

WESTERN AUSTRALIA.

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# COAL MINE WORKERS (PENSIONS) ACT 1943.

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Approved for reprint 7 November 1984.

WESTERN AUSTRALIA.

# 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,<sup>1</sup> assented to 23 December 1944;  
No. 15 of 1947,<sup>2</sup> assented to 1 November 1947;  
No. 43 of 1948,<sup>3</sup> assented to 4 January 1949;  
No. 38 of 1949, assented to 26 October 1949;  
No. 33 of 1950, assented to 16 December 1950;  
No. 33 of 1951,<sup>4</sup> assented to 20 December 1951;  
No. 24 of 1955, assented to 11 November 1955;  
No. 43 of 1957,<sup>5</sup> assented to 26 November 1957;  
No. 40 of 1960, assented to 3 November 1960;  
No. 52 of 1961, assented to 23 November 1961;  
No. 99 of 1964, assented to 23 December 1964;  
No. 16 of 1965, assented to 1 October 1965;  
No. 92 of 1965, assented to 8 December 1965;  
No. 36 of 1969, assented to 19 May 1969;  
No. 5 of 1970, assented to 29 April 1970;  
No. 38 of 1970, assented to 23 September 1970;  
No. 35 of 1971, assented to 10 December 1971;  
No. 79 of 1972, assented to 20 November 1972;  
No. 40 of 1973, assented to 18 October 1973;  
No. 12 of 1977,<sup>6</sup> assented to 11 October 1977;  
No. 62 of 1980, assented to 24 November 1980;  
No. 63 of 1982, assented to 28 September 1982;  
No. 78 of 1983,<sup>7</sup> assented to 22 December 1983,

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 compulsory retirement age, 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.**

Long title.  
Amended by  
No. 63 of  
1982, s. 2.

[Assented to 19 November 1943.]

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

<sup>2</sup> Deemed to have come into operation on 1 July 1944. See Section 4 of No. 15 of 1947.

<sup>3</sup> Came into operation on 8 January 1949. See Section 1 of No. 43 of 1948.

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

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

<sup>6</sup> Came into operation on 30 December 1977. See *Gazette* 30/12/77, p. 4744.

<sup>7</sup> Sections 4 (a) (1), 8, 9, 10, 11, 12, 16, 17 (a) and 21 came into operation on 27 January 1984. See *Gazette* 27/1/84, p. 232. Balance on assent.

BE it enacted—

PART I.—PRELIMINARY.

Short title.

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

[*Subsection (2) repealed by No. 78 of 1983, s. 3.*]

(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.

Interpreta-  
tion.

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;  
No. 77 of  
1972, s. 2;  
No. 40 of  
1973, s. 2;  
No. 63 of  
1982, s. 4;  
No. 78 of  
1983, s. 4.

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

“Appropriate rate” means a rate determined in accordance with section 13A of this Act.

“Compulsory retirement age” means the age on or after which the employment of a mine worker as a mine worker would be an offence under section 5 of this Act.

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

“Conciliation and Arbitration Act” means the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth and any Act amending or in substitution for that Act.

“Date of retirement” means the date on which a mine worker retires pursuant to section 5 of this Act.

“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,<sup>2</sup> and 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;

*[Paragraph (c) deleted by No. 78 of 1983, s. 4.]*

- (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

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<sup>2</sup> Repealed by the Workers’ Compensation and Assistance Act 1981.

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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;

[*Paragraph (e) deleted by No. 78 of 1983, s. 4.*]

- (f) a workmen's inspector appointed under the provisions of the Coal Mines Regulation Act 1902.
- (g) an elected official of an industrial or trade union of employees, or of an association of employees, registered as an organization under the Conciliation and Arbitration Act, or under the Industrial Arbitration Act 1912-1941<sup>1</sup>, of which union or organization 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 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

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<sup>1</sup> Now the Industrial Arbitration Act 1979.

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 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;

- (j) a superintendent, manager or under manager or male person engaged full time in clerical work in connection with a coal mine;
- (k) "Mine worker" also includes a person who is, for a period exceeding two months, employed in or about a coal mine in the State as a consultant to, or by a consultant to, the owner;
- (l) "Mine worker" also includes on and after the passing of the Coal Mine Workers (Pensions) Act Amendment Act 1973 a person who is employed to cut timber for deep mines by an owner whose principal business consists of the supply of timber for the timbering of deep coal mines;

"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 licence 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

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a contractor who contracts with an owner for the excavation or the removal of overburden or the winning of coal or whose principal business consists of the supply of timber for the timbering of deep coal mines 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.

"Social Services Act" means the Social Services Act 1947 of the Parliament of the Commonwealth and any Act amending or in substitution for that Act.

"Tribunal" means the Pensions Tribunal constituted under this Act.

(1a) The definition of "mine worker" in subsection (1) of this section does not include—

- (a) a person who is a director of a company which is the owner of a coal mine;
- (b) subject to subsection (4) of this section, a superintendent or an instructor of any mine rescue corps or body.

(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 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”.

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- (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.

*[Subsection (3) repealed by No. 63 of 1982, s. 4.]*

(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 subsection (1a) (b) of this section.

(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 apply to and in respect of persons who are members of the class to which the proclamation relates.

*[Paragraph (b) deleted by 78 of 1983, s. 4.]*

(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.

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.

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; No. 78 of 1983, s. 5.

(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 class referred to in paragraph (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.

Reciprocating States  
Amended by  
No. 33 of  
1950, s. 5;  
No. 78 of  
1983, s. 6.

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 benefits 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,

he may by proclamation<sup>1</sup> 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

<sup>1</sup> See *Gazette* 31 March 1983, pp. 1084-5.

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 by the Minister of the Crown for such other State or by a specified officer of 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 benefit 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 benefit 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.

Heading.  
Amended by  
No. 63 of  
1982, s. 5.

## PART II.—RETIREMENT AND PENSIONS.

Retirement.  
Substituted  
by No. 63 of  
1982, s. 6.  
Amended by  
No. 78 of  
1983, s. 7.

5. (1) The compulsory retirement age of a mine worker shall be—

- (a) in the case of a mine worker eligible to be a member of the Association of Colliery Management or covered by Division "A" of the Colliery Staff Award 1955, as amended, 62 years;
- (b) in the case of any other mine worker, 60 years,

but nothing in this subsection prevents a mine worker from retiring at any time after he attains the age of 58 years.

(2) A mine worker referred to in paragraph (a) of subsection (1) shall retire after attaining the age of 60 years if required to do so by his employer.

(3) No person shall take into or retain in his employment as a mine worker any person who is of or above compulsory retirement age.

(4) Every mine worker who is at any time after the commencement of this Part employed as a mine worker and who while so employed attains compulsory retirement age shall be retired from and shall vacate his employment as a mine worker immediately upon attaining that age.

(5) A person of or above compulsory retirement age shall not accept or continue in employment as a mine worker.

(6) A person who neglects or fails to comply with any of the provisions of this section is guilty of an offence.

Penalty: \$100 and, in addition, a daily penalty of \$2 for every day or part thereof during which the offence continues.

6. Any mine worker who satisfies the Tribunal—

(a) that he has worked as a mine worker for the 20 years immediately prior to his date of retirement; or

(b) that he would upon retirement have otherwise been eligible for a pension under section 6 of this Act as it stood immediately prior to the coming into operation of section 8 of the Coal Mine Workers (Pensions) Amendment Act 1983,

Pensions  
of retired  
mine  
workers.  
Substituted  
by No. 78 of  
1983, s. 8.

shall be eligible for a pension at the appropriate rate.

Permanent  
incapacity.  
Substituted  
by No. 78 of  
1983, s. 9.

7. (1) A mine worker to whom this section applies shall be eligible for a pension at the appropriate rate.

(2) This section applies to a mine worker—

(a) who proves to the satisfaction of the Tribunal—

- (i) that he has been incapacitated by injury arising out of or in the course of his employment as a mine worker;
- (ii) 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
- (iii) that—

(I) in any case where the mine worker is of or above the age of 58 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 58 years, the incapacity is likely to be permanent; or

(b) who proves to the satisfaction of the Tribunal that he is permanently incapacitated for work and that by reason of such incapacity he is unable to continue in employment as a mine worker.

(3) Notwithstanding subsection (2) of this section, this section shall not apply to a mine worker—

(a) referred to in subsection (2) (a)—

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



(ii) 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;

(b) referred to in subsection (2) (b), where the permanent incapacity is, in the opinion of the Tribunal, due to his own fault.

(4) 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 85 per cent.

(5) The Tribunal may require any applicant for a pension under this section to submit himself to a medical examination as to the degree of incapacity.

8. (1) Notwithstanding anything in this Part, the Tribunal may award a pension or a lump sum payment, as the case may be, not exceeding the amount to which the mine worker would have been entitled if he had been eligible for a pension under section 6 of this Act or a lump sum payment under section 14 (2) (b) of this Act, to any mine worker, even though he may not possess the qualifications required by any other provision of this Part, where the Tribunal is satisfied that the granting of such a pension or lump sum payment 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 or lump sum payment to such a mine worker.

Border line cases.  
Amended by  
No. 43 of  
1948, s. 7;  
No. 33 of  
1950, s. 8;  
No. 24 of  
1955, s. 5;  
No. 63 of  
1982, s. 10;  
No. 78 of  
1983, s. 10.

[Subsection (2) repealed by No. 78 of 1983, s. 10.]

Pensions—  
additional  
payments in  
respect of  
dependants.  
Amended by  
No. 43 of  
1948, s. 8;  
No. 33 of  
1950, s. 9;  
No. 43 of  
1957, s. 4;  
No. 113 of  
1965, s. 8;  
No. 79 of  
1972, s. 3;  
No. 78 of  
1983, s. 11.

9. (1) Where a mine worker becomes eligible for a pension under section 6, 7 or 8 of this Act, he shall also be eligible for an addition to such pension consisting of the following amounts—

- (a) an additional payment at the appropriate rate in respect of his wife, which amount shall be payable until her death or until she ceases to be his wife;
- (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 16 years—  
an additional payment at the appropriate rate on trust for each such child or step child;
- (c) where no amount is payable under paragraph (a) of this subsection, an additional payment at the appropriate rate 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 16 years;
  - (ii) a member of the mine worker's family and is over the age of 16 years;
- or
- (iii) over the age of 16 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.

(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 on trust for such child for such period 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 at the appropriate rate in respect of such female.

Pension  
payable to  
dependants.

Amended by  
No. 33 of  
1944, s. 2;  
No. 43 of  
1948, s. 9;  
No. 33 of  
1950, s. 10;  
No. 35 of  
1971, s. 3;  
No. 63 of  
1982, s. 10;  
No. 78 of  
1983, s. 12;  
and by  
Proclama-  
tion G.G.  
27/2/70,  
v. 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 58 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 section 9 (1) (c) of this Act, shall be eligible for a pension at the appropriate rate 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 section 9 (1) (b) of this Act and in subsections (3), (4) and (5) of that section shall be eligible for pensions of an amount equal to the amounts referred to and for the periods specified, in section 9 (1) (b) of this Act.

(2) (a) The Tribunal may, in its discretion, award a pension at the appropriate rate to the widow of a mine worker whose death occurs after

16 December 1950 where it is proved to the satisfaction of the Tribunal that such mine worker has made a contribution to the Coal Mine Workers' Pensions Fund.

(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 recognized as the wife of a mine worker although not legally married to him, the Tribunal may, in its discretion, award—

- (i) an addition at the appropriate rate under section 9 of the Act to the pension of such mine worker as if that female were the wife of the mine worker; or
- (ii) a pension at the appropriate rate to such female upon the death of the mine worker or pensioner as if that female were the widow of the mine worker, where it is proved to the satisfaction of the Tribunal that the mine worker has made a contribution to the Coal Mine Workers' Pensions Fund:

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

*[Paragraph (b) deleted by No. 78 of 1983, s. 12.]*

(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 remarriage of such female.

*Coal Mine Workers (Pensions).*

(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.

*[Section 10A inserted by No. 33 of 1944 s. 3. Repealed by No. 62 of 1980, s. 2.]*

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

**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.

(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.

*[Previous section 10C inserted by No. 35 of 1971, s. 4.]*

Variation of  
pensions.  
Substituted  
by No. 62 of  
1980, s. 3.  
Amended by  
No. 78 of  
1983, s. 13.

**10C.<sup>1</sup>**

*[Subsection (1) repealed by No. 78 of 1983, s. 13.]*

(2) Subject to this section, where a person to whom or in respect of whom a pension is payable under this Act is in the opinion of the Tribunal eligible to receive a Commonwealth or State pension the Tribunal shall reduce the pension payable under

Validation.

<sup>1</sup> Section 32 of Act No. 78 of 1983 reads as follows—

32. Any amount of pension paid by the Tribunal under the principal Act before the coming into operation of section 13 of this Act which would have been lawfully paid if section 13 of this Act had been in operation at the time that pension was paid is hereby declared to be and always to have been lawfully paid.

this Act to or in respect of that person by the amount that the Tribunal is of the opinion that that person is eligible to receive by way of the Commonwealth or State pension.

(3) The Tribunal may allow a person to receive any amount by which the pension payable under this Act to or in respect of that person is reduced pursuant to subsection (2) of this section if—

- (a) the amount is in respect of an age or invalid Commonwealth pension; and
- (b) the pension payable under this Act in respect of which the reduction is required to be made is awarded before the date upon which the age or invalid Commonwealth pension becomes payable in respect of that person.

(3a) 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, or under any Act amending or in substitution for that Act, the Tribunal shall to that extent withhold payment of the pension or benefit payable under this Act.

(4) A variation of a pension payable under this Act shall take effect—

*[Paragraph (a) deleted by No. 78 of 1983, s. 13.]*

- (b) if the variation is a reduction in the pension pursuant to subsection (2) of this section, in respect of the period commencing on the first day of the next ensuing period for which pensions are payable under this Act.

*Coal Mine Workers (Pensions).*

(5) Subsection (2) of this section does not apply to or in relation to any amount payable—

- (a) by way of supplementary assistance under section 30A of the Social Services Act;
- (b) pursuant to section 135U of the Social Services Act;
- (c) to a person who has the care, custody or control of a child under the age of 16 years;
- (d) by way of pension to a widow of a serviceman eligible to receive benefits under Table A of Schedule 3 to the Repatriation Act 1920 of the Commonwealth or under any provision amending or in substitution for that Table;
- (e) to a mine worker or any one of his dependants qualified under the Social Services Act to receive an invalid pension as being a person who is blind;
- (f) to a mine worker to whom a pension is payable under this Act who is of or over the age of 60 years and less than the age of 65 years; and
- (g) to a person receiving a pension under section 10 of this Act if the mine worker in respect of whom the pension was awarded would if still alive, be of or over the age of 60 years and less than the age of 65 years.

(5a) Where the reduction under subsection (2) of this section 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 Commonwealth or State pension would reduce the amount payable under this Act to an amount under 50 cents per week, the minimum amount payable to him or them shall be 50 cents per week, payable on and from a date to be determined by the Tribunal.



(5b) Any addition to a pension payable under and pursuant to section 9 (1) (b), (3), (4) or (5) shall be paid in addition to the 50 cents payable under subsection (5a) of this section.

(6) A reference in this section to—

- (a) a “Commonwealth pension” is a reference to any age, invalid or widow’s pension, or repatriation pension other than a pension referred to in subsection (5) (d) of this section, payable under this Act; and
- (b) a “State pension” is a reference to any 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.

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.

[Section 12 repealed by No. 78 of 1983, s. 14.]

[Section 13 repealed by No. 78 of 1983, s. 15.]

[Previous section 13A inserted by No. 33 of 1950, s. 15.]

13A. (1) In this section—

“specified rate” means such rate as the Minister declares from time to time in an order under subsection (2) or (3) of this section, to be the specified rate;

“Table” means the table at the end of this section.

Rates of  
pension and  
additional  
payments.  
Substituted  
by No. 78  
of 1983, s. 16.

(2) The Minister shall, in and by an order published in the *Gazette*,<sup>1</sup> specify the weekly rate of wages prescribed for the classification of "Loadermen (Northern District)" in an industrial award applying to the coal mining industry in New South Wales as at 1 October 1983 and may specify a higher rate for different parts of the period commencing on that date and declare that weekly rate to be the specified rate for the purposes of this section in respect of any period for which pensions are payable under this Act commencing on or after 1 October 1983.

(3) Where there is a variation in the weekly award rate specified under subsection (2) of this section, the Minister—

(a) shall, in and by an order published in the *Gazette*, as soon as practicable after the variation is made—

(i) subject to subparagraph (ii) of this paragraph specify that rate as so varied and declare it to be the specified rate for the purposes of this section; and

(ii) where there are 2 or more rates so prescribed, specify one of those rates as so varied and declare it to be the specified rate for the purposes of this section; and

(b) shall, in the order, specify the day as from which the order takes effect, being the first day of the next ensuing period for which pensions are payable under this Act after the day on which the specified rate became or becomes payable as wages to Loadermen (Northern District) in New South Wales,

and any previous order made under this section shall not be in force in respect of any period commencing on or after the day so specified.

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<sup>1</sup> See *Gazette* 27 January 1984, p. 292.

(4) For the purposes of any provision of this Act in which there is a reference to the appropriate rate payable as a pension or as an additional payment to a pension, the appropriate rate of pension or additional payment payable to a person who is eligible under a section set out in column 2 of the Table shall be the percentage of the specified rate set out in column 3 of the Table opposite that section.

TABLE		
Column 1 <i>Item</i>	Column 2 <i>Section of Act</i>	Column 3 <i>Percentage of specified rate payable per Week</i>
1.	Section 6	35%
2.	Section 7 (1)	35%
3.	Section 9 (1) (a) or section 9 (1) (c)	20%
4.	Section 9 (1) (b)	5%
5.	Section 9 (6)	20%
6.	Section 10 (1)	30%
7.	Section 10 (2)	30%
8.	Section 10 (3) (a) (i)	20%
9.	Section 10 (3) (a) (ii)	30%

14. (1) This section applies to and in respect of a pension that was or is first payable on or after 1 December 1979.

Lump sum pensions.  
Substituted by No. 62 of 1980, s. 4.  
Amended by No. 78 of 1983, s. 17.

(2) Notwithstanding anything in this Act but subject to this section, a lump sum payment, the amount of which shall be calculated in accordance with this section, shall be payable to a mine worker—

- (a) who is eligible for a pension under this Act; or
- (b) who satisfies the Tribunal that he has worked as a mine worker for the 10 years immediately prior to his date of retirement.

(2a) A lump sum payment to a mine worker who is eligible for a pension shall be paid in lieu of that pension.

*Coal Mine Workers (Pensions).*

(2b) Subject to section 21 (5c) of this Act, the amount of a lump sum payment shall be calculated in accordance with the following equation—

$$a \times (y-r) = l.$$

where—

- a* represents 50 per cent of the specified rate declared under section 13A of this Act;
- y* represents the number of months of completed service of the mine worker to a maximum of 480 months;
- r* represents the period in respect of which a refund of contributions has been made to the mine worker under this Act;
- l* represents the total lump sum amount in dollars payable to the mine worker.

(3) Subject to this section, upon the death of a mine worker there shall be payable in respect of each person who is entitled to a pension under this Act in respect of the mine worker in lieu of that pension a lump sum payment as follows—

- (a) if the person is a person in respect of whom a pension would have been payable under section 9 (1) (a) of this Act or section 9 (1) (c) of this Act, an amount equal to one-half of the amount that would have been payable to the mine worker under subsection (2) of this section;
- (b) if the person is a person in respect of whom a pension would have been payable under section 9 (1) (b) of this Act, an amount equal to one-third of the amount payable under paragraph (a) of this subsection,

but if no lump sum is payable under paragraph (a) of this subsection and a lump sum is payable only under paragraph (b) of this subsection the lump sum so payable shall be as follows—

- (c) if the number of persons in respect of whom a lump sum is payable does not exceed 3, the amount payable in respect of each person shall be an amount equal to two-thirds of the amount that would have been payable under paragraph (a) of this subsection.
- (d) if the number of persons to whom a lump sum is payable exceeds 3, the total amount payable in respect of all the persons shall be an amount equal to the maximum amount that would have been payable under paragraph (c) of this subsection.

(4) Where a lump sum is payable under this section to or in respect of a mine worker by reason of the death of or injury to the mine worker the following provisions apply in respect to the calculation of the amount of the lump sum payable—

- (a) if the lump sum becomes payable by reason of the death of the mine worker, whether arising out of or in the course of his employment as a mine worker or otherwise, or by reason of the injury to the mine worker arising out of or in the course of his employment as a mine worker, it shall be assumed that the mine worker had attained the age of 60 years at the time the entitlement to payment arose;
- (b) if the lump sum becomes payable by reason of injury to the mine worker otherwise than out of or in the course of his employment as a mine worker, the lump sum payable shall be reduced by one-tenth for each year under 10 years that the mine worker has not been employed as a mine worker.

(5) The payment of a lump sum under this section releases the Fund from any further payment to or in respect of the mine worker under this Act.

(6) Any pension paid to or in respect of a mine worker after 1 December 1979 and before the Coal Mine Workers (Pensions) Amendment Act 1980 comes into operation shall be deducted from the lump sum amount payable under this section.

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

Applications  
for pensions.  
Amended by  
No. 89 of  
1964, s. 3;  
No. 78 of  
1983, s. 18.

16. (1) Every application for a pension or lump sum payment—

- (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.

(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.

(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.<sup>1</sup>

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

<sup>1</sup> Now the Industrial Arbitration Act 1979.

(7) The power to make regulations conferred on The Western Australian Industrial Commission by the Industrial Arbitration Act 1912<sup>1</sup>, 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 or, in the case of a lump sum payment, the number of months of completed service as a mine worker in respect of which the lump sum benefit is payable under this Act.

(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 or, in the case of a lump sum payment, the number of months of completed service as a mine worker in respect of which the lump sum is payable under this Act.

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.

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<sup>1</sup> Now the Industrial Arbitration Act 1979.

## PART III.—THE TRIBUNAL.

The  
Tribunal  
Amended by  
No. 78 of  
1983, s. 19.

17. (1) There shall be a Pensions 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 Conciliation and Arbitration Act or the Industrial Arbitration Act 1912-1941,<sup>1</sup> of which union or organization 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.

(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

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<sup>1</sup> Now the Industrial Arbitration Act 1979.



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.<sup>1</sup>

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<sup>1</sup> 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.

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

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.

(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.

Registrar,  
officers, and  
employees.

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

<sup>1</sup> Now the Public Service Act 1978.

(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.

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

Powers of Tribunal in respect of inquiries and investigations.

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

- (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.

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.

The Fund. Amended by No. 33 of 1950, s. 17; No. 78 of 1983, s. 20.

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

(b) There shall be payable out of the Coal Mine Workers' Pensions Fund all benefits payable under this Act 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 authorized 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 authorizes 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.

## 21.

[Subsection (1) repealed by No. 78 of 1983, s. 21.]

(2) (a) Contributions to the Fund shall be payable—

(i) by each mine worker—at a rate per week specified by notice in accordance with paragraph (b) of this subsection;

(ii) by each owner in respect of each mine worker employed by him—

(I) at a rate per week of 3 times the rate per week payable by each mine worker; and

(II) in addition, in respect of the period commencing on 6 October 1980 and ending on 6 October 1990 or at such earlier time as the Minister orders, at a rate per week specified by notice in accordance with paragraph (b) of this subsection.

(b) The Governor may from time to time by notice published in the *Gazette*<sup>1</sup> specify the rates of contribution payable by each mine worker and by each mine owner in respect of each mine worker employed by such owner and may amend, vary or revoke such a notice.

(c) Any notice published under this subsection shall take effect as from the date of publication in the *Gazette* or from such other date either prior or subsequent to such date of publication as is specified in the notice.

[Paragraph (d) deleted by No. 78 of 1983, s. 21.]

(e) Contributions in respect of a contractor mentioned in paragraph (i) of the interpretation, "Mine worker" in section two of this Act, shall be

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. 29 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;  
No. 35 of  
1971, s. 5;  
No. 79 of  
1972, s. 5;  
No. 62 of  
1980, s. 5;  
No. 63 of  
1982, s. 8;  
No. 78 of  
1983, s. 21.

<sup>1</sup> See *Gazette* 27 January 1984, p. 292.

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.

(ea) Contributions in respect of a person who is a mine worker by virtue of paragraph (k) of the interpretation "Mine worker" in subsection (1) of section two of this Act, shall be paid by him as a mine worker and by the owner of the coal mine in or about which that person is employed.

(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. s. 29  
post.

(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. No. 30 of  
1918, s. 4.  
"Person"  
includes a  
body cor-  
porate.

(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.

(g) Where it appears to the Tribunal that an increase will be necessary in the estimated amount required by the Fund in any period, the Tribunal shall, as soon as practicable, make a report to the Minister—

(i) as to the consequences that the operation of those provisions will have on the requirements of the Fund for that period; and

(ii) as to the rates of contribution needed to meet those requirements.

[*Subsection (3) repealed by No. 78 of 1983, s. 21.*]

(4) The moneys payable by the mine workers and 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) If a mine worker has made regular contributions to the Fund for a period of not less than one year immediately before the termination of his employment and such mine worker ceases employment as a mine worker in circumstances which do not entitle him to a pension or a lump sum payment under any of the provisions of this Act, the Tribunal shall pay to him or to his widow or personal representatives or assigns the amount of the actual contributions paid by him under this Act.

(5a) Where the Tribunal is satisfied that a mine worker referred to in subsection (5) of this section has ceased employment as a mine worker because of—

(a) his attaining the age at which he is obliged to retire under this Act or by reason of his retirement upon attaining an age at which he may retire under this Act; or

(b) his ill-health,

the Tribunal shall pay to him or to his widow or personal representative or assigns the amount of the actual contributions paid by him under this Act together with interest on that amount calculated on the balance of contributions as at 30 June in each year at the rate per annum payable as at that date by the Commonwealth Savings Bank in respect of corresponding amounts in a savings account, but so that no interest on interest is payable.

(5b) Notwithstanding any other provision of this section, 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 1899, the Workmen's Wages Act 1898, the Industrial Arbitration Act 1979 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.

(5c) Where the Tribunal pays to any mine worker the amount of any contributions to the Fund pursuant to subsection (5) of this section, it shall determine the period of service in respect of which contributions refunded were made and such period of service shall be disregarded in the ascertainment of any future or other benefits under this Act to that mine worker or to any other person whose entitlement is derived through the mine worker unless—

- (a) the service of the mine worker was terminated as a result of the curtailment or cessation of operations in the mine in or about which he was employed;
- (b) in the opinion of the Tribunal, the mine worker returned to the coal mining industry at the first opportunity; and
- (c) the mine worker has repaid any amount paid to him under subsection (5) of this section and has paid to the Tribunal interest on that amount at a rate determined by the Tribunal.

(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.

[Subsections (7) and (8) repealed by No. 78 of 1983, s. 21.]

[Section 21A inserted by No. 43 of 1957, s. 7. Repealed by No. 78 of 1983, s. 22.]

**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

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

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“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 authorized 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

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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.

[Section 22 repealed by No. 78 of 1983, s. 23.]

## PART V.—MISCELLANEOUS.

Tribunal  
may award  
pension in  
certain  
cases.

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.

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.

[Section 23A inserted by No. 33 of 1950, s. 19.  
Repealed by No. 78 of 1983, s. 24.]

[Section 24 repealed by No. 78 of 1983, s. 24.]

Pensions  
to be  
inalienable.  
Amended by  
No. 113 of  
1965, s. 8;  
No. 78 of  
1983, s. 25.

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

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 portion of the pension or entitlement 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 or entitlement to a lump sum payment under this Act, if such pension or entitlement were capable of being legally assigned or charged.

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.

Suspension  
of pension  
rights in  
certain  
events—  
alternative  
pensions to  
dependants.  
Amended by  
No. 12 of  
1977, s. 4.

(2) Where a mine worker who is eligible for or has been awarded a pension pursuant to this Act is a patient as defined by the Mental Health Act 1962 his pension rights pursuant to this Act shall, unless the Tribunal determines otherwise (which it is hereby authorized to do), be suspended while he continues as a patient as so defined.

(2a) Whilst the pension rights of a mine worker pursuant to this Act are suspended by force of subsection (2) of this section 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 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, notwithstanding anything in the Mental Health Act 1962 or any other Act.

(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,<sup>1</sup> or the Child Welfare Act 1907-1941,<sup>2</sup> 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.

*[Section 26A inserted by No. 33 of 1950, s. 21.  
Repealed by No. 78 of 1983, s. 26.]*

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<sup>1</sup> Now see Family Court Act 1975.

<sup>2</sup> Now the Child Welfare Act 1907.

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.

Appointment  
of person  
to receive  
pension.

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,<sup>1</sup> and the Commission in Court Session has jurisdiction to hear and determine the question so referred to it.

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

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,<sup>1</sup> 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.

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.

Unpaid  
contributions  
recoverable  
as debt.

(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

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<sup>1</sup> Now Industrial Arbitration Act 1979.

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.

Recovery of  
over-  
payments  
of pensions.  
Amended by  
No. 78 of  
1983, s. 27.

30. (1) Where it is found that any lump sum payment or any part of any such payment payable under this Act or any pension or instalment of a pension which is not payable has been paid, or that any sum paid by way of lump sum payment, 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.

(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.

Accounts  
and audit.

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.

(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.



32. (1) 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.

Actuarial investigation of funds.  
Amended by No. 78 of 1983, s. 28.

(2) The Tribunal shall, as soon as possible after each examination of the Fund made by the Actuary, obtain from the Actuary a report estimating the amount required for the payment of pensions and sums chargeable upon or payable out of the Fund.

*[Section 33 repealed by No. 78 of 1983, s. 29.]*

34. (1) Any person who, for the purpose of obtaining any pension or lump sum payment payable 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.

Offences.  
Amended by No. 99 of 1964, s. 7; No. 113 of 1965, s. 8; No. 78 of 1983, s. 30.

(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 or lump sum payment, 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.

Fines and penalties to be paid into appropriate Fund.

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.

Regulations. Amended by No. 113 of 1965, s. 8; No. 78 of 1983, s. 31.

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.

(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 and lump sum payments payable under this Act, 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 lump sum payments payable under this Act and the manner in which such allowance is to be signified or evidenced;
- (c) prescribe the general conditions governing the payment of pensions and lump sum payments payable under this Act and the manner in which and times at which payment is to be made;
- (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 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.

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Section 11 of Act No. 63 of 1982 reads as follows—

11. A mine worker who—

Transitional.

- (a) ceased employment on or after 5 April 1982; and
- (b) would have been entitled to a pension under any of the provisions of the principal Act if this Act had been in operation on the day of the cessation of his employment,

shall, for the purpose of his entitlement to a pension, be deemed to have retired after this Act came into operation.