

First print



New South Wales

# Coal Acquisition Amendment Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

- (a) to amend the *Coal Acquisition Act 1981* so as to allow coal that has been granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990* to be re-acquired by the Crown, and
  - (b) to amend the *Coal Ownership (Restitution) Act 1990* so as to remove any doubt as to the Minister's power to refuse a claim for restitution of coal under that Act.
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## Outline of provisions

**Clause 1** specifies the name of the proposed Act.

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

**Clause 3** is a formal provision giving effect to a Schedule of amendments to the *Coal Acquisition Act 1981*.

**Clause 4** is a formal provision giving effect to a Schedule of amendments to the *Coal Ownership (Restitution) Act 1990*.

## **Schedule 1      Amendment of Coal Acquisition Act 1981**

### **Revesting of coal by proclamation**

Proposed section 5A (to be inserted by Schedule 1 [2]) provides for the revesting in the Crown of coal that has been granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*. The revesting is to be achieved by means of a proclamation made by the Governor on the recommendation of the Minister. In deciding whether to make such a recommendation, the Minister may have regard to the revenue that would be likely to accrue to the Crown if the coal were vested in the Crown. On publication of the proclamation, the coal is vested in the Crown freed and discharged from all trusts, leases, licences, obligations, estates, interests and contracts. Compensation for any losses arising from the revesting of the coal will be dealt with by arrangements under section 6 of the Act, to which consequential amendments are proposed by Schedule 1 [4], [5] and [6]. The proposed section 5A is to expire on 31 December 1998, after which date no further proclamations will be able to be made.

### **Acquisition of coal otherwise than by revesting**

Proposed section 5B (to be inserted by Schedule 1 [2]) provides for the acquisition by the Minister, on behalf of the Crown, of coal that has been granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*. Action under the proposed section will be able to be taken only on the recommendation of the Coal Compensation Board. The basis on which such recommendations are to be made, and the determination of the amount and method of payment of any consideration payable for coal acquired under the proposed section, are to be dealt with by arrangements under section 6 of the Act, to which a consequential amendment is proposed by Schedule 1 [7] (proposed section 6 (5)).

### **Miscellaneous**

Consequential amendments are proposed to the long title of the Act so as to reflect the substance of proposed sections 5A and 5B (Schedule 1 [1]) and to section 6 of the Act so as to provide that the arrangements under that section are to be made by order (Schedule 1 [3]). The requirement for the arrangements to be made by order will invoke section 43 of the *Interpretation Act 1987*, which provides that a power to make an order brings with it a power to amend or repeal an order so made. Schedule 1 [7] inserts a provision (proposed section 6 (6)) which provides that all arrangements under section 6 of the Act, whenever made, are taken to have been made by order.

## **Schedule 2      Amendment of Coal Ownership (Restitution) Act 1990**

### **Minister's power to refuse claims for restitution**

Section 7 of the Act is proposed to be amended (Schedule 2 [2]) so as to make it clear that nothing in the Act, or any recommendation under the Act, requires the Minister to grant coal to eligible claimants and, in particular, that the Minister may refuse to grant coal to an eligible claimant if of the opinion that the Crown would lose significant revenue were the coal to cease to be vested in the Crown.

### **Miscellaneous**

The definition of *Compensation Arrangements* in section 3 of the Act is proposed to be amended (Schedule 2 [1]) so as to remove words that might misleadingly suggest that those arrangements have not been amended. Those arrangements have been amended several times, and under section 68 of the *Interpretation Act 1987*, references to those arrangements extend to those arrangements as in force for the time being (that is, as amended from time to time).



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New South Wales

## Coal Acquisition Amendment Bill 1997

No. , 1997

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### **A Bill for**

An Act to amend the *Coal Acquisition Act 1981* to provide for the revesting in the Crown of certain coal granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*, and to amend the *Coal Ownership (Restitution) Act 1990* to specify certain grounds on which applications for the granting of coal under that Act may be refused.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Coal Acquisition Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Coal Acquisition Act 1981 No 109**

The *Coal Acquisition Act 1981* is amended as set out in Schedule 1.

**4 Amendment of Coal Ownership (Restitution) Act 1990 No 19 10**

The *Coal Ownership (Restitution) Act 1990* is amended as set out in Schedule 2.



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## Schedule 1 Amendment of Coal Acquisition Act 1981

(Section 3)

### [1] Long title

Insert “, and to provide for the reversioning in the Crown of certain coal granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*” after “Crown”. 5

### [2] Sections 5A and 5B

Insert after section 5:

#### 5A Reversioning in the Crown of coal granted under Coal Ownership (Restitution) Act 1990 10

- (1) This section applies to coal granted under the *Coal Ownership (Restitution) Act 1990*, whether granted before or after the commencement of this section.
- (2) On the recommendation of the Minister, the Governor may, by proclamation, declare that specified coal to which this section applies is vested in the Crown. 15
- (3) In deciding whether to make such a recommendation, the Minister may have regard to the revenue that would be likely to accrue to the Crown if the coal were vested in the Crown. 20
- (4) On the publication in the Gazette of a proclamation under this section, the coal specified in the proclamation is vested in the Crown freed and discharged from all trusts, leases, licences, obligations, estates, interests and contracts. 25
- (5) The reference in subsection (4) to leases does not include a reference to mining leases within the meaning of the *Mining Act 1992*.
- (6) This section expires at the end of 31 December 1998. 30

**5B Acquisition of coal on behalf of the Crown otherwise than by revesting**

- (1) This section applies to coal granted under the *Coal Ownership (Restitution) Act 1990*, whether granted before or after the commencement of this section. 5
- (2) The Minister may, on behalf of the Crown, acquire coal to which this section applies, whether by contract or other arrangement.
- (3) The acquisition of coal under this section may be made only on the recommendation of the New South Wales Coal Compensation Board established under the *Coal Acquisition (Compensation) Arrangements 1985*. 10
- (4) Such a recommendation must be made in accordance with any arrangements in force under section 6.

**[3] Section 6 Arrangements by the Governor** 15

Insert "by order" after "may" in section 6 (1).

**[4] Section 6 (1), (2) and (3)**

Omit "enactment of this Act" wherever occurring in section 6 (1), (2) and (3).

Insert instead "operation of section 5 or 5A". 20

**[5] Section 6 (3)**

Omit "by the operation of section 5".

**[6] Section 6 (3)**

Omit "commencement of this Act".

Insert instead "commencement of section 5 or the publication of the relevant proclamation under section 5A, as the case requires". 25

**[7] Section 6 (5) and (6)**

Insert after section 6 (4):

- (5) Arrangements under this section may also provide for:
  - (a) the basis on which any recommendation referred to in section 5B (3) is to be made, and 5
  - (b) the determination of the amount, and method of payment, of any consideration payable in respect of coal acquired under section 5B.
- (6) Arrangements under this section that, before the commencement of this subsection, were made otherwise than by order are taken always to have been made by order. 10

**Schedule 2 Amendment of Coal Ownership  
(Restitution) Act 1990**

(Section 4)

**[1] Section 3 Definitions**

Omit "(published in Gazette No 95, dated 21 June 1985, at page 2879)" from the definition of *Compensation Arrangements*. 5

**[2] Section 7 Decision of Minister not to be questioned except in limited circumstances**

Insert after section 7 (1):

(1A) Without limiting subsection (1): 10

- (a) nothing in this Act, or any recommendation under this Act, requires the Minister to grant coal to eligible claimants, and
- (b) in particular, the Minister may refuse to grant coal to an eligible claimant if of the opinion that the Crown would lose significant revenue were the coal to cease to be vested in the Crown. 15

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# Coal Acquisition Amendment Bill 1997

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*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments*



New South Wales

## **Coal Acquisition Amendment Bill 1997**

Act No      , 1997

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An Act to amend the *Coal Acquisition Act 1981* to provide for the reversion in the Crown of certain coal granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*, and to amend the *Coal Ownership (Restitution) Act 1990* to specify certain grounds on which applications for the granting of coal under that Act may be refused.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Coal Acquisition Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Coal Acquisition Act 1981 No 109**

The *Coal Acquisition Act 1981* is amended as set out in Schedule 1.

**4 Amendment of Coal Ownership (Restitution) Act 1990 No 19** 10

The *Coal Ownership (Restitution) Act 1990* is amended as set out in Schedule 2.



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**Schedule 1    Amendment of Coal Acquisition Act  
1981**

(Section 3)

**[1]    Long title**

Insert “, and to provide for the reversion in the Crown of certain coal granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*” after “Crown”.

5

**[2]    Sections 5A and 5B**

Insert after section 5:

**5A Reversion in the Crown of coal granted under Coal  
Ownership (Restitution) Act 1990**

10

(1) This section applies to coal granted under the *Coal Ownership (Restitution) Act 1990*, whether granted before or after the commencement of this section.

(2) On the recommendation of the Minister, the Governor may, by proclamation, declare that specified coal to which this section applies is vested in the Crown.

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(3) In deciding whether to make such a recommendation, the Minister may have regard to the revenue that would be likely to accrue to the Crown if the coal were vested in the Crown.

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(4) On the publication in the Gazette of a proclamation under this section, the coal specified in the proclamation is vested in the Crown freed and discharged from all trusts, leases, licences, obligations, estates, interests and contracts.

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(5) The reference in subsection (4) to leases does not include a reference to mining leases within the meaning of the *Mining Act 1992*.

(6) This section expires at the end of 31 December 1998.

30

**5B Acquisition of coal on behalf of the Crown otherwise than by revesting**

- (1) This section applies to coal granted under the *Coal Ownership (Restitution) Act 1990*, whether granted before or after the commencement of this section. 5
- (2) The Minister may, on behalf of the Crown, acquire coal to which this section applies, whether by contract or other arrangement.
- (3) The acquisition of coal under this section may be made only on the recommendation of the New South Wales Coal Compensation Board established under the *Coal Acquisition (Compensation) Arrangements 1985*. 10
- (4) Such a recommendation must be made in accordance with any arrangements in force under section 6.

**[3] Section 6 Arrangements by the Governor 15**

Insert "by order" after "may" in section 6 (1).

**[4] Section 6 (1), (2) and (3)**

Omit "enactment of this Act" wherever occurring in section 6 (1), (2) and (3).  
Insert instead "operation of section 5 or 5A". 20

**[5] Section 6 (3)**

Omit "by the operation of section 5".

**[6] Section 6 (3)**

Omit "commencement of this Act".  
Insert instead "commencement of section 5 or the publication of the relevant proclamation under section 5A, as the case requires". 25

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**[7] Section 6 (5)–(8)**

Insert after section 6 (4):

- (5) Arrangements under this section may also provide for:
- (a) the basis on which any recommendation referred to in section 5B (3) is to be made, and 5
  - (b) the determination of the amount, and method of payment, of any consideration payable in respect of coal acquired under section 5B.
- (6) Arrangements under this section that, before the commencement of this subsection, were made otherwise than by order are taken always to have been made by order. 10
- (7) The amount of compensation payable under arrangements under this section must be just and equitable in so far as the compensation: 15
- (a) results from the operation of section 5A, or
  - (b) relates to a refusal by the Minister to grant coal to an eligible applicant, after the commencement of this subsection, under the *Coal Ownership (Restitution) Act 1990*. 20
- For the purposes of giving effect to paragraph (b) any existing determination of the compensation concerned is to be re-determined in accordance with this subsection.
- (8) It is the duty of the Minister:
- (a) to ensure that the arrangements are reviewed as soon as practicable after the commencement of this subsection, and thereafter from time to time, for the purpose of ascertaining whether or not the arrangements comply with subsection (7), and 25
  - (b) to ensure that amendments to the arrangements are promoted, from time to time as necessary, to bring the arrangements into conformity with subsection (7). 30

**Schedule 2 Amendment of Coal Ownership  
(Restitution) Act 1990**

(Section 4)

**[1] Section 3 Definitions**

Omit “(published in Gazette No 95, dated 21 June 1985, at page 2879)” from the definition of *Compensation Arrangements*. 5

**[2] Section 7 Decision of Minister not to be questioned except in limited circumstances**

Insert after section 7 (1):

(1A) Without limiting subsection (1): 10

- (a) nothing in this Act, or any recommendation under this Act, requires the Minister to grant coal to eligible claimants, and
- (b) in particular, the Minister may refuse to grant coal to an eligible claimant if of the opinion that the Crown would lose significant revenue were the coal to cease to be vested in the Crown. 15



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# Coal Acquisition Amendment Act 1997 No 22

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# Coal Acquisition Amendment Act 1997 No 22

Act No 22, 1997

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An Act to amend the *Coal Acquisition Act 1981* to provide for the revesting in the Crown of certain coal granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*, and to amend the *Coal Ownership (Restitution) Act 1990* to specify certain grounds on which applications for the granting of coal under that Act may be refused. [Assented to 24 June 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Coal Acquisition Amendment Act 1997*.

**2 Commencement**

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

**3 Amendment of Coal Acquisition Act 1981 No 109**

The *Coal Acquisition Act 1981* is amended as set out in Schedule 1.

**4 Amendment of Coal Ownership (Restitution) Act 1990 No 19**

The *Coal Ownership (Restitution) Act 1990* is amended as set out in Schedule 2.



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## Schedule 1    Amendment of Coal Acquisition Act 1981

(Section 3)

### [1]    Long title

Insert “, and to provide for the revesting in the Crown of certain coal granted to eligible claimants under the *Coal Ownership (Restitution) Act 1990*” after “Crown”.

### [2]    Sections 5A and 5B

Insert after section 5:

#### **5A Revesting in the Crown of coal granted under Coal Ownership (Restitution) Act 1990**

- (1) This section applies to coal granted under the *Coal Ownership (Restitution) Act 1990*, whether granted before or after the commencement of this section.
- (2) On the recommendation of the Minister, the Governor may, by proclamation, declare that specified coal to which this section applies is vested in the Crown.
- (3) In deciding whether to make such a recommendation, the Minister may have regard to the revenue that would be likely to accrue to the Crown if the coal were vested in the Crown.
- (4) On the publication in the Gazette of a proclamation under this section, the coal specified in the proclamation is vested in the Crown freed and discharged from all trusts, leases, licences, obligations, estates, interests and contracts.
- (5) The reference in subsection (4) to leases does not include a reference to mining leases within the meaning of the *Mining Act 1992*.
- (6) This section expires at the end of 31 December 1998.

**5B Acquisition of coal on behalf of the Crown otherwise than by revesting**

- (1) This section applies to coal granted under the *Coal Ownership (Restitution) Act 1990*, whether granted before or after the commencement of this section.
- (2) The Minister may, on behalf of the Crown, acquire coal to which this section applies, whether by contract or other arrangement.
- (3) The acquisition of coal under this section may be made only on the recommendation of the New South Wales Coal Compensation Board established under the *Coal Acquisition (Compensation) Arrangements 1985*.
- (4) Such a recommendation must be made in accordance with any arrangements in force under section 6.

**[3] Section 6 Arrangements by the Governor**

Insert "by order" after "may" in section 6 (1).

**[4] Section 6 (1), (2) and (3)**

Omit "enactment of this Act" wherever occurring in section 6 (1), (2) and (3).

Insert instead "operation of section 5 or 5A".

**[5] Section 6 (3)**

Omit "by the operation of section 5".

**[6] Section 6 (3)**

Omit "commencement of this Act".

Insert instead "commencement of section 5 or the publication of the relevant proclamation under section 5A, as the case requires".

**[7] Section 6 (5)–(8)**

Insert after section 6 (4):

- (5) Arrangements under this section may also provide for:
  - (a) the basis on which any recommendation referred to in section 5B (3) is to be made, and
  - (b) the determination of the amount, and method of payment, of any consideration payable in respect of coal acquired under section 5B.
- (6) Arrangements under this section that, before the commencement of this subsection, were made otherwise than by order are taken always to have been made by order.
- (7) The amount of compensation payable under arrangements under this section must be just and equitable in so far as the compensation:
  - (a) results from the operation of section 5A, or
  - (b) relates to a refusal by the Minister to grant coal to an eligible applicant, after the commencement of this subsection, under the *Coal Ownership (Restitution) Act 1990*.

For the purposes of giving effect to paragraph (b) any existing determination of the compensation concerned is to be re-determined in accordance with this subsection.

- (8) It is the duty of the Minister:
  - (a) to ensure that the arrangements are reviewed as soon as practicable after the commencement of this subsection, and thereafter from time to time, for the purpose of ascertaining whether or not the arrangements comply with subsection (7), and
  - (b) to ensure that amendments to the arrangements are promoted, from time to time as necessary, to bring the arrangements into conformity with subsection (7).

## **Schedule 2 Amendment of Coal Ownership (Restitution) Act 1990**

(Section 4)

### **[1] Section 3 Definitions**

Omit "(published in Gazette No 95, dated 21 June 1985, at page 2879)" from the definition of *Compensation Arrangements*.

### **[2] Section 7 Decision of Minister not to be questioned except in limited circumstances**

Insert after section 7 (1):

(1A) Without limiting subsection (1):

- (a) nothing in this Act, or any recommendation under this Act, requires the Minister to grant coal to eligible claimants, and
- (b) in particular, the Minister may refuse to grant coal to an eligible claimant if of the opinion that the Crown would lose significant revenue were the coal to cease to be vested in the Crown.

[Minister's second reading speech made in—  
Legislative Council on 14 May 1997  
Legislative Assembly on 27 May 1997]

BY AUTHORITY