

**COAL AND OIL SHALE MINE WORKERS  
(SUPERANNUATION) AMENDMENT ACT 1988 No. 21**

NEW SOUTH WALES



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**COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION)  
AMENDMENT ACT 1988 No. 21**

NEW SOUTH WALES



**Act No. 21, 1988**

An Act to amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 to increase the contributions to the superannuation fund, to make further provisions with respect to benefits, and for other purposes. [Assented to 30 June 1988]

*Coal and Oil Shale Mine Workers (Superannuation) Amendment 1988*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1988.

**Commencement**

2. This Act commences on 3 July 1988.

**Amendment of Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45**

3. The Coal and Oil Shale Mine Workers (Superannuation) Act 1941 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 21—

Omit the section, insert instead:

**Women employed in coal or oil shale mining industries**

21. Any women who—

- (a) were prescribed persons within the meaning of this section immediately before 3 July 1988; or
- (b) were lawfully employed in the coal or oil shale mining industries in New South Wales as at 3 July 1988; or
- (c) became so employed after 3 July 1988,

are, if they otherwise come within the meaning of "Mine worker" in this Act, mine workers for the purposes of this Act.

(2) Section 14A (**Lump sum benefit payments to retired mine workers**)—

(a) Section 14A (5)—

After "section 2 (1)", insert "or by virtue of the repeal and substitution of section 21 (Mine worker who is a woman) by the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1988".

(b) Section 14A (5)—

Omit "he", insert instead "the person".

(3) Section 14AA—

After section 14A, insert:

*Coal and Oil Shale Mine Workers (Superannuation) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued***Lump sum benefit payments to retired mine workers: from 3 July 1988**

14AA. (1) A mine worker whose date of retirement is on or after 3 July 1988 and who is not entitled to a lump sum benefit payment under section 14A is, on retirement, entitled to a lump sum benefit payment at the rate prescribed by this section.

(2) A person entitled to a lump sum benefit payment under this section is entitled to payment thereof, at the rate of the prescribed amount, for each completed calendar month of service in—

- (a) any period, immediately before the date of retirement, during which the person was continuously engaged in the coal or oil shale mining industries; and
- (b) any other period during which the person was continuously engaged in the coal or oil shale mining industries, being a period which was immediately followed by an authorised period which ended—
  - (i) on the commencement of the period referred to in paragraph (a) (or another period referred to in this paragraph); or
  - (ii) on the date of retirement.

(3) In subsection (2), “the prescribed amount”, in relation to a person entitled to a lump sum benefit payment under this section, means the prescribed amount for the purposes of section 14A as at that person’s date of retirement.

(4) Where a person is a mine worker by virtue of—

- (a) any extension, by or under section 2A or any following section, of the definition of “Mine worker” in section 2 (1); or
- (b) the repeal and substitution of section 21 (Mine worker who is a woman) by the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1988,

the amount of any lump sum benefit payment otherwise payable to that person under this section shall not include payment for any period of engagement in the coal or oil shale mining industries before the person became liable to and did commence to contribute to the Fund.

(5) The amount of any lump sum benefit payment otherwise payable to any person under this section shall not include payment for any period of engagement in the coal or oil shale mining industries in respect of which—

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) a pension or addition thereto is or was payable under this Act to or in respect of the person consequent upon the person's death; or
- (b) a lump sum benefit payment has already been made under this Act to or in respect of the person.
- (6) The amount of any lump sum benefit payment otherwise payable to any person under this section shall not include payment for—
  - (a) any period of engagement in the coal or oil shale mining industries in respect of which a refund of the person's contributions has been made under this Act; or
  - (b) any period before that referred to in paragraph (a).
- (4) Section 14B (**Prescribed amount for purposes of sections 14A and 14AA**)—
 

Section 14B (5A)–(5B)—

After 14B (5), insert:

  - (5A) The Minister may, from time to time (in conjunction with an order under section 19 (2C)), by order published in the Gazette vary the prescribed amount in such manner as is—
    - (a) recommended by an actuary appointed under section 27 in conjunction with a triennial valuation of the Fund; and
    - (b) appropriate to achieve by 30 June 2011 the full funding of all anticipated benefits and entitlements arising under this Act.
  - (5B) A variation under subsection (5A) shall take effect from a date specified in the order.
- (5) Section 14D (**Lump sum benefit payment on death of mine worker**)—
  - (a) Section 14D (1), (2) (except paragraph (a)), (4)—
 

Omit "his" wherever occurring, insert instead "the mine worker's".
  - (b) Section 14D (1), definition of "spouse"—
 

After the definition of "relative", insert:

"spouse", in relation to a deceased mine worker, means—

    - (a) if the deceased mine worker was survived by a widow or widower—the widow or widower, as the case may be, of the mine worker; or
    - (b) if the deceased mine worker was not survived by a widow or widower—

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SCHEDULE 1—AMENDMENTS—*continued*

- (i) where the mine worker was a man and, at the time of his death, he was living with a woman as her husband on a bona fide domestic basis—the woman with whom he was so living; or
    - (ii) where the mine worker was a woman and, at the time of her death, she was living with a man as his wife on a bona fide domestic basis—the man with whom she was so living.
  - (c) Section 14D (2) (a)—  
Before “his”, insert “where the mine worker dies before 3 July 1988,”.
  - (d) Section 14D (2) (a1)—  
After section 14D (2) (a), insert:
    - (a1) where the mine worker dies on or after 3 July 1988, the mine worker’s spouse is entitled to—
      - (i) a lump sum benefit payment of the prescribed dependent amount; or
      - (ii) a lump sum benefit payment equal to a lump sum benefit payment payable to the mine worker under section 14FB (if such a payment had been payable),  
whichever is the greater;
  - (e) Section 14D (4)—  
Omit “wife”, insert instead “spouse”.
  - (f) Section 14D (4) (a), (b)—  
Omit “he” wherever occurring, insert instead “the mine worker”.
  - (g) Section 14D (4)—  
Omit “she”, insert instead “the spouse”.
  - (h) Section 14D (5)—  
Omit the subsection.
  - (i) Section 14D (8)—  
After section 14D (7), insert:
    - (8) If no benefit is payable in respect of a deceased mine worker under this section (other than this subsection), the benefit which would have been payable under section 14FB had the mine worker been entitled to such a benefit is payable to the legal personal representatives of the deceased mine worker.
- (6) Section 14E (**Lump sum benefit payment for disabled mine workers: disablement before 3 July 1988**)—  
Section 14E (7)—

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After section 14E (6), insert:

(7) This section does not apply to or in respect of a mine worker whose engagement in the coal or oil shale mining industries is terminated on or after 3 July 1988 as a result of the mine worker's disability.

(7) Sections 14FA, 14FB—

After section 14F, insert:

**Lump sum benefit payment for total and permanent incapacity: from 3 July 1988**

14FA. (1) Where a mine worker—

(a) proves to the satisfaction of the Tribunal—

- (i) that he or she has been incapacitated by injury during a period when he or she was engaged in the coal or oil shale mining industries; and
- (ii) that by reason of his or her incapacity he or she is unable to continue his or her engagement in those industries and that engagement was terminated on or after 3 July 1988 as a result of his or her disability; and
- (iii) that he or she is permanently unable, by reason of that incapacity, to be engaged, or to be employed, in any remunerative occupation in which it would be otherwise reasonable to expect him or her to engage; and

(b) has not been awarded a pension under section 6, and is not entitled to a lump sum benefit payment under section 14A or 14AA, in respect of the incapacity; and

(c) has submitted himself or herself to any examination required under subsection (3); and

(d) except where the Tribunal is satisfied that the incapacity was caused by injury as a mine worker—would have been entitled to a lump sum benefit payment under section 14A had he or she continued being engaged in those industries until the date of retirement,

he or she is entitled to a lump sum benefit payment of the amount determined under subsection (2).

(2) The amount of a lump sum benefit payable under this section is—

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) where the Tribunal is satisfied that the incapacity was caused by injury as a mine worker—an amount equal to the amount that would have been payable to him or her under section 14A or 14AA—
  - (i) if he or she was—
    - (A) under the age of 55 years at the date of the disability—had he or she continued being engaged in the coal or oil shale mining industries until the mine worker had attained the age of 55 years; or
    - (B) 55 years or over at the date of the disability—had he or she retired on the date of disability; and
  - (ii) had the reference in section 14A (3) or 14AA (3) to his or her date of retirement been a reference to the date of his or her disability; or
- (b) in any other case—an amount equal to a percentage of the amount referred to in paragraph (a), being 10 per cent of that amount, together with a further 10 per cent for each completed year of his or her engagement in the coal or oil shale mining industries before the date of his or her disability, to a maximum of 100 per cent.

(3) The Tribunal may require an applicant for payment of a lump sum benefit under this section to submit himself or herself to examination by a panel of 3 medical practitioners nominated by the Tribunal and the Tribunal shall, in making any such nomination, have regard to any representations made in regard thereto by the applicant.

(4) A person is not entitled to a lump sum benefit payment where the incapacity was caused by his or her act or default intended by him or her to produce that incapacity.

(5) For the purposes of this section, the date on which a person's incapacity arises and the date of his or her disability shall be deemed to be such date or dates as may be determined by the Tribunal, and the Tribunal shall, in making a determination under this subsection, have regard to all the circumstances of the case, including—

- (a) his or her medical and employment history; and
- (b) the date on which he or she ceased to be able to be effectively employed as a mine worker.

(6) In this section, a reference to—



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SCHEDULE 1—AMENDMENTS—*continued*

- (a) injury includes a reference to illness;
- (b) the date of a mine worker's disability is a reference to the date on which he or she becomes unable to continue his or her engagement in the coal or oil shale mining industries by reason of incapacity referred to in this section;
- (c) the date of retirement in relation to a mine worker is (except in subsection (2) (a) (ii)) a reference to the date on which the mine worker would be required by this Act to retire were he or she not to retire or be retired before that date.

**Lump sum benefit payment for partial and permanent incapacity: from 3 July 1988**

14FB. (1) Where a mine worker—

- (a) proves to the satisfaction of the Tribunal—
  - (i) that he or she has been incapacitated by injury during a period when he or she was engaged in the coal or oil shale mining industries; and
  - (ii) that he or she is permanently unable, by reason of that incapacity, to continue his or her engagement in those industries and that engagement was terminated on or after 3 July 1988 as a result of his or her disability; and
- (b) has not been awarded a pension under section 6, and is not entitled to a lump sum benefit payment under section 14A or 14AA, in respect of the incapacity; and
- (c) has submitted himself or herself to any examination required under subsection (3); and
- (d) except where the Tribunal is satisfied that the incapacity was caused by injury as a mine worker—would have been entitled to a lump sum benefit payment under section 14A had he or she continued being engaged in those industries until the date of retirement,

he or she is entitled to a lump sum benefit payment of the amount determined under subsection (2).

(2) The amount of a lump sum benefit payable under this section is an amount equal to the amount that would have been payable to the mine worker under section 14A or 14AA—

- (a) had the mine worker retired on the date of disability; and
- (b) had the reference in section 14A (3) or 14AA (3) to the date of retirement been a reference to the date of disability.

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SCHEDULE 1—AMENDMENTS—*continued*

(3) The Tribunal may require an applicant for payment of a lump sum benefit under this section to submit himself or herself to examination by a panel of 3 medical practitioners nominated by the Tribunal and the Tribunal shall, in making any such nomination, have regard to any representations made in regard thereto by the applicant.

(4) A person is not entitled to a lump sum benefit payment where the incapacity was caused by his or her act or default intended by him or her to produce that incapacity.

(5) For the purposes of this section, the date on which a person's incapacity arises and the date of his or her disability shall be deemed to be such date or dates as may be determined by the Tribunal, and the Tribunal shall, in making a determination under this subsection, have regard to all the circumstances of the case, including—

- (a) his or her medical and employment history; and
- (b) the date on which he or she ceased to be able to be effectively employed as a mine worker.

(6) In this section, a reference to—

- (a) injury includes a reference to illness;
- (b) the date of a mine worker's disability is a reference to the date on which he or she becomes unable to continue his or her engagement in the coal or oil shale mining industries by reason of incapacity referred to in this section;
- (c) the date of retirement in relation to a mine worker is (except in subsection (2) (b)) a reference to the date on which the mine worker would be required by this Act to retire were he or she not to retire or be retired before that date.

(8) Section 19 (**Contributions to Fund**)—

(a) Section 19 (2A)—

Omit “worker—” and paragraphs (a) and (b), insert instead “worker at the rate of 5.5 per cent of the Reference Rate or at such other rate as may be for the time being in force under subsection (2C).”.

(b) Section 19 (2B), (2C)—

After section 19 (2A), insert:

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SCHEDULE 1—AMENDMENTS—*continued*

(2B) A special contribution shall, in addition to the contributions payable by mine workers under the foregoing provisions of this section, be payable to the Fund by each mine worker at the rate of 1.75 per cent of the Reference Rate or at such other rate as may for the time being be in force under subsection (2C).

(2C) The Minister may, from time to time, by order published in the Gazette, fix such rates of special contributions under subsection (2A) or (2B) or both, as are—

- (a) recommended by an actuary appointed under section 27 in conjunction with a triennial valuation of the Fund; and
- (b) appropriate to achieve by 30 June 2011 the full funding of all anticipated benefits and entitlements arising under this Act.

(c) Section 19 (3)—

Omit “(2A)”, insert instead “(2C)”.

(d) Section 19 (3A)—

Omit “(2A)”, insert instead “(2C)”.

(9) Section 19L (**Refund of contributions where mine worker ceases to be employed on or after 26.3.1978**)—

(a) Section 19L (1) (a) (iii)—

Omit “death; and”, insert instead “death.”.

(b) Section 19L (1) (b)—

Omit the paragraph.

(c) Section 19L (2), (3)—

Omit the subsections.

(d) Section 19L (6)–(8)—

Omit section 19L (6), insert instead:

(6) The interest payable on the amount of refunded contributions is the total of the interest payable on the balance of contributions as at 30 June in each year at the following rates per annum:

- (a) in respect of a year ending on or before 30 June 1988—  
the rate per annum payable as at that 30 June by the Commonwealth Savings Bank in respect of corresponding amounts in a savings account;
- (b) in respect of a year ending on or after 30 June 1989—the  
rate per annum determined by the Tribunal in respect of that year.

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SCHEDULE 1—AMENDMENTS—*continued*

(7) In determining the rate of interest payable in respect of a year, the Tribunal shall have regard to the earnings of the Fund in that year.

(8) No interest on interest is payable under subsection (6) (a).

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