

COAL MINING (AMENDMENT) ACT, 1981, No. 110

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 110, 1981.

An Act to amend the Coal Mining Act, 1973, as a consequence of the enactment of the Coal Acquisition Act, 1981. [Assented to, 18th December, 1981.]

Coal Mining (Amendment).

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

Short title.

1. This Act may be cited as the "Coal Mining (Amendment) Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

- (2) Except as provided in subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Coal Acquisition Act, 1981.

Principal Act.

3. The Coal Mining Act, 1973, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

SCHEDULE 3.—CONDITIONS FOR CONTINUATION OF MINING.

Amendment of Act No. 81, 1973.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Coal Mining (Amendment).

Savings and transitional provisions.

6. Schedule 2 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 6 (1), definition of "authorisation"—
Omit ", 21".
- (b) Section 6 (1), definition of "authorisation to mine"—
Omit the definition.
- (c) Section 6 (1), definition of "coal"—
After "includes", insert "oil".
- (2) Section 14—
Omit the section.
- (3) Section 21—
Omit the section.
- (4) (a) Section 24 (1)—
Omit "to mine shall not be granted over", insert instead "shall not extend to".
- (b) Section 24 (2), (3), (6), (6A), (7)—
Omit the subsections.

Coal Mining (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) Section 24 (8)—
Omit “or (3)”.

- (5) (a) Section 25 (1)—
Omit “an authorisation to mine or”.
- (b) Section 25 (2)—
Omit the subsection.
- (c) Section 25 (3)—
Omit “(not being an authorisation to mine)”.
- (d) Section 25 (9)—
Omit “Subject to subsection (10), on”, insert instead “On”.
- (e) Section 25 (10), (10A)—
Omit the subsections.

- (6) (a) Section 26 (2), (3)—
Omit the subsections.
- (b) Section 26 (9)—
Omit “Except as provided in subsection (10), compensation”,
insert instead “Compensation”.
- (c) Section 26 (10)—
Omit the subsection.

Coal Mining (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) (a) Section 33 (3) (b)—

Omit the paragraph, insert instead:—

- (b) a specified rate of royalty additional to the rate referred to in section 77 (1) (b); or

(b) Section 33 (4) (b)—

Omit the paragraph, insert instead:—

- (b) a rate of royalty additional to the rate referred to in section 77 (1) (b); or

(8) Section 41 (4)—

Omit the subsection.

(9) (a) Section 75 (3)—

Omit “granted wholly or partly in respect of land any coal in which is reserved to, or owned by, the Crown”.

(b) Section 75 (3)—

Omit “land—”, insert instead “land in which the coal the subject of the lease is situated.”.

(c) Section 75 (3) (a), (b)—

Omit the paragraphs.

(d) Section 75 (3A), (3B)—

Omit the subsections.

(e) Section 75 (8) (b)—

After “land;”, insert “and”.

Coal Mining (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (f) Section 75 (8) (c), (d)—
Omit the paragraphs, insert instead:—
(c) in the case of rent reserved in respect of coal, to the Crown,
- (g) Section 75 (9) (b)—
Omit “or (3A)”.
- (h) Section 75 (9)—
Omit “shall—”, insert instead “shall be paid annually in advance at the office of the Department in Sydney.”.
- (i) Section 75 (9) (c), (d)—
Omit the paragraphs.
- (j) Section 75 (11)—
Omit “or any land containing coal vested in that Commission where the surface or coal, as the case may be,”, insert instead “where the surface”.
- (10) (a) Section 76 (2)—
Omit “coal or” where firstly occurring.
- (b) Section 76 (2)—
Omit “the coal or”.
- (11) (a) Section 97 (5) (b) (i)—
After “coal or”, insert “in the case of”.

Coal Mining (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) Section 97 (5) (b) (ii)—
Omit “coal or”.
- (12) (a) Section 116—
Omit “or to the registered holder of an authorisation to mine”
wherever occurring.
- (b) Section 116 (2)—
Omit “and an authorisation to mine”.
- (13) (a) Section 126 (2) (a)—
After “28 (6);”, insert “and”.
- (b) Section 126 (2) (b)—
Omit the paragraph.
- (c) Section 126 (2) (c) (i)—
Omit “and are not paid pursuant to section 41 (4) to an owner
of coal”.
- (d) Section 126 (2) (c) (iii)—
Omit “or (b)”.
- (14) (a) Section 128 (2) (a)—
Omit “and” where lastly occurring.
- (b) Section 128 (2) (b)—
Omit “33 (8).”, insert instead “33 (8); and”.
- (c) Section 128 (2) (c)—
After section 128 (2) (b), insert:—
(c) any amount credited to the account so referred to that
is, by the regulations, authorised to be refunded”.

Coal Mining (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 128 (3)—

Omit all matter after subsection (2), insert instead:—

(3) Moneys referred to in subsection (1) that are not repayable under subsection (2) shall be paid to the Consolidated Revenue Fund.

(15) (a) Section 129—

After “Her Majesty”, insert “land containing”.

(b) Section 129—

Omit “not owned by or reserved to the Crown and land containing any such seams or containing seams of coal owned by or reserved to the Crown”.

(16) (a) Section 130 (1) (b)—

Omit “an authorisation to mine or”.

(b) Section 130 (3)—

Omit “10 or”.

(17) Section 134A (a)—

Omit the paragraph.

(18) Second Schedule—

Omit paragraph 10.

Coal Mining (Amendment).

SCHEDULE 2.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule "appointed day" means the day appointed and notified under section 2 (2) of the Coal Acquisition Act, 1981.

Continuation of mining.

2. (1) Where an authorisation to mine was in force under the Principal Act immediately before the appointed day, the provisions of the Principal Act (sections 25 (7)–(12), 26 (2), (3), (5) and (11) and 103 (3) excepted) have effect in relation thereto as if this Act had not been enacted and as if the Principal Act had been amended by omitting section 26 (1) and by inserting instead the following subsection:—

(1) The Minister may, by instrument in writing served on the registered holder of an authorisation to mine, cancel the authorisation for any reason that to him seems sufficient.

(2) An authorisation to mine firstly referred to in subclause (1) continues in force on and after the appointed day until—

- (a) the authorisation is cancelled; or
- (b) a coal lease is granted in respect of the coal to which the authorisation relates,

whichever first occurs.

(3) Notwithstanding any provision of the Principal Act or an authorisation to mine firstly referred to in subclause (1), the authorisation relates to the actual coal to which it would have related if the Coal Acquisition Act, 1981, had not been enacted.

(4) A person who, immediately before the appointed day, had a right to mine coal otherwise than pursuant to an authorisation to mine in force under the Principal Act or a coal lease so in force may, subject to the conditions imposed by the Minister, continue on and after that day to mine the coal to which, if the Coal Acquisition Act, 1981, had not been enacted, the right would have related and may so continue until—

- (a) the Minister otherwise directs by instrument in writing served on that person; or
- (b) a coal lease is granted in respect of the coal to which the rights conferred by this subclause relate,

whichever first occurs.

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SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(5) The provisions of sections 103 (1) and (2) and 104 of the Principal Act apply to and in respect of—

- (a) an authorisation to mine firstly referred to in subclause (1); and
- (b) the right to mine coal conferred by subclause (4),

in the same way as they apply to and in respect of a concession, and they so apply in the case of the right referred to in paragraph (b) as if the reference in section 103 (2) of the Principal Act to the registered holder of a concession were a reference to the person in whom the right so referred to is for the time being vested.

(6) For the purposes of subclause (4), the Minister—

- (a) shall be deemed to have imposed the conditions specified in Schedule 3; and
- (b) may, by order published in the Gazette, amend Schedule 3 by varying, adding to or revoking the conditions specified therein or any of them.

(7) The Minister may, by order in writing served on a person having a right to mine coal pursuant to subclause (4), impose conditions for the purposes of that subclause.

(8) Without prejudice to the generality of subclause (7), an order under that subclause may impose a condition by reference to a provision in any lease, agreement or other instrument pursuant to which the person required by subclause (4) to comply with the condition had a right to mine coal immediately before the appointed day, or by reference to all such provisions other than specified provisions.

(9) It is a sufficient defence to a prosecution for a contravention of section 130 (1) (b) of the Principal Act, as amended by this Act, if it is proved that the mining for coal to which the prosecution relates was carried on pursuant to this clause.

Application of Principal Act, as amended.

3. The provisions of sections 70, 74A, 74B, 75 (subsections (4)–(7), (9) and (10) excepted), 76, 77 (1) (b), (7) and (9)–(12), 77B, 78, 81, 82, 120, 121, 123, 124, 132, 133, 134 and 134A of the Principal Act, as amended by this Act, and of any other provisions of the Principal Act, as so amended, prescribed for the purposes of this clause apply to and in respect of mining carried on pursuant to clause 2, and to and in

Coal Mining (Amendment).

SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

respect of the person so carrying on mining, in the same way as they apply to and in respect of mining carried on pursuant to a coal lease and to and in respect of the registered holder of the coal lease and they so apply as if—

- (a) the conditions subject to which the mining is carried on were the terms and conditions of the coal lease; and
- (b) the coal being mined pursuant to clause 2 were the coal to which the coal lease relates.

Certain payments to cease.

4. (1) To the extent to which any lease, agreement or other instrument in force immediately before the appointed day provided for the payment of rent or royalty in respect of coal other than coal vested in or reserved to the Crown, the lease, agreement or other instrument ceases on and from that day to have any force or effect.

(2) Except to the extent provided by subclause (1), a lease, agreement or other instrument referred to in that subclause continues in force on and after the appointed day until—

- (a) the Minister, by instrument in writing served on the parties to the lease, agreement or other instrument otherwise directs; or
- (b) a coal lease is granted in respect of the coal to which the lease or other instrument would have related if the Coal Acquisition Act, 1981, had not been enacted,

whichever first occurs.

Certain moneys to be paid.

5. Notwithstanding the amendment by this Act of section 128 of the Principal Act, moneys that, immediately before the appointed day, were held in the account referred to in that section that, but for that amendment, would have been payable to a person other than the Crown remain so payable on and after the appointed day.

Regulations.

6. (1) The Governor may make regulations—

- (a) prescribing provisions of the Principal Act for the purposes of clause 3; or

Coal Mining (Amendment).

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(b) containing provisions of a savings or transitional nature consequent on the enactment of the Coal Acquisition Act, 1981, or this Act.

(2) To the extent to which a regulation made under subclause (1) so provides, the regulation has effect notwithstanding any other provision of this Schedule.

Interpretation Act, 1897.

7. Nothing in this Schedule affects any saving made by the Interpretation Act, 1897.

SCHEDULE 3.

(Sch. 2, cl. 2 (6).)

CONDITIONS FOR CONTINUATION OF MINING.

1. This Schedule applies to a person upon whom a right to mine coal has been conferred by clause 2 (4) of Schedule 2.

2. A person to whom this Schedule applies shall at all times keep and preserve from avoidable injury or damage any mine or seam to which the right applies.

3. Where coal is not immediately saleable, a person to whom this Schedule applies shall not—

(a) without the consent of the Minister, store or dispose of the coal in a manner, or at a location, prohibited by order made by the Minister for the purposes of this clause and published in the *Gazette*; or

(b) store or dispose of the coal in a manner, or at a location, prohibited by order in writing made by the Minister and served on that person.
