

1990 - No. 467

**COAL ACQUISITION ACT 1981 - INSTRUMENT**

(Providing for the compensation payable for saleable coal to be increased from 50 cents to 90 cents a tonne, for limitations to be imposed on the total amounts of compensation that may be paid under the Coal Acquisition (Compensation) Arrangements 1985 to certain coal mining companies and for other matters)

NEW SOUTH WALES



*[Published in Gazette No. 82 of 29 June 1990]*

(LS.) D. J. MARTIN, Governor.

I, Rear Admiral Sir DAVID JAMES MARTIN, 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 27th day of June 1990.

By His Excellency's Command,

NEIL PICKARD  
Minister for Minerals and Energy.

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The Coal Acquisition (Compensation) Arrangements 1985 are amended:

- (a) by inserting after the definition of "insolvent under administration" in clause 3 (1) the following definition:  
"interim payment of compensation" means an interim payment of compensation made under clause 17A;
- (b) by omitting clause 3 (4) and by inserting instead the following subclause:  
(4) In a case where the amount of a claim relating to a deceased person's estate does not exceed \$5,000, a reference in the definitions of "claimant" and "eligible person" in subclause (1) to the legal personal representative of a deceased person includes a reference to a person who satisfies the Compensation Board that the person is entitled to obtain administration of that estate in New South Wales but has not exercised that entitlement.
- (c) by omitting from clause 17 the matter "21 or 22" wherever occurring and by inserting instead the matter "21, 22, 22AA, 22AE3 or 25A";
- (d) by omitting clause 18 (1) and by inserting instead the following subclause:  
(1) If, in the case of a claim made in accordance with clause 10, the Compensation Board is satisfied that the claimant:  
(a) is an eligible person to whom that clause applies; and  
(b) but for the enactment of the Coal Acquisition Act 1981, would have been entitled to the ownership of saleable coal within a colliery holding of which the claimant is a registered holder,  
the Board must estimate the number of tonnes of that saleable coal which has been or, in its opinion, will be extracted from within that part of the colliery holding to which the claim relates during each relevant period beginning with the base date and ending with the last day of the relevant period within which saleable coal within that colliery holding has or will, in its opinion, become exhausted.
- (e) by omitting from the formula in clause 18 (2) the matter "0.5" and by inserting instead the matter "0.9";
- (f) by omitting from clause 18 (2) the word "ascertained" and by inserting instead the word "estimated";
- (g) by omitting clause 18 (3) and by inserting instead the following subclauses:

(3) If, on making the calculation referred to in subclause (2), no interim payment of compensation has been made in respect of the claim, the Compensation Board must calculate the total amount to be paid in respect of the claim:

- (a) by ascertaining for all relevant periods to which subclause (1) applies the total of the amount represented by "v (p)", as determined in accordance with subclause (2); and
- (b) by multiplying that total by the appropriate incremental factor.

(3A) For the purpose of subclause (3), the appropriate incremental factor is a number equivalent to the amount of money that would be accumulated from and including the base date up to and including the day before the date on which the Compensation Board makes its determination in respect of the claim if \$1 were invested on terms (including terms as to a rate of interest) determined by the Treasurer for the purposes of this clause.

- (h) by omitting clause 18 (5) and by inserting instead the following subclauses:

(5) If, after one or more interim payments of compensation have been made in respect of the claim, the Compensation Board proposes to determine the total amount of compensation to be paid in respect of the claim, it must calculate that amount by adding together:

- (a) the total amount of all interim payments of compensation made in respect of the claim; and
- (b) the balance existing at the end of the final relevant period.

(5A) For the purposes of subclause (5), the Compensation Board must:

- (a) first ascertain for all relevant periods to which subclause (1) applies the total of the amounts represented by "v (p)", as determined in accordance with subclause (2); and
- (b) then calculate the balance existing at the end of the first relevant period by multiplying that total by the appropriate incremental factor; and

- (c) then calculate the balance existing at the end of each subsequent relevant period by multiplying by the appropriate incremental factor the amount of that total remaining after deducting the interim payment made on the day after the last day of the immediately preceding relevant period from the balance existing at the end of that period; and
- (d) then calculate the balance existing at the end of the final relevant period by multiplying by the appropriate incremental factor the amount of that total remaining after deducting the final interim payment from the balance existing at the end of the immediately preceding relevant period.

(5B) For the purposes of subclause (5A), the appropriate incremental factor is a number equivalent to the amount of money that would be accumulated:

- (a) in the case of the first relevant period - from and including the base date up to and including the day before the date on which the first interim payment of compensation is made; and
- (b) in the case of any subsequent relevant period (other than the final one) - from and including the date on which the first or any subsequent interim payment is made up to and including the day before the date on which the next interim payment is made; and
- (c) in the case of the final relevant period - from and including the date on which the final interim payment is made up to and including the day before the date on which the Compensation Board is to make its determination in respect of the claim,

if \$1 were invested on terms (including terms as to a rate of interest) determined by the Treasurer as provided by subclause (3A).

(5C) In subclauses (5A) and (5B):

"first relevant period" means the period beginning with the base date and ending with the day before the date on which the first interim payment of compensation is made in respect of the claim;

"subsequent relevant period" means the period beginning with the date on which the first or any subsequent interim payment of compensation is made in respect of the claim (other than the final interim payment) and ending with the day before the date on which the next interim payment is made;

"final relevant period" means the period beginning with the date on which the final interim payment of compensation is made in respect of the claim and ending with the day before the date on which the Compensation Board is to make its determination in respect of the claim.

(5D) If the final interim payment of compensation made in respect of the claim exceeds the balance existing at the end of the immediately preceding relevant period, the amount by which that payment exceeds that balance is an overpayment which the Compensation Board may recover from the claimant in accordance with clause 17B (3).

(i) by inserting after clause 18 (6) the following subclause:

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

(j) by omitting clause 19 (1) and by inserting instead the following subclause:

(1) If, in the case of a claim made in accordance with clause 11, the Compensation Board is satisfied that the claimant:

- (a) is an eligible person to whom that clause applies; and
- (b) but for the enactment of the Coal Acquisition Act 1981, would have been entitled to the ownership of saleable coal within a colliery holding,

the Board must estimate the number of tonnes of that saleable coal which has been or, in its opinion, will be extracted from within that part of the colliery holding to which the claim relates during each relevant period beginning with the base date and ending with the last day of the relevant period within which saleable coal within that colliery holding has or will, in its opinion, become exhausted.

- (k) by omitting from clause 19 (2) the matter "0.5" wherever occurring, and by inserting instead the matter "0.9";
- (l) by omitting from clause 19 (2) the word "ascertained" and by inserting instead the word "estimated";

- (m) by omitting clause 19 (3) and by inserting instead the following subclauses:

(3) If, on making the calculation referred to in subclause (2), no interim payment of compensation has been made in respect of the claim, the Compensation Board must calculate the total amount to be paid in respect of the claim:

- (a) by ascertaining for all relevant periods to which subclause (1) applies the total of the amount represented by "v (p)", as determined in accordance with subclause (2); and
- (b) by multiplying that total by the appropriate incremental factor.

(3A) For the purpose of subclause (3), the appropriate incremental factor is a number equivalent to the amount of money that would be accumulated from and including the base date up to and including the day before the date on which the Compensation Board makes its determination in respect of the claim if \$1 were invested on terms (including terms as to a rate of interest) determined by the Treasurer for the purposes of this clause.

- (n) by omitting clause 19 (5) and by inserting instead the following subclauses:

(5) If, after one or more interim payments of compensation have been made in respect of the claim, the Compensation Board proposes to determine the total amount of compensation to be paid in respect of the claim, it must calculate that amount by adding together:

- (a) the total amount of all interim payments of compensation made in respect of the claim; and
- (b) the balance existing at the end of the final relevant period.

(5A) For the purposes of subclause (5), the Compensation Board must:

- (a) first ascertain for all relevant periods to which subclause (1) applies the total of the amounts represented by "v (p)", as determined in accordance with subclause (2); and

- (b) then calculate the balance existing at the end of the first relevant period by multiplying that total by the appropriate incremental factor; and
- (c) then calculate the balance existing at the end of each subsequent relevant period by multiplying by the appropriate incremental factor the amount of that total remaining after deducting the interim payment made on the day after the last day of the immediately preceding relevant period from the balance existing at the end of that period; and
- (d) then calculate the balance existing at the end of the final relevant period by multiplying by the appropriate incremental factor the amount of that total remaining after deducting the final interim payment from the balance existing at the end of the immediately preceding relevant period.

(5B) For the purposes of subclause (5A), the appropriate incremental factor is a number equivalent to the amount of money that would be accumulated:

- (a) in the case of the first relevant period - from and including the base date up to and including the day before the date on which the first interim payment of compensation is made; and
- (b) in the case of any subsequent relevant period (other than the final one) - from and including the date on which the first or any subsequent interim payment is made up to and including the date on which the next interim payment is made; and
- (c) in the case of the final relevant period from and including the date on which the final interim payment is made up to and including the day before the date on which the Compensation Board is to make its determination in respect of the claim,

if \$1 were invested on terms (including terms as to a rate of interest) determined by the Treasurer as provided by subclause (3A).

(5C) In subclauses (5A) and (5B):

"first relevant period" means the period beginning with the base date and ending with the day before the date on which the first interim payment of compensation is made in respect of the claim;

"subsequent relevant period" means the period beginning with the date on which the first or any subsequent interim payment of compensation is made in respect of the claim (other than the final interim payment) and ending with the day before the date on which the next interim payment is made;

"final relevant period" means the period beginning with the date on which the final interim payment of compensation is made in respect of the claim and ending with the day before the date on which the Compensation Board is to make its determination in respect of the claim.

(5D) If the final interim payment of compensation made in respect of the claim exceeds the balance existing at the end of the immediately preceding relevant period, the amount by which that payment exceeds that balance is an overpayment which the Compensation Board may recover from the claimant in accordance with clause 17B (3).

(o) by inserting after clause 19 (6) the following subclause:

(7) This clause is subject to clause 22AA

(p) by inserting after clause 20 (1) the following subclause:

(1A) If the Compensation Board makes a determination under subclause (1), it must pay to the claimant a further amount equal to the amount that would be accumulated from and including the base date up to and including the date of the determination if the amount of consideration paid by the claimant for the ownership of the coal, less any amount derived by the claimant by virtue of having had ownership of the coal on or after 1 November 1975 and before the base date, had been invested on terms (including terms as to a rate of interest) determined by the Treasurer for the purposes of this clause and notified in writing to the Board.

(q) by omitting from clause 21 the matter "0.5" and by inserting instead the matter "0.9";



- (r) by adding at the end of clause 22 the following subclause:
  - (2) This clause is subject to clause 22AA
- (s) by inserting after clause 22 the following clauses:

**Special provisions relating to claims by certain specified companies**

22AA. (1) If The Broken Hill Proprietary Company Limited, BHP Minerals Ltd or Boone & Willard Pty Ltd have 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, apart from this clause, exceed \$18,000,000, then, irrespective of the provisions of clauses 18-22, the total amount of compensation so payable is, subject to subclause (4), to be \$18,000,000 and no more.

(2) If Coal & Allied Operations Pty Ltd 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, apart from this clause, exceed \$18,750,000, then, irrespective of the provisions of clauses 18-22, the total amount of compensation so payable is, subject to subclause (4), to be \$18,750,000 and no more.

(3) If Durham Holdings Pty Ltd has made claims for compensation in accordance with clause 10,11 12 or 22AB and the total amount of compensation payable in respect of all of those claims would, apart from this clause, exceed \$23,250,000, then, irrespective of the provisions of clauses 18-22, the total amount of compensation so payable is, subject to subclause (4), to be \$23,250,000 and no more.

(4) If, by virtue 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:

- (a) on the balance of the amount of compensation which was still unpaid on 19 September 1989; or
- (b) where one or more interim payments of compensation are made to the company after 19 September 1989, on

the reduced balance or balances of the amount of compensation which was still unpaid on that date, in respect of the balance of the amount of compensation which was owing to the company on 19 September 1989, but only in respect of the period from that date up to the date of payment to the company of that balance.

(5) Interest payable under subclause (4) is to be paid at the rate determined by the Treasurer for the purpose of clause 24.

**Special compensation arrangements with respect to saleable coal within the Nardell Colliery Holding**

22AB. (1) If The Nardell Colliery Pty Ltd has made a claim in accordance with clause 10 for compensation for saleable coal that was, immediately before the base date, within the Nardell Colliery Holding, no compensation is payable to that company in accordance with clause 18, but instead compensation is payable to the shareholders of that company in accordance with this clause.

(2) A person who claims to have been the holder of shares in The Nardell Colliery Pty Ltd immediately before the base date or to be a person to whom those shares have been assigned, or have been transmitted by operation of law, may make a claim for compensation under this clause.

(5) If a claim is made in accordance with subclause (2), the Compensation Board must calculate in accordance with clause 18 the total amount of compensation that would, but for this clause, have been determined in respect of saleable coal that was, immediately before the base date, vested in The Nardell Colliery Pty Ltd and located within the Nardell Colliery Holding.

(4) The amount of compensation to be calculated by the Compensation Board under subclause (3) is to be apportioned among the persons who make claims in accordance with subclause (2) according to their respective shareholdings in The Nardell Colliery Pty Ltd, or the respective shareholdings of the persons through whom they are claiming, at the base date.

(5) A claim by a person in accordance with subclause (2) must:

- (a) be made in writing on a form provided or approved by the Compensation Board; and
- (b) contain such information as is required by the form and supported by such documents as the Compensation Board may specify, and
- (c) specify the shares in The Nardell Colliery Pty Ltd held by the person at the base date; and
- (d) be lodged with the Compensation Board not later than 30 April 1991.

(6) The information and documents referred to in subclause (5) (b), and details of the shares referred to in subclause (5) (c), may be provided to or lodged with the Compensation Board after the time by which the claim is required to be lodged with the Compensation Board.

(7) However, the Compensation Board may not entertain the claim unless the information is provided, and the documents are lodged, before 31 October 1991 or such later date as the Compensation Board in any particular case allows.

- (t) by inserting after clause 25 the following clause:

**Further determination of claims that were originally determined before 19 September 1989**

25A (1) This clause applies to all claims that would, but for this clause, have been treated as having been finally determined before 19 September 1989.

(2) Any compensation paid to a claimant in respect of a claim to which this clause applies is to be treated as an interim payment of compensation even though the claim would, but for this clause, have been regarded as having been finally determined.

(3) As soon as practicable after the commencement of this clause, the Compensation Board must review each claim to which this clause applies and, in consequence of the review, may, in its discretion, make a further determination in respect of the claim.

(4) In reviewing a claim in accordance with subclause (3), the Compensation Board must deal with the claim as if it had not been finally determined and must treat any amount of

compensation paid in respect of the claim as an interim payment of compensation, even though the payment may have been made as part of a final determination of the claim.

(5) The provisions of clause 17 (3) and (4), so far as relevant, apply to the review of a claim in accordance with subclause (3) and, for the purposes of this instrument, any notice purporting to have been served under clause 17 (3) is to be treated as not having been served.

(6) The Compensation Board may, if it considers it to be appropriate to do so, make one or more interim payments or further interim payments of compensation in respect of a claim that is reviewed under subclause (3).

(u) by inserting after clause 7 of Schedule 2 the following clause:

**Summonses to attend proceedings of the Compensation Board and examination of witnesses**

8. (1) The chairman may serve on a person a summons requiring the person to do either or both of the following:

- (a) to attend and give evidence in proceedings of the Compensation Board at a time and place specified in the summons;
- (b) to produce to the Compensation Board, or to attend specified proceedings of that Board and produce, any document or thing in the person's custody or under the person's control that is specified in the summons.

(2) If:

- (a) in accordance with this clause, a person is required by a summons to produce a document; and
- (b) the document is not in writing, or is not in the English language, or is not decipherable on sight,

the summons is to be taken to require the person to produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the document.

(3) The chairman may require any person appearing as a witness in proceedings before the Compensation Board to take an oath, whether or not a summons has been served on the

witness under this clause, and allow the witness to be examined or cross-examined on oath.

(4) A witness attending or appearing in proceedings before the Compensation Board has the same protection and is subject to the same liabilities as a witness would have or be subject to in proceedings before the District Court.

(5) A witness attending proceedings of the Compensation Board in accordance with a summons served under this clause is entitled to be paid such fees and allowances as are prescribed by, or calculated in accordance with, the rules of the District Court for the attendance of witnesses in proceedings before that Court.

(6) If a summons is served under this clause at the request of a claimant, the person specified in the summons is not required to comply with the summons unless, not later than a reasonable time before the day on which the summons is to be complied with, that person is tendered not less than the prescribed amount of money to meet the expense of complying with the summons.

(7) For the purposes of subclause (6), the prescribed amount of money is an amount equal to the amount prescribed by, or calculated in accordance with, the rules of the District Court with respect to the issue of subpoenas.

(8) If a person on whom a summons has been served under this clause:

- (a) fails or refuses to attend proceedings of the Compensation Board as required by the summons; or
- (b) fails or refuses to attend from day to day without having been excused by the chairman from further attendance; or
- (c) having attended proceedings of the Compensation Board as required by the summons:
  - (i) fails or refuses to comply with a requirement under subclause (3) to take an oath; or
  - (ii) fails or refuses to answer a question that the Compensation Board has put to the person; or
  - (iii) fails or refuses to produce a document or thing specified in the summons,

the chairman may, by instrument in writing, certify the failure or refusal to the Supreme Court.

(9) If a certificate is given under subclause (8), the Supreme Court may inquire into the case and, if satisfied that the person to whom the certificate relates has, without reasonable excuse, failed or refused to comply with a requirement specified in the certificate:

- (a) may order the person to comply with the requirement in proceedings of the Compensation Board to be held at a time and place specified in the order; or
- (b) may deal with the person in the same manner as if the person had been guilty of contempt of that Court.

(10) The giving of a certificate under subclause (8) does not prevent the person to whom it relates from being dealt with under section 7 of the Coal Acquisition Act 1981, but the person is not liable to be dealt with both under that section and under subclause (9) (b) in respect of the same matter.

- (v) by inserting after clause 9 of Schedule 3 the following clause:

**Summonses to attend proceedings of the Compensation Review Tribunal and examination of witnesses**

9A (1) The chairman may serve on a person a summons requiring the person to do either or both of the following:

- (a) to attend and give evidence in proceedings of the Compensation Review Tribunal at a time and place specified in the summons;
- (b) to produce to the Tribunal, or to attend specified proceedings of the Tribunal and produce, any document or thing in the person's custody or under the person's control that is specified in the summons.

(2) If:

- (a) in accordance with this clause, a person is required by a summons to produce a document; and
- (b) the document is not in writing, or is not in the English language, or is not decipherable on sight,

the summons is to be taken to require the person to produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement, written in the

English language and decipherable on sight, containing the whole of the information in the document.

(3) The chairman may require any person appearing as a witness in proceedings before the Compensation Review Tribunal to take an oath, whether or not a summons has been served on the witness under this clause, and allow the witness to be examined or cross-examined on oath.

(4) A witness attending or appearing in proceedings before the Compensation Review Tribunal has the same protection and is subject to the same liabilities as a witness would have or be subject to in proceedings before the District Court.

(5) A witness attending proceedings of the Compensation Review Tribunal in accordance with a summons served under this clause is entitled to be paid such fees and allowances as are prescribed by, or calculated in accordance with, the rules of the District Court for the attendance of witnesses in proceedings before that Court.

(6) If a summons is served under this clause at the request of the appellant, the person specified in the summons is not required to comply with the summons unless, not later than a reasonable time before the day on which the summons is to be complied with, that person is tendered not less than the prescribed amount of money to meet the expense of complying with the summons.

(7) For the purposes of subclause (6), the prescribed amount of money is an amount equal to the amount prescribed by, or calculated in accordance with, the rules of the District Court with respect to the issue of subpoenas.

(8) If a person on whom a summons has been served under this clause:

- (a) fails or refuses to attend proceedings of the Compensation Review Tribunal as required by the summons; or
- (b) fails or refuses to attend from day to day without having been excused by the chairman from further attendance; or
- (c) having attended proceedings of the Tribunal as required by the summons:

- (i) fails or refuses to comply with a requirement under subclause (3) to take an oath; or
- (ii) fails or refuses to answer a question that the Tribunal has put to the person; or
- (iii) fails or refuses to produce a document or thing specified in the summons,

the chairman may, by instrument in writing, certify the failure or refusal to the Supreme Court.

(9) If a certificate is given under subclause (8), the Supreme Court may inquire into the case and, if satisfied that the person to whom the certificate relates has, without reasonable excuse, failed or refused to comply with a requirement specified in the certificate:

- (a) may order the person to comply with the requirement in proceedings of the Compensation Review Tribunal to be held at a time and place specified in the order; or
- (b) may deal with the person in the same manner as if the person had been guilty of contempt of that Court.

(10) The giving of a certificate under subclause (8) does not prevent the person to whom it relates from being dealt with under section 7 of the Coal Acquisition Act 1981, but the person is not liable to be dealt with both under that section and under subclause (9) (b) in respect of the same matter.

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#### EXPLANATORY NOTE

The object of this instrument is to amend the Coal Acquisition (Compensation) Arrangements 1985 so as:

- (a) to enable the New South Wales Coal Compensation Board to satisfy claims relating to deceased persons that do not exceed \$5,000 without the need for probate or letters of administration to be obtained in respect of the estates of those persons; and
- (b) to increase the compensation payable in respect of saleable coal acquired under the Coal Acquisition Act 1981 from 50 cents per tonne to 90 cents per tonne; and
- (c) to provide for the review of claims in respect of which compensation was finally determined before 19 September 1989; and
- (d) to provide for interest to be paid in respect of the additional compensation under clause 20 of the Arrangements (which empowers the Compensation Board to determine an increased amount of compensation where the coal owner acquired rights to coal on or after 1 November 1975); and



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- (e) to limit to \$60,000,000 the total amounts that may be paid as compensation to certain specified coal mining companies under the Arrangements; and
  - (f) to make special arrangements for the payment of compensation for saleable coal that was vested in The Nardell Colliery Pty Ltd and within the Nardell Colliery Holding immediately before 1 January 1982; and
  - (g) to enable the chairmen of the Compensation Board and the New South Wales Coal Compensation Review Tribunal to serve summonses on persons requiring them to attend proceedings of that Board or Tribunal to give evidence or to produce specified documents or things.
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