not binding on the Trustee, however the Trustee may consider a nomination when exercising the discretions granted to it under the Rules of this Part 4.

4.8.8B Binding beneficiary nomination

Rule 4.8.8B inserted by
Amending Deed dated
23/10/06.
Effective 1/7/06

- (a) A Member may give, at any time, the Trustee a Binding Nomination.
- (b) The Binding Nomination will cease to be binding if:
- (i) the Member revokes the Binding Nomination or gives the Trustee a new Binding Nomination; or
 - (ii) the Binding Nomination ceases to be binding under the Relevant Law.
- (c) If all Relevant Law requirements have been satisfied, the Trustee must pay any benefits in respect of a Member in accordance with any Binding Nomination.
- (d) To avoid doubt, if a Member has made a nomination in accordance with the former Rule 4.8.8(c) and that nomination is in force as at the date this paragraph 4.8.8B(d) takes effect, that nomination will be deemed to be a Binding Nomination given under this Rule 4.8.8B and takes effect accordingly.

Rule 4.8.8B(d) inserted by
Amending Deed dated 27
April 2007.
Effective 1 July 2007.

4.8.9 Preservation of Benefits

It shall be a condition of this Rule 4.8.9 that all benefits required to be preserved by the Relevant Law, including Employer financed benefits transferred from the Pension Fund, shall be preserved until payable in accordance with the Relevant Law or in such other circumstances as may be determined by the Trustee and agreed by the Regulator.

4.8.10 Allocated Pension Benefit

Rule 4.8.10(a) amended
by Amending Deed dated
26/4/06.
Effective 1/1/06.

- (a) The Trustee may, with the agreement of the Member and subject to the Relevant Law, pay, in whole or in part, a benefit due to a Member as an allocated pension in accordance with the provisions of this Rule or as a pension under Part 5 of the Trust Deed:
- (i) the Member must apply for payment of his or her benefit as an allocated pension in a form approved by the Trustee, and:

- (A) nominate the total dollar amount which is to be transferred from the Member's Accounts to the Member's Allocated Pension Account;
 - (B) nominate the dollar amount which the Member wishes to draw down on a regular basis from the balance standing to the credit of the Member's Allocated Pension Account at such times and under such conditions as may be prescribed from time to time by the Trustee;
 - (C) specify from the range of intervals prescribed by the Trustee from time to time the intervals at which the regular pension payment is to be made;
- (ii) a Member may, subject to the Relevant Law, vary from time to time, but no more frequently than the Trustee permits, the Member's regular payment as nominated in Rule 4.8.10(a)(i)(B) or regular pension interval as specified in Rule 4.8.10(a)(i)(C) by giving notice in writing of at least one month to the Trustee in a form prescribed by the Trustee;
 - (iii) the minimum dollar amount that a Member must nominate to be transferred to the Member's Allocated Pension Account for the purpose of receiving an allocated pension is the greater of 25% of the total of the amounts in the Member's Accounts and \$30,000, or such other amount as the Trustee in its absolute discretion may decide;
 - (iv) the amount of the pension based upon benefits required to be preserved by the Relevant Law is payable in one of the circumstances mentioned in Rule 4.8.9;
 - (v) the amount of the pension based on benefits not required to be preserved by the Relevant Law;
 - (vi) the whole of the pension must be commenced to be paid when required by the Relevant Law.
 - (vii) where the Member becomes Totally and Permanently Disabled, the whole of the pension may be payable at any age.
- (b) The Trustee may, with the agreement of the Dependant of a Member to whom a death benefit is to be paid in accordance with Rule 4.8.8(b) pay, in whole or in part, the benefit as an allocated pension subject to the Dependant satisfying the conditions in Rules 4.8.10(a)(i), (ii) and (iii), assuming that any reference to a Member in those subrules is a reference to the Dependant.
 - (c) The provisions of Rule 4.8.9 shall not apply to payment of benefits where the total amount of benefits is less than the amount as may be prescribed in the Relevant Law from time to time.
 - (d) Members to whom an allocated pension is to be paid may, at the time of commencement of the allocated pension and from time to time thereafter in the manner approved by the Trustee, notify the Trustee of:
 - (i) the names and addresses of any Dependents to whom the person wishes any benefit payable on the Member's death to be paid; and

Rule 4.8.10(a)(ii)
amended by Amending
Deed dated 23/10/06.
Effective 1/7/06

- (ii) the proportions of the benefit which the Member wishes to be paid to the nominated Dependants as a lump sum, a pension or a combination of both.
- (e) The notification referred to in Rule 4.8.10(d):
 - (i) may be varied or replaced from time to time in a manner approved by the Trustee; and
 - (ii) is not binding upon the Trustee but the Trustee may consider the nomination when exercising its discretion under Rule 4.8.8 in respect of the Member.
- (f) A Member may, upon commencement of an allocated pension in the manner approved by the Trustee, notify the Trustee of a name and address of any Dependant to whom the Member wishes any Reversionary Pension payable upon the Member's death to be paid. The nomination:
 - (i) may be varied or replaced from time to time in a manner approved by the Trustee; and
 - (ii) so long as the Relevant Law permits the same, is binding upon the Trustee.
- (g) Where the Member had not nominated a person to whom a Reversionary Pension is to be paid, the Trustee may, on the death of the Member, pay the balance of the Member's Allocated Pension Account as a lump sum, an allocated pension or a combination of both providing that any allocated pension payable is based upon an amount no less than the greater of 25% of the amount in the Member's Allocated Pension Account at the time of the Member's death and \$30,000, or such other amount as the Trustee in its absolute discretion may determine.
- (h) With the specific conditional or general and unconditional consent of the Trustee to operation of this facility and subject to Relevant Law:
 - (i) any Member of the Fund in receipt of an allocated pension may, prior to the Member's death, require the Trustee to pay any benefit in respect of the Member on or after the Member's death to such of the Member's Dependants and/or Legal Personal Representative as the Member nominates and in such proportions as the Member nominates but in such form or forms as the Trustee considers appropriate having regard to the Member's stated wishes, and if a Member requires payment of the death benefit in this manner, then the Trustee shall pay that Member's death benefit accordingly; or
 - (ii) the Trustee may in any particular case and should circumstances require it, determine that this Rule 4.8.10(h) is not applicable – in which case Rules 4.8.10(e) to 4.8.10(g) shall instead apply; and
 - (iii) the nomination referred to in paragraph (i) shall be in such form as the Trustee shall from time to time approve and shall be valid for such period as provided for by Relevant Law.
- (i) Benefits in terms of Rule 4.8.10(h) of this Rule shall only be paid to Dependents of a Member when such Dependents are able to provide a valid discharge to the Trustee in respect of such payment.

- (j) A Member or a Dependant of a Member in receipt of an allocated pension may request, subject to any limits or conditions prescribed by the Relevant Law and by the Trustee, the commutation of any amount of the capital value of the allocated pension to a lump sum payment. Following the commutation of any pension benefit, the Trustee may reduce the regular pension payment to be paid to the Member or Dependant.

4.8.11 Discharge of Trustee

The payment of benefits in accordance with the provisions of Rule 4.7 shall be a discharge and release to the Trustee.

4.8.12 Transfer to Part 5

If the Trustee and Member have agreed that the Member will be paid a pension under Part 5, the Trustee shall debit the amount to be paid in the form of a pension from Member's accounts under Part 4 and credit that amount to the Member's Pension Account under Part 5.

Rule 4.8.12 inserted by
Amending Deed dated
26/4/06.
Effective 1/1/06.

4.9 STATUTORY PENSION

4.9.1 Application for Statutory Pension

- (a) An applicant for a Statutory Pension shall when required by the Trustee to do so furnish to the Trustee without any unnecessary delay such further or additional information, including documentary evidence in respect of their application, as the Trustee may from time to time reasonably require.
- (b) A person if required by the Trustee must deliver or forward to the Trustee a copy of entry of record of birth, death or marriage and if the person satisfies the Trustee that he or she is unable to produce the certified copy of entry of record of birth, death or marriage the Trustee may in lieu thereof accept such evidence of birth, death or marriage as it shall in the circumstances determine.
- (c) When the Trustee allows an application for a Statutory Pension the Trustee shall notify the applicant of the rate per fortnight of the Statutory Pension and the date from which payment of the Statutory Pension has been allowed.
- (d) When the Trustee disallows an application for a Statutory Pension the Trustee shall notify the applicant setting out in writing the reason or reasons for the disallowance.

4.9.2 Payment of Statutory Pension

- (a) An Existing Pensioner shall be paid a Statutory Pension of the Prescribed Amount or of such lesser amount as may be agreed between the Trustee and the Existing Pensioner.
- (b) A person who satisfies the rules in this Rule 4.9 for payment of a Statutory Pension shall be paid a Statutory Pension of the Prescribed Amount or of such lesser amount as may be agreed between the Trustee and that person.
- (c) A Statutory Pension shall be payable within fourteen days of the Statutory Pension being awarded or fortnightly on such day as the Trustee may determine, or such other period as may be agreed between the Trustee and the recipient of the Statutory Pension.

4.9.3 Additions to Statutory Pensions to Existing Pensioners

- (a) Where an Existing Pensioner satisfies the Trustee that:
- (i) their spouse is an invalid and as a consequence the Existing Pensioner employs a person to care for their spouse or for any child; or
 - (ii) their spouse is confined to a convalescent home; or
 - (iii) the Existing Pensioner has no spouse or Housekeeper, is an invalid and consequently the Existing Pensioner employs a person to care for himself or herself; or
 - (iv) the Existing Pensioner is confined to a convalescent home;

and the Existing Pensioner's monetary circumstances warrant an addition to their Statutory Pension the Trustee may award to the Existing Pensioner in addition to their Statutory Pension an additional amount as the Trustee determines such additional amount not to exceed the Prescribed Amount.

- (b) Where an Existing Pensioner satisfies the Trustee that:
- (i) they do not have a spouse; or
 - (ii) they do not have a Housekeeper,

and the Existing Pensioner employs a person to care for any child, adopted child or stepchild and the Existing Pensioner's monetary circumstances warrant an addition to the Existing Pensioner's Statutory Pension the Trustee may award to the Existing Pensioner in addition to their Statutory Pension an additional amount as the Trustee determines such additional amount not to exceed the Prescribed Amount.

4.9.4 Death of the Existing Pensioner

- (a) Upon the death of an Existing Pensioner ("the Deceased") the following persons are subject to approval by the Trustee entitled to a Statutory Pension:
- (i) the surviving spouse of the Deceased; or
 - (ii) the Housekeeper of the Deceased; or
 - (iii) any child, adopted child or stepchild of the Deceased.
- (b) Upon the death of an Existing Pensioner any surviving spouse, Housekeeper or child, adopted child or stepchild of the Existing Pensioner who desires to obtain a Statutory Pension shall complete an application form in the form approved by the Trustee and shall attach to the application form a certified copy of entry of record of death of the Existing Pensioner.
- (c) Where the Trustee allows the application for a Statutory Pension under Rule 4.9.4(b) the person shall be paid a Statutory Pension of the Prescribed Amount.

4.9.5 Addition to Statutory Pension to Surviving Spouse or Housekeeper

- (a) Where a surviving spouse or Housekeeper in receipt of a Statutory Pension under this Schedule satisfies the Trustee that they are an invalid and their

monetary circumstances warrant an addition to their Statutory Pension and either:

- (i) they are permanently incapable of performing their domestic duties and they employ someone to care for them; or
- (ii) they are confined to a convalescent home;

the Trustee may award to them in addition to their Statutory Pension an additional amount as the Trustee determines such additional amount not to exceed the Prescribed Amount.

4.9.6 Cessation of Statutory Pension

- (a) An Existing Pensioner ceases to be entitled to a Statutory Pension upon their death.
- (b) A surviving spouse or Housekeeper in receipt of a Statutory Pension under this Schedule ceases to be entitled to a Statutory Pension upon the first of either of the following occurring:
 - (i) the surviving Spouse or Housekeeper becoming the Dependant of another person; or
 - (ii) upon the death of the surviving spouse or Housekeeper.
- (c) A child, adopted child or stepchild of a Member entitled to a Statutory Pension under this Schedule ceases to be entitled to a Statutory Pension upon ceasing full time education or death, whichever occurs first.

4.10 RECOVERY OF OVERPAYMENTS OF PENSIONS

- (a) Where it is found that any Statutory Pension or instalment of a Statutory Pension which is not payable has been paid or that any sum paid by way of Statutory Pension or instalment of Statutory Pension is in excess of the amount so payable, the amount wrongly paid may:
 - (i) be recovered as a debt due to the Trustee; or
 - (ii) where it is practicable to do so, the Trustee may make any necessary adjustments in any instalments of the same or any other pension thereafter becoming payable.
- (b) Nothing in this Rule 4.10 shall relieve the person wrongly receiving any such payment from any other liability in respect of any fraud committed by him or her.

4.11 GENERAL

4.11.1 Entitlement to only one pension

A person shall not be entitled to receive more than one pension under the provisions of Rule 4.9.

4.11.2 Cancellation of Statutory Pension

The Trustee may cancel any Statutory Pension awarded under Rule 4.9 where the Trustee after reasonable enquiries is satisfied that the award of the Statutory Pension was improperly obtained or that the award was contrary to the provisions of the Deed.

4.11.3 Notice of death or cessation of dependency

An Existing Pensioner or other person to whom a Statutory Pension has been awarded shall within seven days after the death or cessation of dependency of any Dependant in respect of whom any amount is payable as an addition to their Statutory Pension furnish to the Trustee a signed statement in writing setting forth the name of the Dependant and date of death or cessation of dependency of such Dependant.

4.11.4 Notice of marriage

A surviving spouse or other person to whom a Statutory Pension has been awarded pursuant to Rule 4.9 shall within seven days after their marriage or re-marriage furnish to the Trustee a signed statement in writing specifying the name in which the Statutory Pension was granted to them and the date of their marriage or re-marriage.



Membership Application

AUSCOAL Super Part 4 (QCOS)

APPENDIX 4A

RULE 4.3.3

Please complete in BLOCK letters and return to your Payroll Officer.

1. Personal Details

Mr Mrs Ms Miss (please circle one)

First name/s Surname

Postal address

Suburb State Postcode

Date of birth Home phone number

Employer's name Start date / /

This section must be completed.

You must answer these questions to ensure your insurance cover is accurately recorded:

Are you employed under a contract that states a date at which your employment stops? Yes No

Are you a permanent employee, and therefore entitled to paid holiday leave and paid sick leave? Yes No

Have you ever received, been admitted for, or been eligible for a total & permanent disablement benefit from any superannuation fund or life insurance policy? Yes No

If you do not complete the above questions fully and truthfully the insurance cover we report to you may be overstated. The terms and conditions of the Fund's insurance policy ultimately determine whether or not you are entitled to insurance cover. Details of the insurance policy are available on request.

Contact Details

Level 1, 472 The Esplanade
Warners Bay NSW 2282
PO Box 735
Warners Bay NSW 2282
Toll Free 1300 366 212
Tel +61 2 4948 3333
Fax +61 2 4948 6955

Email
enquiries@auscoal.net.au

www.auscoalonline.com.au



Membership Application

AUSCOAL Super Part 4 (QCOS)

2. Member Declaration

Once you have completed this form, please sign the declaration.

- I have received and read the Fund's Privacy Policy. I understand that my personal information will be handled by the Fund to provide and manage my superannuation and without this information the Fund may not be able to provide my superannuation benefits and choices, other than benefits required by law. For this purpose my personal information may pass between the Fund and the Fund's administrator and professional advisers, insurers, government bodies, my employer and other parties as required, including the Trustee of any other fund I transfer to. More information on our Privacy Policy is provided overleaf.
- By signing this application form I agree to be bound by the terms and conditions of the Trust Deed & Rules. The statements above are true and complete, to the best of my knowledge.

Member's signature

Date

Office use only

Member number Return
number
Letter sent

Contact Details

Level 1, 472 The Esplanade
Warners Bay NSW 2282
PO Box 735
Warners Bay NSW 2282
Toll Free 1300 366 212
Tel +61 2 4948 3333
Fax +61 2 4948 6955

Email
enquiries@auscoal.net.au
www.auscoalonline.com.au

3. Privacy Statement

In order to provide you with superannuation benefits, including death and disability benefits, and to properly manage the Fund, your Fund holds personal information about you that identifies you as a member and typically includes your name, address, date of birth, gender, occupation, salary, tax file number and any other required information.

The Fund generally collects this information either from you or your employer. Your personal information may be disclosed to the fund's administrator and professional advisers, insurers, government bodies, your employer and other parties as required, including the trustee of any other fund you may transfer to.

By becoming a member of the Fund, it is assumed that you consent to this handling of your personal information. If you do not provide the Fund with your personal information, the Fund may not be able to provide your superannuation benefits and choices other than benefits, required by law.

You can access your personal information held by the Fund. Should any of your personal information be incorrect, you may have the opportunity to correct it. There are, however, some circumstances where you may be denied access to your information. The Fund's Privacy Officer will advise if any of these circumstances apply.

The Fund abides by the National Privacy Principles under the Privacy Act 1988 (Commonwealth) and has adopted a Privacy Policy which sets out in more detail the way in which it handles members' personal information. If you would like a copy of the Fund's Privacy Policy please contact the Funds Privacy Officer at Level 1, 472 The Esplanade, Warners Bay NSW 2282 – Telephone: 1300 366 212..

Contact Details

Level 1, 472 The Esplanade
Warners Bay NSW 2282
PO Box 735
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Toll Free 1300 366 212
Tel +61 2 4948 3333
Fax +61 2 4948 6955

Email
enquiries@auscoal.net.au
www.auscoalonline.com.au

5 PART 5 OF TRUST DEED

RULES IN RESPECT OF PENSIONS

5.1 Definitions

Part 5 inserted by
Amending Deed dated
26/4/06.
Effective 1/1/06

"Allocated Pension"
deleted by Amending
Deed dated 20 June
2007. Effective 1 July
2007.

"Account-Based Pension"
inserted by Amending
Deed dated 20 June
2007. Effective 1 July
2007.

"Child" inserted by
Amending Deed dated
20/6/07.
Effective 1/7/07.

"Dependant" inserted by
Amending Deed dated
20/6/07.
Effective 1/7/07. Deleted
and replaced by Amending
Deed dated 3 February
2009. Effective 1 March
2009.

"Pension" inserted by
Amending Deed dated
20/6/07.
Effective 1/7/07

In this Part of the Deed:

"Account-Based Pension" means a pension paid under Rule 5.3.

"Child", in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of the person.

"Commencement Day" means the first day of the period to which the first payment of the Term Allocated Pension relates.

"Condition of Release" has the same meaning as in the SIS Regulations.

"Dependant" in relation to a Member, includes:

- (a) the Spouse of the Member;
- (b) any Child of the Member;
- (c) any person with whom the Member has an interdependency relationship (as defined in section 302-200 of the Income Tax Assessment Act 1997); and
- (d) any other person who satisfies the definition of "dependant" in the Superannuation (Industry) Supervision Act 1993.

"Life Expectancy" has the same meaning as that term has under the Relevant Law.

"Non-Commutable Allocated Pension" means a pension paid under Rule 5.7.

"Non-Commutable Term Allocated Pension" means a pension paid under Rule 5.8.

"Pension" means any pension payable under Rule 5.2.

"Pension Account" means the account established under Rule 5.2.

"Preserved Benefits" has the same meaning as in the SIS Regulations.

"Restricted Non-Preserved Benefits" has the same meaning as in the SIS Regulations.

"Reversionary Beneficiary" means a person who is a Dependant and becomes entitled to a Term Allocated Pension after the death of a Member.

"SIS Regulations" means the *Superannuation Industry (Supervision) Regulations 1994*.

"Spouse" has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

"Term Allocated Pension" means a pension paid under Rule 5.4.

“Total and Permanent Disablement” inserted by Amending Deed dated 3 February 2009. Effective 1 March 2009.

“Total and Permanent Disablement” has the meaning given to that term in the policy of insurance (if any) effected by the Trustee to provide a benefit in respect of a Member under this Part 5.

“Transition to Retirement Income Stream” inserted by Amending Deed dated 20/6/07. Effective 1/7/07

“Transition to Retirement Income Stream” means a pension paid under Rule 5.7A.

“Unrestricted Non-Preserved Benefit” has the same meaning as in the SIS Regulations.

5.2 Pension Account

Rule 5.2 deleted and replaced by Amending Deed dated 3 February 2009. Effective 1 March 2009.

The Trustee shall establish and maintain a Pension Account in respect of each Member to whom a Pension is payable under this Part of the Fund and shall credit the Pension Account with::

- (a) and the amount to be credited to the Member’s Pension Account under Rules 2.7(c) or 2.7(d) and Rule 4.8.12;
- (b) the proceeds of any policy of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member for the purposes of this Part 5; and
- (c) any other amounts which the Trustee reasonably determines should be credited to the Pension Account including any payments, rollovers or transfers which, subject to the Relevant Law, the Trustee permits the Member to pay, rollover or transfer to Part 5,

and shall debit from the Pension Account:

- (d) any Pension paid in respect of the Member from this Part of the Fund;
- (e) any amount paid, transferred or rolled out from Part 5 of the Fund in relation to the Member pursuant to a Family Law Arrangement which the Trustee determines should be deducted from that account and any relevant fees and charges, including those referred to in Clause 1.43.5;
- (f) any amount to pay premiums on a policy of insurance effected to provide benefits on the death or Total and Permanent Disablement of the Member under Part 5 of the Deed; and
- (g) any benefits paid under this Part 5 in a form other than a Pension, and any other amounts which the Trustee reasonably determines should be debited to the Pension Account.

5.2A Tax adjustments

Rule 5.2A inserted by Amending Deed dated 20/6/07. Effective 1/7/07

In addition to the credits and debits to a Pension Account provided for in Rule 5.2, the Trustee must make such adjustments to a Pension Account as the Trustee considers appropriate to take into account any No-TFN Contributions Income tax, Release Authority Amounts and TFN Tax Offset Amounts in respect of the Member.

5.3 Account-Based Pension

“Allocated” replaced by “Account-Based” throughout Rule 5.3 amended by Amending Deed dated 20/6/07. Effective 1/7/07

- (a) The Trustee may, on a Member’s request, pay to the Member the amount from time to time standing to the credit of the Member’s Pension Account

as an Account-Based Pension of such periodic amounts, and in such instalments and on such dates as the Trustee may from time to time determine. **PROVIDED THAT:**

- (i) the capital value of the Account-based Pension, and the income from it cannot be used as security for a borrowing; and
 - (ii) the capital supporting the pension cannot be added to by way of contribution or rollover after the pension has commenced.
- (b) An Account-Based Pension:
- (i) may be of a fixed or variable amount;
 - (ii) may be adjusted from time to time to provide for cost of living adjustments;
 - (iii) shall be paid on such other terms as the Trustee considers appropriate; or
 - (iv) any combination of (i) to (iii) as the Trustee considers appropriate,
- PROVIDED THAT** it satisfies the Relevant Law, and in respect of that pension:
- (v) the payments must be made on at least an annual basis to the Member;
 - (vi) the total of the payments in any year (including under a payment split) must meet the minimum payment amounts calculated under clause 1 of Schedule 7 of the SIS Regulation's.
- (c) The Member is only entitled to commute the whole or part of the Account-Based Pension to a lump sum if:
- (i) the commutation results from the death of the Member or the Member's reversionary beneficiary;
 - (ii) the sole purpose of the commutation is:
 - (A) to pay a superannuation contributions surcharge imposed by the Superannuation Contributions Tax Imposition Act 1997; or
 - (B) to give effect to an entitlement of a Non-Member Spouse under a Payment Split;
 - (iii) for a commutation in part – the account balance of the Account-Based Pension, immediately after the commutation, is equal to or greater than the minimum payment amount calculated under clause 1 of Schedule 7 of the SIS Regulations, as reduced by the amount of payments made to the Member in the financial year in which the commutation occurs; or
 - (iv) the Account-Based Pension has paid, in the financial year in which the commutation takes place, at least the minimum amount prescribed by SIS Regulation 1.07D(2).

Rule 5.3(b) amended by
Amending Deed dated
20/6/07.
Effective 1/7/07

Rule 5.3(c) replaced by
Amending Deed dated
20/6/07.
Effective 1/7/07

- (d) Subject to Rule 5.3(ha), upon death of a Member in receipt of an Account-Based Pension who is survived by a Spouse, the following provisions shall apply:
- (i) the Spouse shall be entitled to receive the Account-Based Pension otherwise payable to the Member;
 - (ii) and the Account-Based Pension can only be commuted, in whole or in part, in the circumstances described in Rule 5.3(c) above; and
 - (iii) such Account-Based Pension may be adjusted from time to time to provide for cost-of-living adjustments on such basis as the Trustee in its discretion shall determine.
- (e) Upon the death of a Member's Spouse whilst in receipt of an Account-Based Pension payable in accordance with the previous provisions, the Trustee shall pay the amount then standing to the credit of that Member's Pension Account to, at the Trustee's discretion, such one or more of the Member's other Dependants, as determined at the Trustee's discretion, then living by way of a lump sum payment or to the Member's Legal Personal Representative or to any other person where permitted by Relevant Law.
- (f) Each lump sum payment and Account-Based Pension paid pursuant to this Rule 5.3 shall be debited to the Member's Pension Account.
- (g) Any Account-Based Pension shall cease to be paid when the net credits in respect of that Member's Pension Account have been paid out in full.
- (h) The quantum of any Account-Based Pension, the capital value of any Account-Based Pension and the extent of any right of commutation shall be subject to calculation by the Trustee (or any Actuary retained by the Trustee for that purpose) PROVIDED THAT where the capital value of an Account-Based Pension exceeds the maximum permitted lump sum benefit for such Member as determined from time to time under the Relevant Law any right of commutation shall be limited to the greater of:
- (i) any amount permitted under the Relevant Law; and
 - (ii) fifty per cent (50%) (or such higher percentage as may be approved by the Regulator) of the capital value of such Account-Based Pension).
- (ha) With the specific conditional or general and unconditional consent of the Trustee and subject to Relevant Law:
- (i) any Member of the Fund in receipt of a Pension under this Part 5 may, prior to the Member's death, require the Trustee to pay part or all of any benefit in respect of the Member to which this Part 5 applies on or after the Member's death in accordance with a Binding Nomination. That benefit will be paid in the form of a lump sum unless the Trustee and the person entitled to receive the benefit agree otherwise; or

Rule 5.3(d)(ii) replaced by Amending Deed dated 20/6/07. Effective 1/7/07.

Rule 5.3(d) deleted and replaced by Amending Deed dated 3 February 2009. Effective 1 March 2009.

Rule 5.3(ha) inserted by Amending Deed dated 3 February 2009. Effective 1 March 2009.

Rule 5.3(ha) inserted
by Amending Deed
dated 3 February
2009. Effective 1
March 2009.

- (ii) the Trustee may in any particular case and should circumstances require it, determine that this Rule 5.3(ha) is not applicable – in which case Rules 5.3(d) and (i) shall instead apply; and
 - (iii) any Binding Nomination referred to in paragraph (i) shall be valid for no longer than the maximum period provided for by Relevant Law.
- (i) Subject to the prior provisions of this Rule 5.3, in the event, at any time after the death of a Member, that there be net credits standing to the Member's Pension Account in respect of a Member, the amount thereof shall be paid, net of any Tax, to the Legal Personal Representatives of the Member.

5.4 Term Allocated Pension

Rule 5.4
amended by
Amending Deed
dated 20/6/07.
Effective 1/7/07

Before 1 July 2007, the Trustee may, on a Member's request, pay to the Member the amount from time to time standing to the credit of the Member's Pension Account as a Term Allocated Pension on such terms as agreed by the Member and the Trustee **PROVIDED THAT:**

- (a) the payments are made on at least an annual basis to the Member or the Member's Reversionary Beneficiary throughout a period that is:
 - (i) equal to the Member's Life Expectancy from the Commencement Day of the Term Allocated Pension (rounded up to the next whole number if the Member's Life Expectancy does not consist of a whole number of years);
 - (ii) equal to the Member's Life Expectancy mentioned in Rule 5.4(a)(i) calculated, at the option of the Member, as if the Member were up to 5 years younger on the Commencement Day;
 - (iii) not less than the period available under Rule 5.4(a)(i) and not more than the greater of:
 - (A) the maximum period available under Rule 5.4(a)(ii); and
 - (B) the period of years equal to the number that is the difference between the age attained by the Member at his or her most recent birthday before the Commencement Day, and age 100; or
 - (iv) equal to:
 - (A) the Life Expectancy of Member's Spouse on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Member's Spouse does not consist of a whole number of years);
 - (B) the Life Expectancy of the Member's Spouse calculated, at the option of the Member, as if his or her Spouse were up to 5 years younger on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Member's Spouse does not consist of a whole number of years); or

Rule 5.4(a)(iv)(C)
 amended by Amending
 Deed dated 23/10/06.
 Effective 1/7/06

(C) a period that is not less than the period available under Rule 5.4(iv)(A) and not more than the greater of:

- (1) the maximum period available under Rule 5.4(iv)(B); and
- (2) the period of years equal to the number that is the difference between the age attained by the Member's Spouse at his or her most recent birthday before the Commencement Day, and 100 (rounded up to the next whole number if the period does not consist of a whole number of years);

as selected by the Member PROVIDED THAT:

- (D) the Member has requested that his or her Term Allocated Pension revert to his or her surviving Spouse on his or her death;
 - (E) the Life Expectancy of the Member's Spouse is greater than the Life Expectancy of the Member; and
 - (F) the Member has not chosen a period mentioned in Rules 5.4(i), 5.4(ii) or 5.4(iii);
- (b) the total amount of the Term Allocated Pension payments to be made in a year (excluding payments by way of commutation pursuant to Rule 5.5 but including any payments made under a Payment Split) is determined in accordance with Schedule 6 of the SIS Regulations;
 - (c) the Term Allocated Pension does not have a residual capital value;
 - (d) the Term Allocated Pension can only be commuted in the circumstances set out in Rule 5.5;
 - (e) the Term Allocated Pension can only be transferred in the circumstances set out in Rule 5.6;
 - (f) if the Term Allocated Pension reverts to another person, it must not have a reversionary component greater than 100% of the Member's Pension Account immediately before the reversion;
 - (g) the capital value of the Term Allocated Pension, and the income from it, cannot be used as security for a borrowing; and
 - (h) the Term Allocated Pension complies with any other requirements of the Relevant Law relating to market linked pensions which may apply from time to time.

5.5 Commutation of Term Allocated Pension

- (a) Subject to Rule 5.5(b), the Term Allocated Pension can only be commuted in the following circumstances provided that the commutation amount does not exceed the Member's Pension Account immediately before the commutation:
 - (i) the Term Allocated Pension:

- (A) is not funded from the commutation of an annuity or pension specified under SIS Regulations 1.06(8)(d)(i)(A)(I), (II) and (III); and
 - (B) the commutation is made within 6 months after the Commencement Day of the Term Allocated Pension;
- (ii) on the death of the Member or the Member's Reversionary Beneficiary, the commuted amount is used for the payment of:
- (A) a lump sum or a new pension to one or more Dependants of either the Member or the Member's Reversionary Beneficiary;
 - (B) a lump sum to the legal personal representative of either the Member or the Member's Reversionary Beneficiary; or
 - (C) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in Rules 5.5(a)(ii)(A) or (B), a lump sum to another individual,
- unless the Member has opted, under Rule 5.4(a)(iv), for a period calculated in relation to the Life Expectancy or age of the Member's Spouse, in which case the Term Allocated Pension cannot be commuted until the death of both the Member and the Member's Spouse.
- (iii) if the eligible termination payment resulting from the commutation is transferred directly to purchase another benefit that is an annuity or pension, that annuity or pension is specified under SIS Regulations 1.06(8)(d)(iv)(A), (B), and (C);
- (iv) the commuted amount is used to pay a superannuation contributions surcharge imposed by the *Superannuation Contributions Tax Imposition Act 1997*; or
- (v) the commuted amount is used to give effect to an entitlement of a non-member spouse under a Payment Split.
- (b) In addition to the requirement set out in Rule 5.5(a), unless the Term Allocated Pension is commuted:
- (i) as a result of the death of the Member or the Member's Reversionary Beneficiary; or
 - (ii) for the sole purpose of:
 - (A) paying a superannuation contributions surcharge imposed by the *Superannuation Contributions Tax Imposition Act 1997*;
 - (B) to give effect to an entitlement of a non-member spouse under a Payment Split; or
 - (C) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*,
- then the Term Allocated Pension can only be commuted if:

- (iii) the commutation is a commutation of part of the Term Allocation Pension and the Member's Pension Account immediately after the commutation is at least the total payment calculated in accordance with Schedule 6 of the SIS Regulations, as reduced by the amount of income payments already made in the financial year in which the commutation would occur; or
- (iv) the Term Allocated Pension has paid, in the financial year in which the commutation is to take place, at least the minimum amount specified in SIS Regulation 1.07C(3).

5.6 Transfer of the Term Allocated Pension

Rule 5.6
replaced by
Amending Deed
dated 20/6/07.
Effective 1/7/07

The Term Allocated Pension can only be transferred on the death of the Member or the Member's Reversionary Beneficiary, as the case may be, to a Dependant of the Member, provided that it satisfies Relevant Law.

5.7 Non-Commutable Allocated Pensions which commence to be paid before 1 July 2007

Rule 5.7
replaced by
Amending Deed
dated 20/6/07.
Effective 1/7/07

- (a) The Trustee may, on the Member's request, pay to the Member the amount from time to time standing to the credit of a Member's Pension Account as a Non-Commutable Allocated Pension provided that:
 - (i) the payment commences before 1 July 2007;
 - (ii) the payments are made on at least an annual basis to the Member;
 - (iii) for a Non-Commutable Allocated Pension that has a commencement day on or after 22 December 1992 and before 1 January 2006 – the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the SIS Regulations;
 - (iv) for a Non-Commutable Allocated Pension that has a commencement day on or after 1 January 2006 and before 1 July 2007 – the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB; and
 - (v) the capital value of the Non-Commutable Allocated Pension, and the income from it cannot be used as security for a borrowing; and
 - (vi) the Non-Commutable Allocated Pension can only be commuted if:
 - (i) the sole purpose of the commutation is:
 - (A) to pay an Unrestricted Non-Preserved Benefit;

- (B) to pay a superannuation contributions surcharge imposed by the *Superannuation Contributions Tax Imposition Act 1997*;
 - (C) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (D) to pay a Release Authority Amount; or
- (ii) before the commutation, the Member satisfied a Condition of Release in respect of which the cashing restriction for Preserved Benefits and Restricted Non-Preserved Benefits is 'nil'.
- (b) Upon the death of a Member in receipt of a Non-Commutable Allocated Pension, who is survived by a Spouse, the Spouse shall be entitled to receive the Non-Commutable Allocated Pension otherwise payable to the Member.
 - (c) Upon the death of the Member's Spouse whilst in receipt of a Non-Commutable Allocated Pension payable in accordance with the previous provision, or if a Member in receipt of a Non-Commutable Allocated Pension is not survived by a Spouse, the Trustee shall pay the amount then standing to the credit of that Member's Pension Account to, at the Trustee's discretion, such one or more of the Member's other Dependants, as determined at the Trustee's discretion, then living by way of lump sum payment or to the Member's Legal Personal Representative or to another person where permitted by Relevant Law.
 - (d) Each lump sum payment and Non-Commutable Allocated Pension payment paid pursuant to the Rule 5.7 shall be debited to the Member's Pension Account.
 - (e) Any Non-Commutable Allocated Pension shall cease to be paid when the net credits in respect of that Member's Pension Account have been paid out in full.
 - (f) Subject to the prior provisions of this Rule 5.7, in the event at any time after the death of a Member, that there be net credits standing to the Member's Pension Account in respect of a Member, the amount thereof shall be paid, net of any Tax to the Legal Personal Representatives of the Member.

5.7A Transition to Retirement Income Streams

Rule 5.7A inserted by Amending Deed dated 20/6/07. Effective 1/7/07. Amended by Amending Deed dated 3 February 2009. Effective 1 March 2009.

The Trustee may, on the Member's request, pay to the Member the amount from time to time standing to the credit of a Member's Pension Account as a Transition to Retirement Income Stream in accordance with the provisions of Rule 5.3 (with the exception of Rules 5.3(a)(ii) and 5.3(c) provided that:

- (a) the total of the payments in any year (including under a payment split) is less than 10% of the account balance on 1 July of the financial year in which the payment is made (or, if the pension has commenced in that year, the commencement day); and

Note: Reference to "that" in Rule 5.7A(a) is correct under Amending Deed dated 20/6/07 even though it should be "than".

- (b) if the Transition to Retirement Income Stream is commuted, the commuted amount can only be paid to the Member if:
- (i) the purpose of the commutation is:
 - (A) to pay an Unrestricted Non-Preserved Benefit;
 - (B) to pay a superannuation contributions surcharge imposed by the *Superannuation Contributions Tax Imposition Act 1997*;
 - (C) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (D) to pay a Release Authority Amount; or
 - (ii) before the commutation, the Member satisfied a Condition of Release in respect of which the cashing restriction for Preserved Benefits and Restricted Non-Preserved Benefits is 'nil'.

5.8 Non-Commutable Term Allocated Pension

Rule 5.8
amended by
Amending Deed
dated 20/6/07.
Effective 1/7/07

Before 1 July 2007, the Trustee may, on a Member's request, pay to the Member the amount from time to time standing to the credit of the Member's Pension Account as a Non-Commutable Term Allocated Pension that satisfies the requirements under Rules 5.4, 5.5(a) and 5.6 provided that, if the pension is commuted under Rule 5.5(a)(i), the commuted amount can only be paid to the Member if:

- (a) the purpose of the commutation is to pay an Unrestricted Non-Preserved Benefit; or
- (b) before the commutation, the Member has satisfied a Condition of Release in respect of which the cashing restriction for Preserved Benefits and Restricted Non-Preserved Benefits is "nil".

5.8A Total and Permanent Disablement Benefit

Rule 5.8A inserted
by Amending Deed
dated 3 February
2009. Effective 1
March 2009.

In the event that a Part 5 Member suffers Total and Permanent Disablement there will be payable in addition to the benefit otherwise payable under this Part 5 the proceeds of any policy of insurance effected to provide benefits on the Total and Permanent Disablement of the Member for the purposes of this Part 5.