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No. 42 2000–01

Coal Industry Repeal Bill 2000

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Coal Industry Repeal Bill 2000

Date Introduced: 28 June 2000

House: House of Representatives

Portfolio: Industry, Science and Resources

Commencement: On a date to be fixed by Proclamation. The Explanatory Memorandum states that the commencement of this Bill depends on the passage of complementary legislation through the New South Wales Parliament.

Purpose

The purpose of this Bill is to:

- repeal the *Coal Industry Act 1946*, and
- provide for the dissolution of the Joint Coal Board as constituted under the *Coal Industry Act 1946* (Cth) and the New South Wales *Coal Industry Act 1946*.

Background

The Joint Coal Board was established in 1946 under parallel legislation passed by the Commonwealth (the *Coal Industry Act 1946* (Cth)) and New South Wales (the *Coal Industry Act 1946* (NSW)). The Joint Coal Board is a statutory corporation funded primarily from insurance premiums under its workers' compensation scheme, investment of its accumulated funds and reserves, and fees received for services. Since 1992 the Board's principal powers and functions have included:

- providing occupational health and rehabilitation services for workers engaged in the coal industry, including the provision of preventative medical services, monitoring workers' health and investigating related matters
- collecting, collating and disseminating accident and other statistics related to the health and welfare of workers engaged in the coal industry

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- providing courses in the production and utilisation of coal under international development assistance programs, and
- promoting the welfare of workers and former workers in the coal industry in New South Wales, their dependants, and communities in coal mining areas.

History of the Joint Coal Board

Establishment after the Second World War

During World War II the Commonwealth Government acted under its defence powers to take increasing control over the coal industry in the interests of war production. Under the *Coal Production (War Time) Act 1944*, the Commonwealth Coal Commissioner had the power to control coal production, distribution and prices throughout Australia.

When the war ended the Commonwealth and New South Wales Governments decided to establish a coal authority that would exercise powers similar to, and in some respects wider than those given to the Commonwealth Coal Commissioner during the war. The justification for the Board's sweeping powers at its inception, and the involvement of the Commonwealth Government, lay in the precarious state of the NSW coal industry at the end of the war. In 1946, the bulk of Australian coal was produced by NSW. It was essential to electricity and gas production, rail transport, steel production and other industries such as cement manufacture, as well as for ship's bunkers. At the time, production capacity of the NSW industry could not meet Australia's demand for coal. Speaking in the second reading debate on the Coal Industry Bill 1946, the Minister for Post-War Reconstruction, Hon John Dedman said:

During the past six years of abnormally rapid industrialization in Australia, the consumption of coal has leapt ahead of production in a chronically sick industry.¹

The coal shortage had serious implications for Australia's post-war reconstruction which depended on adequate supplies of iron and steel products, building materials and transport. The coal industry in 1946 was fundamentally inefficient and technologically out of date, producing only some 11 million tonnes from 138 mines with a yearly output per employee of about 621 tonnes.² (By way of comparison, in 1999 the comparable figures were more than 131 million tonnes of raw coal from 64 mines with a saleable output per employee of 9 600 tonnes.³)

The Joint Coal Board was established by parallel Commonwealth and New South Wales legislation, the *Coal Industry Act 1946* (Cth) and the *Coal Industry Act 1946* (NSW) (the Coal Industry Acts), with the Commonwealth relying on State Constitutional authority for many of the major functions of the Board.⁴ The legislation provided the Joint Coal Board with sweeping powers over virtually every aspect of the NSW coal industry. These included control over mining methods, opening and closing coal mines, distribution of coal including its purchase and sale, regulation of prices, employment in and recruitment to the coal industry and power to acquire and operate any mine or to manage any mine.

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Involvement in Workers' Compensation

At its formation the Board set up a medical service to undertake regular periodic medical examinations of the workforce, and to advise the Board on all health aspects of the industry. Dust was a major problem in the mines and resulted in physical disability for some miners due to pneumoconiosis (black lung) because of the very limited dust control procedures then in place.

The high cost of dust claims had pushed up the cost of workers' compensation to the point where one mine on the South Coast of NSW was paying the equivalent of 40% of wage costs in insurance premiums. These costs restricted the willingness of proprietors to undertake further capital expenditure to expand output. The Board saw that the differing incidence of workers' compensation costs between one mine and another greatly contributed to the uneven price and cost structure in the industry. It therefore decided, in accordance with its legislation, to establish its own scheme of workers' compensation insurance which would enable it to spread the cost throughout the industry.

Prior to 1948, approximately 75% of workers' compensation insurance business was handled by Mine Owners' Insurance Pty Ltd, a company heavily subsidised by the Commonwealth during the war years. The Board purchased this company in June 1948 and introduced a new scheme of workers' compensation insurance from 1 October 1948 for all miners in the industry. The Joint Coal Board's Order No. 10 requires each employer in the coal industry to take out all workers' compensation insurance for all mine workers with the Board.

Involvement in Mining Communities

Since its creation the Joint Coal Board has provided funds to local authorities to improve the amenities available in mining communities. In his second reading speech on the Coal Industry Bill 1946, Hon John Dedman said :

But improvement of the actual working and distribution of coal will be of no avail if the miners at the coal-face and in their homes are left, as they have been in the past, to burrow in the darkness of a harsh and insecure livelihood. They must feel that they, too, are participating in the social life and progress of the nation which depends so greatly on their efforts in winning coal.⁵

In many of the older mining areas the Board has provided water and sewerage schemes, recreational facilities, libraries, and parks and gardens.

Changing Role of the Joint Coal Board

The role of the Joint Coal Board has been the matter of consideration and review on several occasions since 1975. The proposal for a joint Commonwealth/State review of the Board first arose out of a Commonwealth review of policies and programs initiated in late 1975 with the purpose of achieving savings in expenditure. The then government considered the possibility of negotiating a planned withdrawal from the Joint Coal Board.

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However, following strong representations from the industry and the unions favouring retention of the Board, it decided to initiate discussions with the NSW Government to examine the future of the Board and the possibility of its becoming a self-financing authority.

In 1983, the Commonwealth and NSW again discussed the future of the Board. The discussions led to a restructuring in 1984 which provided for a Board of three members, one member to be drawn from the trade union movement, one from coal company management and one from government.

Following the restructure, the stated objectives of the Board were to increase efficiency and stability in the industry and to minimise the periodic disruptions to which the coal industry has been subjected. In 1988 the Board directed the Coal Industry Tribunal to hear an application by the major coal companies for a change in the miners' award. At issue was the introduction of more flexible working hours. The Coal Industry Tribunal's decision of September 1988 facilitated the introduction of seven day a week operations, the abolition of the annual Christmas shutdown and more flexibility in rostering and shift working hours.⁶

In 1992, a further review of the Board's operations was carried out,⁷ and amendments to the Coal Industry Acts were passed. The amendments refocused the Board away from engineering and industrial issues to a primary concern for the occupational health and welfare of mine workers. In 1993 the administration of the Coal Industry Tribunal and Local Coal Authorities was transferred from the Board to the Australian Industrial Relations Commission, where a separate coal panel was established. The Board has since ceased involvement in industrial matters.

In broad terms, the activities of the Board have changed since its inception from comprehensive control of the industry, including itself producing coal, to a role of regulation and the provision of specific services to the industry. These include the provision of a workers' compensation scheme, occupational health and rehabilitation services for workers engaged in the coal industry, and the collection and publication of accident and other statistics related to the health and welfare of workers engaged in the coal industry.

Need for New South Wales legislation

In the 1998 Federal election campaign the Coalition made a commitment to withdraw from the Joint Coal Board.⁸ The New South Wales Government indicated that it proposes to retain the functions of the Board in a newly created entity.⁹ This Bill relies on New South Wales making a law to provide for the transfer of all the assets, rights, liabilities and existing staff of the Joint Coal Board to a new State-administered corporation or entity. The Explanatory Memorandum states that the commencement of this Bill depends on the passage of complementary legislation through the New South Wales Parliament.¹⁰ The Bill itself simply says that the Bill will commence on a day to be fixed by Proclamation.

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On 18 June 2000, the then NSW Attorney-General and Minister for Industrial Relations, Hon Jeff Shaw QC MLC, announced that legislation would be introduced into the NSW Parliament to combine the functions of the Joint Coal Board, Mines Rescue and Coal Super under one corporation.¹¹ He said that the corporation would be administered by a board of directors appointed by the Minister after recommendations from the coal industry. In his press release Mr Shaw stated that:

The corporation will be owned and operated by coal industry stakeholders. This is an important step in placing the industry in the hands of those who know it best. The day-to-day running will be in their hands, although the corporation will, as a matter of course, be subject to government regulation and review.¹²

The press reported that the New South Wales Government wanted the new corporation to start on 1 October 2000.¹³ As at 15 September 2000 legislation had not been introduced into the NSW Parliament. Press reports indicate that the NSW Minerals Council Ltd. which represents coal companies, has expressed concern about the plan for the new corporation to be industry-owned. The executive director of the NSW Minerals Council Ltd., Mr Dennis Porter, is reported as saying that industry ownership raised issues for the voluntary association that covered coal, minerals and quarrying, and that:

At the end of the day our coal industry members are going to have to be happy with the model. The Government can legislate whatever it likes for a statutory corporation but it can't force an industry-owned model down somebody's throat if they are not willing.¹⁴

Main Provisions

Clause 4 provides for the dissolution of the Joint Coal Board as it is constituted under the *Coal Industry Act 1946*. The clause states that it is Parliament's intention that New South Wales legislation make provision for the transfer of all assets, rights, liabilities and existing staff of the Joint Coal Board to a new NSW corporation or entity set up to carry out its functions.

The effect of **clause 5** is to provide for the records of the Joint Coal Board that are of national archival interest to be managed by National Archives of Australia and for administrative arrangements to be made under paragraph 24(2)(b) of the *Archives Act 1983* for the transfer of other records to New South Wales.

Clause 6 provides that any workers' compensation scheme created by the Board will be taken to be established under New South Wales law immediately before the repeal of the *Coal Industry Act 1946*. The clause refers to a NSW Act which is yet to be passed in the NSW Parliament.

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Clause 7 provides that compensation will be payable if, as a result of the Act proposed by this Bill, property is acquired from a person on other than ‘just terms’. Section 51(xxxi) of the Constitution gives the Commonwealth Government power to acquire land or property from private companies or individuals for purposes for which the Government has the power to make laws. In exercising such power, the Government must do so on ‘just terms’. The courts have defined ‘just terms’ as providing fair, timely compensation approximating the market value for the property acquired as far as it is possible, and reflecting a general notion of fairness in all circumstances.¹⁵ The general requirement of ‘just terms’ is the provision of a price which a reasonably willing vendor and purchaser would have negotiated at the date of acquisition.¹⁶

Acquisitions by a State Government are not affected by the constitutional limitation of ‘just terms’ imposed on the Commonwealth’s legislative powers. A State may therefore acquire property without compensation.¹⁷ However most States have passed legislation which requires that the acquisition of land be compensated in a way that would satisfy the ‘just terms’ requirement under the Commonwealth Constitution. In New South Wales this is effected by the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

In 1981 the State of New South Wales acquired all coal in the State under the *Coal Acquisition Act 1981* (NSW). The New South Wales Government has passed the Coal Acquisition (Compensation) Arrangements 1985 for the determination of cases in which compensation would be payable and for the determination of the amount and method of payment of compensation.¹⁸

Item 1 of Schedule 1 provides for the repeal of the *Coal Industry Act 1946* (Cth).

Endnotes

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- 1 Hon John Dedman MP, ‘Second Reading Speech, Coal Industry Bill 1946’, 24 July 1946, *Commonwealth Parliamentary Debates*, vol. 188, p. 3007.
 - 2 S.J.Butlin and C.B.Schedvin, ‘War economy 1942-1945’, Canberra, Australian War Memorial, 1977, *Australia in the War of 1939-1945, Series 4 (Civil), volume IV*, p.444.
 - 3 Joint Coal Board, *Summary of New South Wales Black Coal Statistics*, www.jcb.org.au (23 August 2000).
 - 4 Hon John Dedman MP, ‘Second Reading Speech, Coal Industry Bill 1946’, 24 July 1946, op cit, p. 3009.
 - 5 *ibid.*, p. 3010.
 - 6 ‘The day the miners began surrendering to reality’, by Ean Higgins, *Australian*, 1-2 October 1988, p. 21.

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- 7 *Review of the Joint Coal Board*, by Bryan Kelman assisted by Denis Casey and Noel Webb, February 1991.
- 8 'Coal industry repeal bill increases flexibility, Senator Nick Minchin, *Media Release*, 28 June 2000.
- 9 Joint Coal Board, *52nd Annual Report 1998-1999*, p. 3.
- 10 *Explanatory Memorandum*, Coal Industry Repeal Bill 2000, p. 2.
- 11 'Coal groups to merge', *Daily Telegraph*, 19 June 2000, p. 15.
- 12 'New industry-owned corporation for NSW coal industry', Hon. J.W.Shaw QC MLC, *Press Release*, 18 June 2000.
- 13 'Industry merger concern', *Newcastle Herald*, 5 July 2000, p. 20.
- 14 *ibid.*
- 15 *Peeverill v Health Insurance Commission* (1991) 32 FCR 133; 104 ALR 449.
- 16 *Nelungaloo Pty Ltd v Commonwealth* (1948) 75 CLR 495.
- 17 *Halsbury's Laws of Australia*, volume 22, 'Real property', [355-7005].
- 18 J R S Forbes and A G Lang, *Australian mining and petroleum laws*, Second edition, Butterworths, Sydney, 1987, p. 264. The Coal Acquisition (Compensation) Arrangements 1985 are in force under section 6 of the *Coal Acquisition Act 1981* (NSW).

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Appendix

Joint Coal Board Statistics

Comparative Statistical Profile

Year Ended 30 June												
	Notes	Units	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Industry Declared Wages		\$m	792.0	850.0	883.0	847.0	799.0	813.0	875.0	946.0	887.9	754.0
Average Number Employed	(a)	No	17200	17000	16600	15100	14700	14300	14473	14793	13522	11064
Premiums Received	(b)	\$m	64.0	54.0	39.0	33.0	32.5	38.0	55.8	60.0	54.0	45.9
Av Industry Premium Rate	(b)	%	8.1	6.4	4.4	3.9	4.1	4.7	6.4	6.3	6.1	6.1
Premium Cost per Employee	(b)	\$	3721	3176	2349	2185	2211	2657	3855	4056	4008	4140
Workers' Compensation Claims Lodged		No	7979	7510	6616	5903	5690	6231	5533	5095	4651	3552
Claim Rate	(c)	%	46.4	44.2	39.9	39.1	38.7	43.6	38.2	34.4	34.0	32.1
Payments on Claims		\$m	58.0	70.0	80.0	77.0	72.4	68.1	64.9	69.1	57.8	73.0
Provision for Outstanding Claims		\$m	270.0	254.0	248.0	223.0	212.4	221.3	233.0	232.3	247.7	261.7
Raw Coal Production		m Tonnes	93.9	96.7	101.2	102.9	101.9	107.8	113.1	123.6	134.0	131.4
Premium Cost per Tonne Coal Produced		\$	0.68	0.56	0.39	0.32	0.32	0.35	0.49	0.49	0.40	0.35
Lost Time Injury Frequency Rate	(d)	No	168	143	108	78	68	73	56	48	52	39
Severity Rate	(e)	Days	N/A	2546	1878	1210	1128	1332	1050	999	1215	1079
No of Mines		No	70	72	70	67	68	69	72	68	66	64
Days Lost per Employee due to Industrial Disputes		Days	6.0	4.7	5.1	2.5	6.7	2.0	5.0	5.8	5.4	2.6
Days Lost per Employee due to Workers' Compensation		Days	5.3	4.7	4.0	3.4	3.6	4.1	3.7	3.3	3.2	3.5
Fatalities		No	1	9	7	4	1	2	2	6	2	3
Investment Income	(f)	\$m	58.6	55.5	50.4	37.1	21.6	29.5	37.5	55.1	33.3	27.9
Total Assets	(f)	\$m	452.0	396.0	382.0	352.0	312.5	293.3	306.2	332.1	344.6	327.6
Accumulated Funds	(f)	\$m	84.6	103.2	55.7	56.4	42.5	22.4	24.0	55.7	57.3	31.1
Staff		No	215	207	177	143	139	131	130	130	131	123

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Source: Joint Coal Board *Annual Report 1998-1999*.

Notes

- (a) from 1991 this figure includes all employees exposed to risk, including mines rescue personnel, central office staff etc.
- (b) these figures do not take into account special premium rebates
- (c) the claims rate is arrived at as follows
$$\frac{\text{number of claims during the period} \times 100}{\text{number of employees exposed to risk during period}}$$
- (d) number of lost time injuries per million hours worked
- (e) days lost due to absences on workers' compensation per million hours worked
- (f) the figures from 1992 onwards are not directly comparable with previous years due to changes in accounting standards

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Summary of New South Wales Black Coal Statistics

	Financial Year		Calendar Year	
	1997-98	1998-99	1998 (r)	1999
Production '000 tonnes				
- raw coal	134 009	131 381	132 365	134 283
underground mines	58 299	51 318	54 648	52 797
open cut mines	75 710	80 063	77 717	81 486
- saleable coal	107 708	103 421	105 224	106 054
underground mines	49 898	43 730	46 519	45 142
open cut mines	57 810	59 691	58 705	60 912
Number of mines (a)	66	64	67	61
underground	41	40	41	39
open cut	25	24	26	22
Employment (a)	11 695	10 400	10 898	9 748
underground mines	6 957	6 063	6 373	5 734
open cut mines	4 738	4 337	4 525	4 014
Saleable output per employee, tonnes	8 110	9 600	8 565	10 180
underground mines	6 130	7 120	6 370	7 430
open cut mines	11 240	12 880	11 790	14 025
Export '000 tonnes	75 934	76 406	77 286	72 094
metallurgical	24 121	24 341	22 810	23 638
steaming	51 813	52 065	54 476	48 456
Domestic sales '000 tonnes	33 715	31 203	31 134	31 147
power stations	24 631	24 127	24 194	25 138
steel industry	7 805	6 043	5 915	5 070
other	1 279	1 033	1 025	939
Mine and port stocks '000 tonnes (a)	10 494	6 715	6 275	8 626
Lost-time injury frequency rate	52	39	48	37
underground mines	65	48	58	45
open cut mines	31	27	34	26
Lost-time injury incidence rate	10	7	9	7
underground mines	12	9	11	9
open cut mines	7	5	6	5
Number of fatalities	2	3	4	3

Source: Joint Coal Board Website www.jcb.org.au (23 August 2000)

(a) As at end of period. (r) revised.

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