

# Coal Acquisition (Re-acquisition Arrangements) Order 1997

[1997-601]



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.

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New South Wales

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# Coal Acquisition (Re-acquisition Arrangements) Order 1997



New South Wales

## Part 1 Preliminary

### 1 Name of Order

This Order is the *Coal Acquisition (Re-acquisition Arrangements) Order 1997*.

### 2 Commencement

This Order commences on 14 November 1997.

### 3 Definitions

In this Order:

**Acquisition Act** means the *Coal Acquisition Act 1981*.

**Board** means the New South Wales Coal Compensation Board established under the 1985 Arrangements.

**Coal Compensation Board funds** means funds appropriated by Parliament from time to time for the purposes of the payment of compensation under this Order.

**exercise** a function includes perform a duty.

**function** includes power, authority or duty.

**1985 Arrangements** means the *Coal Acquisition (Compensation) Arrangements 1985*.

**Tribunal** means the New South Wales Coal Compensation Review Tribunal established under the 1985 Arrangements.

**Restitution Act** means the *Coal Ownership (Restitution) Act 1990*.

**saleable coal** means coal in a natural state on or below the surface of land that is or has been extracted for sale or disposal or that might reasonably be expected to be extracted for sale or disposal.

#### **4 Notes**

The explanatory note and table of contents do not form part of this Order.

#### **5 The Board and staff**

- (1) The Board has and is to exercise the functions conferred on it under this Order (in addition to those conferred on it under the 1985 Arrangements).
- (2) Such staff as may be necessary to enable the Board to perform its functions under this Order may be employed under the *Public Sector Management Act 1988*.
- (3) The Board may, with the approval of the Minister administering a government department or an administrative office, arrange for the use of the services of any staff or facilities of the department or office.
- (4) It is the duty of the Board's staff and staff whose services are made use of under subclause (3), to render such practical assistance as is reasonable to persons who are or may be affected by the *Coal Acquisition Amendment Act 1997* to assist them with applications for compensation.

### **Part 2 Compensation in respect of restored coal revested in the Crown**

#### **6 Compensation to owner of revested coal**

- (1) Any person, other than the Crown or an instrumentality or agency of the Crown, is eligible to apply for compensation under this Part in respect of saleable coal that:
  - (a) is vested in the Crown under section 5A of the Acquisition Act, and
  - (b) was immediately before it so vested in the Crown vested in the person.
- (2) The compensation payable is to be calculated in accordance with Schedule 1.
- (3) Compensation in respect of coal referred to in this clause is payable in accordance with this Order and not otherwise.
- (4) If coal that is the subject of an application under this clause was the subject of a determination under the 1985 Arrangements:
  - (a) the applicant is, pending the determination of the compensation payable under this clause, entitled to a preliminary payment of compensation under this Order equal to the amount of the compensation determined under the 1985 Arrangements, and
  - (b) the amount of compensation payable under this clause is not to be less than the amount of the compensation determined under the 1985 Arrangements, except to the extent of any reduction under clause 8 (Gains to be offset against compensation) of this Order.

## **7 Compensation for consequential loss when coal revested**

- (1) A person, other than the Crown or an instrumentality or agency of the Crown, who claims to have sustained a consequential loss that is attributable to the operation of section 5A of the Acquisition Act is eligible to apply for compensation under this Part but only if the consequential loss is a pecuniary loss that is directly attributable to the discharge by virtue of the operation of that section of any trust, lease, licence, obligation, estate, interest or contract established, granted, incurred, created or entered into before the commencement of this Order.
- (2) A claim cannot be made under this clause for a loss in respect of which an application could be made under clause 6 and cannot be made for a loss that is attributable to a liability to pay royalties to the Crown.
- (3) If the Board is satisfied that an applicant has sustained a loss to which this clause applies and that having regard to all the circumstances of the case it would be just and equitable for compensation to be paid in respect of the loss, the Board is to determine the amount of compensation to be paid to the person. The compensation to be paid is not to exceed the amount of that loss. The compensation must be just and equitable.
- (3A) If, on considering a claim to which this clause applies:
  - (a) the Board is not satisfied that the applicant has sustained a loss, or
  - (b) the Board is satisfied that the applicant has sustained a loss but, having regard to all the circumstances of the case, considers it would not be just and equitable for compensation to be paid in respect of the claim,the Board is to refuse the claim.
- (4) Compensation in respect of a loss to which this clause applies is payable in accordance with this Order and not otherwise.

## **8 Gains to be offset against compensation**

In the calculation of an amount of compensation payable under this Part, the Board may make such reduction as the Board determines to be equivalent to the money value of any benefit obtained by the applicant from the discharge of any trust, lease, licence, obligation, estate, interest or contract by virtue of section 5A of the Acquisition Act.

## **9 Making an application**

- (1) An application for compensation under this Part must:
  - (a) be in writing in a form approved or provided by the Board, and
  - (b) contain or be accompanied by such information and documents as are indicated

or required by the form of application or as the Board requires, and

- (c) be lodged with the Board within 3 months after the coal concerned was vested in the Crown under section 5A of the Acquisition Act in the case of an application under clause 6, or 30 June 1998 in the case of an application under clause 7.
- (2) Despite subclause (1), the Board may if it thinks fit, accept and determine an application for compensation under clause 6 lodged more than 3 months after the coal concerned was vested in the Crown under section 5A of the Acquisition Act and may accept and determine an application for compensation under clause 7 lodged after 30 June 1998 but not after such later date as the Minister may determine and notify in the Gazette before 30 June 1998.

### **Part 3 Compensation when restitution application refused**

#### **10 Compensation under 1985 Arrangements to be redetermined if restitution application refused on Crown revenue grounds**

- (1) When an eligible claimant under the Restitution Act has the person's application under that Act refused on the ground specified in section 7 (1A) (b) of that Act (namely, that the Minister is of the opinion that the Crown would lose significant revenue were the coal concerned to cease to be vested in the Crown), ***the original compensation claim*** (that is, the claim for compensation under the 1985 Arrangements by reason of which the person was such an eligible claimant) is on application to be redetermined under this Order.
- (2) For the purposes of the redetermination, the compensation payable is to be calculated in accordance with Schedule 1. The amount of compensation as redetermined is not to be less than the amount determined under the 1985 Arrangements in respect of the original compensation claim.
- (3) Any determination under the 1985 Arrangements in respect of that original compensation claim is discharged and is of no effect for the purposes of the 1985 Arrangements (including any appeal under the 1985 Arrangements). Compensation in respect of coal to which the original compensation claim relates ceases to be payable in accordance with the 1985 arrangements and is payable in accordance with this Order (and not otherwise). This subclause does not affect the validity of any interim payment of compensation under the 1985 Arrangements.
- (4) Pending a redetermination of compensation under this clause, the person whose claim under the 1985 Arrangements is to be redetermined is entitled to a preliminary payment of compensation under this Order equal to the amount of the compensation as determined under the 1985 Arrangements (less any interim payments of that compensation made under the 1985 Arrangements).

### **11 Gains to be offset against compensation**

In the calculation of an amount of compensation payable under this Part, the Board may make such reduction as the Board determines to be equivalent to the money value of any benefit obtained by the applicant from the discharge of any trust, lease, licence, obligation, estate, interest or contract by virtue of section 5 of the Acquisition Act.

### **12 Making an application**

- (1) An application for compensation under this Part must:
  - (a) be in writing in a form approved or provided by the Board, and
  - (b) contain or be accompanied by such information and documents as are indicated or required by the form of application or as the Board requires, and
  - (c) be lodged within 3 months after the person was given notice of the refusal of the person's application under the Restitution Act.
- (2) Despite subclause (1), the Board may if it thinks fit, accept and determine an application for compensation under this Part lodged more than 3 months after the person was given notice of the refusal of the person's application under the Restitution Act.

## **Part 4 Voluntary acquisition of coal by agreement**

### **13 Criteria for recommendation to acquire coal**

- (1) A recommendation referred to in section 5B (3) of the Acquisition Act (a recommendation that the Minister acquire coal on behalf of the Crown) is not to be made unless:
  - (a) the acquisition will result in economic benefit to the Crown or is necessary to alleviate substantial hardship being suffered by the person in whom the coal is vested, and
  - (b) the acquisition will result in the Crown acquiring the coal freed and discharged from all trusts, leases, licences, obligations, estates, interests and contracts.
- (2) Nothing in this Order requires coal that is offered for sale to the Crown to be acquired by the Crown.

### **14 Recommendation as to consideration payable**

The Board's recommendation for the acquisition of coal under section 5B of the Acquisition Act is to include a recommendation as to the amount to be paid for the coal, being an amount determined at the discretion of the Board.



## **Part 5 General**

### **15 Rights and entitlements of persons under a disability and others**

Any right or entitlement conferred on a person by this Order may in the following circumstances (instead of being exercised by the person) be exercised by the person specified:

- (a) where the person has died—the specified person is the person's legal personal representative,
- (b) where the person is a mentally incapacitated person—the specified person is the committee or manager of the person's estate,
- (c) where the person is an insolvent under administration (as defined in the 1985 Arrangements)—the specified person is the trustee in bankruptcy of the person's estate,
- (d) where the person is the next friend of a minor who has, since the right or entitlement arose, attained the age of 18 years—the specified person is that next friend,
- (e) where the person was a body corporate, whether a company or not, that has been dissolved and the property of that body is, by law, vested in the Australian Securities Commission—the specified person is that Commission.

### **16 Further information**

- (1) The Board may, by notice served on a person who has made an application for compensation under this Order or a claim under the 1985 Arrangements, require the person to provide it with further information or documents with respect to the application or claim, or with respect to any other application under this Order or claim under the 1985 Arrangements (whether or not made by the person), by a date specified in the notice.
- (2) The Board may decline to give further consideration to a person's application or claim if the person fails without reasonable excuse to comply with the requirements of a notice under this clause to provide information or documents with respect to any application or claim or, in purported compliance with those requirements, provides information or documents that the Board considers to be inadequate. If the Board declines to give further consideration to a person's application or claim, the Board is to make a determination refusing the application or claim.
- (3) The Board may pay out of Coal Compensation Board funds any reasonable expenses incurred by the registered holder of a colliery holding in complying with the requirements of a notice under this clause where the requirements relate to an application or claim not made by that registered holder.

### **17 Applicant may vary application in certain cases**

With the consent of the Board, an application under this Order may be varied by the applicant at any time before the Board has made a determination in respect of it.

### **18 Consideration and determination of applications**

- (1) As soon as practicable after an application is made to the Board, the Board must proceed to consider the application. After consideration of an application, the Board must proceed to determine the application.
- (2) The Board is to cause notice in writing of its determination of an application to be served on the applicant. The determination is to specify the basis on which the compensation is calculated (if the application is allowed) or the Board's reasons for refusing the application (if the application is refused).

### **19 Interim payments of compensation**

- (1) At any time before an application for compensation under this Order is determined, the Board may, with the consent of the applicant, make one or more interim payments of compensation to the applicant.
- (2) An interim payment of compensation is not to be made unless the payment is authorised by the Minister.
- (3) The making of an interim payment of compensation is at the absolute discretion of the Board and the Board cannot be required to disclose the basis on which the interim payment is made or calculated.
- (4) A person is not entitled to receive compensation under this Order by reason only that the person has received an interim payment of compensation and the making of an interim payment does not prevent the Board from refusing the application concerned.
- (5) No appeal lies in respect of the making of or the refusal to make an interim payment of compensation.
- (6) The Board is entitled to recover in a court of competent jurisdiction as a debt due to the Board any amount by which the total of interim payments of compensation to a person in respect of coal and any preliminary payment of compensation to the person under this Order in respect of the coal exceed the amount of compensation (if any) determined under this Order in respect of the coal. However, only interim payments of compensation are recoverable under this subclause and the Board cannot under this subclause recover a preliminary payment of compensation.
- (7) Interim payments of compensation are to be made from Coal Compensation Board funds.

## **20 Preliminary payments not recoverable**

- (1) A preliminary payment of compensation under this Order in respect of coal is not recoverable merely because it exceeds the amount of compensation determined under this Order in respect of the coal.
- (2) A preliminary payment of compensation is however recoverable to the extent (if any) that it exceeds the amount of compensation determined under this Order in respect of the coal as a result of a reduction in that compensation under clause 8 (Gains to be offset against compensation). To the extent that a preliminary payment is so recoverable, it is recoverable in a court of competent jurisdiction as a debt due to the Board.
- (3) This clause does not prevent the recovery of a preliminary payment on any other ground (for example, on the ground that the payment was made to the wrong person because of a mistake as to the person's identity).

## **21 Interest on compensation**

- (1) Interest is payable in respect of an amount of compensation determined under this Order, for the period from the date on which the determination of the amount was made up to and including the date of payment. However, if the determination is made before an application for the compensation is made, interest is not payable for any period before the application is made.
- (2) Interest under this clause is to be at a rate and on terms determined by the Treasurer and notified in writing to the Board.
- (3) The amount of compensation in respect of which interest under this clause is payable is to be reduced by the amount of any interim or preliminary payment of compensation made to the applicant.

## **22 Payment of compensation**

- (1) On being authorised to do so by the Minister, the Board is to pay an amount of compensation determined by it under this Order (together with any interest payable) to the applicant out of Coal Compensation Board funds. The amount of compensation to be paid to an applicant is to be reduced to take account of any interim or preliminary payments of compensation paid to the applicant in respect of the coal concerned.
- (2) If an applicant fails without reasonable excuse to comply with a requirement made by the Board under this Order to provide the Board with further information or documents or, in purported compliance with such a requirement, provides information or documents that the Board considers to be inadequate, the Board may postpone payment to the applicant of an amount of compensation until the applicant complies with the requirements of the notice.

- (3) If the Board has paid the reasonable expenses of the registered holder of a colliery holding incurred in complying with the requirements of a notice served under this Order to provide information or documents in relation to an application for compensation, being an application not made by that registered holder, the Board may deduct the amount so paid from any amount of compensation payable to an applicant under this Order in respect of the application.
- (4) If payment of an amount of compensation determined under this Order is postponed under this clause, interest is payable under this Order in respect of the amount only from the date to which payment of the amount was postponed up to and including the date of payment.
- (5) No interest is payable under this Order in respect of any amount deducted from an amount of compensation by the Board under this clause.

### **23 Appeals**

- (1) There is a right of appeal against a determination of compensation under this Order or a refusal of an application for compensation under this Order.
- (2) The appeal is to the Tribunal and is made by lodging with the Tribunal a notice of appeal in writing within 30 days after the Board notifies the claimant of the determination or the refusal of the application concerned. The notice of appeal must specify the grounds of appeal and be accompanied by a lodgment fee of \$100.
- (3) The Tribunal may in a particular case extend and further extend the time for lodging a notice of appeal. The Tribunal may delegate to a member of the staff of the Board the power of the Tribunal under this subclause to extend or further extend that time.
- (4) The grounds on which an appeal may be lodged are:
  - (a) in the case of an appeal against a determination of compensation, that the Board has wrongly assessed the amount of compensation that is payable to the applicant, or
  - (b) in the case of an appeal against the refusal of an application, that the applicant was entitled to compensation under this Order or that the application was wrongfully refused.
- (5) There is no appeal against any determination or other action under this Order except as provided by this clause. In particular there is no appeal against a recommendation of the Board for the purposes of section 5B of the Acquisition Act or a determination of the Treasurer for the purposes of Schedule 1.
- (6) If on an appeal, the Tribunal has remitted the matter to the Board for reconsideration, the applicant is not precluded from lodging a further appeal under this clause against a determination of the Board of the amount of compensation on the ground that the

Board has wrongly assessed the amount of compensation.

## 24 Service of notices and other documents

A notice or other document that is required by this Order to be served on a person may be served as provided by the 1985 Arrangements.

## 25 Compliance with requirements of forms

- (1) Strict compliance with the substance of, and provision of the information required by, a form provided or approved by the Board under this Order is necessary unless the Board otherwise agrees.
- (2) A form approved or provided by the Board for the purposes of this Order must be completed in accordance with such directions and instructions as are specified in, or relate to, the form.

## 26 Confidentiality

The Board and any person concerned in the administration of this Order must not disclose any information obtained under this Order in respect of an application unless the disclosure is made for the purpose of exercising the Board's or the person's functions under this Order or the 1985 Arrangements.

## 27 Amendment of 1985 Arrangements

The *Coal Acquisition (Compensation) Arrangements 1985* is amended as set out in Schedule 2.

# Schedule 1 Calculation of compensation

(Clauses 6 and 10)

## 1 Definitions

In this Schedule:

**base date** means:

- (a) in relation to a clause 6 application, the date on which the coal to which the application relates vested in the Crown under section 5A of the Acquisition Act, or
- (b) in relation to a clause 10 application, 1 January 1982.

**clause 6 application** means an application under clause 6.

**clause 10 application** means an application under clause 10.

**median date**, in relation to a relevant period, means 1 January in that relevant period.

**relevant period** means a period of 12 months that begins on 1 July in a year.

## 2 Calculation of compensation

- (1) The Board is to determine an application by calculating the amount of compensation payable on the application in accordance with the following steps:

**Step 1** (*Calculation of total base compensation amount by calculating and totalling amounts of compensation for each relevant period*)

Calculate an amount of compensation in respect of each successive relevant period, beginning with the relevant period within which the base date falls and ending with the relevant period that, in the Board's opinion, is the last relevant period in which saleable coal will be extracted from the land to which the application relates. The calculation of compensation for each relevant period is to be in accordance with whichever of the following formulas is appropriate for the relevant period concerned:

- (A) Relevant periods occurring before the date on which the Board determines the application:

$$r \times t \times a$$

- (B) Relevant periods occurring after the date on which the Board determines the application:

$$r \times t \times \frac{e}{1000}$$

- (C) The relevant period during which the Board determines the application:

The formula to be used is the formula in (B) if the determination is made before 1 January in the relevant period or the formula in (A) if the determination is made on or after 1 January in the relevant period.

Then add together each of the amounts calculated under this step in respect of the application to obtain a total base compensation amount for the application.

Make any adjustment to the total base compensation amount that may be necessary to ensure that the amount of compensation is just and equitable and to give effect to any reduction under clause 8 or 11 (Gains to be offset against compensation).

**Step 2** (*Allowing for any interim and preliminary payments already made on the application after adjusting those payments according to when they were made*)

Subtract from the total base compensation amount determined under step 1 an amount calculated as follows (being the total of adjusted interim and preliminary payments):

Adjust any interim and preliminary payments made in respect of the application by multiplying each such payment by the relevant incremental factor and then adding together each of those adjusted payments. The relevant incremental factor for an interim or preliminary payment is a number equivalent to the amount of money that would be accumulated on and from the date on which the interim or preliminary payment is made up to and including the day before the date on which the Board determines the application if \$1 were invested on the terms determined by the Treasurer under clause 3 of this Schedule.

(2) If the total of adjusted interim and preliminary payments calculated under step 2 exceeds the total base compensation amount determined under step 1, the excess is to be treated as an overpayment that the Board can recover from the applicant in accordance with this Order. However, only interim payments of compensation are recoverable under this subclause and the Board cannot under this subclause recover a preliminary payment of compensation except to the extent (if any) that the excess is due to any reduction in compensation under clause 8 (Gains to be offset against compensation).

(3) In the formulas in this clause:

**a** in respect of a particular relevant period is a number equivalent to the amount of money that would be accumulated on and from the median date of the relevant period up to and including the day before the date on which the Board determines the application if \$1 were invested on the terms determined by the Treasurer under clause 3 or on such other terms as the Board considers just and equitable in the circumstances of the case.

**e** in respect of a particular relevant period is the amount that, if invested at the date on which the Board determines the application on terms (including terms as to a rate of interest) determined by the Board in relation to the particular case, would produce the sum of \$1,000 at the median date of that relevant period, or such other amount as the Board considers just and equitable in the circumstances of the case.

**r** is \$0.90 or such other amount as the Board considers just and equitable in the circumstances of the case.

**t** in respect of a particular relevant period is:

(a) for the purposes of a clause 6 application—the number of tonnes of saleable coal that in the Board’s opinion has been or will be extracted from the land to which the application relates during that relevant period, but (in the case of the relevant period within which the base date falls) ignoring coal extracted before the base date, or

(b) for the purposes of a clause 10 application—the number of tonnes of saleable coal

that in the Board's opinion has been or will be extracted from the land to which the application relates during that relevant period.

### 3 Terms of investment

- (1) The Treasurer is to determine terms of investment (including terms as to a rate of interest) from time to time for the purposes of clause 2.
- (2) The Treasurer is to notify the Board of each such determination.
- (3) A person who makes an application is entitled to obtain from the Board a copy of any determination of the Treasurer under this clause that is relevant to the application.

## Schedule 2 Amendment of 1985 Arrangements

(Clause 27)

### [1] Clause 3 Definitions

Omit the definition of **Coal Compensation Fund Account** from clause 3 (1).

Insert instead:

**Coal Compensation Board funds** means funds appropriated by Parliament from time to time for the purposes of the payment of compensation under these arrangements.

### [2] Clause 3 (1)

Insert the following definition:

**1997 Compensation Arrangements** means the *Coal Acquisition (Re-acquisition Arrangements) Order 1997*.

### [3] Clause 6

Omit the clause. Insert instead:

## 6 Coal Compensation Board funds

The Compensation Board is to submit estimates of the expenditure from the Coal Compensation Board funds at such times and in such form and detail as the Treasurer requires and is to comply with any direction issued by the Treasurer to the Board with respect to commitments and rates of expenditure against those funds.

### [4] Clause 7 Annual report

Insert after clause 7 (3):



(4) A reference in this clause to the Board's work and activities includes a reference to its work and activities under the 1997 Compensation Arrangements.

**[5] Clause 8 Compensation not payable except in accordance with the provisions of this instrument**

Insert at the end of clause 8:

- (2) This clause does not limit the operation of the 1997 Compensation Arrangements.
- (3) A claim cannot be made under this instrument if the loss is one in respect of which an application for compensation can be made under the 1997 Compensation Arrangements.

**[6] Clause 14 Further information**

Omit "funds for the time being credited to the Coal Compensation Fund Account maintained under clause 6" from clause 14 (3).

Insert instead "Coal Compensation Board funds".

**[7] Clause 15A Confidentiality**

Insert "or the 1997 Compensation Arrangements" after "under this instrument".

**[8] Clause 16 Procedure of Compensation Board**

Insert "under this instrument or an application under the 1997 Compensation Arrangements" after "claim".

**[9] Clause 16 (2)**

Insert at the end of clause 16:

- (2) Schedule 2 applies in respect of an application under the 1997 Compensation Arrangements as if a reference in that Schedule to "claim" and "claimant" were a reference to "application" and "applicant".

**[10] Clause 17A Interim payments of compensation**

Omit "Coal Compensation Fund Account" from clause 17A (1).

Insert instead "Coal Compensation Board funds".

**[11] Clause 17B Effect of interim payments on compensation payable**

Omit "Coal Compensation Fund Account" from clause 17B (3).

Insert instead "Coal Compensation Board funds".

**[12] Clause 25 Payment of compensation**

Omit “funds for the time being credited to the Coal Compensation Fund Account” from clause 25 (2).

Insert instead “Coal Compensation Board funds”.

**[13] Clause 28 Hearing of appeal by Tribunal**

Omit “under clause 27”.

**[14] Clause 29 Decisions of Tribunal**

Omit “under clause 27” from clause 29 (1).

Insert instead “under this instrument or the 1997 Compensation Arrangements”.

**[15] Clause 29 (2)**

Omit “specified in clause 27 (3) (a)”.

Insert instead “that the Board has wrongly assessed the amount of compensation concerned”.

**[16] Clause 29 (3)**

Omit “specified in clause 27 (3) (b)”.

Insert instead “that the claimant was entitled to compensation or that the claim was wrongfully refused”.

**[17] Clause 29 (4)**

Omit “which was lodged on a ground specified in clause 27 (3) (a) or (b)”.

**[18] Clause 29 (5)**

Omit “under clause 27”.

Insert instead “under this instrument or the 1997 Compensation Arrangements”.