

[Act 2001 No 107]



New South Wales

Coal Industry Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide for the dissolution of the Joint Coal Board and the Mines Rescue Board, and
 - (b) to provide for the exercise of the functions of those dissolved Boards by companies registered under the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*) and approved by the Minister, and
 - (c) to establish a Mines Rescue Brigade (as a continuation of the Brigade established under the *Mines Rescue Act 1994*) and to provide for its personnel and funding, and
 - (d) to repeal the *Mines Rescue Act 1994*, to amend the *Coal Industry Act 1946* and to make consequential amendments to other Acts.
-

Outline of provisions

Part 1 Preliminary

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 a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 makes it clear that notes included in the Act do not form part of the Act.

Part 2 Dissolution of Joint Coal Board and Mines Rescue Board

Clause 5 dissolves the Joint Coal Board (in so far as it is constituted pursuant to the *Coal Industry Act 1946*) on the date on which the provision of the *Coal Industry Repeal Act 2001* of the Commonwealth that is equivalent to clause 5 commences. The clause also gives effect to Schedule 1 to the proposed Act (which provides for the transfer of the staff of the Joint Coal Board).

Clause 6 transfers the assets, rights and liabilities of the Joint Coal Board to the Ministerial Holding Corporation established under the *State Owned Corporations Act 1989*. However, any asset that is a Commonwealth record within the meaning of the *Archives Act 1983* of the Commonwealth is excluded from the transfer unless the National Archives of Australia has given permission for the transfer. The clause also gives effect to Schedule 2 to the proposed Act (which provides for the transfer of the assets, rights and liabilities of the Joint Coal Board).

Clause 7 permits the Minister, by an order published in the Gazette, to transfer any such assets specified in the order as were transferred to the Ministerial Holding Corporation to a company that the Minister has approved under proposed section 9.

Clause 8 dissolves the Mines Rescue Board and gives effect to proposed Schedules 3 and 4 (which transfer the assets, rights, liabilities and staff of the dissolved Board to the company approved under proposed section 9 to exercise the functions previously exercised by the Board).

Part 3 Approved companies

Division 1 Approval of companies

Clause 9 permits the Minister to approve (either conditionally or unconditionally) of one or more companies registered under the *Corporations Act 2001* of the Commonwealth for the purpose of exercising one or more of the functions set out in the proposed Act. A company will not be approved unless it is wholly owned in equal shares by the Construction Forestry Mining and Energy Union (or by a company wholly owned by that Union) and the Minerals Council (or a wholly-owned subsidiary of the Minerals Council), or is a wholly-owned subsidiary of another approved company, and its constitution contains the provisions set out in Schedule 5 to the proposed Act. No company will be approved unless at least one company has as one of its objects the object of establishing or administering (or establishing and administering), or providing administrative services in respect of, superannuation schemes for the benefit of mine workers, former mine workers and their dependants.

The Minister is not to approve 2 or more companies to exercise, at the same time, functions relating to workers compensation insurance schemes in respect of workers engaged in the coal industry, or the function of providing mines rescue services. The companies approved to exercise those functions will be known, respectively, as the *workers compensation company* and the *mines rescue company*.

The proposed section also requires the Minister to act in accordance with such provisions of the constitution of an approved company as are set out in Schedule 5.

Division 2 Functions of approved companies

Clause 10 sets out the general functions that a company may be approved to exercise. These include providing occupational health and rehabilitation services for workers engaged in the coal industry, referring matters relating to the safety of such workers to the Chief Inspector of coal mines, monitoring dust in coal mines, providing mines rescue services, establishing or administering (or establishing and administering), or providing administrative services in respect of, superannuation schemes and establishing or administering (or establishing and administering), or providing, workers compensation insurance schemes. An approved company must exercise such of those functions as are specified in its notice of approval.

Clause 11 sets out certain ancillary functions of an approved company. These include the power to require the keeping and furnishing of statistics, returns and other information relating to matters concerning or arising out of the company's other functions under the proposed Act.

Clause 12 confers on an approved company that is approved to exercise functions under the proposed section the power to require, by written notice, the owner or manager of a coal mine to do or refrain from doing such things specified in the notice as are necessary to protect the health of workers at the mine. Refusal or failure to comply with such a requirement is a criminal offence. However, a mine owner or manager of whom such a requirement is made may apply to the Administrative Decisions Tribunal for a review of the decision of the approved company that imposed the requirement.

Clause 13 confers on an approved company the power to make (and vary and revoke) orders, with the approval of the Minister, for or with respect to the approved company's functions. The orders may include (but are not limited to) requirements relating to returns and other matters specified in proposed section 11 (b). A person who is required to comply with such an order may apply to the Administrative Decisions Tribunal for a review of the decision of the approved company that gave rise to the order.

Division 3 Principal functions of mines rescue company

Clause 14 sets out the principal functions of the company that is approved to exercise mines rescue functions. These include making available rescue services and facilities to deal with emergencies in underground coal mines in New South Wales, ensuring that adequate rescue equipment is available to deal with such emergencies and training members of the Mines Rescue Brigade established by proposed Part 4 of the proposed Act.

Clause 15 sets out the ancillary function of the mines rescue company—that is, the function of acquiring or building (and maintaining or disposing of) mine rescue stations.

Clause 16 confers on the mines rescue company the discretionary function of providing rescue services and training courses in connection with mines (other than underground coal mines in the State).

Clause 17 confers additional, non-rescue, discretionary functions on the mines rescue company. These functions include providing technical and advisory services to owners of mines and others.

Clause 18 provides that the mines rescue company may exercise its discretionary functions anywhere.

Clause 19 requires the mines rescue company to determine, annually, the amount that an owner of a coal mine must pay, in respect of the coal mine, to the mines rescue company toward the cost of meeting the expenses incurred by the company in exercising its principal mines rescue functions. Different determinations may be made in respect to different coal mines, having regard to such of the matters specified in the proposed section as are applicable to the coal mine concerned. The regulations may replace a determination made under the proposed section by prescribing an amount, in respect of a particular coal mine, different from that determined by the mines rescue company.

Clause 20 requires the mines rescue company to serve on the owner of a coal mine notice of the amount of contribution payable by the owner under proposed section 19.

Clause 21 allows the mines rescue company to recover any money due to it as a debt in a court of competent jurisdiction. It also allows the mines rescue company to waive or refund any money due or paid to it.

Division 4 General financial matters

Clause 22 prohibits the mines rescue company from charging fees for services provided by it in the exercise of the functions specified in proposed section 14. (That section sets out the principal functions of the mines rescue company, the costs of which are to be defrayed by the contributions payable, under proposed section 19, by owners of coal mines.)

Clause 23 provides that the property, income and operations of an approved company are liable to taxation under a law of New South Wales only in so far as they relate to the approved company's exercise of functions concerning superannuation schemes. However, this exemption does not apply in respect of any activities that the company engages in outside the coal industry (except for the mines rescue company's activities in relation to mines other than coal mines).

Clause 24 specifies the uses to which premiums and other money received in relation to any workers compensation insurance scheme established, administered or provided by the workers compensation company must be put. It also allows the workers compensation company to require each employer in the coal industry in the State to pay to the company an additional contribution (of an amount determined by the company) in respect of a particular financial year if the company is satisfied that there is an overall deficit in its funds.

Division 5 Appointment and powers of inspectors

Clause 25 permits an approved company to appoint any of its employees or officers as inspectors for the purpose of undertaking inspections to assist the approved company in the exercise of its functions. An approved company must furnish the Minister with a list of its inspectors, and must notify the Minister of any changes to it.

Clause 26 confers powers of entry and search on an inspector.

Clause 27 confers a power to require information on an inspector.

Clause 28 allows an inspector to retain for some time any book, record or document removed from premises by the inspector in the course of an inspection.

Clause 29 provides for the exoneration from personal liability of an inspector acting under the direction of an approved company in respect of anything done or omitted to be done by the inspector if the thing was done or omitted to be done in good faith for the purpose of executing the proposed Act.

Division 6 Certain obligations of owners and managers of coal mines and employers in the coal industry in relation to approved companies

Clause 30 requires an owner of a coal mine to pay interest on the contribution that the owner is required to pay under proposed section 19 if the contribution is not paid by the date specified in the notice served on the owner under proposed section 20. It imposes the same requirement on an employer in the coal industry in the State who fails to pay any contribution required by proposed section 24 by the due date.

Clause 31 empowers the workers compensation company to require any employer in the coal industry in New South Wales to effect workers compensation insurance in respect of the employer's employees in the industry with or through that company. Refusal or failure to comply with such a requirement is a criminal offence and attracts a penalty for each day that the refusal or failure continues.

The clause also, for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*, specifically authorises action under the proposed section.

Clause 32 requires owners and managers of coal mines (and their agents and employees) to co-operate with inspectors. Failure to do so is a criminal offence.

Part 4 New South Wales Mines Rescue Brigade

Division 1 Establishment, functions and composition of Brigade

Clause 33 establishes the New South Wales Mines Rescue Brigade (the *Brigade*).

Clause 34 sets out the function of the Brigade, which is to provide (under the control and direction of the mines rescue company) a mine rescue service for responding to, and dealing with, emergencies arising at underground coal mines in New South Wales and at other mines.

Clause 35 provides that the Brigade comprises all the persons for the time being appointed as members of the Brigade by the mines rescue company.

Division 2 Determination of requirements for Brigade

Clause 36 requires the mines rescue company to determine, for each underground coal mine in New South Wales:

- (a) the number of employees of the mine, and
- (b) the number and kind of items of rescue equipment, and
- (c) the size and kind of facilities,

that the owner of the mine must make available to the mines rescue company to enable it to exercise its functions at the mine. The mines rescue company may vary any such determination.

Clause 37 requires the mines rescue company to serve notice of a determination (or a variation of a determination) made under proposed section 36 on the owner of the coal mine concerned, and requires the owner to comply with the determination. In particular, the owner must provide the mines rescue company with a list of the names, addresses and other required particulars of the employees to be made available to the mines rescue company.

Clause 38 provides that the owner's obligations under proposed section 37 are modified to the extent that a person named in the list provided under that section is not willing to be appointed a member of the Brigade, or the mines rescue company has refused to appoint a person named in the list (or has terminated the appointment of a person previously appointed from such a list).

Clause 39 confers on an owner of an underground coal mine the right to apply to the Administrative Decisions Tribunal for a review of the decision of the mines rescue company giving rise to a determination (or a variation of a determination) made under proposed section 36.

Division 3 Appointment and termination of appointment of members of Brigade

Clause 40 requires the mines rescue company to appoint or to refuse to appoint as members of the Brigade the persons named in the list provided to it under proposed section 37. It may also appoint any other person as a member of the Brigade. However, a person must not be appointed without the person's consent.

Clause 41 allows the mines rescue company to terminate the appointment of a member of the Brigade at any time. If the mines rescue company does so (or refuses to appoint a person named in the list provided to it under proposed section 37), it must notify the owner of the coal mine in writing of its decision and the reason for the decision. The owner must provide the mines rescue company (within 14 days after being so notified) with another list specifying the name, address and other required particulars of another employee to replace the person whose appointment was refused or terminated.

Clause 42 provides for the arbitration under the *Commercial Arbitration Act 1984* of any dispute between the mines rescue company and an owner of an underground coal mine arising from the mines rescue company's refusal to appoint (or termination of appointment of) a member of the Brigade.

Division 4 Miscellaneous

Clause 43 provides that the mines rescue company is responsible for the relevant training of the members of the Brigade.

Clause 44 obliges the owner of a coal mine who employs members of the Brigade to allow the employee members to attend training and emergencies. Failure to do so is a criminal offence.

Clause 45 requires notice of a *reportable event* (as defined in the proposed section) that occurs at a mines rescue station to be given to the mines rescue company and to the Chief Inspector of coal mines. Records of all such events must be kept.

Clause 46 provides that a member of the Brigade who has successfully completed training and is competent to take part in mines rescue work is entitled to receive a certificate to that effect from the mines rescue company. The proposed section also allows the mines rescue company to issue medallions to members of the Brigade on satisfactory completion of such periods of service as the mines rescue company determines.

Part 5 Miscellaneous

Clause 47 makes it clear that the proposed Act does not affect the operation of the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and that an approved company, in the exercise of its functions, is subject to those Acts.

Clause 48 provides that any legal challenge to an order or to a requirement made by or under the proposed Act, or a discretion exercised under the proposed Act, does not operate to suspend any obligation to comply with the order or requirement, or to prevent legal proceedings being instituted (or continued) in respect of the failure to comply. However, the proposed section is subject to any express provision to the contrary in provisions establishing rights of appeal.

Clause 49 provides that only the Minister and the Director of Public Prosecutions are authorised to institute prosecutions under the proposed Act. If an inspector is of the opinion that an offence against the proposed Act or the regulations has been committed, the inspector may compile a report on the alleged offence and forward it to the Director of Public Prosecutions, who must consider the report and decide whether to institute proceedings in respect of the alleged offence.

Clause 50 provides that proceedings for an offence against the proposed Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or summarily before the Supreme Court in its summary jurisdiction.

Clause 51 makes it clear (to remove any doubt) that:

- (a) an approved company is not an agent of the Crown and cannot render the Crown liable for any of the company's debts, liabilities or obligations, and
- (b) neither the *Independent Commission Against Corruption Act 1988* nor the *Ombudsman Act 1974*, nor any other Act prescribed by the regulations for the purposes of proposed section 51 (b), applies to or in respect of an approved company.

Clause 52 makes it clear that the proposed Act does not bind the Crown except in relation to any mine of which the Crown, or an agent or instrumentality of the Crown, is the owner.

Clause 53 sets out the general regulation-making power under the proposed Act. The regulations may create an offence and may impose a penalty not exceeding 30 penalty units. The proposed section makes particular reference to (among other things) the power to make regulations regulating inspectors in the exercise of their functions and regulating or prohibiting acts or omissions specified in the regulation in relation to one or more approved companies so specified. A draft of a proposed regulation must be furnished, at least 21 days before it is presented to the Governor, to the Board of Directors of each approved company that will be affected by the proposed regulation.

Clause 54 repeals the *Mines Rescue Act 1994*.

Clause 55 gives effect to the Schedule of amendments to the *Coal Industry Act 1946*.

Clause 56 gives effect to the Schedule of consequential amendments to other Acts.

Clause 57 gives effect to the Schedule of savings, transitional and other provisions.

Clause 58 provides for Ministerial review of the proposed Act.

Schedules

Schedule 1 provides for the transfer of the staff of the Joint Coal Board to one or more approved companies.

Schedule 2 contains provisions relating to the transfer of the assets, rights and liabilities of the Joint Coal Board.

Schedule 3 contains provisions relating to the transfer of the assets, rights and liabilities of the Mines Rescue Board.

Schedule 4 provides for the transfer of the staff of the Mines Rescue Board to the mines rescue company.

Schedule 5 sets out the provisions that are required to be included in the constitution of an approved company.

Schedule 6 amends the *Coal Industry Act 1946*. The proposed amendments repeal most of that Act, leaving in force only Part 7A (Industrial matters), the regulation-making powers, certain savings and transitional provisions and certain formal provisions (such as the provision specifying the short title of the Act).

Schedule 7 makes consequential amendments to other Acts, including the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

In particular, the Schedule amends those Acts so as to deem the workers compensation company a licensed insurer that is a specialised insurer under, and for the purposes of, those Acts. (The Joint Coal Board is currently such an insurer.) The amendments also make it clear that:

- (a) certain provisions of those Acts do not apply to the workers compensation company, and
- (b) that company is taken to be the insurer of all employers in the coal industry (whether or not the employer maintains a policy of insurance with the company), and
- (c) an employee or a deemed employee of such an employer is not eligible to make a claim under the Uninsured Liability and Indemnity Schemes constituted by those Acts.

Schedule 8 enacts savings, transitional and other provisions.