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Coal Acquisition Legislation Repeal Bill 2007

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COAL ACQUISITION LEGISLATION REPEAL BILL 2007

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Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [11.25 a.m.]: I move:

That this bill be now read a second time.

The Coal Acquisition Legislation Repeal Bill marks the end of a significant chapter in the history of coal in New South Wales. The bill repeals the legislation relating to the acquisition and restitution of rights with respect to privately owned coal. Five Acts and statutory instruments will be repealed with the passing of this bill. They are the Coal Acquisition Act 1981, the Coal Acquisition (Compensation) Arrangements 1985, the Coal Ownership (Restitution) Act 1990, the Coal Ownership (Restitution) Regulation 2005 and the Coal Acquisition (Re-Acquisition Arrangements) Order 1997.

In January 1982 the Government compulsorily acquired title to coal from private coal owners under the Coal Acquisition Act 1981. These private coal owners and others who suffered pecuniary loss as a result of the Government's acquisition of titles were able to claim for their losses. Compensation was calculated under the provisions of the Coal Acquisition (Compensation) Arrangements 1985. Since then approximately 28,000 claims for compensation have been determined under the arrangements. Subsequent to this the Coal Ownership (Restitution) Act 1990 allowed for the re-vesting of some coal titles in place of compensation. Coal titles that could be re-vested had to be outside a colliery holding as of 1 January 1986 and of no economic benefit to the State. Approximately 1,300 claimants applied for restitution of their coal under this Act.

A further set of amendments was made in 1997 under the Coal Acquisition (Re-Acquisition Arrangements) Order 1997. The 1997 order established the mechanism to calculate compensation for claims arising from the Government's reacquisition of coal titles, which had previously been restored to private coal owners. Compensation was paid to owners whose coal was reacquired and to owners whose restitution applications were refused. The 1997 order also provided for voluntary acquisition of private coal titles by government through agreement with coal owners. Payment was made to owners on commercial grounds. About 145 owners have applied to voluntarily transfer their coal titles to the State. Government has always been committed to just and equitable compensation for those whose right to coal titles was acquired. The legislation therefore provided for a Coal Compensation Board and a Coal Compensation Review Tribunal to manage the claims process, including compensation determinations and payments, and the review of determinations.

It has not been possible for new claims for compensation to be lodged since July 1994. Repeal of the coal acquisition legislation will bring to an end the role of the Coal Compensation Board and the Coal Compensation Review Tribunal. The Coal Compensation Board has been the independent statutory authority responsible for determining and paying compensation claims made by former private coal owners since 1985. The review tribunal has heard appeals from board determinations. The Coal Compensation Board has presided over more than 30,000 claims for compensation since its inception, and through the legislative changes that impacted on its work. The review tribunal, the independent authority set up at the same time as the board to hear and adjudicate appeals from the board's determinations, has considered 580 matters since 1985.

The board has administered three schemes. Two of these are the compensation schemes under the 1985 arrangements and the 1997 order, and the third is the voluntary acquisition of the coal titles scheme. Since 1985 the board and the tribunal have overseen the payment of almost \$790 million to claimants. The board has now undertaken most of the work it was set up to do. It expects to have considered virtually all eligible claims by 31 December 2007. Consideration can therefore be given to bringing the board and the tribunal to a close.

The net financial benefit to the State from the acquisition of coal titles, after taking into account the \$790 million paid in compensation, is estimated at \$10.5 billion. This is a significant benefit to the State of New South Wales. There will also be a substantial cost saving for Government with the closing of the Coal Compensation Board and the Coal Compensation Review Tribunal now that they have finished their work. Further, the repeal of the

legislation associated with coal acquisition reflects the Government's policy of streamlining and reducing regulation where appropriate.

This leads me to the provisions of the bill before the House. I remind the House that the Acts and statutory instruments that will be repealed are: the Coal Acquisition Act 1981, the Coal Acquisition (Compensation) Arrangements 1985, the Coal Ownership (Restitution) Act 1990, the Coal Ownership (Restitution) Regulation 2005 and the Coal Acquisition (Re-Acquisition Arrangements) Order 1997. The bill will abolish the New South Wales Coal Compensation Board and the New South Wales Coal Compensation Review Tribunal. At the same time it will commence in stages to allow for a transitional period. The bill ensures that existing claimants' procedural rights are maintained. Any claim made under the 1985 arrangements that has not been settled before the bill commences will be determined by the director general of the Department of Primary Industries. The director general will assume all of the functions of the Coal Compensation Board.

On the abolition of the Coal Compensation Review Tribunal, the Government's residual jurisdiction will be transferred to the Land and Environment Court. This means that the Land and Environment Court will determine any pending appeals under the 1985 arrangements that have not been decided in the tribunal by the time the repeal commences. Appeals from determinations of the Coal Compensation Board made before the commencement of the repeal legislation and not dealt with by the tribunal will be appeals to the Land and Environment Court. Appeals from determinations of the director general of the Department of Primary Industries, taking on the functions of the Coal Compensation Board, will also be to the Land and Environment Court. Taken together, these provisions ensure that all existing rights of appeal are safeguarded and that nobody will be deprived of his or her procedural rights.

Not only are processes under the 1985 arrangements provided for, but provision is also made for claim applications under the 1997 order. The right to lodge applications for claims under the voluntary acquisition scheme, that is, under the 1997 order, will be repealed once the bill has received assent. However, the repeal bill ensures that existing claimants' procedural rights under the 1997 order are maintained until they are finalised. The director general of the Department of Primary Industries will decide any claim that has not been decided before the bill commences.

The Government will still have the power under common law contract to acquire coal titles from private owners suffering financial hardship. The removal of the present statutory scheme to claim will not prevent a titleholder from applying to the State for voluntary acquisition of a title. It is clear that the repeal of the coal acquisition legislation, the closure of the New South Wales Coal Compensation Board and the New South Wales Coal Compensation Review Tribunal will not deny claimants any of their existing procedural rights. The bill will have no negative impact on the community. All claims for compensation for the compulsory acquisition of coal, voluntary acquisition of coal and reacquisition of coal will be finalised, or transitional arrangements will be put in place, to allow the proper determination of residual matters.

It has not been possible for new claims for compensation to be made since July 1994. The time taken to finalise the compensation schemes demonstrates the complex nature of the claims determined by the board. Further, the presence of the tribunal ensured that board determinations were open to rigorous independent scrutiny, guaranteeing equitable compensation outcomes. I thank the members of the Coal Compensation Board and the Coal Compensation Review Tribunal for their work over the years and their contribution to the effective implementation of the coal acquisition legislation. Now that that work has been completed, this repeal bill is timely and appropriate. I commend the bill to the House.

The Hon. TREVOR KHAN [11.34 a.m.]: The Opposition does not oppose the Coal Acquisition Legislation Repeal Bill 2007, which brings to an end the role of the Coal Compensation Board, the Coal Compensation Review Tribunal and some ancillary bodies. Coal compensation to freehold owners has had a chequered history over the past 25 years starting when Neville Wran removed freehold coal rights in 1981. A movement—the Freehold Rights Association—was formed and pressured the Government into some form of compensation in the mid-1980s. When the Coalition came to government in 1988 a full review was carried out and a proper compensation scheme was implemented with additional compensation. The Carr Government then altered the scheme, allowing people to reacquire their rights in lieu of payment of compensation. In 1997 it again changed with the Government, through the Hon. Michael Egan, moving to acquire all rights, including those rights that had been reacquired by landholders. Initially the Government was not going to pay any compensation.

Working with the Freehold Rights Association, together with threats of successful Supreme Court cases on the issue, the Coalition was able to pressure the Government in this Chamber to pay just and equitable compensation in relation to the proposed 1997 acquisitions. The latest series of claims were to sunset on 30 June 1994 and no claims have been made since then. The bill effectively dismantles the board and tribunal and makes some transitional provisions. I note that the Freehold Rights Association accepts the inevitability of the position. On 13 November 2007 Elizabeth Bowman, the chief executive officer of the Freehold Rights Association, wrote to John Turner, shadow Minister for Mineral Resources, shadow Minister for Lands and member for Myall Lakes, and said:

Thank you very much for informing the Freehold Rights Association of the pending legislation to repeal the five

Acts and statutory instruments relating to the acquisition of private coal in the State of NSW. Your action is much appreciated. We note that this Act will also transfer the powers of the Coal Compensation Board and the Coal Compensation Review Tribunal to the Director General of the Department of Primary Industries and the Land and Environment Court respectively.

You will have received comment from James Moses, our Honorary Secretary/Treasurer, on the Government attitudes outlined in Ms Sonia Hornery's speech introducing the proposed legislation which expresses the FRA's disappointment at the huge disparity between so called "just and equitable compensation" paid to former owners and the net value to the State.

It is also worth drawing your attention to the fact that nowhere in Ms Hornery's address is there any mention of the part played by the FRA in gaining compensation for the compulsory acquisition of freehold coal. Without its members activity in lobbying vigorously over several years for compensation and property rights, the introduction of the bill, Coal Compensation Arrangements 1985, would not have occurred, a travesty of justice indeed.

Further to the above, there is no acknowledgement of the part played by the FRA in having the wording "just and equitable" included in the Coal Acquisition (Re-acquisition) arrangements Order 1997.

It would appear that Ms Hornery's document outlining the "Agreement in Principle" is deficient in its account of the history of coal acquisition in NSW. As this is a document which will be referred to by future social historians and economists perhaps you and your Parliamentary colleagues would attempt to redress the imbalance. We would salute you if you could!

The Hon. HENRY TSANG (Parliamentary Secretary) [11.38 a.m.], in reply: I thank the Hon. Trevor Khan for his contribution. The Coal Acquisition Legislation Repeal Bill 2007 marks the end of a significant chapter in the history of coal in New South Wales. The bill repeals the legislation relating to the acquisition and restitution of rights with respect to privately owned coal. The Government's policy of acquisition of coal in private ownership and compensation to former coal owners has benefited both the coal owners and New South Wales to a great degree. At the same time considerable quantities of coal were privately owned. This led to a real difficulty for Government. On one hand it was spending large sums of money to enable the coalmining industry to develop; on the other, it was unable to use the royalties it would normally gain from mined coal owned by the Crown to fund the infrastructure requirements. The major part of the royalties was going to the holders of private coal title. The Government introduced the Coal Acquisition Act 1981 to enable it to meet its considerable infrastructure costs. This Act transferred all private coal ownership to the State.

The Government has always been committed to just and equitable compensation for those whose right to coal titles was acquired. The legislation therefore provided for a Coal Compensation Board and a Coal Compensation Review Tribunal to manage the claims process, including compensation determinations and payments, and the review of determinations. The repeal of the coal acquisition legislation will bring to an end the role of the Coal Compensation Board and the Coal Compensation Review Tribunal. The Coal Compensation Board has presided over more than 30,000 claims for compensation since its inception and through the legislative changes that impacted on its work.

The review tribunal, the independent authority set up at the same time as the board to hear and adjudicate appeals from the board's determinations, has considered 580 matters since 1985. On the abolition of the Coal Compensation Review Tribunal, the tribunal's residual jurisdiction will be transferred to the Land and Environment Court. This means that any pending appeals under the 1985 arrangements that have not been decided in the tribunal by the time the repeal bill commences will be determined by the Land and Environment Court. Appeals from determinations of the Coal Compensation Board, made before the commencement of the repeal legislation and not dealt with by the tribunal, will be appeals to the Land and Environment Court.

Appeals from determinations of the Director General of the Department of Primary Industries, taking on the functions of the Coal Compensation Board, will also be to the Land and Environment Court. Taken together, these provisions will ensure that all existing rights of appeal are safeguarded and that nobody will be deprived of his or her procedural rights. I thank the members of the Coal Compensation Board and the Coal Compensation Review Tribunal for their work over the years and their contribution to the effective implementation of the coal acquisition legislation. Now that that work has been completed, this repeal bill is timely and appropriate. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

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