



Bills Digest

No. 85 2001-02

Coal Industry Repeal (Validation of Proclamation)
Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Coal Industry Repeal (Validation of Proclamation) Bill 2002

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Coal Industry Repeal (Validation of Proclamation) Bill 2002

Date Introduced: 20 February 2002

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: Clauses relating to the *Coal Industry Repeal Act 2001* will commence retrospectively from 31 December 2001. Other clauses will commence from the day on which this Act receives Royal Assent.

Purpose

To validate retrospectively the commencement date of the *Coal Industry Repeal Act 2001* as 1 January 2002.

Background

In the 1998 Federal election campaign the Government made a commitment to withdraw from the Joint Coal Board.¹ Following negotiations with the NSW Government it was jointly decided to transfer full responsibility for the Joint Coal Board to the NSW Government. This included the transfer of all the assets, liabilities and rights of the Joint Coal Board to New South Wales. This was done in order to ensure that the new corporation to be established under NSW legislation to replace the Joint Coal Board, would have a financially sound base and would continue to have the resources needed to maintain its functions. The Commonwealth and the NSW Government also agreed that all staff of the Joint Coal Board would be transferred to the new corporation established under NSW law. The date of the Proclamation which would dissolve the Joint Coal Board was to be coordinated between the Commonwealth and New South Wales Governments to ensure that the new arrangements were in place, and that the new NSW corporation was ready to take over once the Joint Coal Board was dissolved.

The New South Wales coal industry is a major employer in that State, providing work for about 9700 workers. Coal mining accounted for over 70 per cent of the total income from

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mining in New South Wales in 1999-2000, with exports in 2000 worth around \$3.4 billion.²

The *Coal Industry Repeal Act 2001* provides for the dissolution of the Joint Coal Board as constituted under parallel Commonwealth and NSW legislation, the *Coal Industry Act 1946* (Cth) and the *Coal Industry Act 1946* (NSW). The *Coal Industry Repeal Act 2001* also supports New South Wales in 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 private company called Coal Services Pty Ltd, and for other matters incidental to the dissolution of the Joint Coal Board. (More information on the provisions of the *Coal Industry Repeal Act 2001* and the history of the Joint Coal Board is included in Bills Digest No. 42, 2000-01).³

New South Wales legislation passed in December 2001 established a new corporation called Coal Services Pty Ltd.⁴ Coal Services Pty Ltd is a private company owned jointly by the NSW Minerals Council and the Construction, Forestry, Mining, and Energy Union (CFMEU) as representatives of the coal industry. It came into being on 1 January 2002 when the Joint Coal Board and the Mines Rescue Board ceased to exist. The merger of the two Boards completed several years of negotiations between the Commonwealth and the New South Wales Governments, the NSW Minerals Council and the CFMEU, and consolidated all activities of a health and welfare nature in one company servicing the NSW coal industry. The merger also signalled the end of over 50 years of direct Commonwealth involvement in the NSW coal industry.

The *Coal Industry Repeal Act 2001* received Royal Assent on 28 April 2001. The Act was to commence on Proclamation with no further date set within which the Act must commence in any event. The commencement of the Act depended on the passage of complementary legislation through the NSW Parliament. The complementary State legislation (*Coal Industry Act 2001* (NSW)) was assented to on 14 December 2001.

On 20 December 2001 the Governor-General signed the Proclamation which was counter signed by the responsible Minister, the Minister for Industry, Tourism and Resources. This was in accordance with section 5 of the *Acts Interpretation Act 1901* which provides that:

- (2) Every Act reserved for the signification of the King's pleasure thereon shall come into operation on the day on which His Majesty's assent is proclaimed in the Gazette by the Governor-General, unless the contrary intention appears in such Act.

However, according to the Minister's Second Reading Speech on this Bill, 'because of an administrative oversight the Proclamation was not gazetted' before 1 January 2002.⁵ In fact it was gazetted one month later on 1 February 2002.⁶ This means that the *Coal Industry Repeal Act 2001* may not have commenced on 1 January 2002 as intended, and that, as a consequence, the legal basis of many of the actions taken by the NSW Government in connection with the NSW coal industry, is uncertain.

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The purpose of this Bill is to remedy the situation by retrospectively validating the Proclamation. This will have the effect of providing certainty to Coal Services Pty Ltd which has responsibility for workers' compensation, occupational health and rehabilitation, and mines rescue services in the New South Wales coal industry.

Main Provisions

Clause 4 has the effect of validating 1 January 2002 as the commencement date of the *Coal Industry Repeal Act 2001*, and of validating all actions that have been taken on the assumption that this was the commencement date. Such actions include those taken by New South Wales in transferring the property and staff of the Joint Coal Board to Coal Services Pty Ltd, which in turn has been using these resources to manage the former functions of the Joint Coal Board.

Clause 5 relates to the acquisition of property on 'just terms'. Section 7 of the *Coal Industry Repeal Act 2001* provides that compensation will be payable if, as a result of the Act, property is acquired from a person other than 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 possible, and reflecting a general notion of fairness in all circumstances.⁷ This clause ensures that Section 7 of the *Coal Industry Repeal Act 2001* also applies to this Act.

The purpose of **Clause 6** is to avoid any doubt about the validity of any 'past acts' taken between 1 January 2002 and the date on which this Act receives Royal Assent. **Sub-clause 6(1)** defines a 'past act' as any action that was taken on the assumption that the *Coal Industry Repeal Act 2001* commenced on 1 January 2002.

Sub-clauses 6(5) and 6(6) recognise that New South Wales may want to make its own laws to validate 'past acts' and support the capacity of New South Wales to pass legislation validating 'past acts'.

Endnotes

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- 1 'Coal industry repeal bill increases flexibility', Senator Nick Minchin, *Media Release*, 28 June 2000.
 - 2 'NSW hands coal health and safety functions to industry', Marian Hookham, 17 December 2001, *MiningNews.net* at <http://www.miningnews.net/storyview.asp?StoryID=6710&SectionID=9>

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- 3 Rosemary Bell, Bills Digest No. 42, 2000-01, Coal Industry Repeal Bill 2000 at <http://www.aph.gov.au/library/pubs/bd/2000-01/01BD042.htm>
- 4 *Coal Industry Act 2001* (NSW)
- 5 Hon Ian Macfarlane, Minister for Industry, Tourism and Resources, 'Second Reading Speech', Coal Industry Repeal (Validation of Proclamation) Bill 2002, House of Representatives, *Hansard*, 20 February 2002, p. 356.
- 6 Commonwealth of Australia, *Gazette*, No. S37, Friday 1 February 2002.
- 7 *Peverill v Health Insurance Commission* (1991) 32 FCR 133; 104 ALR 449.

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