NSW Legislative Assembly Hansard

Coal Acquisition Amendment (Fair Compensation) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 6 April 2005.

Second Reading

Mr KERRY HICKEY (Cessnock—Minister for Mineral Resources) [10.02 a.m.]: I move:

That this bill be now read a second time.

The object of this bill is to amend the Coal Acquisition Act 1981 to make provision for the payment of fair and consistent compensation under that Act. The bill amends the Act to ensure fairness between all compensation claimants. It will mean that a small group of remaining claimants' compensation claims will be assessed under the same royalty regime as that used for those claimants whose claims have already been settled. The Coal Acquisition Act 1981 was introduced on 1 January 1982 to effect the acquisition of privately owned coal rights by the State. A compensation scheme was instituted under the Coal Acquisition (Compensation) Arrangements 1985. The Coal Compensation Board determines and pays compensation to former private owners of coal that was acquired by the State in 1982.

Payment of compensation pursuant to the Coal Acquisition (Compensation) Arrangements 1985 is known as the Compensation Scheme, which has four claims for loss of estate in coal remaining of a total of almost 28,000. The former Coalition Government introduced the Coal Ownership (Restitution) Act in 1990, which allowed some owners to apply for the restitution of their coal rights in lieu of receiving compensation. Subsequent amendments to the Coal Acquisition Act made by this Government in 1997 re-acquired some previously restored coal titles that were valuable to the people of New South Wales, and required the compensation payable under the Coal Acquisition (Re-acquisition) Arrangements Order 1997 to be just and equitable. The Re-acquisition Scheme was established in accordance with these amendments and it has 125 applications remaining from a total of 400.

Since the Coal Compensation Scheme began, compensation of more than $650 million has been paid to date to former owners of private coal. Following the Commonwealth Grants Commission recommendation the New South Wales Government moved to an ad valorem coal royalty regime in line with that of other States. At the time of this recommendation the Grants Commission indicated that New South Wales would be further penalised if it failed to implement this policy. The introduction of the ad valorem coal royalty regime on 1 July 2004 and recent litigation have increased the board's compensation liability by $116 million. Potential litigation from applications yet to be determined may further increase liability by more than $50 million.

The Coal Acquisition Amendment (Fair Compensation) Bill 2005 makes four key changes to the Coal Acquisition Act 1981 and does not affect the established entitlements to compensation for the 129 claims and applications that remain to be settled as they existed prior to the introduction of the ad valorem royalty scheme. This legislation is required to implement consistency in all the claims and applications for compensation. They were received at the same time and should all be assessed under the same flat rate per tonne regime that has applied to the more than 28,000 claimants who have already settled their claims. The people with the remaining 129 claims for coal compensation should not have the advantage of an unexpected windfall gain, estimated at $116 million, which could be better spent on teachers, nurses and police.

The Government is unashamed in wanting to direct these savings to front-line services. This decision is in the interests of consistency for all claimants and for the benefit of the people of New South Wales. This bill will ensure that coal compensation is based on the longstanding royalty rate of $1.70 a tonne. It will do so by inserting a proposed section 6A (2) into the Coal Acquisition Act 1981. Firstly, the bill removes the windfall financial benefits that accrue to the two-thirds majority of affected claimants arising from the introduction of the ad valorem coal royalty regime on 1 July 2004. Secondly, the bill restores fair compensation to the approximately one-third of claimants who may potentially be disadvantaged by the introduction of the ad valorem royalty scheme.

For example, some claimants' compensation is based on coal mined from areas of low-value coal for domestic electricity generation markets, where the ad valorem royalty may be less than the traditional royalty rate of $1.70 a tonne. In this way the bill ensures that the method of calculating compensation for the remaining claims is consistent with that used for the claims already determined by the Coal Compensation Board. Thirdly, the bill clarifies the law in relation to super royalty. "Super royalty" is the term commonly used to refer to additional payments of royalty that were provided for in certain circumstances under the former Coal Mining Act 1973 and until 1 July 2004 under the Mining Act 1992. The provisions relating to super royalty under the Mining Act 1992 were repealed on 1 July 2004. Super royalty was abolished by the repeal of the Mining Regulation 2003. Under subsections (3) and (4) of proposed section the calculation of super royalty may relate only to a period occurring before 1 July 2004.

Fourthly, the bill ensures that no compensation is payable from contracts negotiated in conjunction with tenders for coalmining leases for supply of coal at favourable prices by inserting proposed section 6A (5) into the Coal Acquisition Act 1981. A specific example is for the supply of coal for generating electricity. The Wran Government's acquisition of private coal rights in 1981 through the Coal Acquisition Act was a decisive and visionary act which provided that all the people of New South Wales should benefit from the resources of the State rather than a few who acquired private coal rights through a historical accident. Royalties that would otherwise have been diverted into the hands of the lucky few were instead channelled by the Government to benefit all the people of New South Wales regardless of land ownership or geology. The

Government provided for compensation to be payable for eligible former private coal owners by enacting the Coal Acquisition (Compensation) Arrangements 1985. The methodology for calculating that compensation recognised that coal in the ground is worth nothing—there is no market for private coal. It is not until the coal is mined and processed to generate electricity or make steel that the coal acquires value. The prospect or possibility that the coal might be mined gives that coal in the ground a potential value.

The companies that mine coal in New South Wales have to invest hundreds of millions of dollars in order to add value by extracting the coal in a manner that is safe and environmentally friendly and efficiently utilises the State's resources. The former private coal owners add nothing to the mining process. By a quirk of history they were the passive recipients of a proportion of the royalty for coal mined at a rate determined not by them but by the State. This bill will remove from the compensation formula the windfall which has not been available to all claimants and would otherwise flow to a select few. These windfall benefits would cost the State significant amounts of money which could be better used to benefit all the people of New South Wales in providing schools, hospitals, police services, transport and infrastructure.

The impacts of the bill are limited: No compensation claims in the compensation scheme or compensation applications in the Re-acquisition Scheme which have already been finally determined by the Coal Compensation Board are affected through proposed section 6A (7). However, the bill will affect claims that are the subject of an appeal, judicial review or re-determination as in proposed section 6A (6). The Nardell Colliery Pty Ltd test case litigation gave substantial compensation benefits to claims in the Re-acquisition Scheme. Recent litigation has flowed these benefits to the few remaining claims for loss of estate in coal outside a colliery holding, in the Compensation Scheme. The bill does not remove any of the benefits won by claimants in the Nardell Colliery test case.

The formula for compensation in line with the Nardell Case has been agreed and these entitlements are recognised by the Government. Nardell-dependent claimants will remain eligible to be compensated for a proportion of the payments made to the State by mining companies when a lease is granted, commonly called front-end payments. These claimants will also be entitled to the benefits of dividend imputation in the discount rate, and for super or additional royalty prior to 1 July 2004, when it was removed by the introduction of the ad valorem royalty regime. Coal compensation will continue to be just and equitable, but the provisions of this bill will prevail over the obligation for compensation to be just and equitable to the extent of any inconsistency by proposed section 6A (1).

It is worth noting that the change to an ad valorem system came about following years of sustained pressure from the Commonwealth and its agencies. In February 1999 the Public Inquiry into the Australian Black Coal Industry undertaken by the Productivity Commission recommended that the New South Wales Government should adopt an ad valorem royalty system. The Federal Government supported the Productivity Commission's recommendations. Furthermore, in its review of States' capacities to raise mining revenue, the Commonwealth Grants Commission assessed that New South Wales's need for Commonwealth funding could be further reduced on the basis that prima facie it could raise $87.6 million per annum more in mining revenue than it had actually raised.

The vast majority of eligible persons have been paid compensation under the Compensation Scheme and the Re-acquisition Scheme based on the coal royalty at $1.70 fixed at that rate since 1981. The compensation of the remaining claimants will be calculated in a similar way to the 99.5 per cent of people whose claims have already been determined. Similarly, the commencement of the ad valorem royalty terminated super royalty in addition to the fixed rate of royalty. The benefits of super royalty up to the introduction of ad valorem royalty on 1 July 2004 will be preserved by proposed section 6A (3). However, by proposed section 6A (4) this bill will ensure that compensation will not include super royalty after that date.

It is the practice of this Government to manage the State's resources carefully, particularly where it concerns our environment and the safety of our mineworkers. For example, when the Government tenders coalmining leases for areas suitable to supply coal for electricity generation, the Government on some occasions accepts the tender that will provide the lowest priced coal to the electricity generator. This means that the State of New South Wales obtains a benefit of affordable electricity for the people of New South Wales. The Government awarded the tender for the Mount Arthur Coal mining lease to the company that offered the lowest price coal to Macquarie Generation. Claims are now made for additional front-end payments, for a share of the value of this contract and on the basis that this decision has limited the royalty under the ad valorem scheme and hence their compensation payments.

A front-end payment is a payment under the Mining Act 1992 made to the department in respect of the grant of some mining leases. These claims have the potential to increase the Government's liability under the Re-acquisition Scheme by a further $50 million. The bill ensures that compensation does not include windfall benefits or losses arising from arrangements requiring the holder of a mining lease to supply coal at a particular price. The benefit, which this Government has earned the people of New South Wales in obtaining affordable coal to fuel our power stations, was obtained through the Government's strong negotiation with the coalmining companies. The reduced price of coal is a commercial transaction between a coalmining company and an electricity generator and is in no way analogous to a front-end payment.

It is unfair to the wider community that compensation is now being sought for what was a mutually beneficial commercial arrangement. As such this is not a front-end payment for the purposes of the Mining Act and does not apply to any compensation determination. That is the reason this Government intends to clarify the law so that front-end payments, an entitlement that some claimants may be eligible for, are distinct from these types of commercial arrangements. At the same time this bill will ensure that compensation is fair and consistent between the vast majority of claimants whose claims have already been finally determined and the less than 0.5 per cent of claimants still awaiting final determination by removing the market price for coal from the calculation of compensation. This bill will protect the public of New South Wales and secure the benefits won for them by this Government. The changes in this bill are sensible and practical responses to the problems I have described. I commend the bill to the House.