

Western Australia

## **Miner's Phthisis Act 1922**

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## Miner's Phthisis Act 1922

### An Act relating to miner's phthisis.

#### 1. Short title

This Act may be cited as the *Miner's Phthisis Act 1922*, and shall come into operation on a date to be fixed by proclamation <sup>1</sup>.

#### 2. Interpretation

In this Act —

**employer** means any person (including a body corporate) by whom or on whose behalf any other person is employed to work on, in, or about a mine, and the term includes an agent or manager of an employer;

**Mine** and **mining** have the same meaning as in the *Mining Act 1904* <sup>2</sup>;

**Minister** means the Minister for Mines <sup>3</sup>, or other responsible Minister of the Crown charged for the time being with the administration of this Act.

#### 3. Appointment of officers

The Minister may employ such Government medical officers and medical practitioners as he may think fit for the purposes of this Act, and shall issue to every such officer or practitioner so appointed a certificate in writing of his appointment.

**4. Medical examination**

- (1) It shall be the duty of every person occupied or employed in mining operations on, in, or about any mine to submit himself, from time to time, to a medical officer or medical practitioner so appointed, for examination for symptoms of miner's phthisis or tuberculosis, whenever required so to do by any such medical officer or practitioner.
- (2) Any person occupied or employed on, in, or about a mine who fails, when required as aforesaid, to submit himself to any medical examination for the purposes of this Act, at the time and place stated in the requisition, shall be guilty of an offence.  
Penalty: \$100.
- (3) After every medical examination or re-examination of any person under this section, if such person is found not to be suffering from tuberculosis, he shall be supplied with a certificate in the prescribed form, which, until revoked, shall entitle him either to continue working or to commence work in mining operations on, in, or about any mine.

*[Section 4 amended by No. 113 of 1965 s. 8(1).]*

**5. Duty of employers**

Every employer of persons engaged in mining operations shall —

- (a) furnish to a medical officer or medical practitioner appointed as aforesaid, or to the Under Secretary for Mines<sup>4</sup>, a list of all persons employed on, in, or about the mine of the employer whenever required in writing so to do; and
- (b) afford to all persons so employed by him all reasonable facilities for such persons to submit themselves, without loss of pay, to medical examination under this Act; and
- (c) permit any medical officer or medical practitioner appointed as aforesaid, to have access to the mine of the

employer for the purposes of and in the execution of his duties under this Act.

Penalty: \$100.

*[Section 5 amended by No. 113 of 1965 s. 8(1).]*

**6. Penalty for obstruction of officers**

Any employer, and any person employed on, in, or about a mine, who resists, hinders, or obstructs a medical officer or medical practitioner in the exercise and performance of his powers and duties under this Act, or does any act or thing to prevent or discourage any person from submitting himself to any medical examination under this Act, shall be guilty of an offence.

Penalty: \$100.

*[Section 6 amended by No. 113 of 1965 s. 8(1).]*

**7. Reports**

- (1) It shall be the duty of every medical officer and medical practitioner appointed under this Act from time to time to report in writing to the Minister as prescribed.
- (2) In any report under this Act which may be published or open to public inspection, the names of the persons who may have submitted themselves to medical examination shall not be disclosed.

**8. Employment of miners suffering from tuberculosis may be prohibited**

- (1) If a medical officer or practitioner appointed under this Act reports in writing to the Minister that a person therein-named is suffering from tuberculosis and engaged in mining operations, the Minister may, by notice in the prescribed form served on such person and his employer, prohibit the employment of such person on, in, or about a mine, or part of the mine to which this section applies.

- (2) If, after service of such notice, the person to whom the notice relates is employed on, in, or about a mine, or part of the mine to which this section applies, such person and his employer shall be guilty of an offence.

Penalty: \$100.

Provided that the person on whom such notice has been served may, within 14 days after the service of the notice, appeal therefrom by notice in writing given to the Minister, such notice having annexed thereto a certificate in writing signed by a practitioner registered under the *Medical Practitioners Act 2008*, that in the opinion of such practitioner the appellant is not suffering from tuberculosis.

- (3) The appeal shall be heard and determined by a Board consisting of the Principal Medical Officer, or a deputy appointed by him, and 2 practitioners registered under the *Medical Practitioners Act 2008*, one to be nominated by the appellant and the other by the Minister.
- (4) If the Board, or 2 of its members, certify in writing that in their opinion the appellant is not suffering from tuberculosis, the notice served on the appellant under subsection (1) shall be annulled, but otherwise shall continue to have effect. The decision of the Board upon any question of fact shall be final, and shall not be subject to appeal to or review by any court of law.
- (5) The certificate of the Board shall be filed in the Department of Mines<sup>4</sup>, and a copy thereof shall be issued to the appellant by whom the original may be inspected.
- (6) It shall not be a disqualification for appointment as a member of the Board that the practitioner nominated by the appellant gave the certificate annexed to the appellant's notice of appeal.
- (7) Whenever a medical officer or practitioner appointed under this Act reports in writing to the Minister that a person named in such report and engaged in mining operations has so developed



symptoms of miner's phthisis, uncomplicated by tuberculosis, as to indicate that further employment on, in, or about a mine or part of a mine to which this section applies may be detrimental to his future health, the Minister shall, by notice in the prescribed form, notify such person accordingly.

- (8) This section shall apply only within such districts, and to such mines, or parts of mines, as are declared from time to time by the Governor by Order in Council published in the *Gazette*.

*[Section 8 amended by No. 113 of 1965 s. 8(1); No. 22 of 2008 s. 162.]*

## 9. Compensation

- (1) It shall be the duty of the Mine Workers' Relief Fund, Incorporated, to keep a register, and on application by any person employed on, in, or about a mine at or after the commencement of this Act or who was so employed at any time on or after the commencement of this Act, and within 12 months next preceding his examination on which the report to the Minister under section 8 was based, and whose employment is prohibited under section 8, to insert the name of such person in such register.
- (2) Any person whose employment is prohibited as aforesaid, and whose name is registered in the register to be kept by the Mine Workers' Relief Fund, Incorporated, shall have the right to receive from the Department of Mines<sup>4</sup> compensation, equal to the ruling rate of pay in the district in which he was employed at the time of such prohibition for the class of work in which he was engaged, unless other suitable employment is found for and offered to him by the Department of Mines<sup>4</sup>.
- (3) If suitable work is found for, and offered to any person entitled to compensation under this section, and is refused by him, the right of such person to receive compensation under this section shall thereupon cease, and his name shall be removed from the register.

**s. 9**

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- (4) If any question shall arise touching the right of any person to have his name placed or retained on the register, or his right to receive compensation hereunder, the question shall be referred by the Minister to a warden, whose decision shall be final.
- (4a) If the Principal Medical Officer certifies in writing that a person whose name is registered is or has become unable to work at any suitable employment, compensation under subsection (2) shall cease to be payable, but such person shall be entitled to receive from the Department of Mines<sup>4</sup> compensation in accordance with a scale prescribed by regulations made under this Act, but so that such compensation shall not be less than that provided by the scale of relief in force at the commencement of this Act under the rules of the Mine Workers Relief Fund, Incorporated.
- (4b) On the death of a person whose name is registered his dependants (if any) shall be entitled to receive from the Department of Mines<sup>4</sup> compensation in accordance with a scale prescribed by regulations made under this Act, but so that such compensation shall not be less than that provided by the scale of relief in force at the commencement of this Act under the rules of the Mine Workers' Relief Fund, Incorporated.
- (4c) A person whose name is registered, and who is or becomes entitled to receive or has received compensation under the *Workers' Compensation and Injury Management Act 1981*, and actually receives or has received such compensation shall not thereafter have any right to compensation under this Act.
- (4d) If a person whose name is registered dies, and his death is or has been caused by an injury as defined by the *Workers' Compensation and Injury Management Act 1981* section 5(1), by reason whereof his dependants are entitled to receive compensation under that Act, and actually receives or has received such compensation, such dependants shall not thereafter have any right to compensation under this Act.

- (5) For the purposes of this section *suitable employment* shall mean such work as the Principal Medical Officer or such deputy as he shall appoint or the Principal Medical Officer of the Wooroloo Sanatorium certifies to be suitable employment for the person to whom it is offered, and being either work on, in, or about a mine or part of a mine not declared under section 8 to be a mine or part of a mine to which such section applies, or elsewhere, or of some other kind.

*[Section 9 amended by No. 42 of 1925 s. 2; No. 39 of 1929 s. 3; No. 42 of 2004 s. 166.]*

**9A. Application of Act to persons employed within 3 months**

A person shall be deemed to be “engaged in mining operations” or “employed on, in, or about a mine at the commencement of this Act” within the meaning of those words in sections 8 and 9 respectively, if he was so engaged or employed within 3 months before the commencement of this Act, notwithstanding that at such time he may have been temporarily out of employment.

*[Section 9A inserted by No. 42 of 1925 s. 3.]*

**10. Interpretation**

- (1) For the purposes of this Act, a person working under a tribute agreement or other contract shall be deemed to be engaged in mining operations within the meaning of this Act, and any mine owner who is party to any such tribute agreement or contract shall be deemed an employer of such person.
- (2) District inspectors and workmen’s inspectors appointed under the *Mines Regulation Act 1906*<sup>6</sup>, shall be deemed to be persons occupied or engaged in mining operations within the meaning of this Act.

*[Section 10 amended by No. 39 of 1929 s. 4.]*

**11. Regulations**

The Governor may make regulations prescribing all matters which it may be necessary or convenient to prescribe for giving effect to this Act, and may impose a penalty not exceeding \$50 for the breach of any regulation.

*[Section 11 amended by No. 113 of 1965 s. 8(1).]*

**Notes**

<sup>1</sup> This is a compilation of the *Miner's Phthisis Act 1922* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Miner's Phthisis Act 1922</i>	16 of 1923	22 Feb 1923	7 Sep 1925 (see s. 1 and <i>Gazette</i> 4 Sep 1925 p. 1573)
<i>Miner's Phthisis Act Amendment Act 1925</i>	42 of 1925	31 Dec 1925	31 Dec 1925
<i>Miner's Phthisis Act Amendment Act 1929</i> <sup>7</sup>	39 of 1929	31 Dec 1929	31 Dec 1929
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<b>Reprint 1: The <i>Miner's Phthisis Act 1922</i> as at 14 Mar 2003</b> (includes amendments listed above)			
<i>Workers' Compensation Reform Act 2004</i> s. 166	42 of 2004	9 Nov 2004	s. 166(1) and (2): 4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131); s. 166(3): 14 Nov 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657); Para (b) of proclamation published 31 Dec 2004 p. 7131 revoked (see <i>Gazette</i> 17 Jun 2005 p. 2657)
<i>Medical Practitioners Act 2008</i> s. 162	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 35 <sup>8</sup>	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)

<sup>2</sup> Repealed by the *Mining Act 1978*.

<sup>3</sup> On the date as at which this reprint was prepared the former Minister for Mines was called the Minister for State Development.

<sup>4</sup> Under the *Alteration of Statutory Designations Order (No. 2) 2001* the former Department of Mines is known as Department of Mineral and Petroleum Resources and its administrative head is called the Director General.

<sup>5</sup> Footnote no longer applicable.

<sup>6</sup> Repealed by the *Mines Safety and Inspection Act 1994*.

<sup>7</sup> The *Miner's Phthisis Act Amendment Act 1929* s. 2 reads as follows:

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**2. Interpretation of s. 8**

Any person who was employed on, in or about a mine on or after the commencement of the principal Act, shall be deemed to be and to have been “engaged in mining operations” within the meaning of those words in section 8 of the principal Act, if he was so engaged at any time within 12 months next preceding his examination on which the report to the Minister under that section is, or may have been, based.

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<sup>8</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* Pt. 5 Div. 35 had not come into operation. It reads as follows:

**Division 35 — Miner's Phthisis Act 1922 amended**

**113. Act amended**

This Division amends the *Miner's Phthisis Act 1922*.

**114. Section 8 amended**

- (1) In section 8(2) delete “a practitioner registered under the *Medical Practitioners Act 2008*,” and insert:

a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession,

- (2) In section 8(3) delete “2 practitioners registered under the *Medical Practitioners Act 2008*,” and insert:

2 persons registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession,