

[Act 2002 No 12]



New South Wales

## Coal Industry Amendment (Validation) Bill 2002

### Explanatory note

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

#### Overview of Bill

The object of this Bill is to validate, to the extent to which the legislative power of the Parliament permits, acts and things done on the assumption that the *Coal Industry Repeal Act 2001* of the Commonwealth (*the Commonwealth Act*) had commenced on 1 January 2002.

The Commonwealth Act and the *Coal Industry Act 2001* (*the NSW Act*) were intended (among other things) to dissolve the Joint Coal Board. (See section 4 (1) of the Commonwealth Act and section 5 (1) and the definition of *dissolution date* in section 3 of the NSW Act.) Both a State Act and a Commonwealth Act are necessary to effect that dissolution because the Joint Coal Board was constituted in pursuance of the NSW *Coal Industry Act 1946* (as it was called on enactment) and the *Coal Industry Act 1946* of the Commonwealth.

It was agreed that both the Commonwealth Act and the New South Wales Act would commence on 1 January 2002.

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A purported Proclamation of the Commonwealth, signed by the Governor-General on 20 December 2001, fixed 1 January 2002 as the commencement date of the Commonwealth Act. However, the Commonwealth failed to publish the purported Proclamation in the Commonwealth Gazette on or before 1 January 2002. New South Wales duly proclaimed the NSW Act to commence on 1 January 2002 and all parties have acted as if the Commonwealth Act commenced on 1 January 2002 as intended and, therefore, as if the Joint Coal Board was dissolved on that date (and its staff, assets, rights and liabilities transferred under the NSW Act).

The Commonwealth has now passed legislation to validate both the purported Commonwealth Proclamation and (to the extent that the legislative power of the Commonwealth permits) “past acts” done on the assumption that the Commonwealth Act had commenced on 1 January 2002 (the *Coal Industry Repeal (Validation of Proclamation) Act 2002*). That Act also contemplates the validation of past acts by a law of New South Wales, and provides that it is the intention of the Commonwealth Parliament that its validation of past acts is not to apply to the exclusion of a law of New South Wales to the extent that the New South Wales law is capable of operating concurrently with the Commonwealth validation.

## 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 assent.

**Clause 3** is a formal provision giving effect to the amendment to the NSW Act set out in Schedule 1.

**Schedule 1** inserts clause 1A (Validation relating to commencement of Act) in Schedule 8 (Savings, transitional and other provisions) to the NSW Act.

Proposed clause 1A (1) provides that *past acts* (defined in proposed clause 1A (4) as acts or things that were done on the assumption that the *Coal Industry Repeal Act 2001* of the Commonwealth had commenced on 1 January 2002) are as valid, and are taken always to have been as valid, as they would have been if that Act had commenced on 1 January 2002.

Proposed clause 1A (2) recites the fact that proposed clause 1A (1) is enacted in accordance with the express intention of the Parliament of the Commonwealth.

Proposed clause 1A (3) provides that proposed clause 1A (1) has effect to the extent to which it is not in excess of the legislative power of the Parliament of New South Wales.