

1994—No. 16

COAL ACQUISITION ACT 1981—INSTRUMENT

(Relating to the calculation of compensation and other matters)

NEW SOUTH WALES



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(L.S.) P. R. SINCLAIR, Governor.

I, Rear Admiral PETER ROSS SINCLAIR, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 6 of the Coal Acquisition Act 1981 and clause 33 of the Coal Acquisition (Compensation) Arrangements 1985, and of all other powers enabling me in that behalf, make the arrangements set out in this instrument.

Signed at Sydney, this fifth day of January 1994.

By His Excellency's Command,

I. R. CAUSLEY,
Minister for Agriculture and Fisheries
and Minister for Mines.

The Coal Acquisition (Compensation) Arrangements 1985 are amended:

(a) by omitting from clauses 17, 17C and 27 (4) (a) the matter “, 19” wherever occurring;

(b) by omitting clauses 18 and 19 and by inserting instead the following clauses:

Calculation of compensation in respect of claims under clause 10 or 11

18. (1) The Board is to determine a claim under clause 10 or 11 by calculating the amount of compensation payable on the claim in accordance with the following steps:

Step 1 (Calculation of total base compensation amount by calculating and totalling amounts of Compensation for each relevant period)

Calculate an amount of compensation in respect of each relevant period during the period beginning with the base date and ending with the last day of the relevant period within which the colliery holding to which the claim relates was or will (in the Board's opinion) be removed from the register of colliery holdings kept under section 163 of the Mining Act 1992. The calculation of compensation for each relevant period is to be in accordance with whichever of the following formulas is appropriate for the relevant period concerned:

A. Relevant periods occurring before the date on which the Board determines the claim:

$$([n \times h] + [r \times t]) \times a$$

B. Relevant periods occurring *after* the date on which the Board determines the claim:

$$[n \times h \times d/1000] + [r \times t \times e/1000]$$

C. The relevant period *during* which the Board determines the claim:

The formula to be used is the formula in B if the determination is made before 1 January in the relevant period or the formula in A if the determination is made on or after 1 January in the relevant period.

Then add together each of the amounts calculated under this step in respect of the claim to obtain a total base compensation amount for the claim.

Step 2 (Allowing for any interim payments already made on the claim after adjusting those payments according to when they were made)

Subtract from the total base compensation amount calculated under step 1 an amount calculated as follows (being the total of adjusted interim payments):

Adjust any interim payments made in respect of the claim by multiplying each such payment by the relevant incremental factor and then add together each of those adjusted interim payments. The **relevant incremental factor** for an interim payment is a number equivalent to the amount of money that would be accumulated on and from the date on which the interim payment is made up to and including the day before the date on which the Board determines the claim if \$1 were invested on the terms determined by the Treasurer under clause 19.

(2) If the total of adjusted interim payments calculated under step 2 exceeds the total base compensation amount calculated under step 1, the excess is to be treated as an overpayment which the Board may recover from the claimant in accordance with clause 17B (3).

(3) In the formulas in this clause:

- a** in respect of a particular relevant period is a number equivalent to the amount of money that would be accumulated on and from the median date of the relevant period up to and including the day before the date on which the Board determines the claim if \$1 were invested on the terms determined by the Treasurer under clause 19;
- d** and **e** in respect of a particular relevant period are the amounts which, if invested at the date on which the Board determines the claim on terms (which include terms as to a rate of interest and which may differ in relation to **d** and **e**) determined by the Board in relation to the particular case, would each produce the sum of \$1,000 at the median date of that relevant period;
- h** is the area, measured in hectares, of that part of the colliery holding which contains the coal that is the subject of the claim (and if that area is or includes a fraction of a hectare, that fraction is taken to be a whole hectare);
- n** is 2 in relation to the relevant period beginning on 1 January 1982, or 4 in relation to any other relevant period;

r is:

- (a) in the case of a claim under clause 10—\$0.90; or
- (b) in the case of a claim under clause 11:
 - (i) \$0.90, except as provided in subparagraph (ii); or
 - (ii) if, but for clause 4 of Schedule 2 to the Coal Mining (Amendment) Act 1981, a rent or royalty in respect of the coal that is the subject of the claim would have been payable to the claimant under a lease, agreement or other instrument which was terminated by that clause and that rent or royalty would have been less than \$0.90 for each tonne of coal extracted under that lease, agreement or instrument—that lesser amount;

t in respect of a particular relevant period is the number of tonnes of saleable coal which has been or, in the Board's opinion, will be extracted from that part of the colliery holding which contains the coal that is the subject of the claim during that relevant period.

(4) This clause is subject to clauses 22AA and 22AB.

Terms of investment

19. (1) The Treasurer is to determine terms of investment (including terms as to a rate of interest) from time to time for the purposes of clause 18.

(2) The Treasurer is to notify the Board of each such determination.

(3) A claimant under clause 10 or 11 of these Arrangements is entitled to obtain from the Board a copy of any determination of the Treasurer under this clause which is relevant to the claimant's claim.

(c) by omitting clause 20 (1) (b) and by inserting instead the following paragraph:

(b) is of the opinion that the claimant would suffer substantial hardship or injustice if the compensation were to be calculated in accordance with clause 18.

- (d) by omitting from clause 20 (1) the words "the amount of compensation to be paid to the claimant be an amount greater than that which would be payable under clause 18 or 19" and by inserting instead the words "for the purpose of Step 1 in clause 18 (1) the total base compensation for the claim amount be an amount greater than that which would otherwise be calculated in accordance with Step 1";
- (e) by omitting clause 20 (1A);
- (f) by omitting from clause 21 the matter "19" where firstly and secondly occurring and by inserting instead the matter "18";
- (g) by omitting from clause 21 the words "the formula set out in clause 19 (2) the symbol "r" represented an amount decided by the Board, exceeding 0.9 of a dollar" and by inserting instead the words "the formulas set out in clause 18 the symbol r represented an amount decided by the Board, exceeding \$0.90";
- (h) by omitting from clause 22A (3) the matter "19" and by inserting instead the matter "18";
- (i) by omitting clause 22AA (4) and (5) and by inserting instead the following subclauses:

(4) If, because of this clause, a company is not entitled to be paid as compensation under this instrument an amount greater than that specified in subclause (1), (2) or (3) (whichever is applicable to the company), the company is nevertheless entitled to be paid interest on the balance of the amount of compensation (not exceeding the amount specified in that subclause) which from time to time remains unpaid on or after 19 September 1989.

(5) If R. W. Miller & Company Pty. Limited has made claims for compensation in accordance with clause 10, 11 or 12 and the total amount of compensation payable in respect of all of those claims would, but for this clause, exceed \$20,000.000, then, irrespective of the provisions of clauses 18–22, the total amount of compensation so payable is, subject to subclause (6), to be \$20,000,000 and no more.

(6) If, because of this clause, R. W. Miller & Company Pty. Limited is not entitled to be paid as compensation under this instrument an amount greater than that specified in subclause (5), R. W. Miller & Company Pty. Limited is nevertheless entitled to be paid interest on the balance of the amount of compensation (not exceeding the amount specified in that subclause) which from time to time remains unpaid on or after 30 June 1993.

(7) Interest to which there is an entitlement referred to in this clause is to be paid at the rate, and on the terms, determined by the Treasurer for the purposes of clause 24 and in proportion to the duration of the period during which each balance is current.

(j) by inserting in clause 24 (1) after the words “at a rate” the words“, and on terms,“;

(k) by inserting after clause 26 the following clause:

Alternates

26A. (1) There is to be an alternate for each member of the Compensation Review Tribunal.

(2) The alternate for a member is to be appointed by the Governor and is to be a person who has the same qualifications and is nominated in the same manner as the member for whom he or she is the alternate.

(3) A member’s alternate may act as the member if the member is absent or ill or if there is a vacancy in the office of the member.

(4) An alternate, while acting as a member, is taken to be a member and is to have and may exercise the functions of the member for whom he or she is the alternate. A reference in this Instrument to a member of the Compensation Review Tribunal includes a reference to an alternate of a member when acting as the member.

(5) No person is to be concerned to inquire whether or not any occasion has arisen in which a member’s alternate is authorised to act as the member, and all acts or things done or omitted by the alternate while so acting are as valid and effectual and have the same consequences as if they had been done or omitted by the member.

(6) An alternate may be appointed notwithstanding any vacancy in the office of any member and a vacancy in the office of any member does not affect the tenure of office of any alternate.

EXPLANATORY NOTE

The purposes of this instrument are to simplify the calculation of compensation payable to claimants who have suffered loss as a result of the enactment of the Coal Acquisition Act 1981, to cap the compensation payable to R. W. Miller & Company Pty. Limited and to provide for the appointment of alternate members of the Coal Compensation Tribunal.

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The instrument replaces clauses 18 and 19 of the Coal Acquisition (Compensation) Arrangements 1985 with one shorter clause, principally to omit the requirement that compensation be notionally discounted back to a base date, then augmented by the application of various incremental factors. The omission simplifies calculations under the Arrangements and accords with their current administration.

The new clause 18 also provides for the calculation of compensation up to the date of removal of a colliery holding from the register kept under the Mining Act 1992, rather than the date on which saleable coal is exhausted. Referring to the deregistration date is more appropriate as colliery holdings may remain registered in a holder's name after ceasing mining operations.

A new clause 19 provides for the Treasurer to determine investment terms on the basis of which compensation is calculated. This clause separately provides what is presently incorporated in clauses 18 and 19 themselves, and sets it out in more detail.

An amendment is made to clause 22AA to extend the caps on compensation under the Arrangements to R. W. Miller & Company Pty. Limited and to make it clear that interest is payable on the unpaid balance of compensation as it exists from time to time.

A new provision is added requiring an alternate to be appointed for each member of the Compensation Review Tribunal and empowering the alternate to exercise the functions of the member during the member's illness, absence or vacancy in office.

This instrument includes some minor consequential amendments. It is made under section 6 of the Coal Acquisition Act 1981 and under clause 33 of the Coal Acquisition (Compensation) Arrangements 1985.
