

MINERS' PENSIONS ACT 1982

No. 90 of 1982

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MARGINAL NOTES

The following abbreviations are used in the marginal notes to this Act.

NSW—Coal and Oil Shale Mine Workers (Superannuation) Act, 1941
(New South Wales, No. 45 of 1941)

R.B.—*Retirement Benefits Act* 1982 (Tasmania, No. 10 of 1982)

1956—*Miners' Pensions Act* 1956 (Tasmania, No. 11 of 1956).

Interpretation.
1956, s. 3.

3—(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“ age for retirement ” means—

- (a) in the case of a miner, other than a miner referred to in paragraph (b), the age of 60 years; or
- (b) in the case of a miner who is a manager, under-manager, colliery engineer, or clerical worker, the age of 65 years or any earlier age at which he elects to retire as provided by subsection (4);

“ age pension ” means an age pension payable under the *Social Services Act 1947* of the Commonwealth, but in Schedule 3 does not include any part of that pension or supplement or addition to it that may be paid to the person entitled to it by reason of his having any dependants or of his having the custody, care, or control of any person;

“ the Board ” means the Miners' Pensions Board continued in existence under section 7;

“ child ”, in relation to a miner, means—

- (a) his child or stepchild who has not attained the age of 16 years; or
- (b) in the case of a child or stepchild undergoing a course of full-time education and who has not attained the age of 18 years, that child or stepchild;

“ the commencement day ” means 26th September 1982;

“ contributions ” means contributions paid or payable, as the case may require, to the Fund under section 13;

“ contributory service ”—

- (a) in relation to a person who is, or is deemed to be, employed as a miner on or after the commencement day, means a period or periods during

R.B., definition
of “ service ”.

which that person contributes to the Fund and includes any period in respect of which he is required to so contribute but before his first contribution is paid to the Fund; and

- (b) in relation to a person who was, or is deemed to have been, employed as a miner immediately before the commencement day, means a period or periods of continuous employment as a miner during which contributions in respect of that person have been paid to the Fund in accordance with the repealed Act and ending at the time when any calculation of his period of service is required to be made for the purposes of this Act;

“existing pensioner” means a pensioner who was, immediately before the commencement day, entitled to a pension under the repealed Act as—

- (a) a retired or incapacitated miner; or
(b) a widow, child, or other dependant of a retired or incapacitated miner;

“the Fund” means the Miners' Pension Fund continued in existence under section 10 (1);

“injury” means a personal injury arising out of, and in the course of, employment as a miner, and includes a disease so arising, whether of sudden onset or contracted by a gradual process;

“invalid pension” means an invalid pension payable under the *Social Services Act 1947* of the Commonwealth;

“mine” means a coal mine or oil-shale mine and includes—

- (a) a quarry from which coal or oil-shale is obtained;
(b) all the land at or near the entrance to the workings in such a mine or quarry and occupied by the owner in connection with the winning of coal or oil-shale; and
(c) part of any such mine or quarry;

- “miner” means a person who is ordinarily employed wholly in or at a mine by the owner of the mine and includes a person who is ordinarily employed at any other place by the owner of a mine in connection with the treatment of coal or oil-shale;
- “officer of the Public Service” means a person employed in any capacity in any branch of the Public Service but does not include a person temporarily so employed;
- “organization” means any union or association of, or including, owners or miners that is registered as an organization under the *Conciliation and Arbitration Act 1904* of the Commonwealth;
- “owner” means a person who is the proprietor of a mine and includes—
- (a) a lessee, licensee, or occupier of a mine;
 - (b) a person having the management of mining operations carried out in or at a mine;
 - (c) in the case of a company carrying out mining operations, the manager or agent of that company; and
 - (d) a contractor or tributer for the working of a mine or for doing any work in or at the mine,
- but does not include a person who merely receives a royalty, rent, tribute, or fine from a mine or is merely the proprietor of a mine that is subject to a lease, grant, or licence for the working of the mine;
- “pensioner” means a person who is entitled to a pension under Part III;
- “Public Service” means the Public Service of Tasmania, as defined in section 5 of the *Public Service Act 1973*;
- “reference rate” means an amount fixed by the Treasurer, by order under subsection (8), as the reference rate for the purposes of this Act;
- “registrar” means the registrar of the Board appointed under section 9 (1);
- “the regulations” means regulations in force under this Act;
- “the repealed Act” means the *Miners' Pensions Act 1956*;
- “tributer” means a person who agrees to work a mine upon terms providing for the owner of the mine to receive part of the proceeds won by that person from the mine;

“ unit rate ” means the minimum rate of wage payable weekly to a coal-cutting machineman under the Coal Mining Industry (Miners) Award, 1973, Tasmania or any award made by way of variation of, or in substitution of, that award and in force under the *Coal Industry Act* 1946 of the Commonwealth.

(2) For the purposes of this Act—

(a) a tributer; or

(b) a member of a partnership that owns a mine and who works in or at the mine,

shall be deemed to be a miner, notwithstanding that the tributer or member may also be a part-owner of the mine.

(3) For the purposes of this Act, a person who is engaged by the owner of a mine in the transport of coal or oil-shale from the mine to the point of delivery at a railway or other public transport service, or at the storage depot that is nearest to the mine, shall be deemed to be employed as a miner.

(4) For the purposes of the definition of “ age for retirement ” in subsection (1), a manager, under-manager, colliery engineer, or clerical worker may elect to retire at any time after he attains the age of 60 years and before he attains the age of 65 years.

(5) For the purposes of the definition of “ contributory service ” in subsection (1), where a miner has received, whether under this Act or the repealed Act, a refund of his contributions to the Fund and has subsequently recommenced contributing to the Fund, the period of the miner’s employment before the day on which he recommenced so contributing shall be deemed not to comprise part of his contributory service. ^{R.B.} _{s. 3(3) (b).}

(6) For the purposes of the definition of “ existing pensioner ” in subsection (1), a person shall be deemed to have been entitled to a pension under the repealed Act immediately before the commencement day, notwithstanding that no such pension was at that time payable to him by reason of any deductions made under section 23 or 24, or both of those sections, of that Act.

(7) For the purposes of the definition of “ pensioner ” in subsection (1), a person shall be deemed to be entitled to a pension under Part III, notwithstanding that no such pension is payable to him by reason of any deductions made under section 23 or 24, or both of those sections.

N.S.W., s. 14b.

(8) The Treasurer, after taking into account the most recent report made by an actuary under section 11 and any other actuarial advice that he considers necessary, may, by order published in the *Gazette*—

- (a) determine an amount that is not less than \$100 to be the reference rate for the purposes of this Act; and
- (b) specify a date on which the determination takes effect.

(9) A date specified in an order under subsection (8) may be a date that is before or after the date of notification of the order in the *Gazette*.

Application
of Act.
R.B. s. 3 (1),
definition of
"contributor".

4—The application of this Act extends to, and in relation to—

- (a) a miner who is required to contribute to the Fund but who has not commenced to pay his contributions to the Fund; and
- (b) a miner who has ceased to contribute to the Fund by reason of his age.

Continuity of
contributory
service.
1956, s. 4.

5—(1) For the purposes of this Act, the continuity of a miner's contributory service is not affected by reason only of his absence from employment—

- (a) on war service in the Naval Forces, the Military Forces, or the Air Force of the Commonwealth;
- (b) in the performance of any work or service in connection with a war or warlike operations in which the Commonwealth is at any time engaged;
- (c) on leave granted by his employer for or on account of—
 - (i) annual recreational leave;
 - (ii) sickness or accident; or
 - (iii) any other lawful occasion;
- (d) during his holding office as an elected official of a miners' organization;
- (e) during a period of unemployment as a miner if he loses his employment as such through no fault on his part and his failure to obtain other employment is through no fault on his part.

(2) Where a miner who loses his employment as a miner through no fault on his part engages, during the period during which he is unable to obtain employment as a miner, in employment otherwise than as a miner, that employment shall be deemed not to interrupt his employment as a miner.

6—(1) Except as provided in this section, a person shall not—

Prohibition of
employment
after age for
retirement.
1956, s. 5.

(a) engage or retain in his employment as a miner any person who has attained the age for retirement; or

(b) accept, or continue in, employment as a miner after attaining the age for retirement.

(2) Where the Governor is satisfied that a person is, in good faith and not with a view to obtaining exemption, a member of—

(a) a partnership; or

(b) a proprietary company,

that is the owner of a mine, the Governor may, by order-in-council, suspend the operation of subsection (1) in relation to that person on such conditions, if any, as the Governor may impose.

(3) The Board, at any time on special cause being shown to its satisfaction, may, by resolution, suspend the operation of subsection (1) on such conditions, if any, as the Board may impose in respect of—

(a) the employment of a miner specified in the resolution; or

(b) the employment in or at a mine so specified of—

(i) all miners; or

(ii) a class of miners so specified.

(4) The registrar shall issue a certificate of exemption in the prescribed form to a person in respect of whom a suspension has been granted under subsection (2) or (3).

(5) A certificate of exemption under subsection (4) shall state full particulars of the suspension to which it relates and shall specify the period for which it is issued and the conditions, if any, to which it is subject.

(6) While a period of suspension is in force under this section in relation to a miner, the provisions of subsection (1) do not apply to, or in relation to, that miner so long as the conditions, if any, specified in the certificate of exemption issued under this section are complied with.

PART II

BENEFITS FOR RETIRED MINERS AND DEPENDANTS

Division 1—The Miners' Pensions Board

The Miners'
Pensions Board,
1956, s. 6.

7—(1) The Miners' Pensions Board established under section 6 of the repealed Act shall be and remain the same body corporate as was existing immediately before the commencement day.

(2) The Board—

(a) shall continue to be a body corporate with perpetual succession;

(b) shall have a seal; and

(c) may sue and be sued in its corporate name.

(3) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Board and shall presume that it was duly affixed.

(4) The Board shall, subject to this section, consist of 3 members appointed by the Governor, of whom—

(a) one shall be appointed as the chairman of the Board;

(b) one shall be a person who is not a miner, nominated by an owner or an organization of owners; and

(c) one shall be a person nominated by an organization of miners.

(5) A nomination required by subsection (4) may be made by such organization of owners or of miners as appears to the Minister to represent the interests of owners or of miners, as the case may be.

(6) If an owner or organization fails to make a nomination for the purposes of this section within 30 days after the date on which the Minister calls for the nomination to be made, the Minister may nominate a person who appears to him to be suitable to fill the relevant position on the Board, and that person may be appointed accordingly.

(7) Schedule 1 has effect with respect to the membership of the Board.

(8) Schedule 2 has effect with respect to the meetings of the Board.

8—(1) The Board shall, as soon as practicable after 30th June in each year, prepare a report of its affairs and activities for the period of 12 months ending on that date and submit the report to the Minister. Annual report. 1956, s. 13.

(2) The Minister shall lay, or cause to be laid, before each House of Parliament a copy of a report submitted to him in accordance with subsection (1) within 14 sitting days of the House after the date on which he receives that report.

9—(1) The Governor may, under and in accordance with the provisions of the *Public Service Act 1973*, appoint a registrar of the Board and such other officers as may be necessary to assist the Board in the administration of this Act. Registrar and other officers. 1956, s. 14.

(2) An officer of the Public Service may be appointed under this section, and may hold office under this Act in conjunction with his office as an officer of the Public Service.

Division 2—The Miners' Pension Fund

10—(1) The Miners' Pension Fund established under section 15 of the repealed Act shall continue under that name and shall be the Fund for the purposes of this Act. The Miners' Pension Fund. 1956, s. 15.

(2) The Fund shall be under the management and control of the Board.

(3) There shall be paid into the Fund—

- (a) all contributions by owners and miners under this Act;
- (b) all payments made by the Treasurer under this Act; and
- (c) all income derived from the investments of the Fund.

(4) All money payable to the Fund shall be paid to the Board, and all pensions and benefits under this Act shall be paid from the Fund by the Board.

(5) The accounts and records of the Board relating to the Fund are subject to the provisions of the *Audit Act 1918*.

(6) The Fund is not liable to taxation imposed by or under any Act.

(7) The money standing to the credit of the Fund from time to time—

(a) shall, so far as is practicable, be invested by the Board in any of the ways authorized by the *Trustee Act 1898* for the investment of trust funds; or

(b) may be placed by the Board to the credit of a special deposit account in the Treasury.

(8) Where any money is placed to the credit of a deposit account pursuant to subsection (7) (b), the Treasurer may cause to be paid interest on that money at such rate as he may determine.

Actuarial
investigations
of Fund.
1956, s. 16.

11—(1) The Board shall cause an investigation as to the state and efficiency of the Fund to be made by an actuary at the expiration of each period of 3 years.

(2) The first investigation under this section shall be made at the expiration of the period of 3 years after the date on which the last investigation was made under the repealed Act.

(3) The actuary by whom an investigation is made under this section shall report to the Board on the result of the investigation, and the Board shall, as soon as practicable after receipt of the report, submit copies of the report to the Minister.

(4) The Minister shall lay, or cause to be laid, before each House of Parliament a copy of a report submitted to him in accordance with subsection (3) within 14 sitting days of the House after the date on which he receives that report.

(5) Until the first report is made to the Board under this section, a reference in this Act to the most recent report made by an actuary under this section shall be read as a reference to the most recent report made by an actuary under section 16 of the repealed Act.

Division 3—Contributions to the Miners' Pension Fund

Contributions
by Treasurer.
1956, s. 17.

12—(1) In this section—

“prescribed period” means the period commenced on 1st July 1982 and ending on 30th June 1987;

“prescribed total amount” means the total amount paid by the Board under Part III and under the repealed Act to pensioners in respect of the prescribed period.

(2) The Treasurer shall pay to the Fund, in respect of the financial year commenced on 1st July 1982 and in respect of each of the following 3 financial years, an amount of \$78 000 in each case.

(3) Where the prescribed total amount exceeds the total of the Treasurer's contributions to the Fund under this section, the Treasurer shall, as soon as practicable after the prescribed period, pay to the Fund a further contribution of an amount equal to the excess or \$78 000, whichever is the less.

(4) If, during the financial year commencing on 1st July 1986, the Treasurer is satisfied that it is necessary or desirable to do so, the Treasurer may make an advance to the Fund of an amount not exceeding \$78 000 on account of an amount payable to the Fund under subsection (3).

(5) Where the total of all amounts paid to the Fund by the Treasurer under this section exceeds the prescribed total amount, the Board shall, as soon as practicable after the prescribed period, refund to the Treasurer the amount of the excess.

(6) The amount required for a payment by the Treasurer to the Fund under this section is a charge on the Consolidated Revenue Fund and is payable out of that Fund without further appropriation than this subsection.

(7) The payments by the Treasurer to the Fund under this section shall be made at such times and in such manner as may be prescribed by the regulations.

13—(1) Subject to subsection (2)—

(a) an owner shall pay to the Fund in respect of each of the miners employed by him weekly contributions equal to 7·5 per cent of the unit rate; and

(b) a miner shall pay to the Fund weekly contributions equal to 2·5 per cent of the unit rate.

Contributions
by owners
and miners.
1956, s. 18.

(2) Subsection (1) does not apply to, or in relation to, a miner during any period when he is absent from his employment as mentioned in section 5 (1) (a), (b), (d), or (e) or when he is engaged in employment otherwise than as a miner as mentioned in section 5 (2).

(3) An owner may, as provided by the regulations, deduct from the wages of a miner contributions payable by the miner under subsection (1) (b).

(4) An owner shall, within 7 days after contributions are payable or deducted by him under this section, pay to the Board the total of those contributions.

(5) Contributions to the Fund by an owner and a miner are required to be paid under this section notwithstanding that—

- (a) the miner is absent from employment on leave granted by his employer as mentioned in section 5 (1) (c); or
- (b) the operation of section 6 (1) is suspended in relation to **the miner.**

Division 4—Benefits

Qualification
for lump sum
benefits.
1956, s. 19.

14—(1) Subject to this Act, a miner is entitled on retirement to a lump sum benefit if he has attained the age for retirement and **if—**

- (a) every part of the period of 10 years immediately before the date of his retirement was either a period when he was employed as a miner or a period when he was absent from employment as mentioned in section 5 (1); and
- (b) he has been employed as a miner for a period of 10 years or more or for 2 or more periods together amounting to 10 years or more.

(2) A lump sum benefit payable under subsection (1) is an amount that is equal to the product of the number of completed months of the miner's contributory service and the reference rate at the date of his retirement.

(3) If the operation of section 6 (1) is suspended under that section in relation to a miner and that miner has not received—

- (a) a lump sum benefit under this Division; or
- (b) a pension under the repealed Act,

that miner shall, notwithstanding subsection (1), not be entitled to a lump sum benefit under that subsection until the expiration of that period of suspension.

15—(1) Where a miner—

(a) proves to the satisfaction of the Board—

- (i) that he is incapacitated by injury or, in the case of a miner employed as such for a continuous period of 13 years, is incapacitated, whether by injury or not;
- (ii) that, by reason of his incapacity, he is unable to continue his employment as a miner; and
- (iii) that the incapacity is likely to be permanent and is of a major or effectively disabling kind;

(b) has, if so required, submitted himself to a medical examination under subsection (3); and

(c) has not been awarded a lump sum benefit under this Division, or a pension under the repealed Act, in respect of the incapacity,

Lump sum benefits for incapacitated miners.
N.S.W., s. 14E.

the miner is entitled to a lump sum benefit of an amount determined in accordance with subsection (2).

(2) The amount of a lump sum benefit payable to a miner under subsection (1) is the product of the reference rate in force at the date of his incapacity and—

(a) the number of completed months of his contributory service; or

(b) 180,

whichever product is the greater amount.

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

(4) A miner is not entitled to a lump sum benefit under this section where the incapacity was caused by an act or default on his part that was likely to cause an injury to himself.

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

(a) the medical and employment history of the miner; and

(b) the date on which the miner ceased to be able to be effectively employed as a miner.

Lump sum
benefits payable
on death of
miners.
N.S.W., s. 14b.

16—(1) In this section—

“miner to whom this section applies” means a miner who dies while in employment as a miner unless—

- (a) the miner has received a lump sum benefit under this Division or a pension under the repealed Act; or
- (b) the miner was, immediately before his death, entitled to be paid any such lump sum benefit or pension;

“prescribed dependent amount”, in relation to a deceased miner, means the amount that is the product of the amount that was the reference rate in force at the date of the miner's death and 240;

“relative” means brother, sister, step-brother, step-sister, grandmother, grandfather, grandson, or grand-daughter.

(2) On the death of a miner to whom this section applies, if the miner is survived by a widow or widower, the widow or widower is entitled to a lump sum benefit equal to the prescribed dependent amount, and, if there is a dependent child of the miner, each such dependent child is entitled to a lump sum benefit as follows:—

- (a) where there are not more than 3 such children—the lump sum benefit for each child is one-third of the prescribed dependent amount;
- (b) where there are more than 3 such children—the lump sum benefit for each child is an amount equal to the prescribed dependent amount divided by the number of those children.

(3) On the death of a miner to whom this section applies who is not survived by a widow or widower but is survived by a dependent child, each such dependent child is entitled to a lump sum benefit as follows:—

- (a) where there are not more than 3 such children—the lump sum benefit for each child is two-thirds of the prescribed dependent amount;
- (b) where there are more than 3 such children—the lump sum benefit for each child is an amount equal to twice the prescribed dependent amount divided by the number of those children.

(4) On the death of a miner to whom this section applies who is survived by fewer than 3 dependent children—

- (a) each of his dependent parents is entitled to a lump sum benefit of three-quarters of the prescribed dependent amount;
- (b) each of his dependent relatives is entitled to a lump sum benefit of one-half of the prescribed dependent amount; and
- (c) each other person dependent on him who is not otherwise entitled to a benefit under this section is entitled to a lump sum benefit of one-quarter of the prescribed dependent amount.

(5) For the purposes of this section, a person was dependent on a miner only if the Board is satisfied that the person was wholly or mainly dependent for financial support on the miner at the date of the miner's death.

(6) Where the spouse of a miner to whom this section applies dies—

- (a) at the same moment as the miner dies or in circumstances rendering it uncertain which of them survived the other; or

(b) within 48 hours before the miner dies,

that spouse shall, for the purposes of this section, be deemed to have been alive at the time of the miner's death.

(7) Where—

- (a) there is no widow or widower of a miner to whom this section applies; and

(b) the Board is satisfied that—

(i) in the case of a male miner, a woman was generally recognized as his wife although not legally married to him; or

(ii) in the case of a female miner, a man was generally recognized as her husband although not legally married to her,

that woman shall be deemed to be his widow or, as the case may be, that man shall be deemed to be her widower, for the purposes of this section.

(8) The lump sum benefit to which a child is entitled under this section is payable to—

(a) the mother of the child; or

(b) if the mother of the child is dead, the legal guardian of the child,

upon trust for the child until he attains the age of 18 years with power to apply the whole or any part of that lump sum, both as to principal and interest, to the maintenance, education, or advancement in life of the child.

(9) The aggregate of the amounts payable under this section on the death of a miner shall not exceed twice the prescribed dependent amount and, where, but for this subsection, that aggregate amount would exceed twice the prescribed dependent amount, the benefits specified in subsection (4) shall, to the necessary extent, be reduced proportionately or, if necessary, not be paid.

(10) On the death of a miner who is not survived by a widow, widower, child, or other person to whom a lump sum benefit is payable under this section, the Board shall, on application by the legal personal representative of the miner, pay to him an amount equal to the total amount of the contributions paid to the Fund by the miner, together with interest on those contributions at such rate, compounded annually, as the Board may determine in respect of each financial year.

Refund of contributions.

17—Where, after the commencement day, a miner—

- (a) retires before attaining the age for retirement;
- (b) is retrenched; or
- (c) otherwise ceases to be employed as a miner,

the Board shall, on application by the miner, refund to him an amount equal to the total amount of the contributions that he has paid to the Fund together with interest on those contributions at such rate, compounded annually, as the Board may determine in respect of each financial year.

PART III

PENSIONS FOR EXISTING PENSIONERS AND DEPENDANTS

Application of Part III.

18—This Part applies to, and in relation to—

- (a) an existing pensioner; and
- (b) a widow, child, or other dependant of a retired or incapacitated miner if the widow, child, or other dependant is entitled to a pension under section 22.

Continuance of pension entitlements under repealed Act.

19—(1) An existing pensioner is, unless he elects to commute his pension entitlements as provided by section 20, entitled to a pension and weekly amounts under this Part.

(2) The rates of pensions and weekly amounts payable under this Part shall be determined in accordance with Schedule 3.

(3) The Governor may, by order-in-council, amend Schedule 3 by omitting a reference to a rate of pension or weekly amount specified in that Schedule and substituting for that reference a reference to another rate of pension or another weekly amount, as the case may be.

20—(1) This section applies to, and in relation to—

Commutation of certain pensions.

(a) a retired miner who is an existing pensioner, if—

(i) he has retired by reason of physical incapacity and attained the age of 60 years; or

(ii) he has retired otherwise than by reason of physical incapacity; and

(b) a pensioner who is the widow of a miner and who has attained the age of 60 years.

(2) A person to whom this section applies may, by notice in writing served on the Board, elect to commute his pension entitlements under this Part.

(3) On an election under subsection (2), a person to whom this section applies is entitled, in place of the pension to which but for this section he would be entitled, to the payment of such lump sum as may be determined by the Board after obtaining and taking into account any actuarial advice that it considers appropriate.

21—(1) Subject to this Part, an existing pensioner who, immediately before the commencement day, was entitled to be paid a pension as a retired or incapacitated miner is entitled to be paid, in addition to a pension under this Part, a weekly amount—

Additional payments to existing pensioners in certain cases. 1956, s. 20.

(a) in respect of his wife, if any;

(b) if he has not a wife, in respect of one adult unmarried female person who—

(i) is wholly or mainly dependent on his pension; and

(ii) is caring for a child or some other member of his family;

(c) in respect of each child of the existing pensioner who is wholly or mainly dependent on his pension, until that child attains the age of 16 years or, in the case of a child undergoing a course of full-time education, the age of 18 years; and

(*d*) if no amount is payable under paragraph (*c*), in respect of each brother or sister of the existing pensioner who is under the age of 16 years and is wholly or mainly dependent on him, until that brother or sister attains the age of 16 years or, in the case of a brother or sister undergoing a course of full-time education, the age of 18 years.

(2) The Board may—

(*a*) award or continue a payment under subsection (1) (*c*) or (*d*), notwithstanding that the person in respect of whom the payment is to be made has attained the age of 16 years if that person, by reason of any physical or mental defect, is totally incapacitated from earning his own living; or

(*b*) pay to an existing pensioner an amount under subsection (1) (*c*) in respect of any child who is maintained as a member of his family as if that child were a child of the existing pensioner.

Pensions to
widows, &c.,
of existing
pensioners.
1956, s. 21 (2).

22—(1) Upon the death of an existing pensioner who—

(*a*) was, immediately before the commencement day, entitled to a pension as a retired or incapacitated miner; and

(*b*) has not commuted his pension entitlements under section 20,

a pension is payable to his widow, children, and other dependants, if any, as provided by this section.

(2) A pension under this section is payable—

(*a*) to the widow, if any, of the deceased pensioner;

(*b*) if the deceased pensioner is not survived by a widow, to an adult unmarried female person who was at the date of his death wholly or mainly dependent on his pension and who is caring for his child or some other member of his family;

(*c*) in respect of each child of the deceased pensioner who was at the date of his death wholly or mainly dependent on his pension; and

(*d*) if the deceased pensioner is not survived by a widow or any such child, in respect of each brother or sister of his who is under the age of 16 years and was at the date of his death wholly or mainly dependent on his pension.

(3) On the remarriage or death of a miner's widow who is a pensioner, a pension is payable under this section—

- (a) to each child of the deceased miner who was at the date of his death wholly or mainly dependent on his earnings or pension; or
- (b) if there is no such child, to each brother or sister of the deceased miner who has not attained the age of 16 years and who was at the date of his death so dependent.

23—(1) In this section—

“maximum means as assessed” has the same meaning as in Part III of the *Social Services Act 1947* of the Commonwealth;

Deductions from pensions on account of employment. 1956, s. 23.

“pension under this Part” includes a weekly amount payable under section 21;

“prescribed amount” means the amount that represents the weekly proportion of the maximum means as assessed of a person that does not affect his age pension or invalid pension.

(2) Where a pensioner—

- (a) who, in the case of a male, has attained the age of 65 years; or
- (b) who, in the case of a female, has attained the age of 60 years,

engages or continues to engage in any paid employment, the total amount of the pension under this Part payable to that person shall be reduced by the amount by which the average weekly earnings of that person from that employment exceeds the prescribed amount.

24—(1) In this section, “pension under this Part” includes a weekly amount payable under section 21.

Deductions from pensions in certain cases. 1956, s. 24.

(2) Where, in relation to a period for which a pension under this Part is payable—

- (a) a pensioner or a widow, child, or other dependant of a pensioner receives, or is entitled to receive, an amount by way of an age pension or invalid pension; or

- (b) an incapacitated pensioner under the age for retirement receives an amount by way of earnings, or would have received an amount by way of earnings from available employment that he should, in the opinion of the Board, have accepted,

that amount shall, in respect of that period, be deducted from the amount payable to the pensioner, widow, or other dependant, as the case may be, as a pension under this Part.

- (3) Where a pensioner or a dependant of a pensioner—

(a) in the case of a male, attains the age of 65 years; or

(b) in the case of a female, attains the age of 60 years,

that pensioner or dependant shall, for the purposes of subsection (2), be regarded as being entitled to receive the maximum amount of an age pension or invalid pension payable to that person, notwithstanding that no such pension or only part of such a pension is paid to that person.

Granting of
pensions.
1956, s. 25.

25—A pension under this Part shall be granted by the Board on application in accordance with the regulations by—

(a) the widow of the miner, if she is an adult, or her parent or legal guardian, if she is not;

(b) the parent or legal guardian of a child of the miner; or

(c) a dependant of the miner, if he is an adult, or his parent or legal guardian, if he is not,

or, if there is no parent or legal guardian of the child or other dependant, by the person having the custody or control of the child or other dependant.

Payment of
pensions.
1956, s. 26.

26—(1) A pension under this Part that is payable to a widow is so payable until the death or remarriage of the widow.

(2) Where a pension under this Part is payable in respect of a child, brother, or sister of a deceased miner—

(a) the pension is so payable until the child, brother, or sister attains the age of 16 years or, if he or she is undergoing a course of full-time education, the age of 18 years; and

(b) the Board may pay the pension to such person for the benefit of the child, brother, or sister as the Board thinks best and the receipt of that person is a sufficient discharge to the Board for any payment so made.

(3) A person shall not be paid for his own benefit more than one pension under this Part.

(4) Except where otherwise provided in this Part, a pension under this Part is payable until the death of the pensioner.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

27—(1) In this section, “benefit” does not include a pension or weekly amount payable under Part III.

Reciprocity
with other
States.
1956, s. 29.

(2) Where the Governor is satisfied that—

(a) legislation substantially similar to this Act and providing benefits for miners and dependants of miners substantially equivalent to those provided under this Act is in force in another State; and

(b) the Minister has entered into an agreement with the appropriate Minister of that other State for the reciprocal application of this Act as provided in this section,

the Governor may, by order-in-council, declare that other State to be a reciprocating State for the purposes of this Act.

(3) The Minister, on behalf of Tasmania, may enter into an agreement with the appropriate Minister of another State, acting on behalf of that other State, for the reciprocal application of the provisions relating to benefits for miners and for widows and dependants of miners.

(4) An agreement under this section may provide for—

(a) the recognition, in such cases and circumstances as are specified in the agreement, of a period of employment as a miner in another State as contributory service for the purposes of this Act;

(b) the mutual acceptance of certificates by the registrar or other officers specified in the agreement as evidence of facts or qualifications relating to benefits;

(c) the cases in which, and the conditions under which—

(i) benefits shall be paid wholly or in part from the Fund; and

(ii) payments shall be made from the Fund to a corresponding fund of another State;

- (d) ensuring that a miner shall not be entitled to, or be paid, a benefit under this Act, and also under the law in force in another State; and
- (e) such other matters, if any, as may be prescribed by the regulations or as the Minister may think necessary or desirable for the purposes of this Act.

(5) While an agreement under this section is in force, the Minister may, by order and on the recommendation of the Board, exempt a person specified in the order from the operation of a provision of this Act so specified for the purpose of giving effect to the agreement.

Expenses of
administration.
1956, s. 30.

28—The expenses incurred in the administration of this Act shall be paid out of the Fund.

Pensions not
assignable.
1956, s. 31.

29—(1) A pension or other benefit under this Act is not capable of being assigned, charged, taken in execution, or passed by operation of law to any person other than the pensioner or beneficiary to or for whose benefit it is payable.

(2) The money payable under this Act upon the death of a person is not an asset for the payment of the debts or liabilities of that person.

Recovery of
overdue
contributions.
1956, s. 32.

30—(1) Where the contributions of a miner are, for any reason, in arrear, the amount in arrear may be deducted from his salary or wages in accordance with the regulations, and the owner by whom he is employed shall cause those payments to be deducted accordingly and paid to the Board.

(2) The Board may at any time recover the amount of any contributions payable to it by any owner or miner in a court of competent jurisdiction, or may deduct any such amount from any money payable under this Act to, or in relation to, that miner.

Returns.
1956, s. 33.

31—(1) An owner shall provide the Board with such returns with respect to employees and such other information as the Board may at any time require for the purposes of this Act.

(2) The Board may require a miner or pensioner at any time to provide the Board with such evidence of age and such other information as the Board may require for the purposes of this Act.

32—(1) An owner or miner who contravenes or fails to comply with section 6 (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$200 and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day during which the offence continues. Offences by owners, miners, &c.

(2) If an owner fails to comply with section 13 (4), the owner is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$200.

(3) If an owner, miner, or pensioner without reasonable cause fails to comply with a requirement of the Board under section 31, the owner, miner, or pensioner is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$100.

33—(1) A person who is dissatisfied with a decision or determination of the Board under this Act may appeal to a judge from that decision or determination, and the decision of the judge on the hearing of the appeal is final. Appeals from decisions, &c., of Board. R.B. s. 77 (4).

(2) An appeal under subsection (1) shall be instituted, heard, and determined as prescribed by the regulations.

34—(1) The Governor may, on the recommendation of the Board, make regulations for the purposes of this Act. Regulations. 1956, s. 34.

(2) Without prejudice to the generality of the provisions of subsection (1), the regulations may make provision for—

- (a) the mode of payment of pensions and other benefits, either generally or in particular cases or classes of cases;
- (b) the keeping by owners of such records as may be prescribed and the returns to be provided by them to the Board;
- (c) notification to the Board by a pensioner who engages in any employment; and
- (d) any matters necessary or convenient for giving effect to an agreement under section 27.

(3) The regulations may, in such cases as may be prescribed in them, require any document, information, or particulars required by or under this Act to be provided to the Board, to be verified by a statutory declaration.

(4) The regulations may be made subject to such conditions, or be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(5) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene, or fail to comply with, any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding \$200 and, in the case of a continuing offence, a further penalty not exceeding \$20 for each day during which the offence continues.

Repeal of
Miners'
Pensions Act
1956, &c.

35—(1) The *Miners' Pensions Act 1956* and the *Miners' Pensions Amendment Act 1981* are repealed.

(2) Notwithstanding the repeals effected by subsection (1), the provisions of Schedule 4 have effect for the purpose of the transition to the provisions of this Act from the law in force immediately before the commencement day.

SCHEDULE 1

Section 7 (7)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF THE BOARD

1—A member of the Board shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time for a term not exceeding 3 years, specified in the instrument of his re-appointment.

Term of office.

2—Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his time to the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member of the Board.

Provisions relating to members.

3—A member of the Board shall be paid such remuneration and allowances as the Minister may determine, but no such determination shall apply in respect of a member of the Board who is an officer of the Public Service unless the Public Service Board has approved of the determination applying to him.

Remuneration of members.

4—The provisions of the *Public Service Act 1973* do not apply to or in respect of the appointment of a member of the Board and a member of the Board shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

Public Service Act 1973 not to apply.

5—(1) The Minister may appoint any person (including a member of the Board other than the chairman of the Board) to act in the office of the chairman or appoint any person to act in the office of a member of the Board other than the chairman while the chairman or that member of the Board, as the case may be, is absent from his office through illness or any other cause.

Appointment of substitute to act during absence of member of Board.

(2) A member of the Board other than the chairman shall, for the purpose of subclause (1), be deemed to be absent from his office if he is acting in the office of chairman pursuant to subclause (1).

(3) A member of the Board shall, for the purposes of subclause (1), be deemed to be absent from his office if there is a vacancy in that office which has not been filled in accordance with clause 7.

(4) A person shall not be concerned to inquire whether or not any occasion has arisen requiring or authorizing a person to act in the office of a member of the Board, and all things done or omitted to be done by that person while so acting shall be as valid, and shall have the same consequences, as if they have been done or omitted to be done by that member.

6—(1) A member of the Board shall be deemed to have vacated his office—

Vacation of office.

- (a) when the term for which he was appointed to hold office expires;
- (b) when he dies;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;

- (d) if he is absent from 3 consecutive ordinary meetings of the Board of which reasonable notice has been given to him, either personally or in the ordinary course of post, unless on leave granted by the Minister, or unless, before the expiration of 3 weeks after the last of those meetings, he is excused by the Minister for his absence from those meetings;
 - (e) if he becomes liable to be detained under the *Mental Health Act* 1963 in a hospital that is a hospital within the meaning of section 3 (1) of that Act;
 - (f) if he is convicted in Tasmania of a crime or an offence that is punishable by imprisonment for a period of 12 months or upwards, or if he is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable;
 - (g) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts the resignation; or
 - (h) if he is removed from office by the Governor under subclause (2).
- (2) The Governor may remove a member from office for misbehaviour or incompetence.
- (3) Without prejudice to the generality of the provisions of subclause (2), a member of the Board shall be deemed to have misbehaved in office if—
- (a) he votes on any matter before the Board in which he has a direct pecuniary interest; or
 - (b) he takes part in, or is present at, the discussion of any such matter before the Board without disclosing his pecuniary interest to the members of the Board present.
- (4) The Governor may remove from office a member of the Board (other than the chairman) if the Governor is satisfied that, having regard to the circumstances that have arisen since his appointment, the member is no longer a suitable person to perform his duties as a member of the Board.
- (5) The Governor shall not remove a member of the Board from office otherwise than under this clause.

Filling of
casual
vacancies.

7—(1) On the occurrence of a vacancy in the office of a member of the Board, the Governor may appoint a person to the vacant office for the balance of his predecessor's term of office.

(2) If a member whose office so becomes vacant was a person nominated by an owner or an organization of owners or miners, the person so appointed in his stead shall be a person nominated by that owner or organization.

Validity of
proceedings,
&c.

8—(1) No act or proceeding of the Board or of any person acting pursuant to any direction of the Board is invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken, or commenced, there was a vacancy in the membership of the Board.

(2) All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member of the Board or that any person was disqualified from acting as, or incapable of being, a member of the Board, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

9—In any proceedings by or against the Board, unless evidence is given to the contrary, no proof shall be required of— Evidentiary provisions.

- (a) the constitution of the Board;
 - (b) any resolution of the Board;
 - (c) the appointment of any member of the Board; or
 - (d) the presence of a quorum at any meeting of the Board.
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SCHEDULE 2

Section 7 (8)

PROVISIONS WITH RESPECT TO MEETINGS OF THE BOARD

Convening of meetings of the Board.

1—Meetings of the Board may be convened by the chairman of the Board or by any 2 members of the Board.

Procedure at meetings.

2—(1) Two members of the Board shall form a quorum at any duly convened meeting of the Board.

(2) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

(3) Questions arising at a meeting of the Board shall be determined by a majority of votes of the members of the Board present and voting.

(4) Where the voting on a question is equal—

(a) the decision of that question shall be postponed until the next meeting of the Board; and

(b) notice of that question and of the fact that the voting on it was equal shall be given in the notice calling the meeting,

and if, at the next meeting, the voting on that question is again equal, the chairman may exercise a second or casting vote.

Chairman.

3—(1) The chairman of the Board shall preside at all meetings of the Board at which he is present.

(2) If the chairman of the Board is not present at a meeting of the Board, a member of the Board elected by the members present shall preside at that meeting.

Records of proceedings.

4—The Board shall keep full and accurate records of all its proceedings.

General procedure.

5—The procedure for the calling of, and for the conduct of business at, meetings of the Board shall, subject to this Schedule, be as determined by the Board.

SCHEDULE 3

Section 19 (2)

RATES OF PENSIONS AND WEEKLY AMOUNTS

1—(1) In this Schedule—

“double age pension rate” means the aggregate of the maximum rates of the age pensions that may be paid to a husband and a wife who are living together;

“single age pension rate” means the maximum rate of the age pension that may be paid to a person who is not married.

Interpretation.
1956, second
schedule.

(2) For the purposes of this Schedule, the double age pension rate and the single age pension rate shall be calculated on a weekly basis, and for the purposes of so calculating either of those rates, a year shall be deemed to consist of 52 weeks.

2—Except as provided by this Schedule, a pension payable under section 19 is payable at the rate of \$12.75 a week.

General
pension rate.

3—(1) In subclause (2), “the prescribed amount” means the amount of \$12.75 or, if by virtue of clause 5 that amount is decreased or increased, the amount substituted for that amount.

Weekly
amounts for
wife, children,
&c., of retired
miners.

(2) Except as provided by this Schedule—

(a) a weekly amount payable under section 21 (1) (a) is such amount as together with the prescribed amount, amounts to an amount \$3 greater than the double age pension rate;

(b) a weekly amount payable under section 21 (1) (b) is such amount as, together with the prescribed amount, amounts to a sum \$2 greater than the double age pension rate;

(c) a weekly amount payable under section 21 (1) (c) is—

(i) an amount of \$1 in respect of an only child or, in the case of more than one child, the first child; and

(ii) an amount of 85 cents in respect of each other child; and

(d) a weekly amount payable under section 21 (1) (d) is an amount of 85 cents.

4—Except as provided by this Schedule—

(a) a pension payable under section 22 (2) (a) is payable at the rate of \$11.75 a week;

(b) a pension payable under section 22 (2) (b) is payable at the rate of \$10.25 a week;

(c) a pension payable under section 22 (2) (c) or (3) (a)—

(i) in respect of the eldest child entitled to such a pension, is payable at the rate of \$1 a week; and

Pension rates
for widow,
child, &c., of
deceased miner.

(ii) in respect of each other child entitled to such a pension, is payable at the rate of 85 cents a week; and

(d) a pension payable under section 22 (2) (d) or (3) (b) is payable at the rate of 85 cents a week.

Variation by
reference to
single age
pension rate.

5—(1) If at any time the single age pension rate is less than \$10·50 a week, the amounts specified in clauses 2 and 4 (a) and (b) shall be decreased by the amount by which that rate is less than \$10·50 a week.

(2) If at any time the single age pension rate is greater than \$10·50 a week, the amounts specified in clauses 2 and 4 (a) and (b) shall be increased by the amount by which that rate is greater than \$10·50 a week.

Maximum
pension rate.

6—The rate of pension payable to a pensioner under this Schedule shall not exceed the rate of pension, including weekly amounts specified in clause 3, payable under this Schedule to a retired miner with a wife and 3 children who are wholly or mainly dependent on his pension.

SCHEDULE 4

Section 35 (2)

TRANSITIONAL PROVISIONS AND SAVINGS

1—(1) A person holding office immediately before the commencement day as a member of the Board shall, unless he sooner vacates his office or is removed from office under clause 6 of Schedule 1, continue to hold that office for the remainder of the period specified in the instrument of his appointment. Members of the Board.

(2) A person holding office immediately before the commencement day as the chairman of the Board shall continue to hold that office while he continues to hold office as a member of the Board pursuant to subclause (1).

2—A person appointed under section 14 of the repealed Act as a registrar of the Board and who holds that office immediately before the commencement day shall, on that day, be deemed to have been appointed under section 9 of this Act as a registrar of the Board on the same terms and conditions as those applicable to his office immediately before that day. Officers of the Board.

3—An account opened with a bank by the Board that is in existence immediately before the commencement day shall, on and after that day, be deemed to be a bank account of the Board for the purposes of this Act. Bank accounts.

4—The accounts and records kept by the Board under the repealed Act that are in existence immediately before the commencement day shall, on and after that day, be deemed to be accounts and records kept by the Board for the purposes of this Act. Accounts and records.

5—Where, immediately before the commencement day, a person was, or is deemed to have been, employed as a miner— Contributions under repealed Act.

(a) any contributions that were payable to the Fund at that time by, or in respect of, that person shall be deemed to be contributions so payable under this Act; and

(b) any contributions paid to the Fund by, or in respect of, that person shall be deemed to be contributions so paid under this Act.

6—Any regulations in force under the repealed Act immediately before the commencement day shall, notwithstanding the repeals effected by section 35 (1) and except in so far as they are inconsistent with the provisions of this Act, continue in force as if they had been made under this Act and may be amended or rescinded by regulations made under this Act. Saving for regulations.

7—Any appointment, nomination, determination, payment, application, or requirement made, certificate issued, notice given, authority granted, proceeding instituted, or suspension in force or other act, matter, or thing done under the repealed Act that, immediately before the commencement day, was of force or effect shall continue in force and have effect as if made, issued, given, granted, instituted, or in force under the corresponding provision of this Act. General saving provision.

