



New South Wales

Coal Acquisition Amendment (Fair Compensation) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Coal Acquisition Act 1981* (*the principal Act*) vested all coal in the Crown and enabled the Governor to make arrangements for the payment of compensation to claimants. The *Coal Ownership (Restitution) Act 1990* provided that certain successful claimants could apply to have the coal restored to them rather than accept the compensation. The principal Act then enabled the Governor, by proclamation, to re-vest the coal that had been restored under the *Coal Ownership (Restitution) Act 1990* in the Crown and to make arrangements for the payment of compensation to claimants in those cases.

The object of this Bill is to amend the principal Act:

- (a) to ensure that if royalty is included in the determination of compensation for any claim that has not been finally determined under the principal Act the royalty will be calculated on the same basis on which other claims have previously been determined rather than in accordance with the new scheme for the payment of royalty recently introduced under the *Mining Act 1992*, and

- (b) to make it clear that compensation for loss of “super royalty” can be paid in relation to appropriate claims, but only for periods occurring before the repeal of the provisions of the *Mining Regulation 2003* that allowed the payment of super royalty, and
- (c) to provide that a payment of compensation under the principal Act is not to take into account any arrangements required to be entered into under the *Mining Act 1992* by the holder of a mining lease or similar authorisation that deal with the supply of coal at a particular price.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of its assent.

Clause 3 is a formal provision that gives effect to the amendments to the principal Act set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [4] inserts proposed section 6A into the principal Act to achieve the object outlined in the Overview above.

Proposed section 6A (1) makes it clear that the provisions of the new section prevail over section 6 of the principal Act (compensation arrangements by the Governor) and the arrangements that have been made under that section.

Proposed section 6A (2) provides that if royalty is to be included in the determination of any claim for compensation under section 6 of the principal Act it is to be calculated in accordance with the provisions of the *Mining Act 1992* and the regulations under that Act, as in force immediately before 1 July 2004. The significance of that date is that on 1 July 2004 the provisions relating to the payment of royalty for coal under the *Mining Act 1992* were changed and a new scheme introduced for the payment of royalty. The new scheme replaced the rates of royalty payable on coal, which were based on a rate per tonne of coal recovered, with a rate based on a percentage of the value of the coal recovered, with the rate to vary according to the method of mining used to recover the coal. The effect of proposed section 6A (2) will be to preserve the previous method of determining royalty for the purposes of compensation claims that have not yet been finally determined.

Proposed section 6A (3) enables the Coal Compensation Board to include, in appropriate cases, “super royalty” in the determination of compensation claims under the principal Act. Super royalty is the term commonly used to refer to additional payments of royalty that were provided for in certain circumstances under the former *Coal Mining Act 1973* and until 1 July 2004 under the *Mining Act 1992*. The calculation of super royalty may only relate to a period occurring before 1 July 2004.

Proposed section 6A (4) provides that any calculation of super royalty is to be done in accordance with the relevant provisions under the *Mining Act 1992*, as in force immediately before 1 July 2004. The provisions relating to super royalty under the *Mining Act 1992* were repealed on 1 July 2004.

Proposed section 6A (5) ensures that the determination of compensation under section 6 of the principal Act will not include any amount in respect of arrangements entered into by the holder of a mining lease or other authorisation under the *Mining Act 1992* in order to fulfil a requirement for the grant of the lease or other authorisation or a condition of the lease or other authorisation if the arrangements relate to the price at which coal is to be supplied.

Proposed section 6A (6) provides that the proposed section extends to claims for compensation that have not been finally determined, including any claim that is the subject of an appeal, judicial review or redetermination.

Proposed section 6A (7) makes it clear that the proposed section does not affect any payment of compensation that has already been made in relation to a claim that has been finally determined or entitle any person who has received such a payment to any further compensation in relation to the claim.

Proposed section 6A (8) enables the arrangements under section 6 of the principal Act to make provision for the circumstances in which a claim is taken to be finally determined for the purposes of proposed section 6A.

Proposed section 6A (9) provides that a reference to a claim in the proposed section includes a reference to an application.

Schedule 1 [1]–[3] make consequential amendments.

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Explanatory note

First print



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No. , 2005

A Bill for

An Act to amend the *Coal Acquisition Act 1981* to make further provision for the payment of compensation under that Act; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Coal Acquisition Amendment (Fair Compensation) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Coal Acquisition Act 1981 No 109	7
The <i>Coal Acquisition Act 1981</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

		1
	(Section 3)	2
[1] Section 3 Definitions		3
Insert in alphabetical order:		4
<i>Coal Compensation Board</i> means the New South Wales Coal Compensation Board established under the <i>Coal Acquisition (Compensation) Arrangements 1985</i> .		5 6 7
[2] Section 5B Acquisition of coal on behalf of the Crown otherwise than by reversion		8 9
Omit “New South Wales Coal Compensation Board established under the <i>Coal Acquisition (Compensation) Arrangements 1985</i> ” from section 5B (3).		10 11
Insert instead “Coal Compensation Board”.		12
[3] Section 6 Arrangements by the Governor		13
Insert “(taking into account section 6A)” after “subsection (1)” in section 6 (2).		14
[4] Section 6A		15
Insert after section 6:		16
6A Special provisions relating to compensation		17
(1) Section 6, and any arrangements made under that section, are subject to the provisions of this section.		18 19
(2) If royalty is to be included in the determination of compensation under section 6 in relation to any claim, the royalty is to be calculated in accordance with the provisions of the <i>Mining Act 1992</i> and the <i>Mining Regulation 2003</i> relating to the payment of royalty, as those provisions were in force immediately before 1 July 2004.		20 21 22 23 24 25
(3) Despite subsection (2), the determination of compensation payable under section 6 in relation to any claim must not include an additional amount in respect of royalty under section 283 (1) (b) of the <i>Mining Act 1992</i> (or any provision of or made under the former <i>Coal Mining Act 1973</i> relating to the payment of additional royalty) unless the Coal Compensation Board considers it appropriate and the amount relates to a period occurring before 1 July 2004.		26 27 28 29 30 31 32 33

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Schedule 1 Amendments

- (4) Any additional amount of royalty referred to in subsection (3) is to be calculated in accordance with the provisions of section 283 (1) (b) of the *Mining Act 1992*, and the relevant provisions of the *Mining Regulation 2003*, as in force immediately before 1 July 2004. 1
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- (5) The determination of compensation payable under section 6 in relation to any claim must not include any amount in respect of any contract or other arrangement that: 6
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- (a) was entered into by an applicant or tenderer for, or the holder of, any lease, licence or other authorisation under the *Coal Mining Act 1973* (as in force before its repeal) or the *Mining Act 1992*, and 9
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- (b) was entered into for the purpose of fulfilling a requirement relating to the grant of the lease, licence or other authorisation or a condition of the lease, licence or other authorisation, and 13
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- (c) related to the price at which coal was to be supplied to another party to the contract or arrangement. 17
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- (6) The provisions of this section extend to any compensation in relation to a claim that has not been finally determined at the commencement of this section, including a claim that is the subject of any appeal, judicial review or redetermination. 19
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- (7) However, the provisions of this section: 23
- (a) do not affect any payment of compensation under section 6 made before the commencement of this section if the payment was in respect of a claim that had been finally determined before that commencement, or 24
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- (b) do not entitle any person who has received a payment referred to in paragraph (a) in respect of a claim to any further payment of compensation under section 6 in respect of the claim. 28
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| (8) | The arrangements made under section 6 may (but need not) make provision with respect to the circumstances in which a claim is taken to have been finally determined for the purposes of this section. | 1
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| (9) | In this section, a reference to a claim includes a reference to an application. | 5
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