



New South Wales

Coal Industry Amendment Act 1995 No 19

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Coal Industry Amendment Act 1995 No 19

Act No 19, 1995

An Act to amend the *Coal Industry Act 1946* to abolish the Coal Industry Tribunal and Local Coal Authorities, to confer certain functions and powers on the Australian Industrial Relations Commission in connection with the coal industry in New South Wales, and for associated purposes. [Assented to 19 June 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Coal Industry Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Coal Industry Act 1946 No 44

The *Coal Industry Act 1946* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Interpretation

Insert in alphabetical order in section 4 (I):

Australian Commission means the Australian Industrial Relations Commission.

coal mining industry includes the shale mining industry.

Commonwealth Industrial Relations Act means the *Industrial Relations Act 1988* of the Commonwealth, and includes any rules of court or regulations in force under that Act.

[2] Section 4

Omit the definitions of *industrial dispute*, *industrial matters*, *organisation*, *the Commission*, *the Court* and *the Tribunal*.

[3] Part 7 Industrial matters

Omit the Part (sections 36–54A).

[4] Part 7A

Insert before Part 8:

Part 7A Industrial matters

54B Application of Commonwealth Industrial Relations Act to coal mining industry in the State

(1) Application of Commonwealth Industrial Relations Act

The provisions of the Commonwealth Industrial Relations Act, as in force for the time being, and as

modified by or under this Act, apply as a law of the State for the purpose of enabling the Australian Commission to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees. Those provisions so apply as if the Commonwealth Industrial Relations Act extends to disputes in the State that do not extend beyond the limits of the State.

(2) Functions and powers

The Australian Commission may accordingly perform functions and exercise powers under those provisions with respect to those matters, whether or not there is a dispute extending beyond the limits of the State.

(3) Interpretation of Commonwealth Act

The *Acts Interpretation Act 1901* of the Commonwealth, as in force for the time being, applies as a law of the State in relation to provisions applied by subsection (1), and so applies as if those provisions were respectively an Act of the Commonwealth or rules of court or regulations under such an Act, as the case requires.

(4) Non-application of State Interpretation Act

The *Interpretation Act 1987* does not apply in relation to the provisions applied by subsection (1).

(5) Modification of Commonwealth Act

The regulations may modify the provisions of the Commonwealth Industrial Relations Act for the purposes of this section.

54C State awards and orders

(1) Functions and powers of State tribunals

Nothing in this Act affects the functions or powers of any State tribunal in relation to the coal mining industry, except as provided by subsection (2).

(2) **Federal awards prevail**

No award or order of a State tribunal that has application in the coal mining industry (whether it was made before or after the commencement of this section) has effect to the extent that it is inconsistent with a federal award that has application in the coal mining industry.

(3) **Definitions**

In this section:

federal award means:

- (a) an award of the Australian Commission to the extent that it is made under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B), or
- (b) an award referred to in clause 11 of Schedule 1 that is taken to have been made by the Australian Commission under those provisions.

State tribunal includes a State court.

54D Industrial Relations Court of Australia

The provisions of the Commonwealth Industrial Relations Act that apply under section 54B also apply for the purpose of enabling the Industrial Relations Court of Australia to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, in connection with federal awards as defined in section 54C. Jurisdiction to perform those functions and exercise those powers is conferred on that court accordingly.

[5] Schedule 1 Savings and transitional provisions

Insert after the heading to the Schedule:

Part 1 General

1 Regulations

- (1) The regulations may make provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - Coal Industry (Amendment) Act 1992
 - Coal Industry Amendment Act 1995
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional 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.

[6] Schedule 1

Re-number existing clause 1 as clause 1A.

Insert before that clause the heading **“Part 2 Provisions consequent on enactment of Coal Industry (Amendment) Act 1992”**.

[7] Schedule 1

Omit clause 2.

[8] Schedule 1

Omit clause 10.

[9] Schedule 1

Insert at the end of the Schedule:

**Part 3 Provisions consequent on enactment of
Coal Industry Amendment Act 1995**

**11 Existing awards, orders, decisions and agreements
made under this Act**

(1) Definition of instrument

A reference in this clause to an instrument is a reference to:

- (a) an award or order made by the Coal Industry Tribunal, or
- (b) a decision given by a Local Coal Authority, or
- (c) an agreement made at a hearing before the Coal Industry Tribunal or a Local Coal Authority, or
- (d) an agreement made under a provision of an award made by the Coal Industry Tribunal,

that had effect immediately before the commencement of this clause.

(2) Existing instruments to become awards of Commission

An instrument, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees,

has effect as, and is taken to be, an award made by the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B).

(3) References to Tribunal or Authority in existing instruments

A reference in an instrument referred to in subclause (2) to the Coal Industry Tribunal or to a Local Coal Authority is taken (except in relation to matters that occurred before the Commencement of this clause) to be a reference to the Australian Commission.

(4) Determinations and other things under existing instruments

A determination made or any other thing done before the commencement of this clause by the Coal Industry Tribunal or a Local Coal Authority under an instrument referred to in subclause (2) has effect on and after that commencement as if it had been made or done by the Australian Commission.

(5) Coverage of awards

Without limiting the operation of the other provisions of this clause, an instrument that is taken to be an award made by the Australian Commission under this clause is varied, with effect from the end of the day immediately preceding the commencement of this clause, so that the instrument is to be read as naming as parties or respondents to the instrument all persons or organisations that were within its coverage immediately before that commencement. The award is taken to be binding on those persons or organisations, as if they were parties referred to in section 149 (1) of the Commonwealth Industrial Relations Act (as applied by section 54B), regardless of whether or not they or any of them were or were required to be registered under that Act.

(6) Application of clause

This clause applies to an instrument only to the extent to which it was made under powers conferred by State legislation.

12 Matters pending before Coal Industry Tribunal or Local Coal Authority

(1) Pending matters before Tribunal or Authority become matters before Australian Commission

A matter pending before the Coal Industry Tribunal or a Local Coal Authority immediately before the commencement of this clause, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, is taken to be a matter before the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B). The Australian Commission may deal with the matter as if it had been before the Australian Commission since it arose.

(2) Extent of operation of subclause (1)

Subclause (1) applies only to the extent to which:

- (a) the matter was notified to the Coal Industry Tribunal or the Local Coal Authority for the purpose of the performance or exercise by the Tribunal or Authority of, or
- (b) the Tribunal or Authority was performing or exercising,

functions or powers in relation to the matter conferred by State legislation.

(3) Previous evidence, arguments, decisions and other matters

For the purpose of dealing with a matter under subclause (1), the Australian Commission may have regard to:

- (a) any evidence given, or arguments put, in proceedings relating to the matter before the Coal Industry Tribunal or the Local Coal Authority, and
- (b) any decision, recommendation, determination or report made by the Tribunal or Authority in relation to the matter.

[Minister's second reading speech made in—
Legislative Council on 24 May 1995
Legislative Assembly on 31 May 1995]