

[Act 1995 No 19]



New South Wales

Coal Industry Amendment Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to reform arrangements relating to industrial matters in the coal mining industry in New South Wales.

At present, industrial matters are dealt with by the Coal Industry Tribunal and Local Coal Authorities, under powers conferred by legislation of the Commonwealth and the State. That legislation (contained in the Coal Industry Acts) jointly creates and confers functions and powers on the Coal Industry Tribunal and Local Coal Authorities. The adoption of this joint scheme overcame constitutional problems based on the limitation of Commonwealth legislative power, which is restricted to conciliation and arbitration for the prevention and settlement of disputes *extending beyond the limits of any one State*: Commonwealth Constitution, section 51 (xxxv).

Under new arrangements, the Coal Industry Tribunal and the Local Coal Authorities will be abolished. It is proposed that industrial functions and powers will instead be exercised by the Australian Industrial Relations Commission. This will be achieved by the joint operation of this Bill and the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth.

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Schedule 1 Amendments

Schedule 1 (1) inserts definitions that are used in provisions to be inserted in the Principal Act.

Schedule 1 (2) omits definitions that will no longer be used in the Principal Act.

Schedule 1 (3) omits Part 7 of the Principal Act. That Part deals with industrial matters in the coal mining industry. It sets up and confers functions and powers on the Coal Industry Tribunal and Local Coal Authorities.

Schedule 1 (4) inserts a new Part 7A into the Principal Act. That Part will deal with industrial matters in the coal mining industry, but in a different way from that provided by Part 7, which will be repealed by the proposed Act. The new Part contains the following provisions:

- **Proposed section 54B.** This section applies the *Industrial Relations Act 1988* of the Commonwealth (together with relevant rules of court and regulations), as in force for the time being, as a law of the State for the purpose of enabling the Australian Industrial Relations Commission to exercise functions in the coal mining industry for purely intrastate purposes. This provision is contemplated by item 8 of Schedule 1 to the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth. The section also provides for the modification of the 1988 Act by regulation: modification of the 1988 Act is contemplated by the 1994 Commonwealth Act. The section also provides for the applied provisions of Commonwealth legislation to be interpreted in accordance with Commonwealth rather than State interpretation legislation.
- **Proposed section 54C.** This section provides that State tribunals can deal with matters in the coal mining industry, but federal awards prevail over State awards or orders.

- **Proposed section 54D** ensures that the Industrial Relations Court of Australia can exercise its jurisdiction in relation to new and existing awards under the applied provisions.

Schedule 1 (5) and (8) relocate the provisions of clause 10 of Schedule 1 to the Principal Act, dealing with the power to make regulations of a savings or transitional nature, and extend it to cover matters arising from the passing of the proposed Act.

Schedule 1 (6) renumbers a clause of Schedule 1 to the Principal Act, to make way for the relocated clause 10, as mentioned above.

Schedule 1 (7) omits clause 2 of Schedule 1 to the Principal Act. That clause continued Local Coal Authorities in existence following amendments made in 1992. The clause is spent, and superfluous in light of the proposed abolition of such authorities.

Schedule 1 (8)—see Schedule 1 (5) above.

Schedule 1 (9) inserts savings and transitional provisions consequent on the passing of the proposed Act. These include the following:

- **Proposed clause 11.** This clause treats existing awards and orders of the Coal Industry Tribunal (and certain other decisions and agreements) made under State legislative power as awards of the Australian Industrial Relations Commission. This provision is contemplated by item 15 of Schedule 1 to the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth.
- **Proposed clause 12.** This clause treats matters pending before the Coal Industry Tribunal or a Local Coal Authority under State legislative power as matters pending before the Australian Industrial Relations Commission. This provision is contemplated by item 17 of Schedule 1 to the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth.