

COAL MINE WORKERS (PENSIONS).

No. 78 of 1983.

**AN ACT to amend the Coal Mine Workers (Pensions)
Act 1943-1982 and for related purposes.**

[Assented to 22 December 1983.]

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

1. (1) This Act may be cited as the *Coal Mine Workers (Pensions) Amendment Act 1983*. Short title and citation.

(2) In this Act the Coal Mine Workers (Pensions) Act 1943-1982 is referred to as the principal Act. Reprinted as approved 28 June 1971 and amended by Acts Nos. 35 of 1971, 79 of 1972, 40 of 1973, 12 of 1977, 62 of 1980 and 63 of 1982.

(3) The principal Act as amended by this Act may be cited as the Coal Mine Workers (Pensions) Act 1943-1983.

Commence-
ment.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on the day on which it is assented to by the Governor.

(2) Sections 4 (a) (i), 8, 9, 10, 11, 12, 16, 17 (a) and 21 of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Section 1
amended.

3. Section 1 of the principal Act is amended by repealing subsection (2).

Section 2
amended.

4. Section 2 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting before the definition of “Compulsory retirement age” the following definition—

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

(ii) by inserting after the definition of “Compulsory retirement age” the following definition—

“ “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. ”;

(iii) in the definition of “Mine worker”—

(I) by deleting paragraph (c);

(II) by deleting paragraph (e);

- (III) in paragraph (g) by deleting “Commonwealth Conciliation and Arbitration Act, 1904-1934” and substituting the following—

“ Conciliation and Arbitration Act ”;

- (IV) in paragraph (i) by deleting “who on or after the coming into operation of the Coal Mine Workers (Pensions) Act Amendment Act, 1951, is”; and

- (V) by deleting paragraph (j) and the provisos following that paragraph and substituting the following paragraph—

“ (j) a superintendent, manager or under manager or male person engaged full time in clerical work in connection with a coal mine; ”; and

- (iv) by inserting after the definition of “Present war” the following definition—

“ “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. ”;

- (b) by inserting after subsection (1) the following subsection—

“ (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. ”; and

(c) in subsection (4)—

(i) in paragraph (a)—

(I) in subparagraph (i) by deleting “the first proviso to that definition” and substituting the following—

“ subsection (1a) (b) of this section ”; and

(II) in subparagraph (iii) by deleting “, subject to any modification which may be made pursuant to paragraph (b) of this subsection,”; and

(ii) by deleting paragraph (b).

Section 3
amended.

5. Section 3 of the principal Act is amended in subsection (5) by deleting “classes referred to in paragraphs (e) and (f)” and substituting the following—

“ class referred to in paragraph (f) ”.

Section 4
amended.

6. Section 4 of the principal Act is amended—

(a) in paragraph (a) of subsection (1) by deleting “pensions” and substituting the following—

“ benefits ”; and

(b) in subsection (2)—

(i) in paragraph (b) by inserting after “Minister of the Crown for such other State” the following—

“ or by a specified officer of such other State ”; and

- (ii) in paragraphs (c) and (e) by deleting “pension” in both places where it occurs and substituting the following—

“ benefit ”.

7. Section 5 of the principal Act is amended in subsection (1) by deleting “Subject to section 2 (4) (b) of this Act the” and substituting the following—

Section 5 amended.

“ The ”.

8. Section 6 of the principal Act is repealed and the following section is substituted—

Section 6 repealed and substituted.

“ 6. Any mine worker who satisfies the Tribunal—

Pensions of retired mine workers.

(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,

shall be eligible for a pension at the appropriate rate. ”.

9. Section 7 of the principal Act is repealed and the following section is substituted—

Section 7 repealed and substituted.

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

Permanent incapacity.

(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. ”.

10. Section 8 of the principal Act is amended— Section 8
amended.

(a) by repealing subsection (1) and substituting the following subsection—

“ (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. ”; and

(b) by repealing subsection (2).

Section 9
amended.

11. Section 9 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (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. ”; and

(b) in subsection (6) by deleting all the words after “addition to his pension” and substituting the following—

“ at the appropriate rate in respect of such female ”.

Section 10
amended.

12. Section 10 of the principal Act is amended—

- (a) in subsection (1) by deleting all the words after “provisions of this Act,” and substituting the following—

“ 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 ”;

- (b) by repealing paragraph (a) of subsection (2) and substituting the following paragraph—

“ (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. ”;

and

(c) in subsection (3)—

(i) in paragraph (a), by deleting subparagraphs (i) and (ii) and substituting the following subparagraphs—

“ (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: ”;

and

(ii) by deleting paragraph (b).

13. Section 10C of the principal Act is amended— Section 10C amended.

(a) by repealing subsection (1);

(b) in subsection (2) by inserting after “Commonwealth” in both places where it occurs the following—

“ or State ”;

(c) by inserting after subsection (3) the following subsection—

“ (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. ”;

(d) by deleting paragraph (a) of subsection (4);

(e) in subsection (5)—

(i) by deleting the full stop at the end of paragraph (c) and substituting a semi-colon; and

(ii) by inserting after paragraph (c) the following paragraphs—

“ (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. ”;

- (f) by inserting after subsection (5) the following subsections—

“ (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. ”; and

- (g) by repealing subsection (6) and substituting the following subsection—

“ (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. ”.

Section 12
repealed.

14. Section 12 of the principal Act is repealed.

Section 13
repealed.

15. Section 13 of the principal Act is repealed.

Section 13A
repealed
and
substituted.

16. Section 13A of the principal Act is repealed and the following section is substituted—

Rates of
pension and
additional
payments.

“ 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.

(2) The Minister shall, in and by an order published in the *Gazette*, 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.

(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% ”.

Section 14
amended.

17. Section 14 of the principal Act is amended—

- (a) by repealing subsection (2) and substituting the following subsections—

“(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.

(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—

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

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. ”; and

(b) in subsection (4)—

(i) by deleting paragraph (a) and substituting the following paragraph—

“ (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; ”; and

(ii) in paragraph (b) by deleting “the death of or”.

18. Section 16 of the principal Act is amended— Section 16
amended.

(a) in subsection (1) by inserting after “pension” the following—

“ or lump sum payment ”;

(b) in subsection (9) by inserting after “payable” the following—

“ 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 ”; and

(c) in subsection (10) by inserting after “payable” the following—

“ 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 ”.

Section 17
amended.

19. Section 17 of the principal Act is amended in subsection (3) by deleting “Commonwealth Conciliation and Arbitration Act, 1904-1934,” and substituting the following—

“ Conciliation and Arbitration Act ”.

Section 20
amended.

20. Section 20 of the principal Act is amended in paragraph (b) of subsection (2) by deleting “pensions payable” and substituting the following—

“ benefits payable under this Act ”.

Section 21
amended.

21. Section 21 of the principal Act is amended—

(a) by repealing subsection (1);

(b) in subsection (2)—

(i) by deleting paragraphs (a), (b) and (c) and substituting the following paragraphs—

“ (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* 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. ”;

(ii) by deleting paragraph (d); and

(iii) in paragraphs (g) by deleting “the provisions of section 10C of this Act take effect and it appears to the tribunal that a consequential” and substituting the following—

“ it appears to the Tribunal that
an ”;

(c) by repealing subsection (3);

(d) in subsection (4) by inserting after
“payable by the” the following—

“ mine workers and ”;

(e) by repealing subsections (5) and (5A) and substituting the following subsections—

“ (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. ”; and

(f) by repealing subsections (7) and (8).

Section 21A
repealed.

22. Section 21A of the principal Act is repealed.

Section 22
repealed.

23. Section 22 of the principal Act is repealed.

Sections 23A
and 24
repealed.

24. Sections 23A and 24 of the principal Act are repealed.

25. Section 25 of the principal Act is amended— Section 25 amended.

(a) in subsection (1)—

(i) by inserting after “a pension” the following—

“ or an entitlement to a lump sum payment under this Act ”; and

(ii) by inserting after “the pension” the following—

“ or entitlement ”; and

(b) in subsection (2)—

(i) by inserting after “any pension” the following—

“ or entitlement to a lump sum payment under this Act ”; and

(ii) by inserting after “such pension” the following—

“ or entitlement ”.

26. Section 26A of the principal Act is repealed. Section 26A repealed.

27. Section 30 of the principal Act is amended in subsection (1)— Section 30 amended.

(a) by inserting after “found that” the following—

“ any lump sum payment or any part of any such payment payable under this Act or ”; and

(b) by inserting after “by way of” the following—

“ lump sum payment, ”.

Section 32
amended.

28. Section 32 of the principal Act is amended—

(a) by inserting before “The Minister” the subsection designation—

“ (1) ”; and

(b) by inserting after “Act.” the following—

“ (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.

29. Section 33 of the principal Act is repealed.

Section 34
amended.

30. Section 34 of the principal Act is amended—

(a) in subsection (1) by inserting after “any pension” the following—

“ or lump sum payment payable under this Act ”; and

(b) in subsection (2) by inserting after “pension” the following—

“ or lump sum payment ”.

Section 37
amended.

31. Section 37 of the principal Act is amended in paragraphs (a), (b) and (c) of subsection (2) by inserting after “pensions” in each place where it occurs the following—

“ and lump sum payments payable under this Act ”.

Validation.

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.