

# Coal Acquisition (Compensation) Arrangements 1985

[1985-236]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Coal Acquisition Legislation Repeal Act 2007 No 62](#), Sch 2.1 (not commenced — to commence on 1.1.2008)
- **Proposed repeal**  
The Arrangements are to be repealed on the commencement of sec 4 (a) of the [Coal Acquisition Legislation Repeal Act 2007 No 62](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Coal Acquisition (Compensation) Arrangements 1985



New South Wales

## Part 1 Preliminary

### 1 Name of instrument

This instrument may be cited as the *Coal Acquisition (Compensation) Arrangements 1985*.

### 2 Commencement

This instrument shall take effect on the day after the day on which it is published in the Gazette.

### 3 Definitions

(1) In this instrument, except in so far as the context or subject-matter otherwise indicates or requires:

**applicant** means an applicant for compensation under the 1997 Compensation Arrangements.

**application** means an application for compensation under the 1997 Compensation Arrangements.

**base date** means the date on which coal vested in the Crown pursuant to section 5 of the *Coal Acquisition Act 1981*.

**claim** means a claim made under clause 10, 11 or 12 or purportedly made under clause 12 (as referred to in clause 9A (1) (b)).

**claimant** means a person who has made a claim or:

- (a) where such a person has died—means the person's legal personal representative,
- (b) where such a person becomes a protected person or an incapable person within the meaning of the *Mental Health Act 1958*—means the committee or manager of the person's estate,
- (c) where such a person becomes an insolvent under administration—means the

trustee in bankruptcy of the person's estate,

- (d) where such a person is the next friend of a minor who has, since the claim was made, attained the age of 18 years—means the second mentioned person, or
- (e) where such a person was a body corporate, whether a company or not, which has been dissolved and the property of that body is, by law, vested in the National Companies and Securities Commission—means that Commission.

**coal** has the meaning ascribed to that expression by the [Coal Acquisition Act 1981](#).

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

**colliery holding** has the meaning ascribed to that expression by the [Coal Mining Act 1973](#).

**Compensation Board** or **the Board** means the New South Wales Coal Compensation Board established under this instrument.

**Compensation Review Tribunal** or **the Tribunal** means the New South Wales Coal Compensation Review Tribunal established under this instrument.

**eligible person** means a person who is eligible to make a claim for compensation under this instrument by virtue of clause 9 or:

- (a) where such a person has died—means the person's legal personal representative,
- (b) where such a person is a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#)—means the committee or manager of the person's estate,
- (c) where such a person is an insolvent under administration—means the trustee in bankruptcy of the person's estate,
- (d) where such a person is a minor—means the minor's next friend, or
- (e) where such a person was a body corporate, whether a company or not, which has been dissolved and the property of that body is, by law, vested in the National Companies and Securities Commission—means that Commission.

**insolvent under administration** means a person who:

- (a) under the [Bankruptcy Act 1966](#) of the Commonwealth or the law of an external Territory of the Commonwealth, is a bankrupt in respect of a bankruptcy from which the person has not been discharged, or
- (b) under the law of a country other than Australia or the law of an external Territory

of the Commonwealth, has the status of an undischarged bankrupt,

and includes:

- (c) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* of the Commonwealth, or under the corresponding provisions of the law of an external Territory of the Commonwealth or of the law of a country other than Australia, where the terms of the deed have not been fully complied with, and
- (d) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* of the Commonwealth, or under the corresponding provisions of the law of an external Territory of the Commonwealth or of the law of a country other than Australia, where a final payment has not been made under that composition.

**interim payment of compensation** means an interim payment of compensation made under clause 17A.

**median date** means:

- (a) in relation to the first relevant period, 1 April 1982, and
- (b) in relation to a subsequent relevant period, 1 January that falls within that period.

**Minister** means the Minister of the Crown in right of New South Wales who is for the time being administering the *Coal Acquisition Act 1981*.

**Parliament** means the Parliament of New South Wales.

**pecuniary loss**, in relation to a claim made under clause 12, does not include any loss which is attributable to a liability to pay royalties to the Crown in respect of coal which is extracted from a colliery holding on or after the base date.

**registered holder** has the meaning ascribed to that expression by the *Coal Mining Act 1973*.

**relevant period** means the period of 6 months beginning with 1 January 1982, or a subsequent period of 12 months beginning with 1 July.

**saleable coal** means coal which is or has been extracted for sale or disposal or which might reasonably be expected to be extracted for sale or disposal.

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

(2) In this instrument:

- (a) a reference to a function includes a reference to a power, authority and duty, and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) In this instrument, a reference to saleable coal within a colliery holding is a reference to all saleable coal which:
  - (a) on 1 January 1986 is in a natural state on or below the surface of any land within a colliery holding, or
  - (b) has, since the base date and before 1 January 1986, been extracted from within a colliery holding.
- (4) In a case where the amount of a claim relating to a deceased person's estate does not exceed \$5,000, a reference in the definitions of **claimant** and **eligible person** in subclause (1) to the legal personal representative of a deceased person includes a reference to a person who satisfies the Compensation Board that the person is entitled to obtain administration of that estate in New South Wales but has not exercised that entitlement.

## Part 2 Administration

### 4 Coal Compensation Board

- (1) There shall for the purposes of this instrument be established a board under the name of the "New South Wales Coal Compensation Board".
- (2) The Compensation Board has and shall exercise the functions imposed on it by this instrument.
- (3) The Compensation Board is to consist of 5 part-time members appointed by the Governor on the nomination of the Minister.
- (4) Of the members of the Board:
  - (a) one is, in and by the instrument by which the member is appointed, to be appointed as chairperson of the Compensation Board, and
  - (b) one is to be a person employed in the Department of Mineral Resources, and
  - (c) (Repealed)
  - (d) 3 are to be persons who do not hold an office of profit under the Crown and who have such qualifications and experience as the Minister considers necessary or desirable for the purpose of enabling the Board to exercise its functions.
- (5) (Repealed)
- (6) A member of the Compensation Board holds office at the pleasure of the Governor.



(7) Schedule 1 has effect with respect to the members of the Compensation Board.

## **5 Staff of the Compensation Board**

- (1) Such staff as may be necessary to enable the Compensation Board to perform its functions under this instrument may be employed under the *Public Service Act 1979*.
- (2) The Compensation 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.
- (3) It is the duty of staff employed as referred to in subclause (1), or whose services are made use of pursuant to subclause (2), to render such practical assistance as is reasonable to enable claimants to lodge their claims.

## **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.

## **7 Annual report**

- (1) As soon as practicable after 30 June in each year during which this instrument is in force, but in any case not later than the next following 31 October, the Compensation Board shall prepare and forward to the Minister a report of its work and activities for the period of 12 months ending on 30 June in that year or, as the case may be, the period from and including the day on which this instrument takes effect and ending on 30 June next following.
- (2) As soon as practicable after 30 June, but not later than 31 October, immediately following the date on which this instrument has ceased to have effect, the person who was, immediately before the instrument ceased to have effect, the chairperson of the Compensation Board or, if that person is dead or is incapacitated for any other reason, some other person, designated by the Minister, who was a member of the Compensation Board immediately before the instrument ceased to have effect shall prepare and forward to the Minister a final report of the Board's work and activities for the period beginning with 30 June immediately preceding the date on which this instrument ceased to have effect and ending with the date on which this instrument ceased to have effect.
- (3) As soon as practicable after receiving a report forwarded under subclause (1) or (2), the Minister shall lay the report or cause it to be laid before both Houses of the Parliament.
- (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.

### **Part 3 Compensation**

#### **8 Compensation not payable except in accordance with the provisions of this instrument**

- (1) Compensation in respect of coal referred to in clause 9 (1) or 9A (1), and in respect of a pecuniary loss referred to in clause 9 (2), is payable in accordance with the provisions of this instrument and not otherwise.
- (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.

#### **9 Persons eligible to make claims for compensation**

- (1) Any person, other than the Crown or an instrumentality or agency of the Crown, is eligible to make a claim under clause 10 or 11 if:
  - (a) saleable coal was, immediately before the base date, vested in that person, and
  - (b) that coal was situated within a colliery holding at any time during the period beginning with the base date and ending with 1 January 1986.
- (2) Where a person claims to have sustained pecuniary loss which is directly attributable to the discharge of any trust, lease, licence, obligation, estate, interest or contract by virtue of the operation of section 5 of the *Coal Acquisition Act 1981*, and the loss is not one in respect of which a claim could be made under clause 10 or 11, the person is eligible to make a claim under clause 12.

#### **9A Compensation payable for claims in respect of coal not within colliery holding**

- (1) This clause applies to a person:
  - (a) in whom saleable coal not within a colliery holding was vested immediately before the commencement of section 5 of the *Coal Acquisition Act 1981*, and
  - (b) who made, or purported to make, a claim under clause 12 before 7 July 1994 for compensation as a result of the operation of section 5 of the *Coal Acquisition Act 1981* in relation to some or all of that coal.
- (2) Compensation (together with interest calculated in accordance with clause 24) is payable to a person to whom this clause applies as a result of the operation of section 5 of the *Coal Acquisition Act 1981* in relation to saleable coal that is the subject of the claim referred to in subclause (1).
- (3) The amount of compensation payable is as follows:

- (a) in a case where a determination was made by the Compensation Board after the commencement of section 5 of the *Coal Acquisition Act 1981* (but before the commencement of this clause) for the payment of compensation for the operation of that section in relation to some or all of the coal concerned:
    - (i) except as provided by subparagraph (ii)—the amount that was determined by the Compensation Board, or
    - (ii) if that determination was or is subsequently varied on appeal or is required to be reduced under another provision of this instrument—the amount provided for in the determination as so varied or reduced,
  - (b) in a case where the claim for that compensation has not been determined by the Board before the commencement of this clause—an amount determined in accordance with clause 22 (1A).
- (4) If a person has been paid an amount of compensation (whether as an interim or final payment) or interest by the Compensation Board before the commencement of this clause in respect of a claim referred to in subclause (1) and that amount is equal to or greater than the amount of compensation or interest payable in accordance with this clause, the person is not entitled to any further payment of compensation or interest.
- (5) Subclause (4) does not affect the operation of clause 17B.
- (6) This clause does not affect the operation of the provisions of the 1997 Compensation Arrangements.

#### **10 Claims for compensation by former coal owners who are holders of relevant colliery holdings**

- (1) A claim for compensation by a person eligible to claim by virtue of clause 9 (1) shall, where the saleable coal that is the subject of the claim is or was, on or after the base date, within a colliery holding of which the claimant is the registered holder:
- (a) be made in writing in a form provided or approved by the Compensation Board for the purposes of this clause,
  - (b) contain or be accompanied by the particulars specified in subclause (2),
  - (c) be accompanied by the documents specified in subclause (3), and
  - (d) be lodged with the Compensation Board before 30 June 1994.
- (2) The particulars referred to in subclause (1) (b) are:
- (a) particulars, including plans and descriptions, identifying the coal that is the subject of the claim,
  - (b) information as to the quantities of coal extracted by the claimant from the colliery

holding during each relevant period or part of a relevant period up to the making of the claim, together with information as to the locations from which and the times at which that coal was extracted,

- (c) information as to the full seam section and working section for each coal seam within the colliery holding, including an analysis of:
  - (i) the contents of each such seam and its correlation with other coal seams, and
  - (ii) the location of sample points and exploratory bore holes,
- (d) information as to whether the extraction of coal from coal seams within the colliery holding will be carried out underground or by open cut methods and, where the coal is to be extracted by open cut methods, information as to the overburden of the coal seams, the ratio of the thickness of the overburden to the thickness of the coal seams and the depth (if any) of the oxidation of the coal seams, and
- (e) particulars of any mining plan or proposed mining plan relating to the colliery holding, including particulars of the quantities of coal that are proposed or expected to be extracted during each relevant period or part of a relevant period from and including the date on which the claim is made and information with respect to the terms under which the coal will be or is likely to be sold.

(3) The documents referred to in subclause (1) (c) are:

- (a) documentary evidence that, immediately before the base date, the coal to which the claim relates was vested in the claimant,
- (b) a copy of any relevant mining plan or proposed mining plan for the colliery holding,
- (c) an estimate of the mineable coal reserves within the colliery holding at the base date or which would or might reasonably be expected to be within that holding by not later than 1 January 1986 after taking into account the need to retain barriers in the seams within the holding, the geology of the land within the holding and the quality of the coal in those seams,
- (d) a forecast of the anticipated recovery of the coal from seams within the colliery holding during each relevant period beginning with the base date and ending with the date on which the coal within the colliery holding is expected to become exhausted, and
- (e) a forecast of the percentage of coal referred to in paragraph (d) that is saleable coal.

(4) Notwithstanding subclause (1), the particulars referred to in subclause (1) (b) and the

documents referred to in subclause (1) (c) may be provided or lodged after the time by which the claim is required by subclause (1) to be lodged with the Compensation Board but a claim for compensation under that subclause shall not be entertained by the Board unless those particulars are provided, and those documents are lodged, before the expiration of 6 months after that time or within such further period as the Board may in any particular case allow.

- (5) Notwithstanding subclause (1), the Compensation Board may entertain a claim for compensation lodged after 29 June 1994 by a person referred to in that subclause, but only if the claim was lodged with the Compensation Board on or before 7 July 1994 and otherwise complies with this clause.

**11 Claims for compensation by former coal owners who are not holders of relevant colliery holdings**

- (1) A claim for compensation by a person eligible to claim by virtue of clause 9 (1) shall, where the saleable coal that is the subject of the claim is or was, on or after the base date, within a colliery holding of which the claimant is not the registered holder:
- (a) be made in writing in a form provided or approved by the Compensation Board for the purposes of this clause,
  - (b) contain or be accompanied by the particulars specified in clause 10 (2) (a)-(e) unless those particulars are not known to, and cannot reasonably be ascertained by, the claimant or those particulars have been provided to the Board by the registered holder of the colliery holding,
  - (c) be accompanied by:
    - (i) the documents specified in clause 10 (3) unless those documents are not in the possession of and cannot reasonably be obtained by the claimant or those documents have been provided to the Board by the registered holder of the colliery holding, and
    - (ii) a copy of the lease, agreement or other instrument (not being a coal lease granted under the *Coal Mining Act 1973*) in force immediately before the base date providing for the payment of a royalty, return or other consideration in respect of the coal to which the claim relates, and
  - (d) be lodged with the Compensation Board before 30 June 1994.
- (2) Notwithstanding subclause (1), the particulars referred to in subclause (1) (b) and the documents referred to in subclause (1) (c) may be provided or lodged after the time by which the claim is required by subclause (1) to be lodged with the Compensation Board but a claim for compensation made under that subclause shall not be entertained by the Board unless those particulars are provided, and those documents are lodged, before the expiration of 6 months after that time or within such further

period as the Board may in any particular case allow.

- (3) Notwithstanding subclause (1), the Compensation Board may entertain a claim for compensation lodged after 29 June 1994 by a person referred to in that subclause, but only if the claim was lodged with the Compensation Board on or before 7 July 1994 and otherwise complies with this clause.

## **12 Claims for compensation by other persons**

- (1) A claim for compensation by a person eligible to claim by virtue of clause 9 (2) shall:
  - (a) be made in writing in a form provided or approved by the Compensation Board for the purposes of this clause,
  - (b) contain such information relating to the pecuniary loss claimed to have been sustained, and such particulars of the circumstances of the loss, as is indicated or required by the form so provided or approved,
  - (c) be accompanied by a document specifying or evidencing the trust, lease, licence, obligation, estate, interest or contract the discharge of which by section 5 of the *Coal Acquisition Act 1981* is claimed to have brought about the loss, and
  - (d) be lodged with the Compensation Board before 30 June 1994.
- (2) Notwithstanding subclause (1), the information referred to in subclause (1) (b) and the document referred to in subclause (1) (c) may be provided or lodged after the time by which the claim is required by subclause (1) to be lodged with the Compensation Board but a claim for compensation made under that subclause shall not be entertained by the Board unless that information is provided, and that document is lodged, before the expiration of 6 months after that time or within such further period as the Board may in any particular case allow.
- (3) Notwithstanding subclause (1), the Compensation Board may entertain a claim for compensation lodged after 29 June 1994 by a person referred to in that subclause, but only if the claim was lodged with the Compensation Board on or before 7 July 1994 and otherwise complies with this clause.

## **13 (Repealed)**

## **14 Further information**

- (1) The Compensation Board may, by notice served on a person who has made a claim under this instrument, require the person to provide it with further information or documents with respect to the claim, or with respect to any other claim under this instrument whether or not made by the person, by a date specified in the notice.
- (2) If a person fails without reasonable excuse to comply with the requirements of a notice served under subclause (1) to provide information or documents with respect to

any claim or, in purported compliance with the requirements of a notice so served, provides information or documents that the Compensation Board decides is or are inadequate, the Board may decline to give further consideration to the person's claim and, if it does so, the Board shall make a determination refusing the claim.

- (3) The Board may pay out of the Coal Compensation Board funds any reasonable expenses incurred by the registered holder of a colliery holding in complying with the requirements of a notice served under subclause (1) where the requirements relate to a claim under this instrument not made by that registered holder.

## **15 Claimant may vary claim in certain cases**

With the consent of the Compensation Board, a claim may be varied by the claimant at any time before the Board has made a determination in respect of it.

### **15A Confidentiality**

Neither the Board nor any person concerned in the administration of the arrangements set out in this instrument shall disclose any information obtained under clause 10, 11, 12, 13, 14 or 15 in respect of a claim unless the disclosure is made for the purpose of exercising the Board's or the person's functions under this instrument or the 1997 Compensation Arrangements.

## **16 Procedure of Compensation Board**

- (1) Schedule 2 has effect with respect to the proceedings of the Compensation Board in considering and determining a claim under this instrument or an application under the 1997 Compensation Arrangements.
- (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".

## **17 Consideration and determination of claims**

- (1) As soon as practicable after a claim is made to the Compensation Board, the Board shall, subject to this instrument, proceed to consider and determine the claim in accordance with clause 18, 20, 21, 22, 22AA, 22AB or 25A, as the case warrants.
- (2) If on considering a claim under subclause (1) the Compensation Board is not satisfied that the claimant is entitled to compensation in respect of the claim, the Board shall make a determination refusing the claim.
- (3) On making a determination in respect of a claim in accordance with subclause (2) or clause 18, 20, 21, 22, 22AA, 22AB or 25A, the Compensation Board shall cause a notice in writing setting out the determination to be served on the claimant.
- (4) The Compensation Board shall specify in a determination made in respect of a claim

in accordance with subclause (2) or clause 18, 20, 21, 22, 22AA, 22AB or 25A:

- (a) where the Board allows a claim for compensation—the basis on which the compensation is calculated, and
- (b) where the Board refuses such a claim—the reasons for refusing the claim.

**17A Interim payments of compensation**

- (1) At any time before a claim is determined, the Board may, with the consent of the claimant, make one or more interim payments of compensation to the claimant from the Coal Compensation Board funds.
- (2) An interim payment of compensation shall not be made unless the payment is authorised by the Minister.
- (3) An interim payment of compensation shall be made at the absolute discretion of the Board and the Board shall not 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 instrument by reason only that the person has received an interim payment of compensation and the making of an interim payment in respect of a claim does not prevent the Board from refusing the claim.
- (5) No appeal lies in respect of the making of or the refusal to make an interim payment of compensation.

**17B Effect of interim payments on compensation payable**

- (1) For the purpose of calculating the interest payable under clause 24 on compensation determined or deemed to be determined in accordance with this instrument, the amount of compensation in respect of which that interest shall be determined shall be reduced by the amount of any interim payment of compensation made to the claimant.
- (2) For the purpose of the payment of compensation under clause 25, the amount of compensation authorised to be paid under that clause shall be reduced by the amount of any interim payment of compensation made to the claimant.
- (3) The Board is entitled to recover in a court of competent jurisdiction as a debt due to the Board, for payment into the Coal Compensation Board funds, any amount by which interim payments of compensation to a person exceed the amount of compensation (if any) determined or deemed to have been determined in accordance with this instrument in respect of the claim.



### 17C Gains to be offset against compensation

In the calculation under clause 18, 20, 21 or 22 of the amount in respect of a claim, the Compensation Board may make such reduction as the Board determines to be equivalent to the money value of any benefit obtained by the claimant from the discharge of any trust, lease, licence, obligation, estate, interest or contract by virtue of section 5 of the [Coal Acquisition Act 1981](#), or from the operation of the [Coal Acquisition \(Transitional Provisions\) Regulation 1982](#) or clause 4 of Schedule 2 to the [Coal Mining \(Amendment\) Act 1981](#).

### 18 Calculation of compensation in respect of claims under clause 10 or 11

- (1) The Board is to determine a claim under clause 10 or 11 by calculating the amount of compensation payable on the claim 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 relevant period during the period beginning with the base date and ending with the last day of the relevant period within which the colliery holding to which the claim relates was or will (in the Board's opinion) be removed from the register of colliery holdings kept under section 163 of the [Mining Act 1992](#). 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 claim:

$$([n \times h] + [r \times t]) \times a$$

- B Relevant periods occurring *after* the date on which the Board determines the claim:

$$[n \times h \times d/1000] + [r \times t \times e/1000]$$

- C The relevant period *during* which the Board determines the claim:

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 claim to obtain a total base compensation amount for the claim.

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

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

Adjust any interim payments made in respect of the claim by multiplying each such payment by the relevant incremental factor and then add together each of those adjusted interim payments. The relevant incremental factor for an interim payment is a number equivalent to the amount of money that would be accumulated on and from the date on which the interim payment is made up to and including the day before the date on which the Board determines the claim if \$1 were invested on the terms determined by the Treasurer under clause 19.

- (2) If the total of adjusted interim payments calculated under step 2 exceeds the total base compensation amount calculated under step 1, the excess is to be treated as an overpayment which the Board may recover from the claimant in accordance with clause 17B (3).
- (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 claim if \$1 were invested on the terms determined by the Treasurer under clause 19.

**d** and **e** in respect of a particular relevant period are the amounts which, if invested at the date on which the Board determines the claim on terms (which include terms as to a rate of interest and which may differ in relation to **d** and **e**) determined by the Board in relation to the particular case, would each produce the sum of \$1,000 at the median date of that relevant period.

**h** is the area, measured in hectares, of that part of the colliery holding which contains the coal that is the subject of the claim (and if that area is or includes a fraction of a hectare, that fraction is taken to be a whole hectare).

**n** is 2 in relation to the relevant period beginning on 1 January 1982, or 4 in relation to any other relevant period.

**r** is:

(a) in the case of a claim under clause 10—\$0.90, or

(b) in the case of a claim under clause 11:

(i) \$0.90, except as provided in subparagraph (ii), or

(ii) if, but for clause 4 of Schedule 2 to the *Coal Mining (Amendment) Act 1981*, a rent or royalty in respect of the coal that is the subject of the claim would have been payable to the claimant under a lease, agreement or other instrument

which was terminated by that clause and that rent or royalty would have been less than \$0.90 for each tonne of coal extracted under that lease, agreement or instrument—that lesser amount.

**t** in respect of a particular relevant period is the number of tonnes of saleable coal which has been or, in the Board's opinion, will be extracted from that part of the colliery holding which contains the coal that is the subject of the claim during that relevant period.

(4) This clause is subject to clauses 22AA and 22AB.

### **19 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 18.
- (2) The Treasurer is to notify the Board of each such determination.
- (3) A claimant under clause 10 or 11 of these Arrangements is entitled to obtain from the Board a copy of any determination of the Treasurer under this clause which is relevant to the claimant's claim.

### **20 Power of Compensation Board to determine an increased amount of compensation where coal owner acquired rights to coal on or after 1 November 1975**

(1) Where the Compensation Board:

- (a) is satisfied that a claim made under clause 10 or 11 relates to saleable coal the ownership of which was acquired by the claimant for consideration on/or after 1 November 1975, and
- (b) is of the opinion that the claimant would suffer substantial hardship or injustice if the compensation were to be calculated in accordance with clause 18,

the Board may, in its discretion, determine that for the purpose of Step 1 in clause 18 (1) the total base compensation for the claim amount be an amount greater than that which would otherwise be calculated in accordance with Step 1 but not greater than the amount of consideration paid by the claimant for the ownership of the coal, less any amount derived by the claimant by virtue of having had ownership of the coal on or after 1 November 1975 and before the base date.

(1A) (Repealed)

(2) Where coal to which subclause (1) applies was situated in land which was the subject of the same transfer, conveyance or other transaction as that by which the coal was acquired and the transfer, conveyance or other transaction did not specify separate prices or values for the coal and for the land in which the coal was situated, the Compensation Board shall, if it is contemplating making a determination under

subclause (1), make an assessment of the value that the coal had at the time of the transfer, conveyance or other transaction and that value shall, for the purpose of applying that subclause, be deemed to be the consideration paid by the claimant for the ownership of the coal.

## **21 Power of Compensation Board to determine increased amount of compensation in cases of certain charitable etc institutions**

Where a claimant is:

- (a) an organisation or association which is registered under the *Charitable Collections Act 1934* or exempted from registration by or under that Act,
- (b) a fund, authority or institution to which section 78 (1) (a) of the *Income Tax Assessment Act 1936* of the Commonwealth applies, or
- (c) a body which is established for a purpose that, in accordance with the law of New South Wales, is charitable or for a purpose that is religious or educational, whether or not that purpose is charitable according to that law,

and the Compensation Board is of the opinion that the claimant would, if the amount of compensation to be determined in respect of the claim made by the claimant were to be calculated in accordance with clause 18, suffer substantial hardship or injustice, the Board may, unless it has determined or proposes to determine the claim in accordance with clause 20, determine the amount of that compensation under the provisions of clause 18 as if in the formulas set out in clause 18 the symbol *r* represented an amount decided by the Board, exceeding \$0.90 but not exceeding \$1.49.

## **22 Determination of claims made under clause 12**

- (1) Where, in the case of a claim made under clause 12, the Compensation Board is satisfied that:
  - (a) the claimant is an eligible person to whom that clause applies and has sustained pecuniary loss which is directly attributable to the discharge of any trust, lease, licence, obligation, estate, interest or contract by virtue of the operation of section 5 of the *Coal Acquisition Act 1981*, and
  - (b) having regard to all the circumstances of the case, it would be just and equitable for the claimant to be paid compensation in respect of that loss,

the Board may determine an amount of compensation to be paid to the claimant, not exceeding the amount of that loss.

- (1A) Where, in the case of a claim referred to in clause 9A (1) (b) that has not been determined before the commencement of this subclause, the Compensation Board is satisfied that:

- (a) the claimant is a person to whom clause 9A applies and has sustained pecuniary loss which is directly attributable to the vesting of coal in the Crown by virtue of the operation of section 5 of the *Coal Acquisition Act 1981*, and
  - (b) having regard to all the circumstances of the case, it would be just and equitable for the claimant to be paid compensation in respect of that loss,
- the Board may determine an amount of compensation to be paid to the claimant, not exceeding the amount of that loss.

(2) This clause is subject to clause 22AA.

**22AA Special provisions relating to claims by certain specified companies**

- (1) If The Broken Hill Proprietary Company Limited, BHP Minerals Ltd, Australian Iron & Steel Pty Limited or Boone & Willard Pty Ltd have made claims for compensation in accordance with clause 10, 11 or 12 and the total amount of compensation payable in respect of all of those claims would, apart from this clause, exceed \$18,000,000, then, irrespective of the provisions of clauses 18-22, the total amount of compensation so payable is, subject to subclause (4), to be \$18,000,000 and no more.
- (2) If Coal & Allied Operations Pty Ltd has made claims for compensation in accordance with clause 10, 11 or 12 and the total amount of compensation payable in respect of all of those claims would, apart from this clause, exceed \$18,750,000, then, irrespective of the provisions of clauses 18-22, the total amount of compensation so payable is, subject to subclause (4), to be \$18,750,000 and no more.
- (3) If Durham Holdings Pty Ltd has made claims for compensation in accordance with clause 10, 11, 12 or 22AB and the total amount of compensation payable in respect of all of those claims would, apart from this clause, exceed \$23,250,000, then, irrespective of the provisions of clauses 18-22, the total amount of compensation so payable is, subject to subclause (4), to be \$23,250,000 and no more.
- (4) If, because of this clause, a company is not entitled to be paid as compensation under this instrument an amount greater than that specified in subclause (1), (2) or (3) (whichever is applicable to the company), the company is nevertheless entitled to be paid interest on the balance of the amount of compensation (not exceeding the amount specified in that subclause) which from time to time remains unpaid on or after 19 September 1989.
- (5) If R.W. Miller & Company Pty. Limited has made claims for compensation in accordance with clause 10, 11 or 12 and the total amount of compensation payable in respect of all of those claims would, but for this clause, exceed \$20,000,000, then, irrespective of the provisions of clauses 18-22, the total amount of compensation so payable is, subject to subclause (6), to be \$20,000,000 and no more.
- (6) If, because of this clause, R.W. Miller & Company Pty. Limited is not entitled to be paid

as compensation under this instrument an amount greater than that specified in subclause (5), R.W. Miller & Company Pty. Limited is nevertheless entitled to be paid interest on the balance of the amount of compensation (not exceeding the amount specified in that subclause) which from time to time remains unpaid on or after 30 June 1993.

- (7) Interest to which there is an entitlement referred to in this clause is to be paid at the rate, and on the terms, determined by the Treasurer for the purposes of clause 24 and in proportion to the duration of the period during which each balance is current.

**22AB Special compensation arrangements with respect to saleable coal within the Nardell Colliery Holding**

- (1) If The Nardell Colliery Pty Ltd has made a claim in accordance with clause 10 for compensation for saleable coal that was, immediately before the base date, within the Nardell Colliery Holding, no compensation is payable to that company in accordance with clause 18, but instead compensation is payable to the shareholders of that company in accordance with this clause.
- (2) A person who claims to have been the holder of shares in The Nardell Colliery Pty Ltd immediately before the base date or to be a person to whom those shares have been assigned, or have been transmitted by operation of law, may make a claim for compensation under this clause.
- (3) If a claim is made in accordance with subclause (2), the Compensation Board must calculate in accordance with clause 18 the total amount of compensation that would, but for this clause, have been determined in respect of saleable coal that was, immediately before the base date, vested in The Nardell Colliery Pty Ltd and located within the Nardell Colliery Holding.
- (4) The amount of compensation to be calculated by the Compensation Board under subclause (3) is to be apportioned among the persons who make claims in accordance with subclause (2) according to their respective shareholdings in The Nardell Colliery Pty Ltd, or the respective shareholdings of the persons through whom they are claiming, at the base date.
- (5) A claim by a person in accordance with subclause (2) must:
- (a) be made in writing on a form provided or approved by the Compensation Board, and
  - (b) contain such information as is required by the form and supported by such documents as the Compensation Board may specify, and
  - (c) specify the shares in The Nardell Colliery Pty Ltd held by the person at the base date, and

(d) be lodged with the Compensation Board not later than 30 April 1991.

- (6) The information and documents referred to in subclause (5) (b), and details of the shares referred to in subclause (5) (c), may be provided to or lodged with the Compensation Board after the time by which the claim is required to be lodged with the Compensation Board.
- (7) However, the Compensation Board may not entertain the claim unless the information is provided, and the documents are lodged, before 31 October 1991 or such later date as the Compensation Board in any particular case allows.
- (8) For the avoidance of doubt, any compensation paid or payable to Durham Holdings Pty Ltd under this clause is taken to satisfy any claim of a person who has acquired any interest directly or indirectly from Durham Holdings Pty Ltd. Accordingly, no compensation is payable under this clause to Renison Limited.

## **22A Claims remitted to Compensation Board for reconsideration**

- (1) As soon as practicable after a claim is remitted to the Compensation Board for reconsideration in accordance with clause 29 (2) (b) or (3) (b), the Board shall, subject to this instrument, proceed to reconsider the claim in accordance with the direction given under clause 29 (2) (b) or (3) (b), as the case requires.
- (2) If a claim remitted to the Compensation Board pursuant to clause 29 (2) (b) or (3) (b) was originally made in accordance with clause 10, then, subject to the direction given under clause 29 (2) (b) or (3) (b), the provisions of clauses 18 and 20, so far as relevant and with necessary modifications apply to the claim.
- (3) If a claim remitted to the Compensation Board pursuant to clause 29 (2) (b) or (3) (b) was originally made in accordance with clause 11, then, subject to the direction given under clause 29 (2) (b) or (3) (b), the provisions of clauses 18, 20 and 21, so far as relevant and with necessary modifications, apply to the claim.
- (4) If a claim remitted to the Compensation Board pursuant to clause 29 (2) (b) was originally made in accordance with clause 12, or was originally purportedly made under clause 12 (as referred to in clause 9A (1) (b)), then, subject to the direction given under clause 29 (2) (b), the provisions of clause 22, so far as relevant and with necessary modifications, apply to the claim.
- (5) Whenever the Compensation Board, as a result of reconsidering a claim remitted to it pursuant to clause 29 (2) (b), varies the determination made in respect of the claim, the Board shall cause a notice in writing setting out the determination as varied to be served on the claimant.
- (6) Whenever the Compensation Board, as a result of reconsidering a claim remitted to it pursuant to clause 29 (3) (b), makes a determination in respect of the claim, the Board shall cause a notice in writing setting out the determination to be served on the

claimant.

- (7) If the Compensation Board varies a determination referred to in subclause (5), or makes a determination as referred to in subclause (6), providing for the payment of compensation to a claimant, it shall specify in the variation or determination the basis on which the compensation is calculated.

### **23 Claim deemed to be finally determined in specified circumstances**

For the purposes of this instrument, a claim shall be regarded as finally being determined:

- (a) where no appeal is lodged under clause 27 within 30 days after a determination made in respect of the claim is notified to the claimant in accordance with clause 17 (3)—at the conclusion of that period,
- (b) where such an appeal is lodged but is withdrawn before the expiration of that period—at the conclusion of that period,
- (c) where such an appeal is lodged but is withdrawn after the expiration of that period—at the time of withdrawal,
- (d) where such an appeal is lodged and the Compensation Review Tribunal makes a decision in respect of the appeal under clause 29 (2) (a) or (3) (a)—at the time when the decision is announced at a hearing of the Tribunal or when a notice specifying the decision is served on the parties to the appeal, whichever time first occurs,
- (e) where such an appeal is lodged and, pursuant to clause 29 (2) (b), the Compensation Review Tribunal remits the claim to the Compensation Board for reconsideration—at the time when the variation of the determination of the Compensation Board is notified to the claimant in accordance with clause 22A (5), or
- (f) where such an appeal is lodged and, pursuant to clause 29 (3) (b), the Compensation Review Tribunal remits the claim to the Compensation Board for reconsideration:
  - (i) if, as a result of reconsidering the claim, the Board has made a determination and no appeal is lodged under clause 27 within 30 days after the determination is notified to the claimant in accordance with clause 22A (6)—at the conclusion of that period,
  - (ii) if such an appeal is lodged but is withdrawn before the expiration of that period—at the conclusion of that period,
  - (iii) if such an appeal is lodged but is withdrawn after the expiration of that period—at the time of the withdrawal, or
  - (iv) if such an appeal is lodged and the Compensation Review Tribunal makes a decision in respect of the appeal under clause 29 (2) (a) or (3) (a)—at the time when the decision is announced at a hearing of the Tribunal or when a notice



specifying the decision is served on the parties to the appeal, whichever time first occurs.

#### **24 Interest on compensation determined in accordance with this instrument**

- (1) There shall, subject to subclauses (2) and (3), be payable in respect of an amount of compensation determined or deemed to be determined in accordance with this instrument, from the date on which the determination of the amount was made up to and including the date of payment, interest at a rate, and on terms, determined by the Treasurer for the purposes of this clause and notified in writing to the Board.
- (2) Where payment of an amount of compensation determined in accordance with this instrument is postponed under clause 25 (3), interest is payable under subclause (1) 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.
- (3) No interest is payable under subclause (1) in respect of any amount deducted from an amount of compensation by the Board pursuant to clause 25 (4).

#### **25 Payment of compensation**

- (1) Where an amount of compensation has been determined in respect of a claim that has been finally determined, the Compensation Board shall transmit the determination to the Minister who, on receipt of the determination, may authorise payment of the amount of compensation specified in the determination.
- (2) On being notified that the Minister has authorised payment under subclause (1) of an amount of compensation, the Compensation Board shall, subject to subclauses (3) and (4), out of the Coal Compensation Board funds, pay that amount to the claimant, together with any interest payable in respect of that amount under clause 24.
- (3) Where a claimant fails without reasonable excuse to comply with the requirements of a notice served under clause 14 (1) to provide the Board with further information or documents or, in purported compliance with the requirements of a notice so served, provides information or documents that the Board decides is or are inadequate, the Board may postpone payment to the claimant of an amount of compensation authorised to be paid under subclause (1) until the claimant complies with the requirements of the notice.
- (4) Where, pursuant to clause 14 (3), 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 clause 14 (1) to provide information or documents in relation to a claim for compensation under this instrument, being a claim not made by that registered holder, the Board may deduct the amount so paid to that registered holder from any amount of compensation payable to a claimant under subclause (2) in respect of the claim.

## **25A Further determination of claims that were originally determined before 19 September 1989**

- (1) This clause applies to all claims that would, but for this clause, have been treated as having been finally determined before 19 September 1989.
- (2) Any compensation paid to a claimant in respect of a claim to which this clause applies is to be treated as an interim payment of compensation even though the claim would, but for this clause, have been regarded as having been finally determined.
- (3) As soon as practicable after the commencement of this clause, the Compensation Board must review each claim to which this clause applies and, in consequence of the review, may, in its discretion, make a further determination in respect of the claim.
- (4) In reviewing a claim in accordance with subclause (3), the Compensation Board must deal with the claim as if it had not been finally determined and must treat any amount of compensation paid in respect of the claim as an interim payment of compensation, even though the payment may have been made as part of a final determination of the claim.
- (5) The provisions of clause 17 (3) and (4), so far as relevant, apply to the review of a claim in accordance with subclause (3) and, for the purposes of this instrument, any notice purporting to have been served under clause 17 (3) is to be treated as not having been served.
- (6) The Compensation Board may, if it considers it to be appropriate to do so, make one or more interim payments or further interim payments of compensation in respect of a claim that is reviewed under subclause (3).

## **Part 4 Appeals**

### **26 Compensation Review Tribunal**

- (1) There shall, for the purposes of this instrument, be established a tribunal under the name of the "New South Wales Coal Compensation Review Tribunal".
- (2) The Compensation Review Tribunal is to consist of 6 members appointed by the Governor.
- (3) Of the members of the Tribunal:
  - (a) two are to be legal practitioners nominated by the Attorney General, and
  - (b) four are to be persons nominated by the Minister who have expertise in the coal industry.
- (4) Of the members of the Tribunal referred to in subclause (3) (a), one is to be appointed as chairperson of the Tribunal and the other is to be appointed as deputy chairperson

of the Tribunal. Each such appointment is to be made in and by the instrument by which the member is appointed as a member.

- (5) A member of the Compensation Review Tribunal holds office at the pleasure of the Governor.
- (6) Schedule 1 has effect with respect to the members of the Compensation Review Tribunal.

#### **26A Alternates**

- (1) There is to be an alternate for each member of the Compensation Review Tribunal.
- (2) The alternate for a member is to be appointed by the Governor and is to be a person who has the same qualifications and is nominated in the same manner as the member for whom he or she is the alternate.
- (3) A member's alternate may act as the member if the member is absent or ill or if there is a vacancy in the office of the member.
- (4) An alternate, while acting as a member, is taken to be a member and is to have and may exercise the functions of the member for whom he or she is the alternate. A reference in this Instrument to a member of the Compensation Review Tribunal includes a reference to an alternate of a member when acting as the member.
- (5) No person is to be concerned to inquire whether or not any occasion has arisen in which a member's alternate is authorised to act as the member, and all acts or things done or omitted by the alternate while so acting are as valid and effectual and have the same consequences as if they had been done or omitted by the member.
- (6) An alternate may be appointed notwithstanding any vacancy in the office of any member and a vacancy in the office of any member does not affect the tenure of office of any alternate.

#### **26B Constitution of the Tribunal for an appeal**

- (1) The Tribunal is, for the purpose of the hearing of an appeal, to be constituted by the chairperson or deputy chairperson of the Tribunal and any 2 of its other members. Alternatively, the Tribunal may be constituted by the chairperson, the deputy chairperson and any one of its other members.
- (2) The chairperson of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular hearing.
- (3) More than one hearing may be conducted by the Tribunal at the same time (that is, one hearing can be conducted by the Tribunal constituted by the chairperson and 2 other members, and another hearing can be conducted by the Tribunal constituted by the deputy chairperson and 2 other members).

## **27 Right of appeal against determination of the Compensation Board**

- (1) Not later than 30 days after being notified of the determination of a claim by the Compensation Board or of the refusal by the Board of a claim, the claimant may, by notice in writing, lodge with the Compensation Review Tribunal an appeal against the determination or refusal.
- (2) An appeal shall not be entertained by the Compensation Review Tribunal unless it:
  - (a) specifies the ground of appeal, and
  - (b) is accompanied by a lodgment fee of \$100.
- (3) The grounds on which an appeal may be lodged under subclause (1) are:
  - (a) in the case of an appeal against a determination of the Compensation Board, that the Compensation Board has wrongly assessed the amount of compensation that is payable to the claimant, and
  - (b) in the case of an appeal against the refusal of a claim, that the claimant was entitled to compensation under this instrument or that the claim was wrongfully refused.
- (4) A claimant is not entitled to appeal under this clause to the Compensation Review Tribunal on the ground:
  - (a) that the claimant is dissatisfied with the determination of any rate of interest by the Compensation Board or the Treasurer for the purposes of clause 18 or 24, or
  - (b) that the Compensation Board has declined to exercise its discretion under clause 20, 21 or 22,but if the Board has, in respect of a claim, exercised its discretion under clause 20, 21 or 22, the claimant is nevertheless entitled to appeal under this clause on the ground specified in subclause (3) (a).
- (5) If:
  - (a) a claimant has appealed under subclause (1) against the refusal of a claim by the Compensation Board, and
  - (b) in consequence of the Compensation Review Tribunal's having remitted the matter to the Board under clause 29 (3) (b) for reconsideration, the Board has made a determination assessing the amount of compensation to be paid to the claimant,the claimant is not precluded from lodging a further appeal under subclause (1) on the ground specified in subclause (3) (a).

## **28 Hearing of appeal by Tribunal**

- (1) Schedule 3 has effect with respect to the hearing of an appeal lodged with the Compensation Review Tribunal.
- (2) Schedule 3 applies in respect of an appeal under clause 23 of the 1997 Compensation Arrangements as if a reference in that Schedule to “claim” and “claimant” were a reference to “application” and “applicant”.

## **29 Decisions of Compensation Review Tribunal**

- (1) As soon as practicable after hearing an appeal lodged with it under this instrument or the 1997 Compensation Arrangements, the Compensation Review Tribunal shall, if it finds the ground of the appeal to be sustained, allow the appeal, but otherwise it shall dismiss the appeal.
- (2) If in accordance with subclause (1) the Compensation Review Tribunal allows an appeal on the ground that the Board has wrongly assessed the amount of compensation concerned, it shall either:
  - (a) vary the determination of the Compensation Board to which the appeal relates by substituting for the amount of compensation determined by the Board such amount as, in its opinion, the Board ought to have determined, or
  - (b) remit the claim or application that is the subject of the appeal to the Board for reconsideration with a direction to vary its determination by correctly assessing the amount of compensation specified in the determination.
- (3) If in accordance with subclause (1) the Compensation Review Tribunal allows an appeal on the ground that the claimant or applicant was entitled to compensation or that the claim or application was wrongfully refused, it shall either:
  - (a) make a determination specifying an amount of compensation that, in its opinion, the Compensation Board ought to have awarded to the claimant or applicant concerned, or
  - (b) remit the claim or application that is the subject of the appeal to the Board for reconsideration with a direction to make a determination assessing the amount of compensation to be paid to the claimant or applicant concerned.
- (3A) If the Compensation Review Tribunal varies the determination of the Compensation Board under subclause (2) (a) or makes a determination under subclause (3) (a), that determination as so varied or, as the case may be, that determination shall be deemed to be the determination of the Board.
- (4) Where under subclause (1) the Compensation Review Tribunal dismisses an appeal, the determination of the Compensation Board appealed against shall be deemed to be confirmed.

- (5) The Compensation Review Tribunal may give such ancillary directions with respect to an appeal lodged under this instrument or the 1997 Compensation Arrangements as it considers appropriate.
- (6) It is the duty of the Compensation Board to comply with directions given by the Compensation Review Tribunal under this clause in so far as those directions apply to the Board.

## **Part 5 Miscellaneous**

### **30 Service of notices etc**

- (1) Where, under the provisions of this instrument, a notice or other document is required to be served on a person, the notice or document may be served:
  - (a) where the person is not a corporation—by serving it personally on the person or by sending it by post to the person at the person's usual or last known place of residence, employment or business, or
  - (b) where the person is a corporation—by leaving it at or sending by post to the registered office of the corporation.

- (2) In subclause (1):

***last known*** means last known to the Compensation Board.

***registered office*** means:

- (a) the office of the corporation that is the registered office or principal office in accordance with the law of the State or Territory of the Commonwealth by or under which the corporation is incorporated,
  - (b) where the corporation is not incorporated in Australia, the office registered under the law of a State or Territory of the Commonwealth as the registered office of the corporation, or
  - (c) in the case of a corporation that has no such registered office or principal office, the principal place of business of the corporation in the State or, if it has no place of business in the State, its principal place of business in Australia.
- (3) For the purposes of this instrument, where a notice or document is properly addressed, prepaid and posted as a letter, the notice or document shall, unless the contrary is proved, be deemed to have been served on the person to whom it is addressed at the time at which the letter would be delivered in the ordinary course of post.

### **31 Compliance with requirements of forms etc**

- (1) Strict compliance with the substance of, and provision of the information required by,

a form provided or approved by the Compensation Board under this instrument is necessary unless the Board otherwise agrees.

- (2) A form provided or approved by the Compensation Board for the purposes of this instrument must be completed in accordance with such directions and instructions as are specified in, or relate to, the form.

### **32 Publication**

- (1) This instrument and any instrument made under clause 33 shall be published in the New South Wales Government Gazette.
- (2) In addition to the publication referred to in subclause (1), the provisions of this instrument and of any instrument made under clause 33, or a summary of those provisions, shall be published in such newspapers or other periodical publications circulating in New South Wales as the Minister may direct.

### **33 Power to revoke or amend these arrangements**

- (1) The Governor in Council may from time to time, by instrument in writing:
  - (a) revoke this instrument,
  - (b) revoke this instrument and substitute for it another instrument containing arrangements pursuant to section 6 of the *Coal Acquisition Act 1981*, or
  - (c) amend this instrument:
    - (i) by omitting matter from it,
    - (ii) by omitting matter from it and substituting other matter, or
    - (iii) by inserting additional matter.
- (2) An instrument made under subclause (1) shall take effect on the date of its publication in the Gazette or on such later date as may be specified in the instrument.

### **34 Savings and transitional provisions**

Schedule 4 has effect.

## **Schedule 1 Provisions with respect to the Compensation Board and the Compensation Review Tribunal**

(Clauses 4 (7), 26 (6))

### **1 Definitions**

- (1) In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires:

**chairperson** means the chairperson of the Compensation Board or the Compensation Review Tribunal, as the case requires.

**member** means a member of the Compensation Board or the Compensation Review Tribunal, as the case requires.

(2) In this Schedule:

- (a) a reference to a member includes a reference to a person acting in the office of a member,
- (b) a reference to the appointment of a member includes a reference to the appointment of a person to act in the office of a member, and
- (c) a reference to the office of a member includes a reference to the office of a person appointed to act in the office of a member.

## **2 Compensation Board and Compensation Review Tribunal not to be subject to control or direction**

Subject to the provisions of any Act and of this instrument, neither the Compensation Board nor the Compensation Review Tribunal is subject to the control or direction of any person in the exercise of its functions under this instrument.

## **3 Acting members**

- (1) The Governor may, from time to time, appoint a person to act in the office of a member during the member's illness or absence, and the person, while so acting, shall have and may exercise all the functions of the member.
- (2) The Governor may, from time to time, appoint a member to act in the office of chairperson of the Compensation Board during the illness or absence of the holder of that office, and such member, while so acting, shall have and exercise all the functions of the chairperson of the Compensation Board.
- (3) The Governor may at any time remove a person from office to which the person was appointed under subclause (1) or (2).
- (4) For the purposes of this clause, a vacancy in the office of a member or the chairperson shall be deemed to be an absence of the member or chairperson, as the case may be.

## **4 Remuneration etc**

- (1) A member is, in connection with the exercise of his or her functions under this instrument, entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.



- (2) Where a member is an officer or temporary employee within the meaning of the *Public Service Act 1979*, and is entitled to remuneration by virtue of being such an officer or temporary employee, the member is not entitled to remuneration under subclause (1) (other than travelling and subsistence allowances relating to the exercise of his or her functions under this instrument).

**5 (Repealed)**

**6 Filling of vacancy**

In the event of the office of a member becoming vacant, a person shall, subject to and in accordance with the provisions of this instrument, be appointed to fill the vacancy.

**7 Disclosure of pecuniary interests**

- (1) A member who has a direct or indirect pecuniary interest:

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Compensation Board or, as the case may be, the Compensation Review Tribunal, or
- (b) in a thing being done or about to be done by the Compensation Board or, as the case may be, the Compensation Review Tribunal,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of that interest at a meeting of the Compensation Board or, as the case may be, the Compensation Review Tribunal.

- (2) A disclosure by a member at a meeting of the Compensation Board or the Compensation Review Tribunal that the member:

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

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of disclosure.

- (3) The chairperson of the Compensation Board or, as the case may be, the Compensation Review Tribunal shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Compensation Board or Compensation Review Tribunal from time to time.

- (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines:
  - (a) be present during any deliberation of the Compensation Board or the Compensation Review Tribunal, or take part in any decision of that Board or Tribunal, with respect to that matter or thing, or
  - (b) exercise any function under this instrument with respect to that matter or thing, as the case may require.
- (5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Compensation Board or the Compensation Review Tribunal or the exercise of any function under this instrument.
- (6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises by reason only that the member is engaged in the coal industry.

## **8 Indemnity for Board members**

A member of the Compensation Board is entitled to be indemnified by the Crown to the extent of any liability which the member may incur as a result of the administration in good faith of the provisions of the arrangements set out in this instrument.

## **Schedule 2 Proceedings of the Compensation Board**

(Clause 16)

### **1 Definitions**

In this Schedule:

***chairperson*** means the chairperson of the Compensation Board.

***member*** means a member of the Compensation Board.

### **2 General procedure**

Subject to this Schedule, the procedure for convening a meeting of the Compensation Board to consider and determine a claimant's claim and for the conduct of such a meeting shall be as determined by the Board.

### **3 Quorum**

Three members shall form a quorum and any duly convened meeting of the Compensation Board at which a quorum is present shall be competent to deal with any matter arising before the Board and shall have and may exercise all or any of the functions of the Board.

#### **4 Presiding member**

- (1) The chairperson or, in the absence of the chairperson, another member elected as chairperson for the meeting by the members present shall preside at a meeting of the Compensation Board.
- (2) The person presiding at any meeting of the Compensation Board shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

#### **5 Voting**

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

#### **6 Consideration of claims**

In considering a claim the Compensation Board:

- (a) may inform itself in such manner as it considers appropriate,
- (b) may call and receive evidence as to any matter relevant to the claim, and
- (c) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

#### **7 Costs of claimant**

The costs incurred by a claimant in making a claim shall be borne by the claimant.

#### **8 Summonses to attend proceedings of the Compensation Board and examination of witnesses**

- (1) The chairperson may serve on a person a summons requiring the person to do either or both of the following:
  - (a) to attend and give evidence in proceedings of the Compensation Board at a time and place specified in the summons,
  - (b) to produce to the Compensation Board, or to attend specified proceedings of that Board and produce, any document or thing in the person's custody or under the person's control that is specified in the summons.
- (2) If:
  - (a) in accordance with this clause, a person is required by a summons to produce a document, and
  - (b) the document is not in writing, or is not in the English language, or is not decipherable on sight,

the summons is to be taken to require the person to produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the document.

- (3) The chairperson may require any person appearing as a witness in proceedings before the Compensation Board to take an oath, whether or not a summons has been served on the witness under this clause, and allow the witness to be examined or cross-examined on oath.
- (4) A witness attending or appearing in proceedings before the Compensation Board has the same protection and is subject to the same liabilities as a witness would have or be subject to in proceedings before the District Court.
- (5) A witness attending proceedings of the Compensation Board in accordance with a summons served under this clause is entitled to be paid such fees and allowances as are prescribed by, or calculated in accordance with, the rules of the District Court for the attendance of witnesses in proceedings before that Court.
- (6) If a summons is served under this clause at the request of a claimant, the person specified in the summons is not required to comply with the summons unless, not later than a reasonable time before the day on which the summons is to be complied with, that person is tendered not less than the prescribed amount of money to meet the expense of complying with the summons.
- (7) For the purposes of subclause (6), the prescribed amount of money is an amount equal to the amount prescribed by, or calculated in accordance with, the rules of the District Court with respect to the issue of subpoenas.
- (8) If a person on whom a summons has been served under this clause:
  - (a) fails or refuses to attend proceedings of the Compensation Board as required by the summons, or
  - (b) fails or refuses to attend from day to day without having been excused by the chairperson from further attendance, or
  - (c) having attended proceedings of the Compensation Board as required by the summons:
    - (i) fails or refuses to comply with a requirement under subclause (3) to take an oath, or
    - (ii) fails or refuses to answer a question that the Compensation Board has put to the person, or
    - (iii) fails or refuses to produce a document or thing specified in the summons,

the chairperson may, by instrument in writing, certify the failure or refusal to the Supreme Court.

- (9) If a certificate is given under subclause (8), the Supreme Court may inquire into the case and, if satisfied that the person to whom the certificate relates has, without reasonable excuse, failed or refused to comply with a requirement specified in the certificate:
- (a) may order the person to comply with the requirement in proceedings of the Compensation Board to be held at a time and place specified in the order, or
  - (b) may deal with the person in the same manner as if the person had been guilty of contempt of that Court.
- (10) The giving of a certificate under subclause (8) does not prevent the person to whom it relates from being dealt with under section 7 of the *Coal Acquisition Act 1981*, but the person is not liable to be dealt with both under that section and under subclause (9) (b) in respect of the same matter.

### **Schedule 3 Provisions relating to the hearing of appeals by the Compensation Review Tribunal**

(Clause 28)

#### **1 Definitions**

In this Schedule:

***chairperson*** means the chairperson of the Compensation Review Tribunal.

***member*** means a member of the Compensation Review Tribunal.

#### **1A Deputy chairperson has functions of chairperson**

For the purposes of the hearing of an appeal when the chairperson is not one of the members constituting the Tribunal for that appeal, the deputy chairperson of the Tribunal has all the functions of the chairperson under this Schedule.

#### **2 Fixing of time and place of hearing**

Where an appeal is lodged with the Tribunal, the chairperson shall fix a time and place for the hearing of the appeal and shall cause not less than 7 days' notice of that time and place to be given to the claimant who lodged the appeal and to the chairperson of the Compensation Board.

#### **3 Chairperson of Compensation Board to be respondent**

The chairperson of the Compensation Board is entitled to appear as respondent at the hearing of an appeal lodged with the Tribunal.

#### **4 Hearing to be in public**

A hearing of the Compensation Review Tribunal shall be held as in open court unless the chairperson otherwise orders for the purposes of preserving the confidentiality of evidence given before the Compensation Review Tribunal.

#### **5 Functions of chairperson of Compensation Review Tribunal**

All matters relating to the procedure at a hearing of the Compensation Review Tribunal shall be determined by its chairperson.

#### **6 Appeal to be by way of reconsideration**

An appeal lodged with the Tribunal in respect of a claim shall be dealt with by reconsidering the matters that were considered by the Compensation Board and by considering any evidence or representations in addition to or substitution for any evidence or representations given before or made to the Board in relation to the claim.

#### **7 Onus of sustaining grounds of appeal to be on appellant**

The onus of sustaining the grounds on which an appeal before the Tribunal is based is on the appellant.

#### **8 Compensation Review Tribunal not bound by rules of evidence etc**

The Compensation Review Tribunal:

- (a) is not bound by the rules of evidence and may obtain such information to assist it as it considers to be appropriate, and
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

#### **9 Right to appear or to be represented at hearing of the Compensation Review Tribunal**

At a hearing of the Compensation Review Tribunal:

- (a) the claimant concerned and the respondent may be present and may be heard and they may be assisted by persons having knowledge of the matters to which the hearing relates,
- (b) the persons having knowledge as referred to in paragraph (a) may be heard, and
- (c) the claimant concerned and the respondent may appear by their counsel or solicitors.

#### **9A Summonses to attend proceedings of the Compensation Review Tribunal and examination of witnesses**

- (1) The chairperson may serve on a person a summons requiring the person to do either or both of the following:

- (a) to attend and give evidence in proceedings of the Compensation Review Tribunal at a time and place specified in the summons,
- (b) to produce to the Tribunal, or to attend specified proceedings of the Tribunal and produce, any document or thing in the person's custody or under the person's control that is specified in the summons.

(2) If:

- (a) in accordance with this clause, a person is required by a summons to produce a document, and
- (b) the document is not in writing, or is not in the English language, or is not decipherable on sight,

the summons is to be taken to require the person to produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the document.

- (3) The chairperson may require any person appearing as a witness in proceedings before the Compensation Review Tribunal to take an oath, whether or not a summons has been served on the witness under this clause, and allow the witness to be examined or cross-examined on oath.
- (4) A witness attending or appearing in proceedings before the Compensation Review Tribunal has the same protection and is subject to the same liabilities as a witness would have or be subject to in proceedings before the District Court.
- (5) A witness attending proceedings of the Compensation Review Tribunal in accordance with a summons served under this clause is entitled to be paid such fees and allowances as are prescribed by, or calculated in accordance with, the rules of the District Court for the attendance of witnesses in proceedings before that Court.
- (6) If a summons is served under this clause at the request of the appellant, the person specified in the summons is not required to comply with the summons unless, not later than a reasonable time before the day on which the summons is to be complied with, that person is tendered not less than the prescribed amount of money to meet the expense of complying with the summons.
- (7) For the purposes of subclause (6), the prescribed amount of money is an amount equal to the amount prescribed by, or calculated in accordance with, the rules of the District Court with respect to the issue of subpoenas.
- (8) If a person on whom a summons has been served under this clause:
  - (a) fails or refuses to attend proceedings of the Compensation Review Tribunal as

required by the summons, or

(b) fails or refuses to attend from day to day without having been excused by the chairperson from further attendance, or

(c) having attended proceedings of the Tribunal as required by the summons:

(i) fails or refuses to comply with a requirement under subclause (3) to take an oath, or

(ii) fails or refuses to answer a question that the Tribunal has put to the person, or

(iii) fails or refuses to produce a document or thing specified in the summons,

the chairperson may, by instrument in writing, certify the failure or refusal to the Supreme Court.

(9) If a certificate is given under subclause (8), the Supreme Court may inquire into the case and, if satisfied that the person to whom the certificate relates has, without reasonable excuse, failed or refused to comply with a requirement specified in the certificate:

(a) may order the person to comply with the requirement in proceedings of the Compensation Review Tribunal to be held at a time and place specified in the order, or

(b) may deal with the person in the same manner as if the person had been guilty of contempt of that Court.

(10) The giving of a certificate under subclause (8) does not prevent the person to whom it relates from being dealt with under section 7 of the *Coal Acquisition Act 1981*, but the person is not liable to be dealt with both under that section and under subclause (9) (b) in respect of the same matter.

## **10 Decision of Compensation Review Tribunal**

(1) Subject to this Schedule, a decision supported by a majority of the members in relation to a matter arising before the Compensation Review Tribunal is the decision of the Tribunal in relation to that matter.

(2) In respect of every appeal lodged with the Tribunal, the Tribunal may announce its decision at a hearing of the Tribunal but it shall in any event cause to be served on the parties to the appeal a notice in writing specifying that decision and the reasons on which it is based.

## **11 Hearing and determination of appeal may continue in certain cases notwithstanding vacancy in membership of Compensation Review Tribunal**

Where a member dies or otherwise ceases to be a member while an appeal is before the



Tribunal, then, unless the claimant concerned objects:

- (a) the remaining members may continue to hear and determine the appeal, or
- (b) if another person has been appointed to replace that member, the remaining members together with the newly appointed member may continue to hear and determine the appeal.

## **12 Costs**

The costs incurred by a party to a hearing of the Compensation Review Tribunal shall be borne by that party.

## **Schedule 4 Savings and transitional provisions**

(Clause 34)

### **1 Pending appeals to the Tribunal**

For the purposes of enabling the Tribunal to continue to hear and determine appeals pending immediately before the commencement of this Schedule, the members of the Tribunal holding office immediately before that commencement continue to hold office, and the Tribunal continues to be constituted, in accordance with this instrument as in force immediately before that commencement.