

# Coal Industry Act 1946 No 44

[1946-44]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Coal Industry Act 2001 No 107](#) (not commenced)
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)

### Authorisation

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# Coal Industry Act 1946 No 44



New South Wales

An Act to make provision in relation to the coal industry in New South Wales and elsewhere; and for related purposes.

WHEREAS it has been agreed between the Governments of the Commonwealth and the State of New South Wales that they will jointly establish authorities vested with power to take action with respect to industrial relations, mineworkers' health and welfare and certain other matters in the coal industry:

AND WHEREAS it has been further agreed that the two Governments are to take all practicable steps to secure the passage by the Parliament of the Commonwealth and the Parliament of the State of New South Wales of legislation within the constitutional powers of the respective Parliaments providing for these and other related matters:

AND WHEREAS each of the two Governments has undertaken not to take action, without the prior concurrence of the other, to repeal or amend any of the legislation covered by the agreement:

BE it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

## Part 1 Preliminary

### 1 Name of Act and construction

- (1) This Act may be cited as the *Coal Industry Act 1946*.
- (2) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

### 2 (Repealed)

### 3 Commencement

The several Parts and sections of this Act shall come into operation on such dates as are respectively fixed by the Governor by proclamation published in the Gazette.

### 4 Interpretation

(1) In this Act, unless the contrary intention appears:

**approved bank** means a bank as defined in section 5 (1) of the [Banking Act 1959](#) of the Commonwealth or another Bank declared by the Treasurer of the Commonwealth, or by a person authorised by the Treasurer of the Commonwealth to give approvals for the purposes of this definition, to be an approved bank in relation to the Board.

**Australian Commission** means the Australian Industrial Relations Commission.

**coal mining industry** includes the shale mining industry.

**Commonwealth Industrial Relations Act** means the [Industrial Relations Act 1988](#) of the Commonwealth, and includes any rules of court or regulations in force under that Act.

**full-time member** means a full-time member of the Board, including the Chairperson if appointed as a full-time member.

**member** means any member of the Board, including the Chairperson.

**part-time member** means a part-time member of the Board, including the Chairperson if appointed as a part-time member.

**prescribed** means prescribed by this Act or by regulations made thereunder.

**the Board** means the Joint Coal Board constituted in pursuance of this Act.

**the Commonwealth Act** means the [Coal Industry Act 1946](#) of the Parliament of the Commonwealth and includes that Act as amended from time to time.

**the Commonwealth Minister** means the Minister of the Commonwealth administering the Commonwealth Act.

**the State Minister** means the Minister administering this Act.

(2) (Repealed)

## Part 2 Administration

### 5 Joint Coal Board

(1) The Governor may enter into an arrangement with the Governor-General of the Commonwealth for the constitution, subject to this Act, of an authority which shall be

known as the Joint Coal Board.

- (2) The Board so constituted is a body corporate.
- (3) Nothing in this Act prevents the appointment of the members of the Board by the State Minister and the Commonwealth Minister in accordance with the arrangement.
- (4)-(8) (Repealed)

## **6 Body corporate**

The Board:

- (a) has perpetual succession, and
- (b) is to have a seal, and
- (c) may take proceedings and be proceeded against in its corporate name, and
- (d) may, for the purpose of enabling it to exercise its powers and functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and
- (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its powers and functions.

## **7 Members of the Board**

- (1) The Board constituted under the arrangement referred to in section 5 is to consist of 3 members.
- (2) One member is to be appointed as Chairperson of the Board.
- (3) Of the members other than the Chairperson:
  - (a) one is to be a representative of coal industry employers, and
  - (b) one is to be a representative of coal industry employees.
- (4) The members of the Board, including the Chairperson, may be either full-time or part-time members.
- (5) The appointment of a person as a member is not invalid merely because of a defect or irregularity in relation to the appointment.

## **8 Terms of office of members**

Subject to this Act, a member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but may be re-appointed in accordance with this Act.

## **9 Appointment of persons to act for any member of the Board**

- (1) The State Minister and the Commonwealth Minister may appoint a person to act for any member of the Board who is absent from duty because of illness or otherwise, and the person, while so acting, has all the powers and functions of the member and is taken to be the member.
- (2) If the absent member is a representative of coal industry employers or coal industry employees, the person appointed to act as the member is to be such a representative.
- (3) The State Minister and the Commonwealth Minister may, from time to time, appoint a member to act for the Chairperson if the Chairperson is absent from duty because of illness or otherwise, and the member, while so acting, has all the functions of the Chairperson and is taken to be the Chairperson.
- (4) The State Minister, with the agreement of the Commonwealth Minister, may remove any person from any office to which the person was appointed under this section.
- (5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the State Minister and the Commonwealth Minister may from time to time determine in respect of the person.
- (6) For the purposes of this section, a vacancy in the office of a member or the Chairperson is taken to be an absence from office of the member or Chairperson.
- (7) The appointment of a person to act for a member is not invalid merely because of a defect or irregularity in relation to the appointment.

## **10 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the State Minister or the Commonwealth Minister, or
  - (d) in the case of a full-time member—is absent from duty, except on leave of absence granted by the State Minister or the Commonwealth Minister, for 7 consecutive days or for 14 days in any period of 12 months, or
  - (e) in the case of a part-time member—is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the State Minister or the Commonwealth Minister or unless, before the expiration of 4 weeks after the last



of those meetings, the member is excused by the State Minister or the Commonwealth Minister for having been absent from those meetings, or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit, or

(g) becomes permanently incapable of performing the member's duties.

(2) The State Minister, with the agreement of the Commonwealth Minister, may remove a member from office for misbehaviour, incompetence or incapacity.

### **11 Vacancy does not invalidate Board's actions**

The Board can exercise its powers even if there is one (but not more than one) vacancy in its membership.

### **12 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **13 Remuneration**

A member is entitled to be paid such remuneration (including such travelling and subsistence allowances) as the State Minister and the Commonwealth Minister may from time to time determine in respect of the member.

### **14 Disclosure of pecuniary interests**

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must disclose the nature of the interest to the Board as soon as possible after the relevant facts have come to the member's knowledge.

(2) A disclosure by a member to the Board that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

- (3) Particulars of any disclosure made under this section must be recorded by the Board in a book kept for the purpose at the office of the Board and that book must be open at all reasonable hours to inspection by any person on payment of the prescribed fee (if any).
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the State Minister and the Commonwealth Minister, or the Board, otherwise determine or determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this section does not invalidate any decision of the Board.

## **15 Seal**

- (1) The Chairperson is required to keep the Board's seal in safe custody.
- (2) The seal of the Board must be affixed to a document only:
  - (a) in the presence of at least 2 members of the Board, and
  - (b) with an attestation by the signatures of those members of the fact of the affixing of the seal.
- (3) Every document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if it is signed by the Chairperson or by any member of staff of the Board authorised to do so by the Chairperson.
- (4) Judicial notice is to be taken of the seal of the Board.
- (5) In any legal proceedings, the seal of the Board, when affixed to a document, is, until the contrary is proved, to be presumed to have been duly affixed to the document.

## **16 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **17 Quorum**

The quorum for a meeting of the Board is 2 members of the Board one of whom is to be the Chairperson.

## **18 Presiding member**

- (1) The Chairperson is to preside at a meeting of the Board.
- (2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **19 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **20 Transaction of business outside meetings or by telephone etc**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subsection (1), or
  - (b) a meeting held in accordance with subsection (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subsection (1) is to be recorded by the Board.
- (5) Papers may be circulated among members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

## **21 Delegation of Board's powers and functions**

- (1) The Board may, by writing under its seal, delegate its powers and functions, other than this power of delegation, to any member or employee of the Board or to any committee of persons (whether of members only or members and other persons).
- (2) A delegation:
  - (a) may be general or limited, and
  - (b) may be revoked, wholly or partly, by the Board.
- (3) A delegated power or function may be exercised only in accordance with any conditions to which the delegation is subject.
- (4) A delegated power or function that is duly exercised by a delegate is taken to have been exercised by the Board.
- (5) If the exercise of a power or function by the Board is dependent on the opinion, belief or state of mind of the Board in relation to any matter, the power or function may be exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to any such matter.
- (6) When a power or function is delegated to a particular member, the power or function may be exercised by the person for the time being acting for that member in accordance with section 9.
- (7) A power or function that has been delegated may, despite the delegation, be exercised by the Board.

## **22 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

## **Part 3 Powers and functions of Joint Coal Board**

### **23 Vesting of powers in Board**

- (1) In pursuance of an agreement between the Government of the State and the Government of the Commonwealth, it is declared that the Board is to have all the powers and functions specified in this Act in relation to the Board.
- (2) Subject to the Commonwealth Constitution, those powers and functions are by this subsection, and not otherwise, vested in the Board to the extent to which they are not in excess of the legislative power of the State.

### **24 General powers and functions of the Board**

The Board has the following powers and functions:

- (a) to provide occupational health and rehabilitation services for workers engaged in the coal industry, including providing preventive medical services, monitoring workers' health and investigating related health matters,
- (b) to collect, collate and disseminate accident and other statistics related to the health and welfare of workers engaged in the coal industry,
- (c) to refer matters relating to the safety of workers engaged in the coal industry, as it thinks fit, to the Chief Inspector of Coal Mines or the State Minister and the Commonwealth Minister for consideration,
- (d) to provide courses in the production and utilisation of coal under international development assistance programs sponsored or administered by the Commonwealth Government or approved by the State Minister and the Commonwealth Minister,
- (e) to report to the State Minister and the Commonwealth Minister as it thinks fit, or when requested by either Minister, on matters related to the health or welfare of workers engaged in the coal industry, or on any other matter concerning or arising out of the Board's powers or functions,
- (f) to publish reports and information of public interest concerning or arising out of the Board's powers or functions,
- (g) to promote the welfare of workers and former workers in the coal industry in the State, their dependents and communities in coal mining areas.

### **25 Additional powers related to health**

- (1) The Board may, if it is of the opinion that the health of workers at a coal mine is endangered, or is likely to be endangered, by any conditions at the mine or methods in operation at the mine, require the owner or manager of the mine, by written notice, to do or refrain from doing such things, specified by the Board, as are necessary to protect the health of the workers.

- (2) A person subject to a requirement of the Board under this section may appeal against the requirement to the Supreme Court in accordance with rules of that Court.
- (3) On an appeal, the Supreme Court may make an order confirming, revoking or amending the Board's requirement.
- (4) An appeal which is made to the Supreme Court after an application for review in respect of the same matter is made to the Administrative Appeals Tribunal under the Commonwealth Act and before that application is finally determined is stayed until that final determination.

## **26 Other powers and functions of the Board**

Until such time as the State Minister and the Commonwealth Minister direct, the Board has the following powers and functions:

- (a) to monitor, promote and specify adequate training standards relating to health and safety for workers engaged in the coal industry,
- (b) to monitor dust in coal mines,
- (c) to collect, collate and disseminate statistics related to the coal industry, other than statistics related to the health and welfare of workers.

## **27 Workers' compensation functions**

The Board has power to establish workers' compensation insurance schemes and to require any employer in the coal industry in the State to effect with or through the Board all workers' compensation insurance in respect of the employer's employees in that industry.

## **28 Additional powers of Board**

For the purpose of exercising its powers or functions, the Board may:

- (a) undertake or arrange for research, inquiries, investigations, surveys, tests and inspections, and
- (b) require the keeping and furnishing of statistics, returns and other information relating to matters concerning or arising out of the Board's powers and functions.

## **29 Orders by Board**

- (1) The Board may, with the approval of the State Minister and the Commonwealth Minister, make orders, not inconsistent with this Act or the regulations, for or with respect to the Board's powers and functions under sections 24 and 26-28.
- (2) The Board may, with the approval of the State Minister and the Commonwealth Minister, by order amend or revoke any order made by the Board.

### **30 Publication of orders**

- (1) An order made by the Board must be published in the Gazette and the Commonwealth Gazette.
- (2) An order takes effect on the day it is so published, or if a later day is specified in the order for that purpose, on the later day so specified.
- (3) Subsection (2) does not prevent an order from specifying different days for the commencement of different portions of the order.

### **31 Ministerial direction and control**

- (1) The Board is, in the exercise of its powers and functions and the performance of its duties, subject to the joint control and direction of the State Minister and the Commonwealth Minister.
- (2) The State Minister or the Commonwealth Minister may, with the agreement of the other Minister, issue written directions to the Board on matters of policy, or as to the exercise of the Board's powers or functions or the performance of its duties, and it is the duty of the Board to carry out any direction so given.
- (3) If the exercise of any power or function by the Board is dependent on the opinion or belief of the Board in relation to any matter and a direction is issued under this section in relation to that matter, the Board has the power to exercise the power or function or perform the duty in accordance with that direction.

### **32 Staff of Board**

- (1) The Board may employ such staff as is necessary to exercise its powers and functions under this Act.
- (2) The Board may determine the remuneration and conditions of employment of its staff.
- (3) Part 2 of the [Public Sector Management Act 1988](#) does not apply to or in respect of any such staff.

### **33 Arrangements with other agencies, consultants etc**

- (1) The Board may enter into arrangements with other persons or bodies (including government bodies) with relevant expertise for the provision of assistance to the Board in connection with the exercise of the powers and functions of the Board.
- (2) The Board may engage consultants to assist it in the exercise of its powers or functions.

### **34 Annual operating plan**

- (1) The Board must, on or before 31 May in each year, submit an annual operating plan

for the year commencing on 1 July of that year to the State Minister and the Commonwealth Minister.

- (2) The annual operating plan must contain a plan relating to the proposed strategy of the Board in exercising its powers and functions in the period to which the plan relates and such other matters as may be prescribed.
- (3) The Board must amend an annual operating plan if required to do so by the State Minister and the Commonwealth Minister.
- (4) The Board may amend the annual operating plan and must give the State Minister and the Commonwealth Minister a copy of any such amendment.

### **35 Policy reports**

The Board must, as and when required by the State Minister or the Commonwealth Minister, furnish reports to the Minister concerned, and the other Minister, as to the policy it is pursuing or proposes to pursue in the discharge of its powers and functions.

## **Parts 4, 5**

**(Repealed)**

## **Part 6 Finance**

### **35A Functions of the Board in relation to finance**

The functions of the Board in relation to finance are:

- (a) to receive money payable to the Board, including money payable to the Board as fees for services provided by the Board, and
- (b) to raise such money, under section 35I, as is necessary to exercise its powers or functions, and
- (c) to make payments under sections 35C-35E, and
- (d) to maximise returns on money held by the Board by investing the money under section 35J.

### **35B Board may charge fees**

The Board may charge fair and proper fees for services provided by it in the exercise of any of its powers or functions.

### **35C Workers' compensation funds**

All premiums and other money received under any workers' compensation insurance scheme established by the Board and any other money received by the Board for the purposes of the scheme must be applied:



- (a) to pay any sum required to be paid by the Board under any workers' compensation insurance scheme established by the Board, and
- (b) to pay any expenses incurred in the administration of any such scheme, and
- (c) to pay for the provision of occupational health and rehabilitation services, and
- (d) for such other purposes related to the coal industry, to the Board's welfare functions, to workers formerly engaged in the coal industry or to the administration of this Act as may be approved by the State Minister and the Commonwealth Minister.

**35D (Repealed)**

**35E Other funds**

- (1) The Board may apply money (other than money referred to in section 35C) received by the Board for such purposes, connected with the Board's powers and functions, as the Board thinks fit.
- (2) Without limiting the operation of subsection (1), the Board may apply any such money for any purpose referred to in section 35C.

**35F Annual report**

- (1) The Board must, as soon as practicable after the end of the financial year of the Board, submit an annual report to the State Minister and the Commonwealth Minister.
- (2) The State Minister must lay the report or cause it to be laid before both Houses of Parliament within 21 sitting days after receiving the report.
- (3) The annual report must contain:
  - (a) a report of the Board's operations during the financial year, and
  - (b) financial statements for that year in such form as the Minister for Finance of the Commonwealth approves, and
  - (c) statements about such other matters as the Minister for Finance of the Commonwealth may require, and
  - (d) statements about such other matters as the State Minister and the Commonwealth Minister may require.
- (3A) Before submitting the annual report to the State Minister and the Commonwealth Minister under subsection (1), the Board must submit the financial statements set out in the report to the Auditor-General of the Commonwealth who must report to the Ministers:
  - (a) whether, in the Auditor-General's opinion, the statements are based on proper

accounts and records, and

- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and the state of affairs of the Board, and
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and the disposal of assets, by the Board during the financial year have been in accordance with this Act, and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Ministers.

(3B) The State Minister must cause a copy of the Auditor-General's report to be laid before each House of the Parliament.

(4) In this section:

- (a) a reference to a sitting day, in relation to a House of Parliament, is a reference to a day on which the House actually sits, and
- (b) a reference to a number of sitting days, in relation to a House of Parliament, is a reference to that number of sitting days, regardless of whether those days occur within the same or within different sessions of Parliament.

### **35G Bank accounts**

- (1) The Board may open and maintain an account or accounts with an approved bank or banks and must maintain at all times at least one such account.
- (2) The Board must pay all money of the Board into an account referred to in subsection (1).

### **35H Financial statements and practices**

- (1) The Board must cause proper accounts and records of its transactions and affairs to be kept in accordance with the accounting principles generally applied in commercial practice.
- (2) The financial statements of the Board are to be in a form approved by the Minister for Finance of the Commonwealth.
- (3) The Board must do all such things necessary to ensure that all payments by it are correctly made and properly authorised and that adequate control is maintained over all assets of, or in the custody of, the Board and over the incurring of liabilities by the Board.

### **35I Borrowing by the Board**

- (1) The Board may borrow money for the exercise of its powers and functions.
- (2) The Board must not allow the total of outstanding debts incurred under subsection (1) to exceed \$2,000,000 without the approval in writing of the State Minister and the Commonwealth Minister.
- (3) An approval may be given in relation to a particular transaction or a class of transactions.
- (4) Money borrowed under an approval must be on terms and conditions specified in, or consistent with, the approval.
- (5) Money may be borrowed wholly or partly in foreign currency.
- (6) The Board must not borrow money except in accordance with this section.
- (7) The Board may give security over the whole or part of its assets for the performance of any obligation incurred under subsection (1).
- (8) In this section:

***borrowing*** includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the Board.

### **35J Investment of money of Board**

Money of the Board not immediately required for the purposes of the Board must be invested:

- (a) in securities of, or guaranteed by the State, the Commonwealth or another State, or
- (b) on deposit with an approved bank, or
- (c) in any other way that is consistent with sound commercial practice.

### **35K (Repealed)**

### **35L Taxation**

The property, income and operations of the Board are not liable to taxation under any law of the State to which the Commonwealth is not subject.

## **Part 7**

### **39-54A (Repealed)**

## **Part 7A Industrial matters**

### **54B Application of Commonwealth Industrial Relations Act to coal mining industry in the State**

- (1) **Application of Commonwealth Industrial Relations Act** The provisions of the Commonwealth Industrial Relations Act, as in force for the time being, and as modified by or under this Act, apply as a law of the State for the purpose of enabling the Australian Commission to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees. Those provisions so apply as if the Commonwealth Industrial Relations Act extends to disputes in the State that do not extend beyond the limits of the State.
- (2) **Functions and powers** The Australian Commission may accordingly perform functions and exercise powers under those provisions with respect to those matters, whether or not there is a dispute extending beyond the limits of the State.
- (3) **Interpretation of Commonwealth Act** The *Acts Interpretation Act 1901* of the Commonwealth, as in force for the time being, applies as a law of the State in relation to provisions applied by subsection (1), and so applies as if those provisions were respectively an Act of the Commonwealth or rules of court or regulations under such an Act, as the case requires.
- (4) **Non-application of State Interpretation Act** The *Interpretation Act 1987* does not apply in relation to the provisions applied by subsection (1).
- (5) **Modification of Commonwealth Act** The regulations may modify the provisions of the Commonwealth Industrial Relations Act for the purposes of this section.

### **54C State awards and orders**

- (1) **Functions and powers of State tribunals** Nothing in this Act affects the functions or powers of any State tribunal in relation to the coal mining industry, except as provided by subsection (2).
- (2) **Federal awards prevail** No award or order of a State tribunal that has application in the coal mining industry (whether it was made before or after the commencement of this section) has effect to the extent that it is inconsistent with a federal award that has application in the coal mining industry.
- (3) **Definitions** In this section:  
***federal award*** means:
  - (a) an award of the Australian Commission to the extent that it is made under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B), or
  - (b) an award referred to in clause 11 of Schedule 1 that is taken to have been made

by the Australian Commission under those provisions.

**State tribunal** includes a State court.

#### **54D Industrial Relations Court of Australia**

The provisions of the Commonwealth Industrial Relations Act that apply under section 54B also apply for the purpose of enabling the Industrial Relations Court of Australia to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, in connection with federal awards as defined in section 54C. Jurisdiction to perform those functions and exercise those powers is conferred on that court accordingly.

## **Part 8 Miscellaneous**

### **Division 1 Inspectors' powers**

#### **55 Inspectors**

The Board may appoint employees of the Board in writing to be inspectors for the purpose of making inspections referred to in section 28 (a).

#### **56 Searches to monitor compliance with Act etc**

- (1) An inspector may enter, at any reasonable time, any premises for the purpose of making an inspection referred to in section 28 (a) and may do any or all of the following:
  - (a) search the premises,
  - (b) take photographs, or make sketches, of the premises or any substance or thing at the premises,
  - (c) inspect any book, record or document kept at the premises,
  - (d) remove, or make copies of, any such book, record or document.
- (2) An inspector may not exercise any powers under this section in relation to premises unless the inspector has:
  - (a) produced the inspector's authority for inspection by the occupier, and
  - (b) informed the occupier of the purpose of the entry.
- (3) An inspector may not, under this section, enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (4) An inspector must use no more force than is reasonably necessary in effecting an entry on to the premises.

- (5) If damage is caused to property by an inspector in exercising a power of entry under this section, reasonable compensation is payable by the Board to the owner of the property unless the damage resulted from, or was connected with, obstruction of the inspector.
- (6) In this section, **premises** includes buildings, land and coal mines.

### **57 Power to require information etc**

- (1) An inspector who has entered premises for the purpose of making an inspection under section 28 (a) may, to the extent that it is reasonably necessary for that purpose to ascertain whether this Act, the regulations or orders or requirements made under this Act have been complied with, require a person to answer any questions put by the inspector and to produce any books, records or documents requested by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces the inspector's written authorisation for inspection by the person.

### **58 Retention of books, records and documents**

If an inspector removes a book, record or document from premises under section 56 (1) or a person produces a book, record or document to an inspector in accordance with a requirement under section 57 (1):

- (a) the inspector may retain possession of the book, record or document for such period as is necessary and reasonable for the purpose of ascertaining whether this Act, the regulations or orders or requirements have been complied with, and
- (b) during that period the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document at all reasonable times.

## **Division 2 General**

### **59 Offences**

- (1) A person must not fail, without reasonable excuse, to comply with an order made or taken to be made under section 29 or a requirement made under section 25 by the Board in accordance with this Act.

Maximum penalty: 100 penalty units (in the case of a corporation) or 30 penalty units (in any other case).

- (2) A person must not, without reasonable excuse, refuse to answer any question referred to in section 57.

Maximum penalty: 100 penalty units (in the case of a corporation) or 30 penalty units

(in any other case).

- (3) A person must not, without reasonable excuse, fail or refuse to produce any books, records or documents referred to in section 57.

Maximum penalty: 100 penalty units (in the case of a corporation) or 30 penalty units (in any other case).

- (4) A person must not knowingly make any false or misleading statement in answer to any inquiry referred to in section 57.

Maximum penalty: 100 penalty units (in the case of a corporation) or 60 penalty units (in any other case).

- (5) A person must not assault, delay, obstruct, hinder or impede an inspector referred to in section 55 in the exercise of any powers conferred on the inspector under this Act.

Maximum penalty: 100 penalty units (in the case of a corporation) or 60 penalty units (in any other case).

## **60 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

## **61 Service of documents etc**

- (1) A document may be served on the Board by leaving it at, or by sending it by post to, the office of the Board, or if it has more than one office, any of its offices.
- (2) A requirement made by the Board under section 25 may be served on any person subject to the requirement personally or by sending it by post to the person's address last known to the Board.

## **62 Personal liability of members etc**

A matter or thing done by the Board, a member of the Board or any person acting under the direction of the Board does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

## **63 Regulations**

- (1) The Governor may, on the recommendation of the State Minister with the agreement of the Commonwealth Minister, make regulations prescribing all matters:
- (a) required or permitted by this Act to be prescribed, or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

## **64 Savings and transitional provisions**

Schedule 1 has effect.

## **Schedule 1 Savings and transitional provisions**

(Section 64)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may make provisions of a savings or transitional nature consequent on the enactment of the following Acts:
- [Coal Industry \(Amendment\) Act 1992](#)
  - [Coal Industry Amendment Act 1995](#)
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of [Coal Industry \(Amendment\) Act 1992](#)**

#### **1A Continuity of existence of Board**

Nothing in the [Coal Industry \(Amendment\) Act 1992](#) affects:

- (a) the continued existence of the Board, or
- (b) the continued membership of the Board of a person who was a member of the Board immediately before the commencement of Schedule 1 (3) to the [Coal Industry \(Amendment\) Act 1992](#).



## **2 (Repealed)**

### **3 Staff of the Board**

A person who, immediately before the commencement of Schedule 1 (3) to the *Coal Industry (Amendment) Act 1992*, was an officer or employee of the Board continues to be employed as a member of the staff of the Board on the same terms and conditions.

### **4 Certain orders to be continued**

- (1) Orders Nos 5, 10, 34, 35, 36 and 40 made under this Act by the Board, and in force immediately before the commencement of this clause, continue in force and may be amended or revoked in the same way as an order made by the Board under section 29.
- (2) Any approval or consent given under Order No 34 or 40, and in force immediately before the commencement of this clause, has effect until amended or revoked by the Board or until the relevant provision of the Order ceases to have effect.
- (3) Despite subclause (1):
  - (a) Order No 34 has no effect if a direction is given that the Board is to cease to have the functions referred to in section 26 (a), and
  - (b) Order No 36 has no effect if a direction is given that the Board is to cease to have the functions referred to in section 26 (c), and
  - (c) Order No 40 has no effect if a direction is given that the Board is to cease to have the functions referred to in section 26 (b).

### **5 Board's funds**

- (1) Section 35C applies to money standing to the credit of the Workers' Compensation Fund immediately before the commencement of Schedule 3 (2) to the *Coal Industry (Amendment) Act 1992*.
- (2) Money standing to the credit of the Welfare Fund immediately before that commencement must be applied, as the Board determines, so as to promote the welfare of workers and former workers in the coal industry in the State, their dependents and communities in coal mining areas.
- (3) Section 35E applies to other money standing to the credit of the Board immediately before that commencement.

### **6 Existing rights of Board employees**

Section 14 (3), as in force immediately before the commencement of Schedule 1 (3) to the *Coal Industry (Amendment) Act 1992*, continues to apply to the Board and to any person to whom that subsection applied immediately before that commencement.

## **7 Repeal of Coal Industry (Finance) Regulations**

The *Coal Industry (Finance) Regulations* are repealed.

## **8 Workers' compensation schemes**

Any workers' compensation scheme established by the Board and in operation under this Act immediately before the commencement of this clause is taken to have been established by the Board under section 27 as in force at that commencement.

## **9 General effect of repeal etc of provisions**

(1) The amendment or repeal of a provision of this Act by the *Coal Industry (Amendment) Act 1992* does not affect:

- (a) the previous operation of the provision or any thing duly suffered, done or commenced under the provision, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the provision, or
- (c) any penalty incurred in respect of any offence arising under the provision, or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability or penalty,

and any such penalty may be imposed and enforced, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the provision had not been amended or repealed.

(2) Without limiting the effect of subclause (1), the amendment or repeal of a provision does not affect the proof of any past thing, any right, privilege, obligation or liability saved by the operation of the provision or any amendment or validation made by the provision.

(3) This clause applies in addition to, and without limiting the effect of, any other provision of this Schedule.

## **10 (Repealed)**

## **Part 3 Provisions consequent on enactment of *Coal Industry Amendment Act 1995***

### **11 Existing awards, orders, decisions and agreements made under this Act**

(1) **Definition of instrument** A reference in this clause to an instrument is a reference to:

- (a) an award or order made by the Coal Industry Tribunal, or
- (b) a decision given by a Local Coal Authority, or

(c) an agreement made at a hearing before the Coal Industry Tribunal or a Local Coal Authority, or

(d) an agreement made under a provision of an award made by the Coal Industry Tribunal,

that had effect immediately before the commencement of this clause.

- (2) **Existing instruments to become awards of Commission** An instrument, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, has effect as, and is taken to be, an award made by the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B).
- (3) **References to Tribunal or Authority in existing instruments** A reference in an instrument referred to in subclause (2) to the Coal Industry Tribunal or to a Local Coal Authority is taken (except in relation to matters that occurred before the commencement of this clause) to be a reference to the Australian Commission.
- (4) **Determinations and other things under existing instruments** A determination made or any other thing done before the commencement of this clause by the Coal Industry Tribunal or a Local Coal Authority under an instrument referred to in subclause (2) has effect on and after that commencement as if it had been made or done by the Australian Commission.
- (5) **Coverage of awards** Without limiting the operation of the other provisions of this clause, an instrument that is taken to be an award made by the Australian Commission under this clause is varied, with effect from the end of the day immediately preceding the commencement of this clause, so that the instrument is to be read as naming as parties or respondents to the instrument all persons or organisations that were within its coverage immediately before that commencement. The award is taken to be binding on those persons or organisations, as if they were parties referred to in section 149 (1) of the Commonwealth Industrial Relations Act (as applied by section 54B), regardless of whether or not they or any of them were or were required to be registered under that Act.
- (6) **Application of clause** This clause applies to an instrument only to the extent to which it was made under powers conferred by State legislation.

## **12 Matters pending before Coal Industry Tribunal or Local Coal Authority**

- (1) **Pending matters before Tribunal or Authority become matters before Australian Commission** A matter pending before the Coal Industry Tribunal or a Local Coal Authority immediately before the commencement of this clause, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, is taken to be a matter before

the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B). The Australian Commission may deal with the matter as if it had been before the Australian Commission since it arose.

- (2) **Extent of operation of subclause (1)** Subclause (1) applies only to the extent to which:
- (a) the matter was notified to the Coal Industry Tribunal or the Local Coal Authority for the purpose of the performance or exercise by the Tribunal or Authority of, or
  - (b) the Tribunal or Authority was performing or exercising,  
functions or powers in relation to the matter conferred by State legislation.
- (3) **Previous evidence, arguments, decisions and other matters** For the purpose of dealing with a matter under subclause (1), the Australian Commission may have regard to:
- (a) any evidence given, or arguments put, in proceedings relating to the matter before the Coal Industry Tribunal or the Local Coal Authority, and
  - (b) any decision, recommendation, determination or report made by the Tribunal or Authority in relation to the matter.