

**COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION)  
AMENDMENT ACT 1990 No. 18**

NEW SOUTH WALES



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**COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION)  
AMENDMENT ACT 1990 No. 18**

NEW SOUTH WALES



**Act No. 18,1990**

An Act to amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 for the purposes of redefining the expression "mine worker" and making further provision with respect to the payment of lump sum benefits to mine workers who have become incapacitated by injury while engaged in the coal or oil shale mining industries, and for other purposes. [Assented to 14 June 1990]

**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 1990.

**Amendments to the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45**

2. The Coal and Oil Shale Mine Workers (Superannuation) Act 1941 is amended as set out in Schedules 1 and 2.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 2)

**(1) Section 2 (Definitions):**

(a) From section 2 (1), omit the definition of "Mine worker", insert instead:

**"Mine worker"** means:

- (a) a person engaged in the coal or oil shale mining industries in New South Wales who was, immediately before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990, contributing to the Fund; or
- (b) a person who, after that commencement, becomes employed by an owner in or about a coal or oil shale mine in New South Wales (whether underground or above ground); or
- (c) a person who is engaged in the coal or oil shale mining industries, either before or after that commencement, and in respect of whom the Tribunal has made an order under section 15B declaring the person to be a mine worker for the purposes of this Act; or
- (d) a person in respect of any period during which the person was the holder of a permit in force under section 2E; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (e) a person who is engaged in work declared by an order in force under section 2J to be mine work
- (b) Omit section 2 (7), insert instead:
  - (7) For the purposes of sections 19 and 19D, if a mine worker is employed by a person who is not an owner as defined in subsection (1), a reference to an owner includes a reference to the employer of the mine worker.
  - (8) Subsection (7) does not apply to a mine worker who is:
    - (a) a check-weigher or district check inspector; or
    - (b) an elected official of an industrial or trade union of employees or of an association of employees registered as an organisation under the Industrial Relations Act 1988 of the Commonwealth, of which union or organisation the membership is principally confined to persons who are employed in or about a coal or oil shale mine (whether underground or above ground).
  - (9) If a person was, immediately before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990, a mine worker by virtue of section 2A, 2B, 2C, 2F, 2H or 2K (as in force before that commencement) or of any regulation made under section 2D (as so in force), and the retiring age of the person was, by virtue of a provision of the section or regulation by which the person became a mine worker, 65 years of age, the following provisions apply in respect of the person despite the repeal of those sections by that Act:
    - (a) the retiring age of the person continues to be 65 years;
    - (b) the person may retire or be retired at any time after attaining 60 years of age and before attaining 65 years of age;
    - (c) a reference in any provision of this Act to "date of retirement" is to be read, in relation to the person, as a reference to the date on which the person

SCHEDULE 1 - AMENDMENTS - *continued*

retires or is retired or, as the case maybe, is to retire or to be retired;

- (d) a reference in section 5 or 6, express or implied, to "the commencement of this Part" is to be read, in relation to the person, as a reference to the date of commencement of the section or regulation by virtue of which the person originally became a mine worker;
  - (e) a reference in section 5 (subsection (6) excepted) to the age of 60 years is to be read, in relation to the person, as a reference to the age of 65 years;
  - (f) a reference in section 6 to the age of 60 years is to be read, in relation to the person, as a reference to the age of 65 years or, if the person retires or is retired before attaining 65 years of age, the age at which the person retires or is retired.
- (2) Sections 2A-2D, 2F-2I and 2K:  
Omit the sections,
- (3) Section 2E (**Extension of definition of "Mine worker" to cavelled out mine workers etc.**):  
From section 2E (2), omit "the definition of "Mine worker" in subsection (1) of section 2 shall be extended to include", insert instead " , this section applies to".
- (4) Section 2J (**Further extension of the definition of "Mine worker"**):
- (a) From section 2J omit "Minister" wherever occurring, insert instead "Tribunal".
  - (b) From section 2J (7), omit "the definition of "Mine worker" in subsection (1) of section 2 shall be extended to include", insert instead " , this section applies to".
  - (c) Omit section 2J (10), insert instead:  

(10) The retirement age of a person who, by virtue of this section and the operation of the order, is a mine worker is the age (if any) specified in the order (not greater than 65 years) as the person's retirement age.

SCHEDULE 1 - AMENDMENTS - *continued*

(10A) However, if in the order an age greater than 60 years is specified in relation to a person, the person may retire or be retired at any time after the person attains 60 years of age but not later than the date on which the person attains 65 years of age.

(10B) If subsection (10A) applies to a person, a reference in any other provision of this Act to "date of retirement" is to be read, in relation to that person, as the date on which the person retires or is retired or, as the case may be, the date on which the person is to retire or to be retired.

(d) From section 2J (11), omit "as permitted by the proviso to subsection (10)", insert instead "as provided by subsection (10A)".

(e) Omit section 2J (14), insert instead:

(14) If an order made by the Minister under this section was in force immediately before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990, the order is to be taken to be an order made by the Tribunal under this section (as in force after that commencement).

(5) Section 3 (**Special provisions as to calculation of periods of employment**):

Omit section 3 (6), insert instead:

(6) For the purposes of this Act, the work of persons of the following classes is to be taken to be work in or about a coal or oil shale mine:

(a) a person who is or was, on or after 8 October 1941, employed by the owner of a coal or oil shale mine in New South Wales and who, in the course of that employment is or was principally engaged in the transport of coal or oil shale from the mine to the point of delivery by the owner;

(b) a person who is or was, on or after 8 October 1941, a check-weigher or district check inspector;

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) a person who is or was, on or after 16 October 1949, 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 or was 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) the mine office is or was in close proximity to that mine holding; and
  - (ii) there is or was no other mine office within those confines; and
  - (iii) the duties performed by the person are or were of a similar nature to those performed by a person engaged in clerical work who is or was a mine worker;
- (d) an officer of the Department of Mines (or its successor) who, on or after 16 October 1949:
  - (i) was the holder of a first class certificate of competency; and
  - (ii) was performing inspectorial duties under the Coal Mines Regulation Act 1982,and who became an officer of that Department on or before that date;
- (e) a person:
  - (i) who is or was, on or after 16 October 1949, employed by the owner of a coal or oil shale mine in New South Wales; and
  - (ii) who, in the course of that employment, is or was principally engaged in the transport of overburden or detritus from the mine;
- (f) a person:
  - (i) who was employed on the South Maitland Railway by the South Maitland Railways Proprietary Limited as an engine-driver, fireman, guard or fettler; and
  - (ii) who, on 16 October 1949 or at the commencement of the person's employ-

SCHEDULE 1 - AMENDMENTS - *continued*

ment, whichever is the later, had not attained 55 years of age;

(g) a person:

(i) who was 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, by proclamation published in the Gazette, has declared not to be mine workers; and

(ii) who, on 16 October 1949 or at the commencement of the person's employment, whichever is the later, had not attained 55 years of age;

(h) a person:

(i) who is or was, on or after 17 December 1950, employed by the owner of a coal or oil shale mine in New South Wales; and

(ii) who, in the course of that employment, is or was principally engaged in screening, washing or loading coal or oil shale at the point of delivery;

(i) a person:

(i) who, on 16 October 1949, was 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, by proclamation published in the Gazette, has declared not to be mine workers; and

(ii) who on that date had attained 55 years of age;



SCHEDULE 1 - AMENDMENTS - *continued*

- (j) a person (not being a person referred to in paragraph (a)) in respect of whom the Tribunal was, on application made to it by the industrial union of employees of which the person was or was eligible to be a member, satisfied that the person:
  - (i) was, immediately before 9 December 1957, principally engaged in the transport of coal or oil shale from the mine to the point of delivery to which such coal or oil shale is being delivered by the owner of the mine; or
  - (ii) was, on or after that date, principally engaged in the transport of coal or oil shale from the mine to the point of delivery to which the coal or oil shale was being delivered by the owner of the mine;
- (k) a person (not being a mine worker referred to in paragraph (d)) who was, on or after 9 December 1957, an officer of the Department of Industrial Relations, or its successor and who:
  - (i) was engaged in or about a coal or oil shale mine in the performance of duties under the Coal Mines Regulation Act 1982 (or any Act which that Act replaced) relating to the safety of persons employed in or about coal or oil shale mines; and
  - (ii) was, immediately before being appointed as such an officer, a contributor to the Fund; and
  - (iii) elected to continue to contribute to the Fund and not to a superannuation scheme administered and managed by the State Authorities Superannuation Board (or any of its predecessors) by notice given to the Secretary of that Department and to the Registrar within 21 days of being appointed as an officer of that Department or within such longer period as the Tribunal may in the particular circumstances have allowed.

SCHEDULE 1 - AMENDMENTS - *continued*

(6A) For the purposes of subsection (6), "**point of delivery**" means the place at which the owner of the mine concerned delivered the coal or oil shale to any railway of the State Rail Authority (or any of its predecessors), or to the South Maitland Railway, or to any wharf or other place appointed for the purpose, and includes, in any case where process works are carried on by the owner of the mine, the place at which coal or oil shale was delivered at the works.

(6) Section 5A (**Extension of compulsory retiring age**):

At the end of section 5A, insert:

(2) This section does not apply to a mine worker in respect of whom an order of the Tribunal under section 15B is in force if the order is one which specifies the mine worker's retiring age.

(7) Section 14A (**Lump sum benefit payments to retired mine workers**):

Omit section 14A (5), insert instead

(5) If a person was engaged in the coal or oil shale mining industries before becoming a mine worker for the purposes of this Act, the amount of any lump sum benefit payment otherwise payable to or in respect of that person under this section is not to include payment for the period of the person's engagement in the coal or oil shale mining industries before the person became liable to contribute, and began contributing, to the Fund.

(8) Section 14AA (**Lump sum benefit payments to retired mine workers: from 3 July 1988**):

Omit section 14AA (4), insert instead:

(4) If a person was engaged in the coal or oil shale mining industries before becoming a mine worker for the purposes of this Act, the amount of any lump sum benefit payment otherwise payable to or in respect of that person under this section is not to include payment for the period of the person's engagement in the coal or oil shale mining industries before the person became liable to contribute, and began contributing, to the Fund.

SCHEDULE 1 - AMENDMENTS - *continued*

(9) Section 14E (**Lump sum benefit payment for disabled mine workers**):

After section 14E (7), insert:

(8) A person who makes an application under section 14H for a lump sum benefit payment under this section may include in the application an application for a lump sum benefit payment under section 14FB, but, if the person becomes entitled to receive a benefit payment under section 14FB, the person is not entitled to receive a lump sum benefit payment under this section.

(9) If:

(a) any person has, before the commencement of the Coal and Oil Shale Mine Workers (Suprannuation) Amendment Act 1990, made an application for a lump sum benefit payment under this section; and

(b) the application has not been determined before that commencement (including the disposal of any appeal under section 23A),

the application is to be taken to include, as an alternative to such a benefit payment, an application for a lump sum benefit payment under section 14FB.

(10) Section 14FB (**Lump sum benefit payment for partial and permanent incapacity**):

From section 14FB (1) (a) (ii), omit "on or after 3 July 1988".

(11) Section 14H (**Applications for lump sum benefit payment**):

Omit section 14H (S), insert instead:

(5) After considering the application and report, the Tribunal:

(a) may either allow or disallow the application; or

(b) if the application is for a lump sum benefit payment under section 14E and, alternatively, for a lump sum benefit payment under section 14FB, may either allow the application as to one of those

**SCHEDULE 1 - AMENDMENTS - *continued***

benefits and disallow the application as to the other or disallow the application as to both of those benefits.

(12) **Section 15 (The Tribunal):**

From section 15 (3) (d), omit "Australasian Coal and Shale Employees' Federation", insert instead "United Mineworkers Federation of Australia".

(13) After section 15A, insert:

**Power of the Tribunal to make orders declaring certain persons to be mine workers for the purposes of this Act**

15B. (1) The powers of the Tribunal include:

- (a) a power to make orders declaring persons engaged in the coal or oil shale mining industries to be mine workers; and
- (b) a power to specify in those orders or in separate orders an age not greater than 65 years as the retiring age of any of those persons,

for the purposes of this Act.

(2) If an order under subsection (1) (b) specifies as the retirement age of a person an age greater than 60 years, the person may retire or be retired as a mine worker at any time after attaining 60 years of age and before attaining 65 years of age.

(3) If an order referred to in subsection (2) is in force in respect of a person, the following provisions apply

- (a) a reference in any other provision of this Act to "date of retirement" is to be read, in relation to the person, as a reference to the date on which the person retires or is retired or, as the case may be, the date on which the person is to retire or to be retired;
- (b) a reference in section 5 or 6, express or implied, to "the commencement of this Part", is to be read, in relation to the person, as a reference to the date on which the order is made;

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) a reference in section 5 (subsection (6) excepted) to the age of 60 years is to be read, in relation to the person, as a reference to the retirement age that the Tribunal has specified in respect of the person in the order;
  - (d) a reference in section 6 to the age of 60 years is to be read, in relation to the person, as a reference to the age that the Tribunal has specified in the order in respect of the person or, if the person retires or is retired before attaining that age, the age at which the person retires or is retired.
- (4) An order under this section takes effect:
- (a) from and including a date specified in the order (which may be the date of the order or a date before or after that date but not earlier than the date on which the person to whom the order relates was first engaged in the coal or oil shale mining industries); or
  - (b) if no such date is specified - from and including the date of the order.
- (14) Section 32 (**Regulations**):  
Omit section 32 (5)-(7).
- (15) Schedule 2 (**Savings and transitional provisions**):  
After clause 1, insert:
- Savings and transitional regulations**
2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act 1990 or a later date.

**SCHEDULE 1 - AMENDMENTS - *continued***

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**SCHEDULE 2 - FURTHER AMENDMENTS BY WAY OF  
STATUTE LAW REVISION**

(Sec. 2)

- (1) Section 1 (**Short title, commencement and construction**):  
Omit section 1 (2).
- (2) Section 2 (**Definitions**):  
From section 2 (1), omit the definitions of "Conciliation and Arbitration Act" and "Social Services Act".
- (3) Section 3 (**Special provisions as to calculation of periods of employment**):
  - (a) From section 3 (1), omit "as amended by subsequent Acts, of the Parliament".
  - (b) From section 3 (4), omit "Conciliation and Arbitration Act", insert instead "Industrial Relations Act 1988 of the Commonwealth".
- (4) Section 10A (**De facto wife**):  
From section 10A (6), omit "Social Services Act", insert instead "Social Security Act 1947 of the Commonwealth".

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY OF  
STATUTE LAW REVISION - *continued*

- (5) Section 10AA (**Payment of pension where contributions refunded**):  
Omit section 10AA (2).
- (6) Section 10EA (**Appropriate amounts of pensions and additions thereto**):  
From section 10EA (1) (c) (iii), omit "Special Rate of Pension referred to in the Second Schedule to the Repatriation Act 1920 of the Parliament of the Commonwealth as amended by subsequent Acts of that Parliament", insert instead "special rate provided under section 24 of the Veterans' Entitlements Act 1986 of the Commonwealth".
- (7) Section 10F (**Amendment of Sch. 1 following variation in Reference Rate**):  
From section 10F (2), omit "Social Services Act" wherever occurring, insert instead "Social Security Act 1947 of the Commonwealth".
- (8) Section 13 (**Deductions from pensions**):
- (a) From section 13, omit "Social Services Act" wherever occurring (except where occurring in the second proviso to subsection (1) of that section or where those words are to be omitted elsewhere in this item), insert instead "Social Security Act 1947 of the Commonwealth".
  - (b) From section 13 (1), omit "of the Parliament".
  - (c) From section 13 (1), omit "section 30A. of the Social Services Act", insert instead "section 36 of the Social Security Act 1947 of the Commonwealth (or any section which that section has replaced)".
  - (d) From section 13 (1), omit "section 135U of the Social Services Act", insert instead "the provisions of Part VIII of the Social Security Act 1947 of the Commonwealth (or any provisions of that Act which that Part has replaced)".
  - (e) From section 13 (1), omit "the said section 135U", insert instead "those provisions".

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY OF  
STATUTE LAW REVISION - *continued*

- (f) From section 13 (1), omit "Social Services Act to be deducted from", insert instead "that Act to be deducted from".
  - (g) From section 13 (2) (b), omit "said Act", insert instead "Social Security Act 1947 of the Commonwealth".
  - (h) Omit section 13 (3), insert instead:
    - (3) In this section, a reference to the Social Security Act 1947 of the Commonwealth includes a reference to any reciprocal agreement referred to in section 65 of that Act.
  - (i) From section 13 (5), omit "Social Services Act" where secondly Occurring, insert instead "that Act".
- (9) Section 14FA (**Lump sum benefit payment for total and permanent incapacity: from 3 July 1988**):
- (a) From section 14FA (1), (2) and (6), omit "he or she" wherever occurring, insert instead "the mine worker".
  - (b) From section 14FA (1), (2) and (6), omit "his or her" wherever occurring, insert instead "the mine worker's".
  - (c) From section 14FA (1) (a) (iii) and (2) (a), omit "him or her" wherever occurring, insert instead "the mine worker".
  - (d) From section 14FA (1) (c) and (3), omit "himself or herself" wherever occurring.
  - (e) From section 14FA (4) and (5), omit "his or her" wherever occurring, insert instead "the person's".
  - (f) From section 14FA (4), omit "him or her", insert instead "the person".
  - (g) From section 14FA (5) (b), omit "he or she", insert instead "the person".
- (10) Section 14FB (**Lump sum benefit payment for partial and permanent incapacity**):
- (a) From section 14FB (1) and (6), omit "he or she" wherever occurring, insert instead "the mine worker".
  - (b) From section 14FB (1) and (6), omit "his or her" wherever occurring, insert instead "the mine worker's".



SCHEDULE 2 - FURTHER AMENDMENTS BY WAY OF  
STATUTE LAW REVISION - *continued*

- (c) From section 14FB (1) (c) and (3), omit "himself or herself wherever occurring.
  - (d) From section 14FB (4) and (5), omit "his or her", wherever occurring, insert instead "the person's".
  - (e) From section 14FB (4), omit "him or her", insert instead "the person".
  - (f) From section 14FB (5) (b), omit "he or she", insert instead "the person".
- (11) **Section 15 (The Tribunal):**
- (a) From section 15 (3), omit "Conciliation and Arbitration Act", insert instead "Industrial Relations Act 1988 of the Commonwealth".
  - (b) Omit section 15 (9) (f), insert instead
    - (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983.
  - (c) From section 15 (13), omit ", or of any Act amending that Act,".
- (12) **Section 16 (Registrar, officers and employees):**
- Omit "the Public Service Act 1902, as amended by subsequent Acts", insert instead "Part 2 of the Public Sector Management Act 1988".
- (13) **Section 19H (Suspension of weekly payments of subsidy in certain cases):**
- From section 19H (2), omit "a patient within the meaning of the Mental Health Act 1958", insert instead "a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983".

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY OF  
STATUTE LAW REVISION - *continued*

- (14) Section 21 (**Suspension of pension rights in certain events - alternative pensions to dependants**):
- (a) From section 21 (2) (a) and (b), omit "patient within the meaning of the Mental Health Act 1958" wherever occurring, insert instead "temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983".
  - (b) From section 21 (2) (c), omit "any patient within the meaning of the Mental Health Act 1958", insert instead "any temporary patient or continued treatment patient within the meaning of the Mental Health Act 1958, any forensic patient within the meaning of the Mental Health Act 1983 or any protected person within the meaning of the Protected Estates Act 1983".
  - (c) From section 21 (2) (c), omit "of that Act", insert instead "of those Acts".
  - (d) From section 21 (3) (a) and (4) (a), omit "under the Maintenance Act 1964" wherever occurring, insert instead "for the provision of maintenance under the Family Law Act 1975 of the Commonwealth".
- (15) Section 29 (Offences):
- Omit "Workers' Compensation Commission", insert instead "Industrial Commission".
- (16) Section 30 (Recovery of penalties):
- (a) From section 30 (1), omit "stipendiary magistrate, or any two justices in petty sessions", insert instead "Local Court constituted by a Magistrate sitting alone".
  - (b) From section 30 (2), omit "magistrate or justices", insert instead "Magistrate".

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[Minister's second reading speech made in -  
Legislative Assembly on 17 May 1990  
Legislative Council on 30 May 1990]