

**COAL AND OIL SHALE MINE WORKERS
(PENSIONS) AMENDMENT ACT.**

Act No. 26, 1949.

An Act to amend the Coal and Oil Shale Mine Workers (Pensions) Act, 1941-1948, in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 5th October, 1949.]

**George VI.
No. 26, 1949**

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

1. (1) This Act may be cited as the "Coal and Oil Shale Mine Workers (Pensions) Amendment Act, 1949." Short title,
citation and
commence-
ment.

(2) The Coal and Oil Shale Mine Workers (Pensions) Act, 1941, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Coal and Oil Shale Mine Workers (Pensions) Act, 1941-1949.

(4) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Principal Act is amended—

(a) by inserting in subsection one of section two at the end of the definition of "Owner" the words "and for the purposes of sections nineteen and 19b of this Act where a mine worker, not being a mine worker referred to in paragraphs (f) and (h) of the definition of 'Mine worker' in

Amendment
of Act No.
45, 1941.
Sec. 2.
(Defini-
tions.)

in

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in this subsection, is employed by any person other than the owner as so defined includes the employer of such mine worker”;

Sec. 2A.
(Extension
of defini-
tion of
“Mine
worker.”)

- (b) (i) by inserting at the end of paragraph (b) of subsection three of section 2A the following proviso:—

Provided that any person to whom this paragraph applies may retire or be retired at any time after he attains the age of sixty years and before he attains the age of sixty-five years, and in any such case a reference in any provision of this Act to the “date of retirement” shall, notwithstanding anything elsewhere contained in this Act, in the application of that provision to and in respect of such person be construed as a reference to the date upon which he so retires or is retired.

- (ii) by omitting from subsection four of the same section the words “persons who are members of the classes” where secondly occurring and by inserting in lieu thereof the words “any person who is a member of any of the classes”;

- (iii) by omitting from the same subsection the words “section five” and by inserting in lieu thereof the words “sections five and six”;

- (iv) by inserting in the same subsection after the words “sixty-five years” the words “or, where such person retires or is retired before the age of sixty-five years, the age at which such person retires or is retired”;

New
sec. 2B.

- (c) by inserting next after section 2A the following new section:—

Further
extension
of defini-
tion of
“Mine
worker.”

2B. (1) A reference in this section to the commencement of this section shall be construed as a reference to the date of commencement of the Coal and Oil Shale Mine Workers (Pensions) Amendment Act, 1949.

(2)

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(2) As from the commencement of this No. 26, 1949.
section the definition of "Mine worker" in
subsection one of section two of this Act shall
be extended to include—

- (a) a person who is employed in or about a coal or oil shale mine in New South Wales by any person other than the owner of the mine and who in the course of such employment is engaged in or in connection with hydraulic stowage operations;
- (b) a person engaged in clerical work in connection with a coal or oil shale mine and who though not employed in or about a coal or oil shale mine by the owner of the mine is employed by the owner of the mine at any mine office situated outside the confines of the coal or oil shale mine holding, if—
 - (i) such mine office is in close proximity to such mine holding;
 - (ii) there is no other mine office within such confines; and
 - (iii) the duties performed by such person are of a like nature to those performed by a person engaged in clerical work who by virtue of subsection two of section 2A of this Act is a mine worker;
- (c) an officer of the Department of Mines—
 - (i) who is the holder of a first class certificate of competency;
 - (ii) who is performing inspectorial duties under the Coal Mines Regulation Act, 1912-1947; and
 - (iii) who is not a contributor under the Superannuation Act, 1916-1948, or who, at the commencement of the Coal and Oil Shale
Mine

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Amendment Act, 1949, is a con-
tributor as aforesaid for not
more than two units of pension;

- (d) a person who is employed by the owner of a coal or oil shale mine in New South Wales and who, in the course of such employment, is principally engaged in the transport of overburden or detritus from the mine;
- (e) a person who is employed on the South Maitland Railway by the South Maitland Railways Proprietary Limited as an engine-driver, fireman, guard or fettler, and who, at the commencement of this section or of his employment as aforesaid, whichever is the later, has not attained the age of fifty-five years;
- (f) a person who is employed in the making of coke, otherwise than as an employee of any person supplying or distributing gas for lighting, heating, motive power or other purpose or of the Broken Hill Proprietary Company Limited or of Australian Iron & Steel Ltd. or of any other person whose employees the Governor from time to time by proclamation published in the Gazette declares not to be mine workers, and who, at the commencement of this section or of his employment as aforesaid, whichever is the later, has not attained the age of fifty-five years.

(3) (a) The retiring age of persons being members of the classes referred to in paragraphs (a) and (d) of subsection two of this section shall be sixty years.

(b)

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(b) The retiring age of persons being No. 26, 1949.
members of the classes referred to in paragraphs
(b), (c), (e) and (f) of the said subsection shall
be sixty-five years:

Provided that any person to whom this para-
graph applies may retire or be retired at any
time after he attains the age of sixty years and
before he attains the age of sixty-five years, and
in any such case a reference in any provision
of this Act to the "date of retirement" shall,
notwithstanding anything elsewhere contained
in this Act, in the application of that provision
to and in respect of such person be construed
as a reference to the date upon which he so
retires or is retired.

(4) As from the commencement of this
section the provisions of this Act shall, subject
to this section, apply to and in respect of persons
who by virtue of subsection two of this section
are mine workers:

Provided that the provisions of this Act in
their application to and in respect of such
persons shall be deemed to be modified to the
following extent, that is to say—references,
express or implied, in this Act, to the commence-
ment of Part II of this Act, shall be construed
as references to the commencement of this
section:

Provided further that the provisions of this
Act in their application to and in respect of any
person who is a member of any of the classes
referred to in paragraphs (b), (c), (e) and (f)
of subsection two of this section shall be deemed
to be modified to the following extent, that is to
say—sections five and six of this Act shall have
and take effect as if the age of sixty-five years
or, where such person retires or is retired before
the age of sixty-five years, the age at which such
person retires or is retired were substituted for
the

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the age of sixty years referred to therein, and references in this Act to the "date of retirement" shall be construed accordingly.

Sec. 3.
(Special provisions as to calculation of periods of employment.)

- (d) (i) by inserting in subsection five of section three after the word "station" the words "or any superintendent or instructor appointed pursuant to the Mines Rescue Act, 1925";
- (ii) by inserting at the end of the same subsection the words "or superintendent or instructor";
- (iii) by inserting in subsection six of the same section after the words "'mine worker'" the words "in subsection one of section two of this Act and in paragraphs (b), (c), (d), (e) and (f) of subsection two of section 2B of this Act";
- (iv) by inserting at the end of the same section the following new subsection:—

(7) Notwithstanding anything in this Act contained where any mine worker is continued in employment as a mine worker under and in accordance with a certificate issued by the Tribunal under subsection four of section five of this Act the period of any such employment under and in accordance with such certificate shall be disregarded in determining the eligibility of such mine worker for a pension.

Further amendment of Act No. 45, 1941.
Sec. 6.
(Pensions—mine workers who are retired.)

3. The Principal Act is further amended—

- (a) (i) by inserting next after subsection one of section six the following new subsection:—

(1A) Any person who becomes a mine worker after the commencement of the Coal and Oil Shale Mine Workers (Pensions) Amendment Act, 1949, and who, during the period of twelve months immediately preceding the date upon which he attained the age of sixty years, had actually worked as a mine worker for not less than one hundred

hundred days in all during the said period of twelve months, shall be eligible, as from the date of retirement, for a pension of two pounds fifteen shillings per week if he establishes to the satisfaction of the Tribunal that—

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- (a) he has been continuously resident in New South Wales for a period of not less than five years immediately preceding the date of retirement, and
 - (i) he has, during such period, been continuously engaged in the coal or oil shale mining industries in New South Wales, and actually worked in or about a coal or oil shale mine in New South Wales for not less than five hundred days; or
 - (ii) he has been engaged in the coal or oil shale mining industries in New South Wales for a continuous period of not less than twenty years immediately preceding the date upon which he attained the age of sixty years; or
 - (b) he has been resident in New South Wales for not less than five years out of the seven years immediately preceding the date of retirement; and
 - (i) he has, during such period of seven years, been continuously engaged in the coal or oil shale mining industries in Australia, and actually worked in or about a coal or oil shale mine in Australia for not less than seven hundred days; or
 - (ii)

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- (ii) he has been engaged in the coal or oil shale mining industries in New South Wales for a continuous period of not less than twenty years immediately preceding the date upon which he attained the age of sixty years.
- (ii) (a) by inserting in subsection three of the same section after the words "subsection one" the word and symbols "subsection (1A)";
- (b) by omitting paragraph (a) of the same subsection;
- (c) by omitting from paragraph (b) of the same subsection the words "period of not less than twenty years in all" and by inserting in lieu thereof the words "continuous period of not less than twenty years";
- (iii) by inserting at the end of the same section the following new subsection:—
- (6) (a) The amount of pension per week payable to any mine worker who has, before the commencement of the Coal and Oil Shale Mine Workers (Pensions) Amendment Act, 1949, been awarded a pension pursuant to subsection one, two or three of this section, shall as on and from such commencement and notwithstanding anything contained in this section be two pounds fifteen shillings.
- (b) The amount of pension per week payable to any mine worker who, on or after such commencement, becomes eligible for a pension pursuant to subsection one, two or three of this section, shall as from the date of retirement and notwithstanding anything contained in this section be two pounds fifteen shillings.
- (b)

(b) (i) by omitting from subsection one of section seven the words "two pounds twelve shillings and sixpence" and by inserting in lieu thereof the words "two pounds fifteen shillings";

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Sec. 7.
(Pension—
permanent
incapa-
city.)

(ii) by inserting next after the same subsection the following new subsection:—

(1A) A mine worker shall, subject to this section, be eligible for a pension of two pounds fifteen shillings per week if he proves to the satisfaction of the Tribunal—

(a) that he is permanently incapacitated for work; and

(b) that by reason of such incapacity he is unable to continue in employment as a mine worker; and

(c) that he has been engaged in the coal or oil shale mining industries in New South Wales for a continuous period of not less than twenty years immediately preceding his cessation of employment as a mine worker by reason of such incapacity; and

(d) that he has paid contributions to the Coal Mine Workers' Pensions Fund or the Oil Shale Mine Workers' Pensions Fund for a period of at least five years.

A mine worker shall be deemed to be permanently incapacitated for work if the degree of his permanent incapacity for work is not less than eighty-five per centum.

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

A mine worker shall not be eligible for a pension under this subsection where the permanent incapacity is due to his own fault.

(iii).

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- (iii) (a) by inserting in subsection two of the same section after the words "subsection one" the words "or subsection (1A)";
- (b) by omitting from the same subsection the words "that subsection" and by inserting in lieu thereof the words "subsection one or subsection (1A) of this section";
- Sec. 8.**
(Hard luck cases.)
- (c) by omitting from subsection one of section eight the words "two pounds twelve shillings and sixpence" and by inserting in lieu thereof the words "two pounds fifteen shillings";
- Sec. 9.**
(Pensions-
additional
payments
in respect
of depend-
ants.)
- (d) (i) by omitting from subsection one of section nine the words "one pound seventeen shillings and sixpence" wherever occurring and by inserting in lieu thereof the words "two pounds two shillings and sixpence";
- (ii) by inserting in paragraph (a) of the same subsection after the word "wife" the words "where such wife is totally or mainly dependent on his earnings";
- (iii) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—
- (b) an amount of ten shillings per week in respect of one child (whether legitimate or illegitimate) or step-child under the age of sixteen years who is totally dependent on his earnings, which amount shall be payable until such child shall attain the age of sixteen years.
- (iv) by omitting from paragraph (d) of the same subsection the words "or mainly";
- (v) by inserting at the end of the same subsection the following paragraph:—
- Paragraphs (a), (b) and (d) of this subsection shall also apply and be deemed always to have applied to a mine worker who
has

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has been awarded a pension pursuant to section six, section seven or section eight of this Act. No. 26, 1949.

- (vi) by omitting subsection (1A) of the same section;
- (vii) by inserting in subsection five of the same section after the words "eligible for" the words "or has been awarded";
- (viii) by omitting from subsection six of the same section the words "eight shillings and sixpence" and by inserting in lieu thereof the words "ten shillings";
- (e) (i) by omitting from section ten the words "two pounds" wherever occurring and by inserting in lieu thereof the words "two pounds five shillings"; Sec. 10.
(Pension payable to dependants.)
- (ii) by inserting next after subsection (1c) of the same section the following new subsection:—

(1D) Where a female (other than a widow) of or above the age of sixteen years who has been awarded a pension under subsection one of this section whether before or after the commencement of the Coal and Oil Shale Mine Workers (Pensions) Amendment Act, 1949, has not attained the age of thirty years at the date of such commencement or of such award, whichever is the later, the pension payable to such female shall, notwithstanding anything contained in the said subsection, cease to be payable upon the expiration of a period of twelve months after the date of such commencement or award, as the case may be, or such further period as the Tribunal may from time to time determine.

- (iii) by inserting next after subsection three of the same section the following new subsection:—

(3A) In determining the period on the expiration of which the disqualification of a widow

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widow under subsection two of this section shall cease to have effect subsection three of this section shall be deemed to be modified to the following extent:—

- (a) Paragraph (a) shall be read as if the words “or at the rate of four pounds per week, whichever is the greater,” were inserted immediately before the words “would have been”.
- (b) Paragraph (b) shall be read as if all words following the words “as follows” were omitted therefrom and the words “The period shall be the period during which if a pension of four pounds per week, or of five pounds per week in such cases as the Tribunal deems fit, had been awarded and paid to the widow the total sum paid to the widow by way of such pension would have been equal to the amount of compensation”.
- (c) Paragraph (c) shall be read as if the words “as modified by subsection (3A) of this section” were inserted after the words “this subsection”.
- (iv) by inserting in subsection four of the same section after the words “subsection three of this section” the words “or, in the case of a widow, under that subsection as modified by subsection (3A) of this section”;
- (f) by inserting at the end of section 10A the following new subsections:—
 - (2) The Tribunal may award a pension to any female who at the date of the death of any mine worker on or after the twenty-first day of November, one thousand nine hundred and forty-one, was recognised as the wife of such mine worker although not legally married to him: Provided that no such award shall be made where a pension has been awarded under section ten of this Act to the widow of such mine worker.

**Sec. 10A.
(De facto
wife.)**

(3)

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(3) The amount of any pension awarded to a female under subsection two of this section shall be two pounds five shillings per week and such pension shall be payable until the death, marriage or remarriage of such female. No. 26, 1949.

(4) Where a female who has been awarded a pension under this section whether before or after the commencement of the Coal and Oil Shale Mine Workers (Pensions) Amendment Act, 1949, has not attained the age of thirty years at the date of such commencement or of such award, whichever is the later, the pension payable to such female shall, notwithstanding anything contained in this section, cease to be payable upon the expiration of a period of twelve months after the date of such commencement or award, as the case may be, or such further period as the Tribunal may from time to time determine.

- (g) by omitting subsection three of section eleven; Sec. 11.
(Pensions—
special
provisions.)
- (h) (i) by inserting in subsection one of section 11A after the word “six” the words “section seven or section eight”; Sec. 11A.
(Earnings
from
employ-
ment.)
- (ii) by omitting the proviso to the same subsection;
- (iii) by inserting in subsection two of the same section after the word “Act” the words “or female to whom a pension has been awarded under section 10A of this Act”;
- (iv) by omitting from the same subsection the words “the sum of such pension and”;
- (i) by inserting in subsection four of section twelve after the word “six” the words “or section seven”; Sec. 12.
(No
pension
while com-
pensation
payable.)
- (j) (i) by omitting from subsection one of section thirteen the words “from any invalid or old age pension or as endowment under the Child Sec. 13.
(Deductions
from
pensions.)

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Child Endowment Act 1941 of the Parliament of the Commonwealth or under the Widows' Pensions Act, 1925-1937, as amended by subsequent Acts," and by inserting in lieu thereof the words "from any age, invalid or widows' pension under the Social Services Consolidation Act 1947-1948 of the Parliament of the Commonwealth or any service pension payable to or in respect of a pensioner, his wife, female dependant and one child under the Australian Soldiers' Repatriation Act 1920 of the Parliament of the Commonwealth or any amendment thereof or any State supplementary allowance payable to a widow, or any pension payable under the Superannuation Act, 1916-1948";

- (ii) by omitting from the same subsection the word "old" wherever occurring;
- (iii) by omitting subsection two of the same section.

Further amendment of Act No. 45, 1941.

Sec. 19.
(Contributions.)

4. The Principal Act is further amended—

- (a) by inserting in subsection two of section nineteen after the words "provided in" the words "respect of";
- (b) by omitting from the same subsection the word "direct" and by inserting in lieu thereof the words "upon the recommendation of the Tribunal at the close of that year direct".

Further amendment of Act No. 45, 1941.

Sec. 19A.
(Eligibility of mine workers for subsidies.)

5. The Principal Act is further amended—

- (a) by inserting at the end of section 19A the following new subsection:—
 - (2) Notwithstanding anything contained in subsection one of this section a mine worker who, in respect of incapacity due to the inhalation

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inhalation of dust in coal or oil shale mines in New South Wales, has after the commencement of the Coal and Oil Shale Mine Workers (Pensions) Further Amendment Act, 1947, been awarded compensation under the Workers' Compensation Act, 1926, or any amendment thereof, shall, where such award was made operative from a date prior to such commencement, be deemed to have been eligible for a subsidy from such date in accordance with the provisions of this Part of this Act. No. 26, 1940.

- (b) by inserting in section 19B after the word and symbols "paragraph (b)" wherever occurring the words "of subsection one". Sec. 19B.
(Consequential.)

6. The Principal Act is further amended—

**Further
amendment
of Act No.
45, 1941.**

- (a) by omitting from subsection one of section twenty-one the words "mine worker" where firstly occurring and by inserting in lieu thereof the word "person"; Sec. 21.
(Suspension
of pension
rights in
certain
events.)
- (b) by omitting from the same subsection the words "the mine worker" wherever occurring and by inserting in lieu thereof the words "such pensioner";
- (c) by inserting in the same subsection after the words "section ten" the words "or section 10A";
- (d) by omitting from the same subsection the words "that section" and by inserting in lieu thereof the words "section ten or section 10A of this Act, as the case may be";
- (e) by inserting in subsection two of the same section after the words "section ten" wherever occurring the words "or section 10A";
- (f) by omitting from paragraph (a) of the same subsection the words "that section" and by inserting in lieu thereof the words "section ten or section 10A of this Act, as the case may be";

(g)

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(g) by omitting from subsection three of the same section the words "or may direct that such pension is to be reduced by the amount of the pension payable to the deserted wife";

(h) by inserting at the end of the same section the following new subsection:—

(4) The wife of any mine worker 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 Deserted Wives and Children Act, 1901-1939, and that any order made thereunder has not been complied with; and

(b) that the whereabouts of her husband are known;

shall be eligible for a pension of the amount specified in paragraph (a) of subsection one of section nine of this Act 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.

**Application
of certain
amendments
and valida-
tions.**

7. (1) The amendments made by subparagraph (i) of paragraph (b), paragraph (c), subparagraphs (i), (ii), (iv) and (viii) of paragraph (d) and paragraph (g) of section three of this Act shall be deemed to extend to and from the commencement of this Act apply in respect of all mine workers who were immediately before such commencement in receipt of a pension pursuant to section six, seven or eight or an addition to a pension pursuant to section nine of the Principal Act, as well as to mine workers becoming eligible for any such pension or addition thereto after such commencement.

(2) The amendments made by subparagraph (i) of paragraph (e) of section three of this Act shall be deemed to

to extend to and from the commencement of this Act No. 26, 1940.
apply in respect of all persons who were immediately
before such commencement in receipt of a pension
pursuant to section ten of the Principal Act, as well as
to persons becoming eligible for any such pension after
such commencement.

(3) (a) The amendment made by subparagraph
(iii) of paragraph (d) of section three of this Act shall
be deemed to have commenced upon the ninth day of
November, one thousand nine hundred and forty-eight.

(b) The amendment made by subparagraph
(vii) of paragraph (d) of section three of this Act shall
be deemed to have commenced upon the nineteenth day
of June, one thousand nine hundred and forty-two.
