



New South Wales

# Coal Acquisition (Re-acquisition Arrangements) Order 2004

under the

Coal Acquisition Act 1981

JAMES JACOB SPIGELMAN,  
By Deputation from Her Excellency the Governor

I, Professor Marie Bashir AC, 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*, make the following Order.

Dated, this 15th day of December 2004.

By Her Excellency's Command,

KERRY ARTHUR HICKEY, M.P.,  
Minister for Mineral Resources

## Explanatory note

Section 6 (8) of the *Coal Acquisition Act 1981* requires the Minister administering that Act to review from time to time the arrangements made under that section to ensure that the amount of compensation payable under the arrangements in relation to the operation of section 5A of that Act or the refusal of certain applications under the *Coal Ownership (Restitution) Act 1990* is just and equitable. The object of this Order is to amend the *Coal Acquisition (Re-acquisition Arrangements) Order 1997*:

- (a) to clarify the methodology to be used to determine the compensation payable to an applicant because of the operation of section 5A of the *Coal Acquisition Act 1981* or the refusal of certain applications under the *Coal Ownership (Restitution) Act 1990* so as to take account of certain changes that have occurred, such as to royalty payable or rates of company taxation, and
- (b) to provide an indication as to the matters that might be relevant for the Coal Compensation Board to consider when making a determination in any particular case as to the values to be given to certain variables of the formulae used to determine that compensation while ensuring that the Board has flexibility to fulfil its obligation of determining just and equitable compensation for those applicants.

This Order is made under section 6 of the *Coal Acquisition Act 1981*.

## **2004 No 891**

Clause 1 Coal Acquisition (Re-acquisition Arrangements) Order 2004

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## **Coal Acquisition (Re-acquisition Arrangements) Order 2004**

under the

Coal Acquisition Act 1981

### **1 Name of Order**

This Order is the *Coal Acquisition (Re-acquisition Arrangements) Order 2004*.

### **2 Commencement**

This Order takes effect on the day it is published in the Gazette.

### **3 Amendment of Coal Acquisition (Re-acquisition Arrangements) Order 1997**

The *Coal Acquisition (Re-acquisition Arrangements) Order 1997* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

**[1] Clause 7 Compensation for consequential loss when coal revested**

Omit “A claim” from clause 7 (2). Insert instead “An application”.

**[2] Clause 7 (3A)**

Omit “a claim”. Insert instead “an application”.

**[3] Clause 7 (3A)**

Omit “the claim” wherever occurring. Insert instead “the application”.

**[4] Schedule 1 Calculation of compensation**Omit the definition of  $r$  in clause 2 (3). Insert instead:

$r$  is an amount in respect of a particular relevant period and a particular type of coal that the Board considers just and equitable in the circumstances of the case.

**[5] Schedule 1, clause 2 (4)–(6)**

Insert after clause 2 (3):

- (4) For the purposes of determining an amount for  $e$  in accordance with the methodology set out in the definition of  $e$  in subclause (3), the Board is to take account of the following procedure:
- (a) the Board should calculate a base rate for each month in the particular relevant period,
  - (b) the base rate should be based on a weighted average cost of capital for the coal industry calculated in accordance with a formula determined by the Board,
  - (c) the Board should calculate an additional rate for the mine or proposed mine concerned having regard to the profitability ranking of operating collieries, as determined by the Board,
  - (d) the Board should calculate a further additional rate in relation to development risk and other factors considered by the Board to be relevant to the mine or proposed mine concerned,
  - (e) the sum of the base rate referred to in paragraph (a) plus the additional rates referred to in paragraphs (c) and (d) rounded to the nearest 0.5 per cent is to be used as the rate of interest referred to in that definition.

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Schedule 1 Amendments

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- (5) Subclause (4) does not limit the power of the Board to determine an amount for  $e$  on some other basis if the Board considers it is just and equitable to do so.
- (6) When determining an amount that is just and equitable for the purposes of the definition of  $r$  in subclause (3), the Board is to have regard to the following matters to the extent that they are relevant in the circumstances of the case (but is not limited to a consideration of those matters):
  - (a) any amount, as determined by the Board, that would have been payable to the claimant in respect of royalty for the coal concerned under the *Coal Mining Act 1973* (as in force before its repeal) or the *Mining Act 1992*, taking into account any changes from time to time to the method of calculating that royalty,
  - (b) any additional amount of royalty, as determined by the Board, that would have been payable under section 283 (1) (b) of the *Mining Act 1992*, but only in relation to a period occurring before 1 July 2004,
  - (c) any amount of corporate tax (at the rates applying from time to time) by which the amounts referred to in paragraphs (a) and (b) should be reduced,
  - (d) any further reductions to the amount of royalty normally made under the *Coal Mining Act 1973* (as in force before its repeal) or the *Mining Act 1992* in the nature of administration expenses and the like.

BY AUTHORITY

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