

COAL MINING INDUSTRY LONG SERVICE LEAVE.

14° and 15° Geo. VI., No. XXXIV.

No. 34 of 1950.¹

(Affected by Act No. 113 of 1965.)

[As amended by Act No. 31 of 1951, assented to 29th December, 1951;
and reprinted to the Amendments Incorporation Act, 1938.]

AN ACT to constitute a Coal Mining Industry Long Service Leave Trust Fund; to provide for the payment therefrom to employers in the coal mining industry of amounts paid by them to employees in respect of long service leave accrued to such employees under certain awards; to validate certain matters; and for purposes connected therewith.

[Assented to 16th December, 1950.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Coal Mining Industry Long Service Leave Act, 1950-1951*.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the *Gazette*.¹

Short title,
commence-
ment and
construction.
Amended by
No. 31 of
1951, s. 2.

¹ Came into operation on 1st August, 1951. See G.G. 27/7/51, p. 2083.

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(3) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Interpreta-
tion.
Amended by
No. 31 of
1951, s. 3.

2. (1) In this Act unless the context or subject matter otherwise indicates or requires—

“Administrator” means the Administrator appointed under this Act;

“award” means any award and any variation of an award relating to long service leave for employees in the coal mining industry in the State made by the Central Reference Board or the Local Reference Board, Western Australia, before the eighteenth day of April, one thousand nine hundred and fifty-one, and includes—

(a) orders made and interpretations given before that day in relation to such award or variation, and

(b) such awards, variations of awards and orders made and interpretations given on or after that day as are declared by Proclamation to be included within the interpretation.¹

“employer” means any employer bound by an award;

“Fund” means the Coal Mining Industry Long Service Leave Trust Fund constituted under section three of this Act;

“Minister” means the Minister of the Crown for the time being and from time to time holding the portfolio of Minister for Mines, and

¹ The interpretation of “Award” is amended by *Government Gazettes*: 10/4/52, p. 900; 31/1/53, p. 216; 11/6/54, pp. 1055-6; 27/4/56, p. 1121; 2/11/56, p. 2603; 14/11/58, p. 2962; 31/12/58, p. 3403; 8/5/59, p. 1188; 24/7/59, p. 1940; 28/7/61, p. 2241; 29/12/61, p. 3963; 3/5/63, p. 1171; 24/4/64, p. 1989; 3/2/67, p. 345; 25/7/69, pp. 2132-3.

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includes any other Minister of the Crown temporarily acting in the place of the said Minister;

“prescribed” means prescribed by this Act or the regulations under this Act.

(2) A reference in this Act to any Act of the Parliament of the Commonwealth shall include a reference to that Act as amended from time to time.

3. (1) There shall be established under this Act a Fund to be known as the Coal Mining Industry Long Service Leave Trust Fund, to be kept at the Treasury and administered by the Administrator in accordance with this Act.

Coal Mining
Industry
Long Service
Leave Trust
Fund.

(2) The Fund shall consist of—

- (a) such amounts as are from time to time advanced to the Fund by the Treasurer, and
- (b) all amounts received by the State from the Commonwealth under the States Grants (Coal Mining Industry Long Service Leave) Act 1949 of the Parliament of the Commonwealth.

(3) The Fund shall be applied—

- (a) to the reimbursement of any employer of the amounts paid by him under and in accordance with the provisions of any award and with the prior approval of the Administrator to any employee or the personal representative of any deceased employee in respect of long service leave due to or shifts of entitlement accumulated by such employee or deceased employee under and in accordance with the provisions of any award;
- (b) in meeting the costs incurred in the administration of this Act.

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Payments to
employers.

4. (1) An employer shall be entitled to be reimbursed the amount paid by him under and in accordance with the provisions of any award to any employee or the personal representative of any deceased employee in respect of long service leave due to or shifts of entitlement accumulated by such employee or deceased employee under and in accordance with the provisions of any award if he has obtained the approval of the Administrator prior to making such payment.

(2) The Administrator shall not approve of any payment referred to in subsection one of this section unless he is satisfied that the employee or the personal representative of a deceased employee is entitled to such payment.

Adminis-
trator.

5. (1) There shall be an Administrator of the Fund, who shall be appointed by the Governor. The person to be so appointed shall be an officer within the meaning of the Public Service Act, 1904-1948.¹ The Administrator shall exercise and discharge the powers, authorities, duties and functions conferred and imposed upon him by or under this Act.

(2) The Governor may, under and subject to the provisions of the Public Service Act, 1904-1948,¹ appoint such officers and employees as may be necessary for the administration of this Act.

Duties of
Adminis-
trator.

6. The Administrator shall—

- (a) be responsible for the prudent and efficient administration of the Fund;
- (b) determine all questions of fact arising in connection with payments out of the Fund;
- (c) maintain such records and accounts as may be necessary for the administration of this Act;

¹ Now Public Service Act, 1904-1970.

- (d) as soon as practicable after the thirtieth day of June in each year prepare and transmit to the Minister a report exhibiting a true and correct view of the financial position of the Fund and of the transactions of the Administrator;
- (e) at such times and in respect of such matters as the Minister may require prepare and transmit to the Minister a true and accurate report.

7. (1) The Administrator may, for any purpose in connection with the administration of this Act—

- (a) summon witnesses;
- (b) receive evidence on oath; and
- (c) require the production of documents or records.

Power of Administrator to summon witnesses.
Amended by No. 113 of 1965, s. 8.

(2) A person who has been lawfully summoned to appear before the Administrator shall not fail to appear, and a person who appears, whether summoned or not, shall not—

- (a) refuse to be sworn as a witness;
- (b) fail to answer any question he is lawfully required to answer; or
- (c) fail to produce any document or records he is lawfully required to produce.

(3) Any person who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding one hundred dollars.

8. (1) For the purposes of this Act every employer shall maintain such records and in such form as the Administrator may require, and shall at all times correctly record the particulars required by the Administrator and shall when called upon

Records to be kept by employers.
Amended by No. 113 of 1965, s. 8.

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so to do by the Administrator or any person authorised by him in that behalf produce such records for investigation by the Administrator or person so authorised.

(2) Any person who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding one hundred dollars.

False or misleading statements. Amended by No. 113 of 1965, s. 8.

9. (1) Any person who for the purpose of obtaining any payment under this Act for himself or for any other person makes any false statement to or misleads or attempts to mislead the Administrator, or any officer concerned in the administration of this Act, or any other person whomsoever or otherwise commits any fraudulent act or omission shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding two hundred dollars or to imprisonment for twelve months.

(2) Where a person is convicted of an offence under subsection one of this section and it is made to appear that, in consequence of such offence, he was wrongly paid any amount in respect of or purporting to be in respect of long service leave accrued under any award the court may, in addition to the penalty or punishment referred to in that subsection, impose a penalty or additional penalty not exceeding twice the amount so wrongly paid.

Recovery of penalties.

10. (1) Any penalty imposed by or under this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

(2) Any magistrate or justices may in any proceedings for a penalty under this Act or the regulations make such order as to the payment of costs as may be thought just and may assess the amount of such costs.

11. Each award, insofar as it operates or purports to operate, in relation to employers or employees, or the personal representatives of deceased employees, resident or carrying on business in the State of Western Australia, shall have the force of law, and shall be deemed always to have had the force of law, in accordance with its tenor.

Validation
of awards.
Amended by
No. 31 of
1951, s. 4.

12. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.
Amended by
No. 113 of
1965, s. 8.

(2) In particular and without prejudice to the generality of subsection one of this section the regulations may—

- (a) prescribe the times within which and the manner and form in which applications for payments under this Act may be made;
- (b) prescribe the particulars to be furnished in support of such applications;
- (c) require any person claiming a payment under this Act to make full and complete disclosure to the Administrator in relation to any such claim.

(3) The regulations may impose a penalty not exceeding forty dollars for any breach of the regulations.