

COAL OWNERSHIP (RESTITUTION) ACT 1990 No. 19

NEW SOUTH WALES

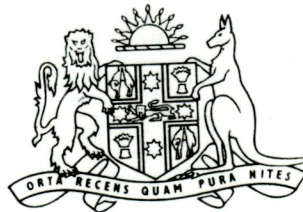


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COAL OWNERSHIP (RESTITUTION) ACT 1990 No. 19

NEW SOUTH WALES



Act No. 19, 1990

An Act to provide for the restitution of certain coal acquired by the Crown as a result of the operation of the Coal Acquisition Act 1981 and to provide for related matters. [Assented to 14 June 1990]

See also the Coal Acquisition (Amendment) Act 1990.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Coal Ownership (Restitution) Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. In this Act:

"**coal**" has the same meaning as in the Coal Acquisition Act 1981;

"**Coal Compensation Fund Account**" means the Coal Compensation Fund Account maintained in the Special Deposits Account under the Public Finance and Audit Act 1983;

"**coal to which this Act applies**" means coal that:

- (a) was vested in the Crown by the operation of section 5 of the Coal Acquisition Act 1981; and
- (b) on 1 January 1986, was located in land outside a colliery holding;

"**colliery holding**" has the same meaning as in the Coal Mining Act 1973;

"**Compensation Arrangements**" means the Coal Acquisition (Compensation) Arrangements 1985 (published in Gazette No. 95, dated 21 June 1985, at page 2879);

"**Compensation Board**" means the New South Wales Coal Compensation Board established under the Compensation Arrangements;

"**eligible claimant**" means a person who has made a claim for compensation in accordance with the Compensation Arrangements and whose claim has been allowed by the Compensation Board, either before or after the commencement of this section, or:

- (a) if such a person has died - means the person's legal personal representative; or

- (b) if such a person is a protected person within the meaning of the Protected Estates Act 1983 - means the manager of the person's estate or, if that estate is being managed by the Protective Commissioner, means the Protective Commissioner; or
- (c) if such a person is an insolvent under administration - means the trustee in bankruptcy of the person's estate; or
- (d) if such a person is a minor - means the minor's next friend; or
- (e) if 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 a specified person - means that specified person;

"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.

Power of the Minister to grant coal in accordance with this Act

4. (1) The Minister may, in accordance with this Act, grant to eligible claimants coal to which this Act applies.

(2) The Minister may exercise the power conferred by this section only on the recommendation of the Compensation Board.

(3) Coal granted under this Act is to be granted for an estate in fee simple.

(4) The Crown Lands Act 1989 applies to the disposal of coal under this Act only to the extent (if any) that the regulations provide.

Eligible claimant may apply for restitution of ownership of coal to which this Act applies

5. (1) If coal to which this Act applies was, immediately before 1 January 1982, owned by an eligible claimant or a person through whom the claimant claims, the claimant may make an application to the Compensation Board requesting the Board to make a recommendation to the Minister that the ownership of the coal be restored to the claimant.

(2) An application under this section must:

- (a) be made in the manner and within the period prescribed by the regulations; and
- (b) contain the information so prescribed; and
- (c) be accompanied by any documents of a kind so prescribed.

(3) As soon as practicable after such an application is received by the Compensation Board, the Board must inquire into the application and make a report of its findings to the Minister, together with a recommendation as to whether or not the application should be granted.

(4) If:

- (a) 2 or more eligible claimants have received or would, but for this Act, be entitled to receive compensation under the Compensation Arrangements for or in respect of the same coal; and
- (b) any of those claimants has made an application under this section,

the Compensation Board may reject the application.

Eligible claimant must refund compensation

6. (1) The Minister must not grant to an eligible claimant coal to which this Act applies unless the claimant has refunded to the Compensation Board any amount of compensation paid to the claimant, or a person through whom the claimant claims, by that Board

in respect of the acquisition of the coal by the Crown under the Coal Acquisition Act 1981.

(2) The Compensation Board must pay into the Coal Compensation Fund Account all amounts that it receives under this section.

Decisions of the Minister not to be questioned except in limited circumstances

7. (1) A decision as to whether or not coal should be granted under this Act is, subject to this Act, in the absolute discretion of the Minister.

(2) A court has no jurisdiction to question a decision of the Minister, or a recommendation of the Compensation Board, under this Act, except on the ground of lack of procedural fairness.

Power of the Minister to delegate functions under this Act

8. The Minister may, by instrument in writing, delegate to a specified person or a person holding a specified office any of the Minister's functions under this Act, other than this power of delegation.

Regulations

9. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) the information to be provided in applications under this Act and in documents required to accompany those applications;
- (b) the period within which such applications must be made;
- (c) the procedure for determining of such applications;
- (d) the factors to be taken into account in determining such applications.

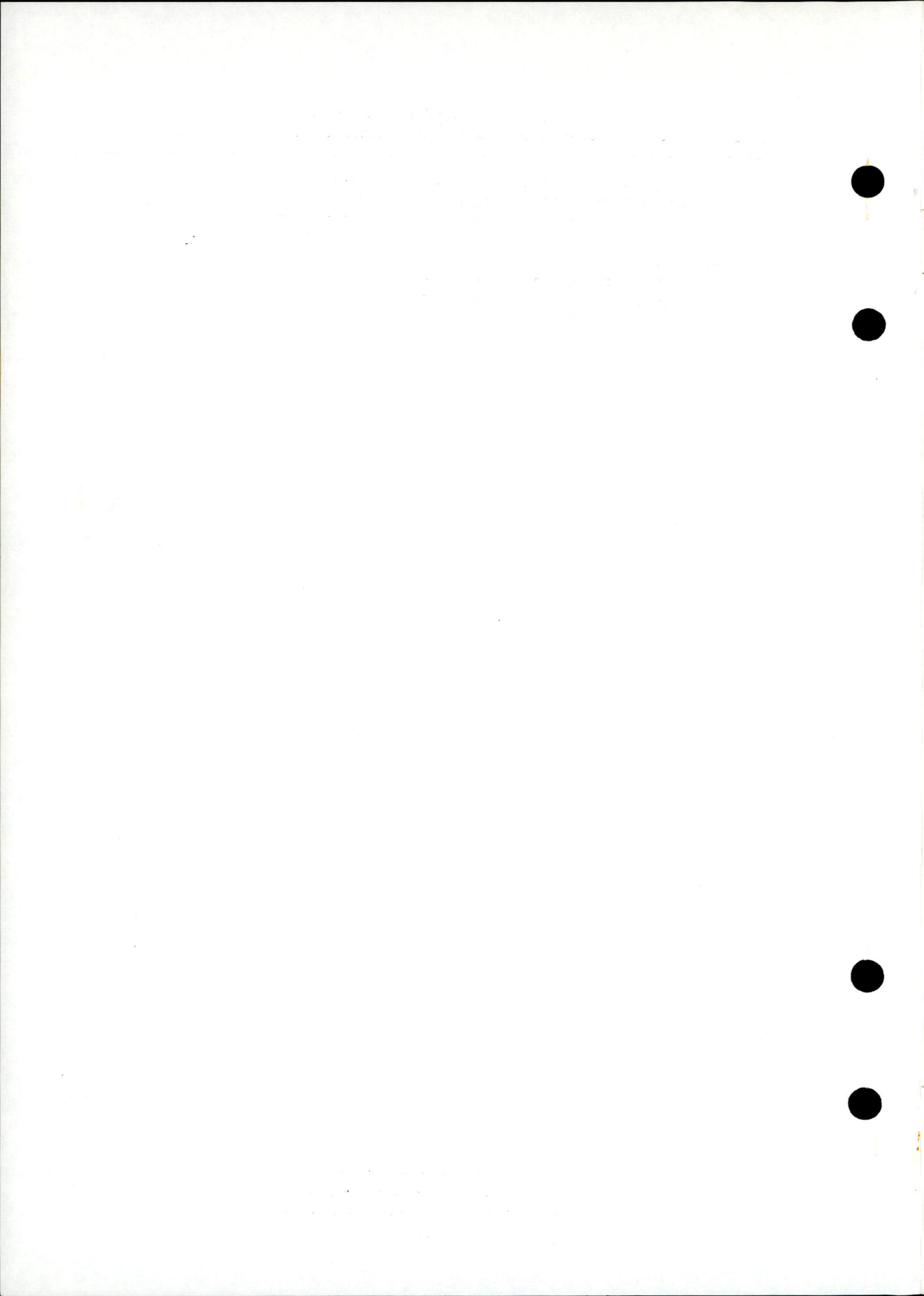
Amendment of the Real Property Act 1900 No. 25

10. The Real Property Act 1900 is amended by inserting at the end of Schedule 2 the following matter:

Coal Ownership (Restitution) 1990

Coal Ownership (Restitution) Act 1990.

*[Minister's second reading speech made in -
Legislative Assembly on 16 May 1990
Legislative Council on 30 May 1990]*



FIRST PRINT

COAL OWNERSHIP (RESTITUTION) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Coal Acquisition (Amendment) Bill 1990 is cognate with this Bill.

The object of this Bill is to provide for the restitution of part of the coal that was acquired by the Crown as a result of the operation of the Coal Acquisition Act 1981. Persons whose claims for compensation under the Coal Acquisition (Compensation) Arrangements 1985 have been allowed by the New South Wales Coal Compensation Board will be able to make applications for the restitution of coal provided the coal was outside a colliery holding on 1 January 1986. ("Colliery holding" has the same meaning as it has in the Coal Mining Act 1973.) However, a person whose application for the restitution of coal is successful will be required to refund any compensation that the person has received in respect of that coal under the Arrangements referred to above.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain expressions used in the proposed Act. Among the expressions defined are "coal to which this Act applies" (meaning coal acquired by the Crown under the Coal Acquisition Act 1981 and not within a colliery holding on 1 January 1986), "colliery holding", "Compensation Arrangements" (meaning the Coal Acquisition (Compensation) Arrangements 1985), "Compensation Board" (meaning the New South Wales Coal Compensation Board) and "eligible claimant".

Clause 4 confers power on the Minister to grant to eligible claimants in accordance with the proposed Act coal to which that Act applies. However, the power is exercisable only on the recommendation of the Compensation Board. A successful claimant will receive a fee simple estate in the coal.

Coal Ownership (Restitution) 1990

Clause 5 will enable an eligible claimant to make an application to the Compensation Board for a recommendation to the Minister that the Minister grant coal to the claimant (being coal that was owned by the claimant, or a person through whom the claimant claims, immediately before 1 January 1982 (when the Coal Acquisition Act 1981 took effect)). The clause also deals with the procedure for making such an application and permits the rejection of an application made in respect of coal that has been the subject of 2 or more compensation claims which have been allowed by the Compensation Board under the Compensation Arrangements.

Clause 6 provides that, where an application under the proposed Act for the grant of coal is successful, the successful applicant will be required to refund any compensation previously received under the Compensation Arrangements in respect of the coal.

Clause 7 provides that a decision as to whether coal should be granted under the proposed Act is to be in the absolute discretion of the Minister and that a decision of the Minister, or a recommendation of the Compensation Board, under the proposed Act is not to be questioned in any court other than on procedural grounds.

Clause 8 will empower the Minister to delegate the Minister's functions under the proposed Act.

Clause 9 will empower the Governor-in-Council to make regulations for the purposes of the proposed Act.

Clause 10 amends Schedule 2 to the Real Property Act 1900. The amendment will facilitate the issue of certificates of title under that Act to persons who are granted coal under the proposed Act.

FIRST PRINT

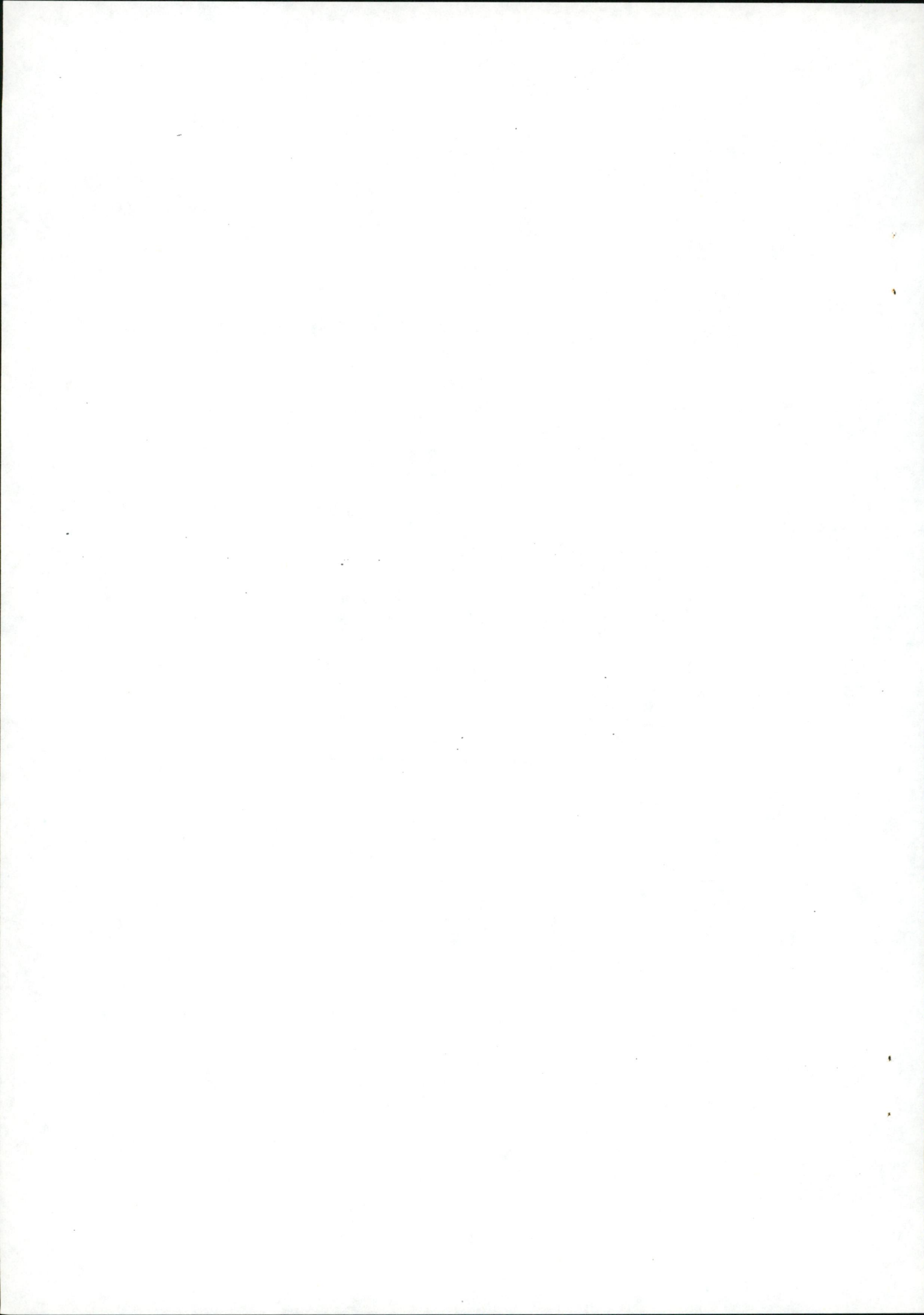
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COAL OWNERSHIP (RESTITUTION) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to provide for the restitution of certain coal acquired by the Crown as a result of the operation of the Coal Acquisition Act 1981 and to provide for related matters.

See also the Coal Acquisition (Amendment) Bill 1990.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Coal Ownership (Restitution) Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. In this Act:

"coal" has the same meaning as in the Coal Acquisition Act 1981;

"Coal Compensation Fund Account" means the Coal Compensation Fund Account maintained in the Special Deposits Account under the Public Finance and Audit Act 1983;

"coal to which this Act applies" means coal that:

- (a) was vested in the Crown by the operation of section 5 of the Coal Acquisition Act 1981; and
- (b) on 1 January 1986, was located in land outside a colliery holding;

"colliery holding" has the same meaning as in the Coal Mining Act 1973;

"Compensation Arrangements" means the Coal Acquisition (Compensation) Arrangements 1985 (published in Gazette No. 95, dated 21 June 1985, at page 2879);

"Compensation Board" means the New South Wales Coal Compensation Board established under the Compensation Arrangements;

"eligible claimant" means a person who has made a claim for compensation in accordance with the Compensation Arrangements and whose claim has been allowed by the Compensation Board, either before or after the commencement of this section, or:

- (a) if such a person has died - means the person's legal personal representative; or

- (b) if such a person is a protected person within the meaning of the Protected Estates Act 1983 - means the manager of the person's estate or, if that estate is being managed by the Protective Commissioner, means the Protective Commissioner; or
- (c) if such a person is an insolvent under administration - means the trustee in bankruptcy of the person's estate; or
- (d) if such a person is a minor - means the minor's next friend; or
- (e) if 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 a specified person - means that specified person;

"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.

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(2) The Minister may exercise the power conferred by this section only on the recommendation of the Compensation Board.

(3) Coal granted under this Act is to be granted for an estate in fee simple.

(4) The Crown Lands Act 1989 applies to the disposal of coal under this Act only to the extent (if any) that the regulations provide.

Eligible claimant may apply for restitution of ownership of coal to which this Act applies

5. (1) If coal to which this Act applies was, immediately before 1 January 1982, owned by an eligible claimant or a person through whom the claimant claims, the claimant may make an application to the Compensation Board requesting the Board to make a recommendation to the Minister that the ownership of the coal be restored to the claimant.

(2) An application under this section must:

- (a) be made in the manner and within the period prescribed by the regulations; and
- (b) contain the information so prescribed; and
- (c) be accompanied by any documents of a kind so prescribed.

(3) As soon as practicable after such an application is received by the Compensation Board, the Board must inquire into the application and make a report of its findings to the Minister, together with a recommendation as to whether or not the application should be granted.

(4) If:

- (a) 2 or more eligible claimants have received or would, but for this Act, be entitled to receive compensation under the Compensation Arrangements for or in respect of the same coal; and
- (b) any of those claimants has made an application under this section,

the Compensation Board may reject the application.

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Coal Ownership (Restitution) 1990

in respect of the acquisition of the coal by the Crown under the Coal Acquisition Act 1981.

(2) The Compensation Board must pay into the Coal Compensation Fund Account all amounts that it receives under this section.

Decisions of the Minister not to be questioned except in limited circumstances

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- (c) the procedure for determining of such applications;
- (d) the factors to be taken into account in determining such applications.

Amendment of the Real Property Act 1900 No. 25

10. The Real Property Act 1900 is amended by inserting at the end of Schedule 2 the following matter:

Coal Ownership (Restitution) Act 1990.
