

COAL MINE WORKERS (PENSIONS).

7° Geo. VI No. XXVII.

No. 27 of 1943.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 33 of 1944,¹ assented to 23rd December, 1944;
No. 15 of 1947,² assented to 1st November, 1947;
No. 43 of 1948,³ assented to 4th January, 1949;
No. 38 of 1949, assented to 26th October, 1949;
No. 33 of 1950, assented to 16th December, 1950;
No. 33 of 1951,⁴ assented to 20th December, 1951;
No. 24 of 1955, assented to 11th November, 1955;
No. 43 of 1957,⁵ assented to 26th November, 1957;
No. 40 of 1960, assented to 3rd November, 1960;
No. 52 of 1961, assented to 23rd November, 1961;
No. 99 of 1964, assented to 23rd December, 1964;
No. 16 of 1965, assented to 1st October, 1965;
No. 92 of 1965, assented to 8th December, 1965;
No. 36 of 1969, assented to 19th May, 1969;
No. 5 of 1970, assented to 29th April, 1970;
No. 38 of 1970, assented to 23rd September, 1970;

and Reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to prohibit the employment and the continuance in employment in the coal mining industry, and in certain callings related thereto, of certain persons of or above the age of sixty years, and to make provision for and with respect to the payment of pensions to such persons upon retirement or incapacity, and to certain other persons, and for other purposes connected therewith.

[Assented to 19th November, 1943.]

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:—

PART I.—PRELIMINARY.

1. (1) This Act may be cited as the *Coal Mine Workers (Pensions) Act, 1943-1970*.

Short title.
Amended by
No. 38 of
1970, s. 1.

¹ Came into operation on 1st July, 1944. See Section 6 of No. 33 of 1944 and *Gazette* 16/6/44, p. 490.

² Deemed to have come into operation on 1st July, 1944. See Section 4 of No. 15 of 1947.

³ Came into operation on 8th January, 1949. See Section 1 of No. 43 of 1948.

⁴ Came into operation on 15th March, 1952. See *Gazette* 14/3/52, p. 639.

⁵ Came into operation on 30th November, 1957. See *Gazette* 13/12/57, p. 3536.

Act divided
into Parts.

(2) This Act is divided into Parts as follows:—

PART I., ss. 1 to 4—PRELIMINARY.

PART II., ss. 5 to 16—COMPULSORY RETIREMENT
AND PENSIONS.

PART III., ss. 17 to 19—THE TRIBUNAL.

PART IV., ss. 20 to 22—FUNDS AND CONTRIBUTIONS.

PART V., ss. 23 to 37—MISCELLANEOUS.

(3) (a) Parts I. and V. of this Act shall commence on the day upon which the assent of His Majesty the King to this Act is signified.

(b) Parts II., III., and IV. of this Act shall, save and except as in this Act otherwise expressly provided, commence upon a day to be appointed by proclamation.*

(c) A different day may be so appointed in respect of any of the Parts II., III., and IV. aforesaid.*

(4) 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 of the regulations or the application thereof to any person or circumstance is held invalid, the remainder of this Act or of such regulations and the application of such provision to other persons or circumstances shall not be affected.

(5) This Act shall be read and construed with the Coal Mines Regulation Act, 1902-1940.¹

Interpreta-
tions.

Amended by
No. 43 of
1948, s. 3;
No. 38 of
1949, s. 3;
No. 33 of
1950, s. 3;
No. 33 of
1951, ss. 4
and 5;
No. 24 of
1955, s. 2;
No. 43 of
1957, s. 3.

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

“Injury” means any personal injury by accident happening to a mine worker while he is employed as such and which entitles him to compensation in accordance with the Workers’ Compensation Act, 1912-1941,² and

* Part III. was proclaimed to come into operation on 17th December, 1943. (See *Government Gazette*, 17th December, 1943.) Parts II. and IV. were proclaimed to come into operation on 1st July, 1944. (See *Government Gazette*, 16th June, 1944.)

¹ Now the Coal Mines Regulation Act, 1946-1965.

² Now the Workers’ Compensation Act, 1912-1970.

includes any disease which causes incapacity which is in the case of a mine worker, deemed under the said Act to be a personal injury by accident suffered by the mine worker concerned at the mine where he is employed.

“Mine worker” means—

- (a) a person who is employed (whether underground or above ground) in or about a coal mine in the State by the owner of the mine;
- (b) a person who was at any time after the thirty-first day of December, one thousand nine hundred and thirty-seven, engaged in the coal industry in this State;
- (c) a person who has at any time after the thirty-first day of December, one thousand nine hundred and thirty-seven, and before the commencement of this Act become permanently incapacitated by injury by an accident which happened to him while he was employed in or about a coal mine in this State and which entitled him to compensation in accordance with the provisions of the Workers' Compensation Act, 1912-1941;¹
- (d) a person who is employed by the owner of a coal mine in this State and who in the course of such employment is principally engaged in the transport of coal from the mine to the point of delivery by the owner; and for the purposes of this paragraph “point of delivery” means the place at which coal is delivered by the owner of the mine to a railway for transportation;
- (e) a check weigher or miner's check inspector;

¹ Now the Workers' Compensation Act, 1912-1970.

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- (f) a workmen's inspector appointed under the provisions of the Coal Mines Regulation Act, 1902-1940;¹
- (g) 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, 1904-1934, or under the Industrial Arbitration Act, 1912-1941,² of which union or organisation the membership is principally confined to persons falling within any one or more of the classes referred to in paragraphs (a) to (f) of this definition and who has actually worked in a coal mine in Western Australia for periods aggregating in all not less than five years;
- (h) a person who, in the opinion of the tribunal, is employed, whether by way of a service agreement or by way of subcontract, in or about an open cut by a contractor who contracts with an owner for the excavation or the removal of overburden or the winning of coal from an open cut, or a person who is so employed in or about a coal mine by a contractor who contracts for the working of any coal mine or any part thereof.
- (i) a contractor who on or after the coming into operation of the Coal Mine Workers (Pensions) Act Amendment Act, 1951, is principally engaged in or about a coal mine and who uses not more than one vehicle at any one time for the excavation or removal of overburden, or the winning of coal from an open cut or for the working of a coal mine, or any part of a coal mine, or for transporting coal to the point

¹ Now the Coal Mines Regulation Act, 1946-1965.

² Now the Industrial Arbitration Act, 1912-1968.

of delivery mentioned in paragraph (d) of this interpretation in carrying out a contract entered into with the owner, and who does not employ one or more persons in carrying out such contract; and

- (j) "Mine worker" also includes and shall be deemed always as from the first day of July, one thousand nine hundred and forty-four, to have included a superintendent, manager or under manager, and further, includes and shall be deemed always as from the twenty-first day of July, one thousand nine hundred and forty-four, to have included a male person engaged full time in clerical work in connection with a coal mine; but the term "mine worker" shall not include a person who is a director of a company which is the owner of a coal mine;

Provided that subject to subsection (4) of this section the term "mine worker" shall not include a superintendent or an instructor of any mine rescue corps or body.

Provided also that subject to subsection (7) of section twenty-one of this Act, the term "mine worker" shall not include—

a person who being first employed in or about a coal mine in the State after the seventh day of January, one thousand nine hundred and forty-nine, or a person, who having been so employed before, on or after that day has ceased to be so employed, except during any absence, lawful absence or occasional absence, referred to in

¹ Definition of mine worker extended by *Gazettes* 16/6/44, p. 489 and 21/7/44, p. 599.

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section three of this Act, and has been again so employed after that day—

- (a) is, when so employed, over the age of thirty-five years, or
- (b) fails to pass the prescribed medical examination at the time and place prescribed.

“Owner” means any person or body corporate who or which is the immediate proprietor or lessee or occupier of any coal mine or of any part thereof, or any agent or trustee acting on behalf of the owner, and does not include a person or body corporate who or which merely receives a royalty rent or fine from a coal mine, or is merely the proprietor of a coal mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the coal mine; but for the purpose of the provisions of this Act relating to contributions to the Fund mentioned in section twenty-one of this Act includes a contractor who contracts with an owner for the excavation or the removal of overburden or the winning of coal, and any contractor for the working of any coal mine or any part thereof shall be subject to this Act in like manner as if he were the owner, but so as not to exempt the owner from any liability, but does not include a contractor mentioned in paragraph (i) of the interpretation, ‘Mine worker’ in this section.

“Pension” means a pension payable under this Act and includes any amounts payable as an addition to a pension.

“Present war” means the war which at the commencement of this Act is existing between His Majesty the King and Germany, Italy and Japan.

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

(2) A person shall for the purposes of this Act be deemed to be engaged in the coal mining industry—

- (a) for any period (whether before or after the commencement of Part II. of this Act) during which he is employed as a mine worker;
- (b) for any period (whether before or after the commencement of Part II. of this Act) during which he is unemployed, if immediately before the date upon which he so became unemployed he was employed (whether underground or above ground) in or about a coal mine in this State by the owner of the mine:

Provided that—

- (i) a person shall not be deemed to be “engaged in the coal mining industry” by reason of the operation of paragraph (b) of this subsection unless he satisfies the tribunal that his employment was terminated otherwise than for misconduct and that his failure to obtain other employment was through no fault on his part; and
 - (ii) the period for which any such person is unemployed shall be deemed not to be interrupted by periods during which he is employed upon work of a casual nature;
- (c) who is a member of the Commonwealth Defence Force engaged on war service in the present war or who is engaged on service under the National Service Act, 1951-1953, of the Commonwealth Parliament or any Act passed in amendment of or substitution for that Act, if immediately before the date

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upon which he became a member as aforesaid or upon which he commenced service under that Act or any Act passed in amendment of or substitution for that Act, as the case may be, he was employed (whether underground or above ground) in or about a coal mine in this State by the owner of the mine, or was a person who by the operation of paragraph (b) of this subsection would be deemed to be "engaged in the coal mining industry."

- (d) for any period during which he is absent on long service leave awarded under the provisions of the Coal Mining Industry Long Service Leave Act, 1950-1951.

(3) A reference in any provision of this Act 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 an offence under section five of this Act.

(4) (a) (i) The Governor may by proclamation extend the definition of "mine worker" to include any one or more of the classes of persons referred to in the first proviso to that definition.

(ii) Any such proclamation shall take effect as from the date of the publication thereof in the *Government Gazette* or from a later date, to be specified in the proclamation.

(iii) As from the date upon which any such proclamation takes effect the provisions of this Act shall, subject to any modification which may be made pursuant to paragraph (b) of this subsection, apply to and in respect of persons who are members of the class to which the proclamation relates.

¹ See *Government Gazettes* 16/6/44, p. 489; 21/7/44, p. 599.

(b) (i) In any proclamation published pursuant to paragraph (a) of this subsection the Governor may specify an age, being later than the age of sixty years, which shall be the retiring age of persons who are members of the class to which the proclamation relates.

(ii) Where a retiring age is so specified the provisions of this Act, in their application to and in respect of persons who are members of such class, shall be deemed to be modified to the extent following that is to say—

Section five of this Act shall have and take effect as if the age specified in the proclamation were substituted for the age of sixty years referred to therein, and references in this Act to the "date of retirement" shall be construed accordingly.

(5) Where a person

- (a) satisfies the Tribunal that prior to the seventh day of January, one thousand nine hundred and forty-nine he was engaged or employed in the coal mining industry elsewhere than in the State under such comparable circumstances that had he been so engaged or employed in the coal mining industry in the State he would have been a mine worker according to the interpretation given to that expression by subsection (1) of this section;
- (b) satisfies the Tribunal that he is engaged or employed as a mine worker in the coal mining industry in the State, and was first so engaged or employed in this State on or after the seventh day of January, one thousand nine hundred and forty-nine;
- (c) satisfies the Tribunal that any interruption in the continuity of his engagement or employment in the coal mining industry elsewhere and as a mine worker in the State was attributable to reasonable time occupied in travelling to the State; and

- (d) complies with the requirements of section twenty-one B of this Act;

he shall be entitled as a mine worker to pension benefits and all other benefits under this Act as if in fact he had been engaged or employed in the coal mining industry in this State before that day.

Special provisions as to calculation of periods of employment. Amended by No. 43 of 1948, s. 4; No. 33 of 1950, s. 4; No. 24 of 1955, s. 3.

3. (1) Any mine worker who is absent from this State or from his employment upon war service as defined in the Commonwealth Defence Act or upon any kind of work or service in connection with the present war, or upon service under the National Service Act, 1951-1953 of the Commonwealth Parliament or any Act passed in amendment of or substitution for that Act, shall be deemed to have been continuously resident in this State and to have been employed in or about a coal mine during the period of such absence, but such mine worker shall not in respect of the period of such absence be required to pay any contributions to the tribunal in respect of the Fund established under Part IV of this Act.

(2) 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 for any continuous period not exceeding twelve months or such further period as the tribunal may in any case determine shall be deemed to have actually worked in or about a coal mine during the period of such absence and the mine worker and the owner shall in respect of the period of such absence be required to pay contributions.

(3) Continuous residence in this State 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 Act the period of any such absence shall be counted as a period of residence in this State.

(4) Any elected official referred to in paragraph (g) of the definition of "Mine Worker" in section two shall, for the purposes of this Act be deemed to have

actually worked in or about a coal mine in this State or in Australia for the whole of the period during which he held office as such elected official.

(5) For the purposes of this Act the work of persons of the classes referred to in paragraphs (e) and (f) of the definition of "Mine worker" in section two of this Act shall be deemed to be work in or about a coal mine.

(6) An owner shall not be required to pay contributions in respect of the mine workers referred to in subsections (4) and (5) of this section.

4. (1) Where the Governor is satisfied—

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

Reciprocating States.
Amended by
No. 33 of
1950, s. 5.

he may by proclamation declare such other State to be a reciprocating State for the purposes of this Act.

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

- (a) the circumstances in which and the conditions subject to which the tribunal will, for the purposes of this Act, regard any person who is or has been a mine worker in or is or has been engaged in the coal mining industry of such other State, as a person who is or has been a mine worker in or is or has been engaged in the coal mining industry of this State;
- (b) the circumstances in which and the conditions subject to which the tribunal may accept and act upon a certificate furnished

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by the Minister of the Crown for such other State that any person is or has been a mine worker in or is or has been engaged in the coal mining industry of such other State, and the period or periods during which he has been such a worker or has been so engaged;

- (c) the circumstances in which and the conditions subject to which the fund established under this Act shall be liable for the payment of the whole or any part of any pension awarded to a person of the class referred to in paragraph (a) of this subsection;
- (d) the circumstances in which and the conditions subject to which payment may be made from the fund established under this Act to the corresponding fund or funds established under the legislation of such other State;
- (e) the making of such provision as may be necessary to ensure that a mine worker or his dependants shall not become entitled to payment of a pension under this Act as well as under the legislation of such other State;
- (f) any adjustments which may be necessary, if the proclamation declaring such other State to be a reciprocating State is revoked;
- (g) any other matter arising under this Act which the Minister may consider necessary or convenient to be included in the agreement.

Provided that no agreement entered into under this subsection shall have any force or effect until the proclamation referred to in subsection (1) of this section has been issued.

(3) The Governor may by proclamation revoke any proclamation issued under subsection (1) of this section, and where a proclamation is so revoked the agreement entered into under subsection (2) of this section shall lapse, except to the extent to which it relates to the matters referred to in paragraph (f) of that subsection.

(4) Where a proclamation declaring any other State to be a reciprocating State as aforesaid has been published and is still in force, the provisions of this Act shall be deemed to be modified to the extent necessary to enable the agreement entered into under subsection (2) of this section with such other State to be carried into effect.

PART II.—COMPULSORY RETIREMENT AND PENSIONS.

5. (1) Subject to this section no person shall take into or retain in his employment as a mine worker any person who is of or above the age of sixty years, and no person of or above the age of sixty years shall accept or continue in employment as a mine worker.

Employment after sixty years of age prohibited. Amended by No. 113 of 1963, s. 8.

(2) (a) Every mine worker who is at the commencement of this Part employed as a mine worker, and who is at such commencement of or above the age of sixty years, shall be retired from and shall vacate his employment as a mine worker upon the expiration of the period of three months after such commencement.

(b) Every mine worker who is at any time after the commencement of this Part employed as a mine worker and who whilst so employed attains the age of sixty years shall be retired from and shall vacate his employment as a mine worker immediately upon attaining that age:

Provided that any such mine worker who attains the age of sixty years at any time within the period of three months after the commencement of this Part shall be retired from and shall vacate his employment as a mine worker upon the expiration of that period.

(c) A person of or above the age of sixty years who is not at the commencement of this Part employed as a mine worker shall not at any time after such commencement be employed as a mine worker.

(3) Any person who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence:

Penalty—One hundred dollars, and, in addition, a daily penalty of two dollars for every day or part of a day during which the offence continues.

(4) (a) (i) The tribunal may from time to time, upon special cause being shown, suspend the operation of subsections (1) and (2) of this section in their application to and in respect of any specified employment of a specified mine worker; and any such suspension may be made subject to such conditions (if any) as the tribunal may impose.

(ii) Any such suspension shall be evidenced by a certificate of exemption, which shall be issued by the tribunal, and shall specify the employment in respect of which the operation of the said subsections is suspended, the mine worker to whom the certificate relates, the period for which the certificate is to remain in force, and the conditions (if any) subject to which the operation of the said subsections is suspended.

(b) (i) The tribunal may from time to time suspend the operation of subsections (1) and (2) of this section in their application to and in respect of all mine workers, or of any specified class of mine workers, or of all mine workers other than those of a specified class, and any such suspension may be made subject to such conditions (if any) as the tribunal may impose.

(ii) Any suspension shall be evidenced by a certificate of exemption, which shall be issued by the tribunal, and shall specify the mine to which the certificate relates, and shall indicate whether the certificate relates to employment of all mine workers, or of a specified class of mine workers or of all mine workers other than those of a specified class. The certificate shall also specify the period for which the same is to remain in force, and the conditions (if any) subject to which the operation of the said subsections is suspended.

(c) The employment of a mine worker, after the date of retirement shall not, where such employment is under and in accordance with a certificate issued under this subsection, constitute an offence.

(5) It shall be a sufficient defence to a charge that a person has taken into or retained in his employment as a mine worker any person who is of or above the age of sixty years, if the person charged proves that the age of the person so employed, as disclosed by the particulars furnished pursuant to regulations made in that behalf, was at the relevant date, less than sixty years.

6. (1) Any mine worker who is employed as a mine worker at the commencement of this Part or at the date upon which he attains the age of sixty years, whichever is the later, or who though not so employed had during the twelve months immediately preceding the commencement of this Part, or the date upon which he attained the age of sixty years, whichever is the later, actually worked as a mine worker for not less than sixty days in all during the said period of twelve months, or who was so employed on the thirty-first day of January, one thousand nine hundred and sixty-one and had attained the age of fifty-eight years on or before that date or attains that age before the twenty-

Pensions—
mine workers
who are
retired.
Amended by
No. 43 of
1948, s. 5;
No. 33 of
1950, s. 6;
No. 52 of
1961, s. 2¹;
No. 16 of
1965, s. 2;
No. 113 of
1965, s. 8,
and by
Proclama-
tion G.G.
27/2/70,
p. 588.

¹ By subsection (2) of section 2 of the Act No. 52 of 1961 it is provided that the amendments specified in subsection (1) of that section shall operate and take effect and shall be deemed to have had operated and have had effect on and from the 1st day of February, 1961.

fourth day of February, one thousand nine hundred and sixty-one, shall be eligible, as from the date of retirement, to a pension of seventeen dollars and twenty-five cents per week,¹ if he establishes to the satisfaction of the tribunal that—

- (a) he has been continuously resident in this State during the five years immediately preceding the date of retirement and—
 - (i) he has actually worked in or about a coal mine in this State for not less than four hundred days during the said period of five years; or
 - (ii) before the commencement of this Part or the date upon which he attained the age of sixty years, whichever is the later, or, as the case may be, before the thirty-first day of January, one thousand nine hundred and sixty-one, he has been engaged in the coal mining industry in the State for a period of not less than twenty years in all; or
- (b) he has been resident in this State for not less than five years out of the seven years immediately preceding the date of retirement and—
 - (i) he has actually worked in or about a coal mine in Australia for not less than five hundred days during such period of seven years; or
 - (ii) before the commencement of this Part or the date upon which he attained the age of sixty years, whichever is the later, or, as the case may be, before the thirty-first day of January, one thousand nine

¹ The rate of pension stated is the rate of pension proclaimed to apply on and after 8/10/69. See Proclamation in *Government Gazette* on 27/2/70, p. 588. For previous amendments see *Government Gazettes* 18/5/51, p. 1323; 14/12/51, p. 3387; 15/5/53, pp. 833-934; 7/5/54, p. 746; 4/11/55, p. 2728; 1/11/57, p. 3024; 30/10/59, p. 2698; 30/6/61, p. 2078; 3/5/63, p. 1171; 31/7/64, pp. 2785-6; 29/1/65, p. 358; 2/6/67, p. 1489; 3/1/69, p. 2.

hundred and sixty-one, he has been engaged in the coal mining industry in this State for a period of not less than twenty years in all.

Provided that a mine worker who because of ill health, certified to by medical certificate, was unable to work sixty days in his last year of employment, but who has fulfilled all other obligations under this Act, shall not be debarred from receiving a pension under this section.

Provided also that the provisions of this subsection shall not apply to a mine worker who was employed as a mine worker on the thirty-first day of January, one thousand nine hundred and sixty-one and had attained the age of fifty-eight years on or before that date or attains that age on or before the twenty-fourth day of February, one thousand nine hundred and sixty one, unless on or before the last-mentioned date he has ceased to be so employed and makes application for payment to him of a pension under this subsection.

(2) Any mine worker who is at the commencement of this Part 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 (a) or paragraph (b) of subsection (1) of this section, shall be eligible, as from the date of retirement, for a pension of seventeen dollars and twenty-five cents per week;¹ Provided that the tribunal shall not award a pension under this subsection 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 subsection.

(3) Any mine worker who at the date of retirement is not eligible pursuant to subsection (1) or subsection (2) of this section for a pension, shall

¹ Amended rate of pension. See footnote page 16.

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be eligible, as from the date of retirement, for a pension of seventeen dollars and twenty-five cents per week¹ if he establishes to the satisfaction of tribunal—

- (a) that during the ten years immediately preceding the commencement of this Part, or the date upon which he attained the age of sixty years, whichever is the later, he has been engaged in the coal mining industry in this State, and during such period has actually worked in the coal mining industry in this State for a period of not less than seven hundred and fifty days in all; or
- (b) that before the commencement of this Part, or the date upon which he attained the age of sixty years, whichever is the later, he has been engaged in the coal mining industry in this State for a period of not less than twenty years in all:

Provided that a mine worker shall not be eligible for a pension under this subsection if during the three years immediately preceding the commencement of this Part or the date upon which he made application for a pension, whichever is the later, he has not been engaged in the coal mining industry in this State and during such period he has in the opinion of the tribunal been continuously engaged in work other than as a mine worker.

(4) Any mine worker whose employment in the coal mining industry at Collie ceased because of the flooding of the mine known as "Hebe" in the month of April, nineteen hundred and sixty-five, is eligible to a pension of fourteen dollars and twenty-five cents per week, if he establishes to the satisfaction of the Tribunal that—

- (a) he attained the age of fifty-eight years on or before the thirtieth day of April, nineteen hundred and sixty-five;

¹ Amended rate of pension. See footnote page 16.

- (b) he is no longer employed as a mine worker and has retired from employment in the coal mining industry;
- (c) except for his age, he would be otherwise eligible for a pension under subsection (1) of this section; and
- (d) he has made an application for the pension on or before the thirty-first day of May, nineteen hundred and sixty-five.

(5) Any pension payable pursuant to subsection (4) of this section shall be paid to the person entitled thereto on and from the latest of the following dates—

- (a) the thirtieth day of April, nineteen hundred and sixty-five;
- (b) the date on which the person last ceased work as a mine worker; or
- (c) the date of the expiration of his annual leave, if any, for which he was paid by the owner of a mine, after he ceased work as a mine worker in or about that mine.

(6) The provisions of subsections (4) and (5) of this section shall be deemed to have come into force for all purposes on the thirtieth day of April, nineteen hundred and sixty-five.

7. (1) A mine worker shall, subject to this section, be eligible for a pension of seventeen dollars and twenty-five cents per week¹ if he proves to the satisfaction of the tribunal—

- (a) that he has been incapacitated by injury arising out of or in the course of his employment as a mine worker, and that such incapacity arose before the commencement of this Part but after the thirty-first day of December, one thousand nine hundred and thirty-seven, or arose after such commencement; and—

Pension—
permanent
incapacity.
Amended by
No. 43 of
1948, s. 6;
No. 33 of
1950, s. 7;
No. 24 of
1955, s. 4;
No. 40 of
1960,² s. 2;
No. 52 of
1961, s. 3;
No. 36 of
1969, s. 2;
No. 38 of
1970, s. 2.
and by
Proclama-
tion G.G.
27/2/70,
p. 588.

¹ Amended rate of pension. See footnote page 16.

² Deemed to have come into operation from 1/7/44.

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(b) that by reason of such incapacity he is unable to continue in employment as a mine worker, or to be employed in full time employment in any other work; and

(c) that—

(i) 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

(ii) 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 subsection—

(a) where the injury giving rise to the incapacity was an intentional self-inflicted injury; or

(b) where since the date of the injury giving rise to the incapacity he has in the opinion of the tribunal been engaged in work which occupies the whole of the time normally required for full-time employment, other than as a mine worker.

(1A) (a) A mine worker shall, subject to this section, be eligible for a pension of seventeen dollars and twenty-five cents per week¹ if he proves to the satisfaction of the tribunal—

(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

¹ Amended rate of pension. See footnote page 16.

(iii) that he has been engaged in the coal mining industry in this State for a period of not less than twenty years in all; and

(iv) that he has paid contributions for a continuous period of not less than five years immediately preceding the cessation of his employment as a mine worker by reason of such incapacity.

(b) 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.

(c) The tribunal may require any applicant for a pension under this subsection to submit himself to a Medical Board for examination as to the degree of incapacity.

(d) A mine worker shall not be eligible for a pension under this subsection where the permanent incapacity is, in the opinion of the tribunal, due to his own fault.

(1B) A mine worker whose service in the coal mining industry was, as the result of the cessation of operations in and closure during the month of December, one thousand nine hundred and sixty, of any mine operated at Collie in the State by the company known as Amalgamated Collieries Limited, terminated by the person or body corporate operating the mine at Collie in or about which he was employed shall, subject to this section, be eligible for a pension pursuant to subsection (1) or subsection (1A) of this section if he proves to the satisfaction of the tribunal—

(a) that during the period of unemployment following such termination he has become incapacitated and such incapacity was occasioned by his employment as a mine worker; and

- (b) that by reason of such incapacity he is unable to be employed in full time employment either as a mine worker or in any other work; and
- (c) that the incapacity is likely to be permanent.

(2) Where a mine worker is awarded a pension pursuant to subsection (1) or subsection (1A) of this section the total amount payable to him as pension (being the amount payable pursuant to subsection (1) or subsection (1A) of this section and any amounts payable pursuant to section nine of this Act) shall until he or any one of his dependants attains the age of sixty years be reduced, except where he is qualified, under the Social Services Consolidation Act, 1947-1954 of the Commonwealth Parliament or any Act passed in amendment of or substitution for that Act, to receive an invalid pension as being a person who is permanently blind, by the amount by which the average weekly amount which he earns or which the tribunal finds he might reasonably earn from available employment not inconsistent either in itself or by reason of the conditions under which it is performed with the maintenance of his health in either of the following cases, that is to say—

- (a) where the pension is awarded on the ground of partial incapacity; or
- (b) where the pension was awarded on the ground of total incapacity and subsequently thereto he has so far recovered as to be fit for employment of the character referred to in the foregoing provisions of this subsection,

exceeds seventeen dollars per week.

Border line cases.
Amended by No. 43 of 1948, s. 7; No. 33 of 1950, s. 8; No. 24 of 1955, s. 5 and by Proclamation G.G. 27/2/70, p. 588.

8. (1) Notwithstanding anything in this Part, the tribunal may award a pension of seventeen dollars and twenty-five cents per week¹ to any mine worker, even though he may not possess the qualifications required by any other provision of

¹ Amended rate of pension. See footnote page 16.

this Part, where the tribunal is satisfied that the granting of such a pension would not be inconsistent with the general scope and purpose of this Part 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.

(2) Where a mine worker is awarded a pension pursuant to subsection (1) of this section, and—

(a) where the pension is awarded on the ground of partial incapacity, or

(b) where the pension was awarded on the ground of total incapacity and subsequently thereto the pensioner has so far recovered as to be fit for employment of the character hereinafter in this subsection referred to,

then in any such case the total amount payable to him as pension (being the amount payable pursuant to the said subsection and any amounts payable pursuant to section nine of this Act) shall until he attains the age of sixty years, be reduced, except where he is qualified, under the Social Services Consolidation Act, 1947-1954 of the Commonwealth Parliament or any Act passed in amendment of or substitution for that Act, to receive an invalid pension as being a person who is permanently blind, by the average weekly amount which he earns or which the tribunal finds he might reasonably earn from available employment not inconsistent either in itself or by reason of the conditions under which it is performed with the maintenance of his health.

9. (1) Where a mine worker becomes eligible for a pension under section six, section seven, or section eight of this Act, he shall also be eligible for an addition to such pension consisting of the following amounts—

(a) an amount of fourteen dollars and twenty-five cents per week¹ in respect of his wife, which amount shall be payable until her death or until she ceases to be his wife;

Pensions—
additional
payments in
respect of
dependants.
Amended by
No. 43 of
1948, s. 8;
No. 23 of
1950, s. 9;
No. 43 of
1957, s. 4;
No. 113 of
1963, s. 8,
and by
Proclama-
tion G.G.
27/2/70,
p. 588.

¹ Amended rate of pension. See footnote page 16.

- (b) while he has totally or mainly dependent on his earnings any child (whether legitimate or illegitimate) or step child under in either case the age of sixteen years—an amount of two dollars per week for each such child or step child;

- (c) where no amount is payable under paragraph (a) of this subsection, an amount of fourteen dollars and seventy-five cents per week¹ in respect of one female who is totally or mainly dependent on his earnings, which amount shall be payable until her death or marriage or until she ceases to be such a dependant:

Provided that no amount shall be paid under this paragraph unless the female in respect of whom such weekly payment is claimed is

- (i) an adult who is caring for any child or step child of the mine worker under the age of sixteen years; or
- (ii) a member of the mine worker's family and is over the age of sixteen years; or
- (iii) over the age of sixteen years and is, in the opinion of the tribunal a relative of the mine worker.

(2) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, the tribunal shall refuse to award an addition to the pension of a mine worker in respect of his wife or shall cancel or suspend so much of any pension as consists of such addition where it is satisfied that the wife is living apart from her husband and the husband is not maintaining or contributing a reasonable sum to the support of his wife.

¹ Amended rate of pension. See footnote page 16.

(3) Notwithstanding anything contained in subsection (1) of this section, the tribunal may, in its discretion, award or continue an addition to a pension under paragraph (b) of that subsection in respect of any child who has attained the age of sixteen years if by reason of any physical or mental defect such child is totally incapacitated from earning a living.

(4) Notwithstanding anything contained in subsection (1) of this section, the tribunal may, in its discretion, for the purpose of assisting in the further education of any child of the mine worker who is of or above the age of sixteen years, award or continue an addition to a pension under paragraph (b) of that subsection in respect of such child for such period not exceeding two years after the child has attained the age of sixteen years as it may think fit.

(5) Notwithstanding anything contained in any other provision of this section, the tribunal may, if in the circumstances of any case it thinks fit so to do, regard as a child for the purposes of this section any child who, though not within the relationships mentioned in this section, is maintained as a member of the family of a mine worker.

(6) Where a mine worker, who becomes eligible for or has been awarded a pension under section six, section seven or section eight of this Act, proves to the satisfaction of the tribunal that his wife is an invalid and that by reason thereof he employs a female over the age of sixteen 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 sixteen years, the tribunal may award to the mine worker in lieu of the amount referred to in paragraph (a) or paragraph (c) of subsection (1) of this section an addition to his pension of an amount of thirteen dollars and fifty cents per week¹ in respect of such female.

¹ Amended rate of pension. See footnote page 16.

Pension payable to dependants. Amended by No. 33 of 1944, s. 2; No. 43 of 1948, s. 9; No. 33 of 1950, s. 10, and by Proclamation G.G. 27/2/70, p. 588.

10. (1) Upon the death of—
- (a) a person who has been awarded a pension pursuant to section six, section seven, or section eight of this Act; or
 - (b) a mine worker whose death has been found to have been due to injury arising out of and in the course of his employment as a mine worker (not being an intentional self-inflicted injury),
 - (c) a mine worker over sixty years of age who continues or has continued in his employment as a mine worker and whose death occurs or has occurred on or after the first day of July, one thousand nine hundred and forty-four, and who if the date of his death had been the date of retirement would have been entitled to a pension under any of the provisions of this Act,

the widow of such person or mine worker, or the female relative in respect of whom such person or mine worker, if he had remained alive, would have been entitled to an addition to his pension under paragraph (c) of subsection (1) of section nine of this Act, shall be eligible for a pension of fifteen dollars and seventy-five cents per week,¹ which shall be payable until the death, remarriage, or marriage of such widow or female relative, as the case may be, and the persons referred to in paragraph (b) of subsection (1) of section nine of this Act and in subsections (3), (4) and (5) of that section shall also be eligible for pensions of an amount equal to the amounts referred to in that paragraph and subsection, and for the periods specified in that paragraph and subsection.

(2) (a) The tribunal may, in its discretion, award a pension of fifteen dollars and seventy-five cents per week¹ to—

- (i) the widow of a mine worker whose death occurred after the first day of July, one thousand nine hundred and forty-four, but before the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1950, such pension to be payable on and

¹ Amended rate of pension. See footnote page 16.

from the commencement of the first pension pay period after the commencement of the said Act; or

- (ii) the widow of a mine worker whose death occurs after the commencement of the said Act where it is proved to the satisfaction of the tribunal that such mine worker has made contributions to the Coal Mine Workers' Pension Fund for a period of not less than five years in all.

(b) A pension awarded under this subsection shall be payable until the death or remarriage of such widow, and the persons referred to in paragraph (b) of subsection (1) of section nine of this Act and in subsections (3), (4) and (5) of that section shall also be eligible for pensions of an amount in each case equal to the respective amounts referred to in that paragraph and those subsections and for the periods specified in that paragraph and those subsections.

(3) (a) Where the tribunal is satisfied that a female is recognised as the wife of a mine worker although not legally married to him, the tribunal may, in its discretion, award—

- (i) an addition of fifteen dollars and seventy-five cents per week¹ under section nine of this Act to the pension of such mine worker as if such female were the wife of such mine worker; or
- (ii) a pension of fifteen dollars and seventy-five cents per week¹ to such female upon the death of the mine worker or pensioner as if such female were the widow of the mine worker, where it is proved to the satisfaction of the tribunal that the mine worker has made contributions to the Coal Mine Workers' Pensions Fund for a period of not less than five years in all:

Provided that no such award shall be made where an addition under section nine of this Act or a pension under section ten of this Act has been awarded

¹ Amended rate of pension. See footnote page 16.

in respect of or to the wife or widow of such mine worker or pensioner.

(b) Any addition to a pension awarded under this subsection shall not be payable in respect of any period prior to the commencement of the first pay period after the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1950.

(c) Subject to subsection (4) of this section any pension awarded to a female under this subsection shall be payable until the death, marriage or re-marriage of such female.

(4) Notwithstanding anything contained in this section, where a female (other than a widow of a mine worker) who has been awarded a pension under subsection (1) or subsection (3) of this section has not attained the age of thirty years at the date of such award, the pension payable to such female shall cease to be payable upon the expiration of a period of twelve months after the date of such award or such further period as the tribunal may in any case from time to time determine.

Earnings from employment. Added by No. 33 of 1944, s. 3. Amended by No. 43 of 1948, s. 10; No. 33 of 1950, s. 11; No. 24 of 1955, s. 6; No. 92 of 1965, s. 2; No. 36 of 1969, s. 3; No. 5 of 1970, s. 2; No. 38 of 1970, s. 3.

10A. (1) If any person to whom a pension has been awarded under section six of this Act or any person who has been awarded a pension under either section seven or section eight of this Act and who is over the age of sixty years or any persons (referred to in this section as "dependants") in respect of whom such pensioner may be eligible for an addition to such pension engages in employment, then the total amount payable as pension (including all additions for which he may be eligible under section nine of this Act) shall be reduced by the amount by which the average weekly earnings of such pensioner and dependants from such employment exceeds seventeen dollars per week.

(2) If any widow or female dependant to whom a pension has been awarded under section ten of this Act engages in employment then the amount payable to her as a pension shall be reduced by the

amount by which the average weekly earnings from such employment exceeds seventeen dollars per week.

(3) Subsections (1) and (2) respectively of this section apply only where the employment is engaged in at a time during which—

(a) the pensioner or any one of his dependants;
or

(b) the widow or female relative,

as the case may be, is, under the Social Services Act 1947-1969 of the Parliament of the Commonwealth or any Act amending or in substitution of that Act, receiving, or is qualified to apply to receive, a pension, other than an invalid pension as being a person who is permanently blind.

10B. (1) Where a person has been awarded a pension pursuant to section eight of this Act, the Tribunal may, from time to time, review the case, and may cancel the pension if satisfied that any change in the circumstances of the particular case justifies such cancellation.

Power to
cancel
pensions.
Added by
No. 33 of
1944, s. 3.

(2) The Tribunal may cancel any pension awarded under this Act where it is satisfied that the award of the pension was improperly obtained or that the award of the pension was contrary to the provisions of this Act.

11. (1) Where a mine worker becomes eligible for a pension pursuant to section six, section seven, or section eight of this Act the pension shall, subject to this Act, be payable to him until his death.

Pensions—
special
provisions.
Amended by
No. 43 of
1948, s. 11;
No. 33 of
1950, s. 12.

(2) No mine worker shall be paid more than one pension under this Act.

No pension
while com-
pensation
payable.
Amended by
No. 33 of
1950, s. 13;
No. 99 of
1964, s. 2.

12. (1) Except as provided in this section, no mine worker shall be entitled to a pension under any provision of this Part, as well as compensation under the Workers' Compensation Act, 1912-1941,¹ or damages received or recovered independently of that Act in respect of an injury arising out of or in the course of his employment as a mine worker.

(2) Where either before or after the commencement of this Part a mine worker has received, or is in receipt of or would, upon application, be entitled to compensation under the Workers' Compensation Act, 1912-1941,¹ the following provisions shall have effect—

- (a) where a mine worker accepts or has accepted weekly payments of compensation under that Act, the disqualification under subsection (1) of this section shall cease to have effect on the day upon which his right to such weekly payments ceases;
- (b) where the mine worker accepts an amount payable in accordance with the table set out in the Second Schedule to the Workers Compensation Act, 1912-1941,¹ or receives or has received a lump sum in redemption of weekly payments under that Act, the disqualification under subsection (1) of this section shall cease, subject to subsection (2a) of this section, to have effect on the expiration of a period ascertained as follows—

The period shall commence on and from the day following the day on which weekly payments of compensation ceased or the day on which the mine worker ceased work as a result of the injury for which compensation under that Act became payable, as the case may be, and shall continue during the number of weeks and part of a week ascertained by

¹ Now the Workers' Compensation Act, 1912-1970.

dividing the amount payable in accordance with the said table or the amount of the lump sum, as the case may be, by the maximum weekly amount of compensation payable under the said Act: Provided that any period of disqualification imposed and continuing at the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1950, shall be cancelled and the period of disqualification shall be ascertained in accordance with this subsection: Provided further that where the period of disqualification so ascertained would have expired before the said commencement of that Act, the disqualification shall be deemed to have ceased on the day immediately preceding the said commencement of that Act.

- (c) where the mine worker would, upon application, be entitled to compensation under the Workers' Compensation Act, 1912-1941,¹ the disqualification under subsection (1) of this section shall continue until such time as he makes the application, and thereafter until such disqualification ceases to have effect pursuant to paragraph (a) or paragraph (b) of this subsection.

Nothing in this paragraph shall be construed as disqualifying the mine worker from receiving a pension by reason only of the fact that proceedings in respect of an injury arising out of or in the course of his employment as a mine worker have been taken independently of the Workers' Compensation Act, 1912-1941.¹

- (2a) For the purpose of calculating when the disqualification under subsection (1) of this section ceases in relation to a mine worker to whom para-

¹ Now the Workers' Compensation Act, 1912-1970.

graph (b) of subsection (2) of this section applies, such portion—

of the amount or lump sum referred to in that subsection that the mine worker accepted or received under the Workers' Compensation Act, 1912,

as the Tribunal is satisfied has, since the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1964, been applied by the mine worker in,

- (a) the purchase of his home;
- (b) redeeming any mortgage on his home; or
- (c) payment of medical expenses in connection with the injury in respect of which he so accepted or received the amount or lump sum,

shall be disregarded.

(3) Where, either before or after the commencement of this Part, a mine worker who becomes eligible for a pension under sections seven or eight of this Act has received or recovered or receives or recovers damages from his employer independently of the Workers' Compensation Act, 1912-1941,¹ in respect of the injury, the disqualification under subsection (1) of this section shall have effect until the expiration of a period, to be determined in accordance with regulations made in that behalf.

Such regulations shall, as far as practicable, apply to and in respect of such damages the like principles as, under subsection (2) of this section, are applicable to and in respect of compensation.

Without prejudice to the generality of the power to make regulations, the regulations made in relation to the matters referred to in this subsection may prescribe conditions subject to which such principles shall be so applied, and may provide that part only of the amount of such damages is to be taken into account for the purposes of such regulations, and in such case shall prescribe such part or the manner of ascertaining the same.

¹ Now the Workers' Compensation Act, 1912-1970.

(4) Notwithstanding the foregoing provisions of this section, the disqualification under subsection (1) of this section in respect of any mine worker who, after the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1964, retires or is retired from employment in the coal mining industry in the State, ceases to have effect upon the date upon which he so retires or is so retired.

13. (1) Any amount which a mine worker or his dependants has or have received, or upon application is or are entitled to receive from any age, invalid or widow's pension under the Social Services Consolidation Act, 1947-1948, of the Parliament of the Commonwealth or any Act amending or in substitution for that Act or as benefit or pension received from or contributed to by the State or any of its instrumentalities under the Superannuation Act, 1871, the Superannuation and Family Benefits Act, 1938, or any other Act of the Parliament of Western Australia, or, in the case of a permanently incapacitated mine worker under sixty years of age, from earnings derived or which might be derived from available employment of the nature referred to in subsection (2) of section seven of this Act in respect of any period for which a pension is payable under this Act, shall be deducted from the amount payable to him or them, as the case may be, as a pension under this Act. Provided that where the deduction of any amount which a mine worker or his dependants has or have received or, upon application, is or are entitled to receive from any such age, invalid or widow's pension would reduce the amount payable under this Act to an amount under fifty cents per week, the minimum amount payable to him or them shall be fifty cents per week, payable on and from a date to be determined by the tribunal. Provided also that any addition to a pension payable under and pursuant to paragraph (b) of subsection (1) of section nine and subsection (3), subsection (4) and subsection (5) of section nine shall be paid in addition to the said fifty cents.

Deductions
from
pensions.
Affected by
No. 15 of
1947, ss. 2, 5
and 6.
Amended by
No. 33 of
1944, s. 4;
No. 43 of
1948, s. 12;
No. 33 of
1950, s. 14;
No. 43 of
1957, s. 5;
No. 113 of
1965, s. 8;
No. 38 of
1970, s. 4.

(1a) Subsection (1) of this section does not apply where the mine worker or any one of his dependants is, under the Social Services Act, 1947-1969 of the Parliament of the Commonwealth or any Act amending or in substitution for that Act, qualified to receive an invalid pension as being a person who is permanently blind.

(2) Where payment in accordance with the provisions of this Act of any pension or other benefit would to any extent reduce any allowance payable under the Tuberculosis Act, 1948, of the Commonwealth Parliament, or under any Act enacted by that Parliament in amendment of, or substitution for that Act, the Tribunal shall to that extent withhold payment of the pension or benefit payable under this Act.

Governor
may by
proclama-
tion vary
amount of
pensions
payable.
Added by
No. 33 of
1950, s. 15.

13A. (1) Notwithstanding anything elsewhere in this Act contained the Governor may from time to time by Proclamation¹ increase or decrease the amount of the pensions or any class of pensions or the additions to any pensions or any class of such additions payable pursuant to the provisions of this Act.

(2) The Governor may by a subsequent Proclamation vary, amend or cancel any Proclamation made under this section.

(3) Any Proclamation made under this section shall take effect as if the same had been enacted by Parliament as an amendment to the principal Act as from the date of the publication thereof in the *Government Gazette* or from such other date either prior or subsequent to such date of publication as is specified in the Proclamation, and section six, section seven, section eight, section nine or section ten of this Act as the case may be shall as from that date be deemed to be amended accordingly.¹

¹ See footnote page 16.

14. (1) Notwithstanding anything in this Act hereinbefore contained or implied, in any case where the receipt of a pension¹ under this Act debars or prevents or is likely to debar or prevent a mine worker or a dependant of a mine worker from receiving or becoming eligible to receive the maximum amount of pension under any of the provisions of the Commonwealth Social Services Consolidation Act, 1947, as amended, for which he would be eligible if a pension were not awarded under this Act the tribunal shall reduce the pension payable under this Act to the appropriate amount so that the person concerned receives or becomes eligible to receive the Commonwealth pension aforesaid.

Reduction of pensions.²
Amended by No. 43 of 1948, s. 13; No. 38 of 1949, s. 4.

(2) The provisions of this section shall cease to have effect on and from a day to be fixed by proclamation.*

15. [*Repealed by No. 15 of 1947, s. 3.*]

16. (1) Every application for a pension—

- (a) shall be in or to the effect of the prescribed form;
- (b) shall contain such particulars as may be prescribed;
- (c) shall be verified as prescribed;
- (d) shall be lodged with or forwarded to the Registrar.

Applications for pensions.
Amended by No. 99 of 1964, s. 3.

(2) Upon receipt of any such application the Registrar shall make or cause to be made such investigations as appear to him desirable, or as may be directed, either generally or in any particular case, by the chairman, or by the tribunal.

¹ See footnote page 16.

² Provisions of section 14 ceased to have effect on 17/11/49. *Gazette* 11/11/49, p. 2882.

Coal Mine Workers (Pensions).

(3) Upon completion of his investigations, the Registrar shall submit the application, together with a full report of the result of his investigations, to the tribunal.

(4) The tribunal shall thereupon consider the application and the report.

(5) The tribunal may allow or disallow the application, or may refer the application to the Commission in Court Session constituted under the Industrial Arbitration Act, 1912.

(6) The Commission in Court Session shall have jurisdiction to hear and determine any application referred to it under this section.

(7) The power to make regulations conferred on The Western Australian Industrial Commission by the Industrial Arbitration Act, 1912, shall extend to the making of regulations for regulating the procedure and practice of the Commission in Court Session in dealing with applications referred to it under this section, and for prescribing all matters which are necessary or convenient to be prescribed by such regulations in relation to the exercise of the jurisdiction conferred upon the Commission in Court Session by this section.

(8) The decision of the Commission in Court Session on any application referred to it under this section shall be final and conclusive and shall be binding upon the applicant and the tribunal.

(9) Where the tribunal 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.

(10) Where the tribunal refers the application to the Commission in Court Session, the Commission in Court Session shall in its determination, specify the rate of pension (including additional amounts)

awarded, and the date (whether before or after the date of the application) as from which the pension is to be payable.

Any such determination shall be embodied in an order, and a copy thereof shall be lodged with the registrar and filed by him with the records of the tribunal.

PART III.—THE TRIBUNAL.

17. (1) There shall be a Pensions Tribunal, ^{The tribunal.} which shall exercise and discharge the powers, authorities, duties and functions conferred and imposed upon the tribunal by this Act and the regulations.

(2) The tribunal shall consist of three members, who shall be appointed by the Governor—

(3) Of the members so appointed—

- (a) one shall be appointed on the nomination of the Minister and shall, in and by the instrument of appointment, be appointed chairman of the tribunal;
- (b) one shall be appointed on the nomination of the owners of coal mines in Western Australia and shall be representative of such owners;
- (c) one shall be appointed on the nomination of the mining unions and shall be representative of the employees in the coal mining industry of Western Australia.

In this subsection the expression "mining union" means an industrial or trade union or association of employees registered under the Commonwealth Conciliation and Arbitration Act, 1904-1934, or the Industrial Arbitration Act, 1912-1941,¹ of which union or organisation the membership is comprised of or includes mine workers.

(4) Every nomination shall be made as prescribed, and shall be sufficient, if made by such owners, or such of the unions concerned as the Minister deems sufficient.

¹ Now the Industrial Arbitration Act, 1912-1968.

(5) If no person or no person able and willing to act as a member of the tribunal is within the time prescribed nominated as the representative of any of the classes of persons referred to in subsection (3) of this section, the member of the tribunal representative of such class may be appointed on the nomination of the Minister.

(6) At any meeting of the tribunal any question or matter shall be decided by a majority of the members present and entitled to vote, and the decision so arrived at shall be the decision of the tribunal.

(7) (a) The member appointed chairman of the tribunal shall, subject to this Act, hold office as such for a period of six years, and shall be eligible for reappointment.

(b) The members of the tribunal, other than the chairman shall, subject to this Act, hold office as such for a period of three years, and shall be eligible for reappointment.

(8) The office of a member of the tribunal shall become vacant if he—

- (a) resigns his office by writing under his hand addressed to the Governor;
- (b) without the permission of the tribunal or the chairman fails to attend three consecutive meetings of the tribunal at which he is entitled to vote;
- (c) is removed from office by the Governor for misbehaviour or incompetence;
- (d) becomes bankrupt or assigns his estate for the benefit of his creditors;
- (e) is convicted of a felony or misdemeanour;
- (f) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act, 1903.¹

¹ Repealed by Mental Health Act, 1962.

(9) On the occurrence of any vacancy in the office of a member of the tribunal the person appointed to fill the vacant office shall, subject to this Act hold office for the remainder of the unexpired term of the vacant office.

(10) No act or proceeding of the tribunal shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding is done, taken, or commenced there is a vacancy in the office of any member.

(11) (a) The chairman of the tribunal shall be entitled to receive such remuneration, whether by way of annual salary or by way of fees for meetings attended, as the Governor may determine.

(b) The members of the tribunal other than the chairman shall be entitled to receive such remuneration by way of fees for meetings attended, as the Governor may determine.

(c) The members of the tribunal shall be entitled to receive travelling expenses, at such rate as the Governor may determine.

17A. (1) The tribunal shall be a body corporate under the name of the Coal Mine Workers' Pensions Tribunal, having perpetual succession and a common seal.

Tribunal a body corporate. Added by No. 33 of 1950, s. 16.

(2) The seal of the tribunal shall not be affixed to any document except pursuant to a resolution of the tribunal and shall be authenticated by the signatures of two members of the tribunal.

18. (1) The Governor may, under and subject to the Public Service Act, 1904-1935,¹ appoint a registrar and such officers and employees as may be necessary for the administration of this Act.

Registrar, officers, and employees.

¹ Now the Public Service Act, 1904-1970.

(2) The registrar shall have and may exercise and discharge the powers, authorities, duties, and functions conferred and imposed upon the registrar by or under this Act.

Powers of tribunal in respect of inquiries and investigations.
Amended by No. 113 of 1965, s. 8.

19. (1) The tribunal, or the chairman or the registrar, may, for the purposes of any inquiry or investigation which it or he is authorised to make—

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

(2) A person who has been lawfully summoned to appear before the tribunal, the chairman or the registrar, 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 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.

PART IV.—FUNDS AND CONTRIBUTIONS.

The Funds.
Amended by No. 33 of 1950, s. 17.

20. (1) There shall be established under this Act a Fund, to be known as the Coal Mine Workers' Pensions Fund, to be kept at the Treasury and administered by the tribunal in accordance with this Act.

(2) (a) The Coal Mine Workers' Pensions Fund shall consist of such moneys as are required or authorised by this Act to be paid into that Fund.

(b) There shall be payable out of the Coal Mine Workers' Pensions Fund all pensions payable to mine workers or to the dependants of mine workers who

were employed or engaged in the coal mining industry and to mine workers or the dependants of mine workers who, in the opinion of the tribunal, were engaged in work associated with that industry.

(3) The expenses involved in the administration of this Act shall be paid out of the Fund in such proportions as the tribunal may determine.

(4) The Fund shall be under the control of the tribunal and shall be operated upon in the manner prescribed.

(5) Any moneys in the Fund which are not immediately required for the purposes of the Fund may be invested by the tribunal in any manner in which trustees are for the time being authorised to invest trust funds or in any debentures or other securities issued or given by any corporate body constituted or established by any law of the Commonwealth of Australia or of any State of the said Commonwealth which authorises the issue of such debentures or the giving of such other securities and provides that the said debentures or other securities are guaranteed by the Government of the Commonwealth or of the State, as the case may be, under the laws whereunder the said debentures are issued or the said other securities are given as aforesaid.

Any interest from time to time received from any such investment shall be paid into the Fund the moneys of which are so invested.

(6) Notwithstanding anything elsewhere contained in this Act or in any law of the State, any moneys payable to any person or persons as refunds of contributions or excess contributions, or pensions, which are not claimed before the expiration of a period of six years from the date on which they respectively became or become payable under this Act shall be paid into the Fund.

Contributions.
 Amended by
 No. 33 of
 1944, s. 5;
 No. 43 of
 1948, s. 14;
 No. 33 of
 1950, s. 18;
 No. 33 of
 1951, s. 6;
 No. 24 of
 1955, s. 7;
 No. 43 of
 1957, s. 6;
 No. 40 of
 1960, s. 3;
 No. 52 of
 1961, s. 4;
 No. 99 of
 1964, s. 4;
 No. 16 of
 1965, s. 3;
 No. 113 of
 1965, s. 8,
 and by
 Proclama-
 tion G.G.
 3/1/69, p. 1.

21. (1) The tribunal shall, as soon as practicable after the day appointed and notified for the commencement of Part II. of this Act, make an estimate of the amount required by the Fund for the period commencing on the day so appointed and notified, and ending on the thirtieth day of June next following for payment of pensions and other sums chargeable upon or payable out of the Fund and for the provision of a reserve in connection with the Fund.

The amount to be provided in that period for the reserve in connection with the Fund shall be such amount as the Governor may direct.

(2) (a) The tribunal shall, as soon as possible after each examination of the Fund made by the Actuary as referred to in section thirty-two of this Act, obtain from the Actuary a report estimating the amount required for payment of pensions and sums chargeable upon or payable out of the Fund and for the provision of a reserve in connection with the Fund.

(b) The amount to be provided in any year for the reserve shall be subject to the approval of the Governor.

(c) From and after the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1948, and until the fifth day of January, 1951, but subject to subsection (5) of this section, the rates of contribution payable by each mine worker and by each owner in respect of each mine worker employed by such owner shall be respectively forty cents per week and eighty cents per week.

(d) On and after the 10th day of October, 1968, and until the rates shall be amended by a Proclamation made under subsection (8) of this section, but subject to subsection (5) of this section, the rates of contribution payable by each mine worker and by each owner in respect of each mine worker employed

by such owner shall be respectively one dollar and fifty-six cents per week and five dollars and eighty-five cents per week.¹

(e) Contributions in respect of a contractor mentioned in paragraph (i) of the interpretation, "Mine worker" in section two of this Act, shall be paid by him as a mine worker and by the owner of the coal mine on whose behalf the contract mentioned in that paragraph is being carried out, as if in fact he was a mine worker employed by the owner;

(f) Where by the regulations an owner is required to deduct from the pay of a mine worker employed by the owner, the amount of contribution payable by the mine worker and to pay to the Tribunal the sum of both the amount of the deduction and the amount of the contribution payable by the owner in respect of that deduction,

Cf. Reg. 26, Gazette 20/4/66, p. 951.

(i) if it appears to the Tribunal that for any reason the owner cannot or could not make the deduction, the Tribunal shall exempt the owner from liability to pay the sum of both those amounts;

Cf. s. 29 post.

(ii) if it appears to the Tribunal that any person has ceased to be an owner or mine worker and cannot be located, the Tribunal may write off the amount of any contributions due and unpaid by the person.

Cf. No. 30 of 1918, s. 4, "Person" includes a body corporate.

(3) In the year commencing on the first day of July, one thousand nine hundred and fifty-one, and in each year thereafter the Treasurer shall cause to be paid into the Coal Mine Workers' Pensions Fund as the State's contribution to that Fund—

(a) the sum of forty-eight thousand dollars out of the Consolidated Revenue Fund, which is hereby permanently appropriated for the purpose of making the annual payment; and

¹The date and rates of contribution in this paragraph are the amended date and amended rates proclaimed in Proclamation in *Government Gazette* 3/1/69, p. 1. For previous amendments see *Government Gazettes* 18/5/51, p. 1323; 13/6/52, p. 1499; 15/5/53, p. 934; 30/6/61, p. 2078; 3/5/63, p. 1171; 31/7/64, p. 2785; 25/2/66, p. 550; 2/6/67, p. 1489.

- (b) such additional amounts as may be appropriated by Parliament from time to time for that purpose.

(4) The moneys payable by the owners under this section shall be paid in such manner and at such times as may be prescribed.

Without prejudice to the generality of the foregoing provisions of this subsection, regulations may prescribe the basis or bases upon which the contributions of individual owners may be assessed.

(5) The moneys payable by the mine workers under this section shall be paid in such manner and at such times as may be prescribed. Any mine worker in receipt of a wage which is less than the basic wage for the district as declared from time to time by the Court of Arbitration or the Commission in Court Session, as the case may be, may elect to pay a prescribed contribution which shall be one-half of the ordinary contribution. Pension or benefit payable to any such worker or his dependants shall be one-half of the pension or benefit ordinarily payable. In the case of any such worker who subsequently pays or resumes payment of the ordinary contribution the amount of pension or benefit payable to him or his dependants shall be determined by the tribunal after actuarial advice and after having regard to the period during which such worker was paying one-half of the ordinary contribution.

If a mine worker has made regular contributions to the Fund for a period of ten years and such mine worker resigns or is dismissed from the coal mining industry in circumstances which do not entitle him to a pension under any of the provisions of this Act, the tribunal shall pay to him the amount of seventy-five per centum of the actual contributions paid by him under this Act, irrespective of the cause of his resignation or dismissal.

Provided that where the service of the mine worker in the coal mining industry is terminated for any reason other than the curtailment or cessation of operations in the mine in or about which he was

employed, the refund contemplated by this paragraph shall not be made until the expiration of a period of one year from the date of the termination of service; unless during such period the mine worker should die, in which event the refund aforesaid shall be made to his widow or personal representative, as the tribunal shall decide.

Provided further that if such mine worker has made regular contributions to the Fund for a period of ten years and before the expiration of the aforesaid period of one year from the date of the termination of his service, he is again employed as a mine worker, a refund under this subsection shall not be made and his previous period of service shall be taken into account for the purpose of determining his eligibility to receive a pension under this Act.

Provided also that where a mine worker is eligible for or receives a refund under this section and subsequently thereto is again employed as a mine worker his previous period of employment as a mine worker shall not be taken into account under section six of this Act for the purpose of determining his eligibility to receive a pension.

Without prejudice to the generality of the foregoing provisions of this subsection, the regulations may prescribe the basis or bases upon which the contributions of individual mine workers are to be assessed and may, notwithstanding the provisions of the Truck Act, the Workmen's Wages Act, the Industrial Arbitration Act or any award or agreement made thereunder, provide for the collection (by deduction from wages or otherwise) and payment to the tribunal by the employers of mine workers of any such contributions.

(5A) (a) Where a mine worker whose service in the coal mining industry was as the result of the cessation of operations in and closure during the month of December one thousand nine hundred and sixty, of any mine operated at Collie in the State by the company known as Amalgamated Collieries Limited, terminated by the person or body corporate operating the mine at Collie in or about

which he was employed, is entitled under subsection (5) of this section to a refund as specified in that subsection of portion of the actual contributions paid by him under this Act, that mine worker shall, notwithstanding the provisions of that subsection, be entitled to a refund of the total amount of the actual contributions so paid by him irrespective of the number of years during which the contributions have been made if he establishes to the satisfaction of the tribunal that—

- (i) he was unable to be re-employed in the coal mining industry at Collie before the twenty-eighth day of July, one thousand nine hundred and sixty-one; and
- (ii) he did not refuse any employment in that industry that was offered to him prior to that date.

(b) If the service of a mine worker referred to in paragraph (a) of this subsection has been continuous since the year one thousand nine hundred and fifty-six, except for a period of unemployment which commenced in the year one thousand nine hundred and fifty-seven as a result of retrenchment where the mine worker was within twelve months thereafter re-employed in the coal mining industry, the refund under that paragraph shall include the amount of the contributions made by him during a continuous period immediately preceding the date of that re-employment.

(c) A refund payable under this subsection shall be paid to the mine worker immediately upon his satisfying the tribunal as required by paragraph (a) of this subsection, unless before receiving such payment he dies, in which event the refund shall be made to his widow or personal representative as the tribunal shall decide.

(d) Notwithstanding the provisions of paragraph (a) of this subsection, a mine worker referred to in that subsection who after the twenty-eighth day of July, one thousand nine hundred and sixty-one, continued to be employed by the company known

as Amalgamated Collieries Limited in connection with the cessation of the mining operations of that company, shall upon ceasing such employment be entitled to a refund of the actual contributions paid by him under this Act if he establishes to the satisfaction of the tribunal that he is unable or unlikely to be re-employed in the coal mining industry at Collie.

(e) The provisions of this subsection shall operate and take effect and shall be deemed to have operated and have had effect on and from the first day of February, one thousand nine hundred and sixty-one and subject to those provisions, shall be deemed to have applied on and from that date, with such modifications as circumstances require, to any person referred to in paragraph (b) of subsection (7) of this section, whose service in the coal mining industry was terminated as mentioned in paragraph (a) of this subsection.

(6) Notwithstanding any provision of the memorandum or articles of association of any company which is an owner within the meaning of the Act, or any agreement between any such company and the shareholders thereof, or any rights in that regard which any shareholder or other person may have, and notwithstanding any resolution of any meeting of shareholders to the contrary, the company may in any year deduct from the dividends otherwise payable on its ordinary or preference shares amounts bearing the same proportion to one-half of the total payments made by the company to the Fund in that year as the dividends otherwise payable to the class bears to the total dividends otherwise payable. Provided that a company shall not, in any year, make a deduction from dividends under the provisions of this subsection which shall exceed the amount which would result from an impost of one and two-thirds cents per ton on five hundred and eighty thousand tons of coal. The provisions of this subsection may be pleaded as an absolute bar to any action, claim, or demands made by any shareholder or other person with respect to any dividend decreased as aforesaid. In the event of any deduction from any dividend in

any year under the provisions of this subsection, the amount of the deduction shall not in any manner whatsoever be added to the dividend lawfully payable in any succeeding year.

(7) (a) For all purposes of or relating to the collection and payment of contributions from or by mine workers and the payment of the contributions by the owners in respect of them, the term "mine worker" shall include those persons referred to in the second proviso to the definition of "mine worker" in section two of this Act, and contributions shall be paid by such persons, and, in respect of them, by the owners concerned, at the same rates respectively as those determined for mine workers and owners as provided for in subsection (2) of this section.

(b) A person referred to in paragraph (a) or paragraph (b) of the second proviso to the definition of "mine worker" in section two of this Act who is over the age of thirty-five years when so employed shall not be eligible for retirement pension benefits under this Act, but—

- (i) any such person who has made regular contributions to the Fund for a period of ten years shall be deemed to be eligible for invalidity benefits under and in accordance with the provisions of section seven of this Act; and
- (ii) the widow of any such person, if that person dies before attaining the age of sixty years and has made regular contributions to the Fund for a period of not less than five years in all, shall be deemed to be eligible for pension benefits under and in accordance with the provisions of section ten of this Act.

(c) In the event of the termination of the service of a person first referred to in paragraph (b) of this subsection, the tribunal shall pay to him the amount of the actual contributions paid by him; provided that there shall be deducted from any such payment any sum received by such person as an

invalidity benefit under this Act, but so nevertheless that such deduction shall not in any case reduce the sum to be paid to such person below the amount of seventy-five per centum of the contributions paid by him subsequently to the receipt by him of the amount then last paid to him as an invalidity benefit.

(d) A person referred to in paragraph (b) of the second proviso to the definition of "mine worker" in section two of this Act who is not over the age of thirty-five years when so employed shall be eligible for:—

- (i) retirement pension benefits under and in accordance with section six of this Act; or
- (ii) invalidity pension benefits under and in accordance with section seven of this Act: Provided that either he has made regular contributions to the Fund for a period of ten years or he has passed the prescribed medical examination before the expiration of a period of ten years after the date when he is so employed; or
- (iii) a refund under and in accordance with subsection (5) of this section of seventy-five per centum of the amount of contributions actually paid by him where his services are terminated before he has attained the age of sixty years.

(8) (a) Notwithstanding anything in this section contained but subject to subsection (5) of this section, the Governor may from time to time by Proclamation increase or decrease the rates of contribution payable by each mine worker or by each owner in respect of each mine worker employed by such owner as fixed in paragraph (d) of subsection (2) of this section.¹

(b) The Governor may by a subsequent Proclamation vary, amend or cancel any Proclamation made under this subsection.

¹ Rates varied. See footnote to page 43.

(c) Any Proclamation made under this subsection shall take effect as if the same had been enacted by Parliament as an amendment to the principal Act as from the date of the publication thereof in the *Government Gazette* or from such other date either prior or subsequent to such date of publication as is specified in the Proclamation and paragraph (d) of subsection (2) of this section shall as from that date be deemed to be amended accordingly.

Refunds of contributions and pension benefits payable in certain circumstances.
 Added by No. 43 of 1957, s. 7.
 Amended by No. 40 of 1960, s. 4;
 No. 99 of 1964, s. 5;
 No. 16 of 1965, s. 4;
 No. 92 of 1965, s. 3.

21A. (1) The provisions of this section operate notwithstanding any of the other provisions of this Act in general, and notwithstanding any of the provisions of the second proviso to the interpretation, "Mine worker" in section two of this Act, or of subsection (5) of section twenty-one of this Act in particular.

(2) Where a person was first employed as a mine worker in the coal mining industry before the coming into operation of the Coal Mine Workers (Pensions) Act Amendment Act, 1957, or is first so employed after the coming into operation of that Act, before having in either case attained the age of thirty-five years,

- (a) if his employment as such was or is terminated after the day on which rights to seniority in employment were established by agreement made between mine workers and owners, namely the second day of December, one thousand nine hundred and fifty-four, because of retrenchment whether before or after attaining that age; and
- (b) if he has not been again employed as a mine worker in the coal mining industry within a period of one year or such longer period as the Tribunal approves and is hereby authorised to approve since the termination of his employment as such; and

- (c) if during such period of one year or such longer period, as the case may be, he has not refused re-employment as a mine worker in the coal mining industry except on grounds which the Tribunal approves and is hereby authorised to approve, as reasonable,

he shall, on making application to the Tribunal, be entitled, after the expiration of one year from the termination of his employment as such, to receive seventy-five per centum of the actual contributions paid by him under this Act during his employment as such, or, as the case may be, during his last period of employment as such since the previous refund, if any, of contributions so paid by him, but

- (d) if during such period of one year or such longer period, as the case may be, he is again employed as a mine worker in the coal mining industry; and
- (e) if he supplies the Tribunal with a prescribed certificate of a medical practitioner certifying that he is fit to be again so employed; and
- (f) if for a period of not less in the aggregate than twenty-five years he has paid contributions payable under this Act by a mine worker; and
- (g) he has not, after such termination of his employment because of retrenchment, received a refund of seventy-five per centum of the actual contributions paid by him under this Act;

he shall be entitled on complying with the requirements of this Act to pension benefits and all other benefits payable in accordance with the provisions of this Act.

(3) Where a person employed, whether before or after the coming into operation of the Coal Mine Workers (Pensions) Act Amendment Act, 1957,

- (a) has attained the age of fifty-seven years;

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- (b) has his employment as such terminated, because of retrenchment, after the second day of December, one thousand nine hundred and fifty-four and after attaining the age of fifty-seven years but before attaining the age of sixty years; and
- (c) has paid contributions payable under this Act by a mine worker
 - (i) for a period commencing either on the first day of July or the twenty-first day of July, one thousand nine hundred and forty-four, and ending with the termination of his employment; or
 - (ii) for a period of twenty-five years;whichever of those periods is the shorter;

he shall, on attaining the age of sixty years, be entitled to pension benefits and all other benefits under this Act, as if his employment had not been terminated until he had attained the age of sixty years.

(4) During the period commencing with such termination of employment and ending with re-employment, if any, of a person mentioned in subsection (2) or subsection (3) of this section as a mine worker, neither the person nor the owner of any coal mine in which he was employed or is re-employed is liable for payment of contributions which, were he employed during the period, would be payable.

(5) Where a person previously employed as a mine worker in the coal mining industry was last re-employed as such after having attained the age of thirty-five years, and was still so employed on the first day of January, one thousand nine hundred and sixty, then if that person—

- (a) has paid contributions to the Fund for a continuous period of fifteen years immediately prior to the date on which he attains the age of sixty years; and

- (b) has been employed as a mine worker in the coal mining industry for periods aggregating not less than twenty-five years; and
- (c) has not, after his employment as such has been terminated at any time, received a refund of any portion of the contributions so paid by him,

he shall, on attaining the age of sixty years and complying with the requirements of this Act, be entitled to pension benefits and all other benefits under this Act.

(6) A mine worker to whom paragraph (a) of subsection (5A) of section twenty-one of this Act refers who has received, in accordance with that subsection, a refund of the total amount of the actual contributions paid by him to the Fund under this Act, is entitled on attaining the age of sixty years and on complying with the requirements of this Act, to pension benefits and all other benefits under this Act, if he establishes to the satisfaction of the Tribunal that he—

- (a) has since the twenty-eighth day of July, nineteen hundred and sixty-one been re-employed as a mine worker in the coal mining industry in the State;
- (b) has not received a refund of all or any portion of the contributions so paid by him, or, having received such a refund, the amount thereof has been repaid to the Fund;
- (c) has, within such period not exceeding three years from the date of the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1965, as the Tribunal determines or within a period of twelve months from the date of his first being so re-employed after the twenty-eighth day of July, nineteen hundred and sixty-one, whichever date is the later, repaid to the Fund the total amount of the actual

contributions paid by him to the Fund under this Act, which has been refunded to him under subsection (5A) of section twenty-one of this Act; and

- (d) has paid contributions to the Fund for periods aggregating not less than twenty-five years before he attains the age of sixty years; or
- (e) has—
 - (i) complied with the provisions of paragraphs (b) and (c) of this subsection;
 - (ii) been continuously employed in the coal mining industry from a date prior to the eighth day of January, nineteen hundred and forty-nine except for the period during which such employment was terminated as mentioned in subsection (5A) of section twenty-one of this Act; and
 - (iii) paid all contributions that he is required to pay in accordance with this Act before he attains the age of sixty years.

Require-
ments for
entitlement
under
subs. (5) of
s. 2.
Added by
No. 43 of
1957, s. 7.
Cf. par. (a)
of s. 3 of
No. 43 of
1948 as to
8th January,
1949.

21B. (1) In this section

“arrears” means the amount of contributions payable under this section in respect of the concessional period;

“concessional period” means period commencing on the eighth day of January one thousand nine hundred and forty-nine and ending on the day next preceding that of commencement of employment in the State as a mine worker; and

“mine worker” means a person who has satisfied the Tribunal as to the matters mentioned in paragraphs (a), (b) and (c) of subsection (5) of section two of this Act

and who, on complying with the requirements of this section, shall be entitled to pension benefits and all other benefits under this Act.

(2) The requirements which are referred to in paragraph (d) of subsection (5) of section two of this Act, and on compliance with which, a person is entitled as a mine worker to pension benefits and all other benefits under this Act are,

- (a) that arrears be paid into the Fund;
- (b) that contributions accruing from time to time after the concessional period ends be paid into the Fund; and
- (c) that all other requirements of this Act, as affected by the provisions of subsection (5) of section two of this Act and to the provisions of this section, be complied with.

(3) Arrears are payable into the Fund in such instalments, of such amount, and at such times, as the Tribunal from time to time determines and is hereby authorised to determine, but shall be paid in full within a period of three years from the day appointed by the Tribunal for payment of the first instalment.

(4) (a) If and when under section four of this Act any other State is declared to be a reciprocating State and an agreement is made by this State with that State, then if pursuant to the agreement the reciprocating State pays into the Fund amounts equal to and representing arrears already paid into the Fund, the Tribunal shall refund the arrears in accordance with the provisions of paragraph (b) or, if the case requires, paragraph (c) of this subsection.

(b) This section does not impose any obligation on an owner as employer of a mine worker to pay any part of the arrears into the Fund, but if the owner has paid the whole or any part of the arrears into the Fund, the Tribunal shall as soon as practicable

after the reciprocating State has made the payment into the Fund, refund to the owner or his personal representatives, or assigns, or if the owner is a company to the company or its successors and assigns, the amount of arrears paid into the Fund by the owner.

(c) If the mine worker has paid the whole or any part of the arrears into the Fund, the Tribunal shall as soon as is practicable after the reciprocating State has made the payment into the Fund, refund to the mine worker, or to his widow, or personal representatives, or assigns, the amount of arrears paid into the Fund by the mine worker.

(5) Where an agreement is not made under section four of this Act, then if the mine worker resigns or is dismissed from the coal mining industry in this State in circumstances which do not entitle him to a pension under any of the provisions of this Act, and if an amount inclusive of arrears equal to contributions for a period of at least ten years has been paid into the Fund, the Tribunal, irrespective of the cause of his resignation or dismissal shall refund to the mine worker or to his widow, or personal representatives, or assigns;

- (a) an amount equal to seventy-five per centum of such part of the arrears as would have been payable as mine worker's contributions during the concessional period had the mine worker been employed in the coal mining industry in this State for the whole of the concessional period;
- (b) plus an amount equal to seventy-five per centum of such part of the arrears as would have been payable as owner's contributions during the concessional period had the mine worker been employed in the coal mining industry in this State for the whole of the concessional period, but which contributions were in fact paid by the mine worker;

- (c) plus an amount equal to seventy-five per centum of the contributions paid by the mine worker as mine worker's contributions exclusive of arrears.

22. (1) Notwithstanding the provisions of any Act, award or agreement to the contrary no payment to the Fund by any owner may be or be deemed to be included in the cost of production of coal and no owner shall in consequence of any payment to the Fund increase the price of any coal supplied to any consumer (including the Government or any State instrumentality) except as hereinafter provided.

Restriction upon increase of price of coal. Amended by No. 43 of 1948, s. 15; No. 113 of 1965, s. 8.

(2) (a) Where the payment by any owner in any year does not exceed three and one-third cents per ton of coal sold by such owner in that year, such owner may include one half of such payment in the cost of production of the coal and may increase the price of coal accordingly.

(b) Where the payment by any owner in any year exceeds three and one-third cents per ton of coal sold by such owner in that year such owner may include the amount of such payment which exceeds one and two-third cents per ton on a maximum of five hundred and eighty thousand tons of coal in the cost of production of the coal and may increase the price of coal accordingly.

PART V.—MISCELLANEOUS.

23. Notwithstanding that the commencement of Part II. of this Act may not have been proclaimed, and subject as hereinafter provided, the tribunal may award a pension to any mine worker who having attained the age of sixty years ceases to be engaged in the coal mining industry after the commencement of this Act and before the commencement of Part II of this Act.

Tribunal may award pension in certain cases.

The tribunal shall not award a pension under this section to any mine worker unless in its opinion the cessation of employment of such mine worker was *bona fide* and was not arranged or did not arise solely or mainly for the purpose of enabling such mine worker to become eligible for a pension pursuant to this section. Subject to the foregoing the tribunal may award a pension under this section in accordance with the same privileges and on similar terms and conditions as are prescribed by Part II. of this Act.

Pensions to persons not British subjects may be discontinued or refused. Added by No. 33 of 1950, s. 19.

23A. Notwithstanding anything elsewhere contained or implied in this Act, the tribunal may, on or after the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1950, discontinue the payment of or refuse to award a pension under section six, section seven or section eight of this Act or an addition to a pension under section nine of this Act to any person who is not either a natural born or naturalised subject of Her Majesty the Queen: Provided that where the payment of such pension or addition has been discontinued or refused, as the case may be, and such person subsequently becomes a naturalised subject of Her Majesty the Queen, the tribunal shall, subject to this Act, re-instate the payment of such pension or addition, or award such pension or addition, as the case may be, from a date to be determined by the tribunal.

Funds established under provisions of Coal Mines Regulation Act, 1902-1940.¹ Amended by No. 33 of 1950, s. 20; No. 113 of 1965, s. 8.

24. From and after the commencement of this Act, the Aged and Infirm Coal Miners' Superannuation Fund established under the provisions of section sixty-eight of the Coal Mines Regulation Act, 1902-1940,¹ and the liability to contribute with respect to such Fund aforesaid, are hereby abolished. The Trustees of the Aged and Infirm Coal Miners' Superannuation Fund shall pay to the tribunal any balance of the said Fund so that such balance shall form part of the funds of the Coal Mine Workers' Pensions Fund established under this Act.

¹ Now the Coal Mines Regulation Act, 1946.

The contributions of owners of mines and employees to the Coal Mines Accident Relief Fund under the provisions of section sixty-seven of the Coal Mines Regulation Act, 1902-1940,¹ shall be reduced by one-eighth, and section sixty-seven aforesaid shall be deemed to be amended accordingly as from the commencement of this Act.

Any miner within the meaning of the Coal Mines Regulation Act, 1902-1940,¹ who is at the date of the commencement of this Part in receipt of any benefits from the Aged and Infirm Coal Miners' Superannuation Fund shall be eligible as from the date of the commencement of this Part to payment by the tribunal out of the Coal Mine Workers' Pensions Fund of a pension of one dollar and twenty-five cents per week, without any deduction, whether under the provisions of Part II. of this Act when proclaimed or otherwise. If any miner receives a pension under the provisions of this section and subsequently becomes eligible for a pension pursuant to section six, section seven or section eight, of this Act the tribunal shall thereupon discontinue the payment of the pension under this section.

Provided that any miner who, at the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1950, is in receipt of a pension under this section and who has not, at the date of such commencement, lodged an application at the office of the tribunal for a pension under section six, section seven or section eight of this Act, shall not be eligible for a pension under any of those sections.

25. (1) Subject to this Act, a pension shall be absolutely inalienable, whether by way or in consequence of sale, assignment, charge, execution, insolvency, or otherwise howsoever:

Pensions
to be
inalienable.
Amended by
No. 113 of
1965, s. 8.

Provided that nothing herein shall be construed to prevent the tribunal, with or without the consent of the pensioner, from paying the whole or any

¹ Now the Coal Mines Regulation Act, 1946.

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.

(2) Every person commits an offence and shall be liable to a penalty not exceeding one hundred dollars who demands or accepts from any pensioner any certificate or any acknowledgment or undertaking that would constitute a legal or equitable assignment of or charge upon any pension, if such pension were capable of being legally assigned or charged.

Suspension
of pension
rights in
certain
events—
alternative
pensions to
dependants.

26. (1) Where any mine worker who has been awarded a pension pursuant to this Act is sentenced to imprisonment for any period in excess of one month, his pension rights pursuant to this Act shall be suspended during the period of such imprisonment, and any person who would, if the mine worker were dead, have been eligible for a pension under section ten of this Act, shall be eligible for a pension in accordance with that section during the period of such imprisonment as if the mine worker were dead.

(2) Where any mine worker who is eligible for or who has been awarded a pension pursuant to this Act becomes an insane patient within the meaning of the Lunacy Act, 1903,¹ his pension rights pursuant to this Act shall be suspended while he continues to be such an insane patient, and any person who would, if the mine worker were dead, have been eligible for a pension under section ten of this Act, shall be eligible for a pension in accordance with that section during the period for which the mine worker continues to be an insane patient, as if the mine worker were dead, and shall be entitled to retain the whole of the said pension for his own use and benefit absolutely, the provisions of any other Act notwithstanding.

¹ Now Mental Health Act, 1962.

(3) The wife of any mine worker eligible for or in receipt of a pension under this Act who has been deserted by her husband or who has been left by him without means of support and who satisfies the tribunal—

- (a) that she has taken proceedings against her husband for an order under the Married Women's Protection Act, 1922,¹ or the Child Welfare Act, 1907-1941,² and either that she has failed to obtain an order, or that the order, if made, has not been complied with; and
- (b) that the whereabouts of her husband are not known,

shall be eligible for a pension in accordance with section ten of this Act, 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 subsection, the tribunal may suspend the pension payable to the mine worker, or may direct that such pension is to be reduced by the amount of the pension payable to the deserted wife.

26A. Where a pension or any addition to a pension is at the commencement of the Coal Mine Workers (Pensions) Act Amendment Act, 1950, payable under the principal Act, any increase in the amount of such pension or in the amount of such addition payable by virtue of the provisions of the Coal Mine Workers (Pensions) Act Amendment Act, 1950, shall be payable on and from the first day of July, 1950, or from the date when such pension or addition as the case may be, was awarded, whichever is the later.

Retrospect-
ive payment
of increases
to pensions
or additions.
Added by
No. 33 of
1950, s. 21.

¹ Now the Married Persons and Children (Summary Relief) Act, 1965.

² Now the Child Welfare Act, 1907-1970.

Appointment
of person
to receive
pension.

27. Where a person entitled to payment of a pension under this Act is for any cause unable to give a valid receipt for such payment, the tribunal or the chairman 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.

Reference to
The Western
Australian
Industrial
Commission.
Amended by
No. 99 of
1964, s. 6.

28. (1) The Minister may refer any question arising under this Act to the Commission in Court Session constituted under the Industrial Arbitration Act, 1912, and the Commission in Court Session has jurisdiction to hear and determine the question so referred to it.

All persons interested and appearing before the Commission in Court Session, including the Minister and the tribunal, shall be entitled to be heard.

(2) The power to make regulations conferred by the Industrial Arbitration Act, 1912, shall extend to the making of regulations by The Western Australian Industrial Commission arising under and pursuant to this section, and for prescribing all matters which are necessary or convenient to be prescribed by such regulations in relation to the exercise or discharge of the functions of the Commission in Court Session under this section.

Unpaid
contribu-
tions
recoverable
as debt.

29. (1) Any part of the contributions required to be paid by section twenty-one of this Act that is not paid on the due date, and all penalties incurred in respect thereof shall constitute a debt due and payable to the Crown, and shall be recoverable in any court of competent jurisdiction by the chairman of the tribunal on behalf of the Crown by suit in his official name.

(2) If in any proceedings against any person for failure to pay any contribution payable under section twenty-one of this Act within the time prescribed the defendant alleges that he is exempt from

the obligation to pay the contribution, or that he had paid the contribution, the burden of proving such exemption or payment shall be on him.

30. (1) Where it is found that any pension or instalment of a pension which is not payable has been paid, or that any sum paid by way of pension or instalment of pension is in excess of the amount so payable, the amount wrongly paid may be recovered as a debt due to the Crown at the suit of the chairman of the tribunal in his official name, or, where it is practicable so to do, the tribunal may make any necessary adjustments in any instalments of the same or any other pension thereafter becoming payable.

Recovery of over-payments of pensions.

(2) Nothing in this section shall relieve the person wrongly receiving any such payment from any other liability in respect of any fraud committed by him.

31. (1) The tribunal shall cause to be kept proper books of account, and shall, as soon as practicable after the thirtieth day of June in each year, prepare and transmit to the Minister for presentation to Parliament statements of accounts, in a form approved by the Auditor General, exhibiting a true and correct view of the financial position and transactions of the tribunal.

Accounts and audit.

(2) The accounts of the tribunal shall be audited by the Auditor General, who shall have, in respect thereof, all the powers conferred on the Auditor General by any law now or hereafter to be in force relating to the audit of public accounts; and the Audit Act, 1904, shall apply to the tribunal, the members of the tribunal, and the officers and employees concerned in the administration of this Act, in the same manner as it applies to accounting officers of public departments.

Actuarial
investigation
of funds.

32. The Minister shall once in every three years, and may at such other times as he thinks fit, cause an examination and report to be made by the Government Actuary upon the assets and liabilities of each of the Funds established under section twenty of this Act.

Advances by
Treasurer.

33. For the purpose of providing for the requirements of the Funds established under section twenty of this Act the Treasurer may, in and for any period in respect of which a contribution is payable by him under section twenty-one of this Act, make advances against the contribution payable by him in respect of that period, to the Fund, of such amount or amounts (not exceeding in the aggregate the amount of the contribution) as may in his opinion be necessary.

Any such advance shall be in satisfaction in whole or in part of the contribution so payable in respect of that period.

Offences.
Amended by
No. 99 of
1964, s. 7;
No. 113 of
1965, s. 8.

34. (1) Any person who, for the purpose of obtaining any pension under this Act, for himself or for any other person, or for the purpose of obtaining exemption from any obligation under this Act, for himself or for any other person, makes any false statement to or otherwise misleads or attempts to mislead the tribunal, the registrar, or any officer concerned in the administration of this Act or The Western Australian Industrial Commission, 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 (1) of this section, and it is made to appear that, in consequence of such offence he was wrongly paid any amount by way of pension, 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.

35. (1) Any penalty imposed by or under this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate.

Recovery of penalties.

(2) Any magistrate 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.

36. All fines and penalties paid or recovered under this Act or the regulations shall be paid to the tribunal, and shall be paid by it into the Fund.

Fines and penalties to be paid into appropriate Fund.

37. (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 (1) of this section the regulations may—

- (a) prescribe the manner and form of claims for pensions, the persons by whom claims may be made, and the particulars to be furnished in support of such claims;
- (b) prescribe the general conditions governing the allowance of pensions and the manner in which such allowance is to be signified or evidenced;
- (c) prescribe the general conditions governing the payment of pensions and the manner in which and times at which payment is to be made;

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- (d) make provision for the repayment of contributions or part thereof to contributors in such cases (if any), and subject to such conditions as may be prescribed;
 - (e) require employers of mine workers to keep records in such manner or in such form as may be prescribed, showing the commencement and cessation of the employment of each mine worker, and such other particulars as may be prescribed;
 - (f) require any person to whom a pension is payable under this Act, to make a full and complete disclosure to the tribunal in relation to any amounts which, by this Act, are directed to be deducted from the pension so payable, and to make such disclosure in such manner and at such times as the tribunal may direct either generally or in any particular case or class of cases.
- (3) The regulations may impose a penalty not exceeding forty dollars for any breach of the regulations.