

First print



New South Wales

# Coal Industry Amendment Bill 1995

## Explanatory note

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

### Overview of Bill

The object of this Bill is to reform arrangements relating to industrial matters in the coal mining industry in New South Wales.

At present, industrial matters are dealt with by the Coal Industry Tribunal and Local Coal Authorities, under powers conferred by legislation of the Commonwealth and the State. That legislation (contained in the Coal Industry Acts) jointly creates and confers functions and powers on the Coal Industry Tribunal and Local Coal Authorities. The adoption of this joint scheme overcame constitutional problems based on the limitation of Commonwealth legislative power, which is restricted to conciliation and arbitration for the prevention and settlement of disputes *extending beyond the limits of any one State*: Commonwealth Constitution, section 51 (xxxv).

Under new arrangements, the Coal Industry Tribunal and the Local Coal Authorities will be abolished. It is proposed that industrial functions and powers will instead be exercised by the Australian Industrial Relations Commission. This will be achieved by the joint operation of this Bill and the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments.

## Schedule 1 Amendments

**Schedule 1 (1)** inserts definitions that are used in provisions to be inserted in the Principal Act.

**Schedule 1 (2)** omits definitions that will no longer be used in the Principal Act.

**Schedule 1 (3)** omits Part 7 of the Principal Act. That Part deals with industrial matters in the coal mining industry. It sets up and confers functions and powers on the Coal Industry Tribunal and Local Coal Authorities.

**Schedule 1 (4)** inserts a new Part 7A into the Principal Act. That Part will deal with industrial matters in the coal mining industry, but in a different way from that provided by Part 7, which will be repealed by the proposed Act. The new Part contains the following provisions:

- **Proposed section 54B.** This section applies the *Industrial Relations Act 1988* of the Commonwealth (together with relevant rules of court and regulations), as in force for the time being, as a law of the State for the purpose of enabling the Australian Industrial Relations Commission to exercise functions in the coal mining industry for purely intrastate purposes. This provision is contemplated by item 8 of Schedule 1 to the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth. The section also provides for the modification of the 1988 Act by regulation: modification of the 1988 Act is contemplated by the 1994 Commonwealth Act. The section also provides for the applied provisions of Commonwealth legislation to be interpreted in accordance with Commonwealth rather than State interpretation legislation.
- **Proposed section 54C.** This section provides that State tribunals can deal with matters in the coal mining industry, but federal awards prevail over State awards or orders.

- **Proposed section 54D** ensures that the Industrial Relations Court of Australia can exercise its jurisdiction in relation to new and existing awards under the applied provisions.

**Schedule 1 (5) and (8)** relocate the provisions of clause 10 of Schedule 1 to the Principal Act, dealing with the power to make regulations of a savings or transitional nature, and extend it to cover matters arising from the passing of the proposed Act.

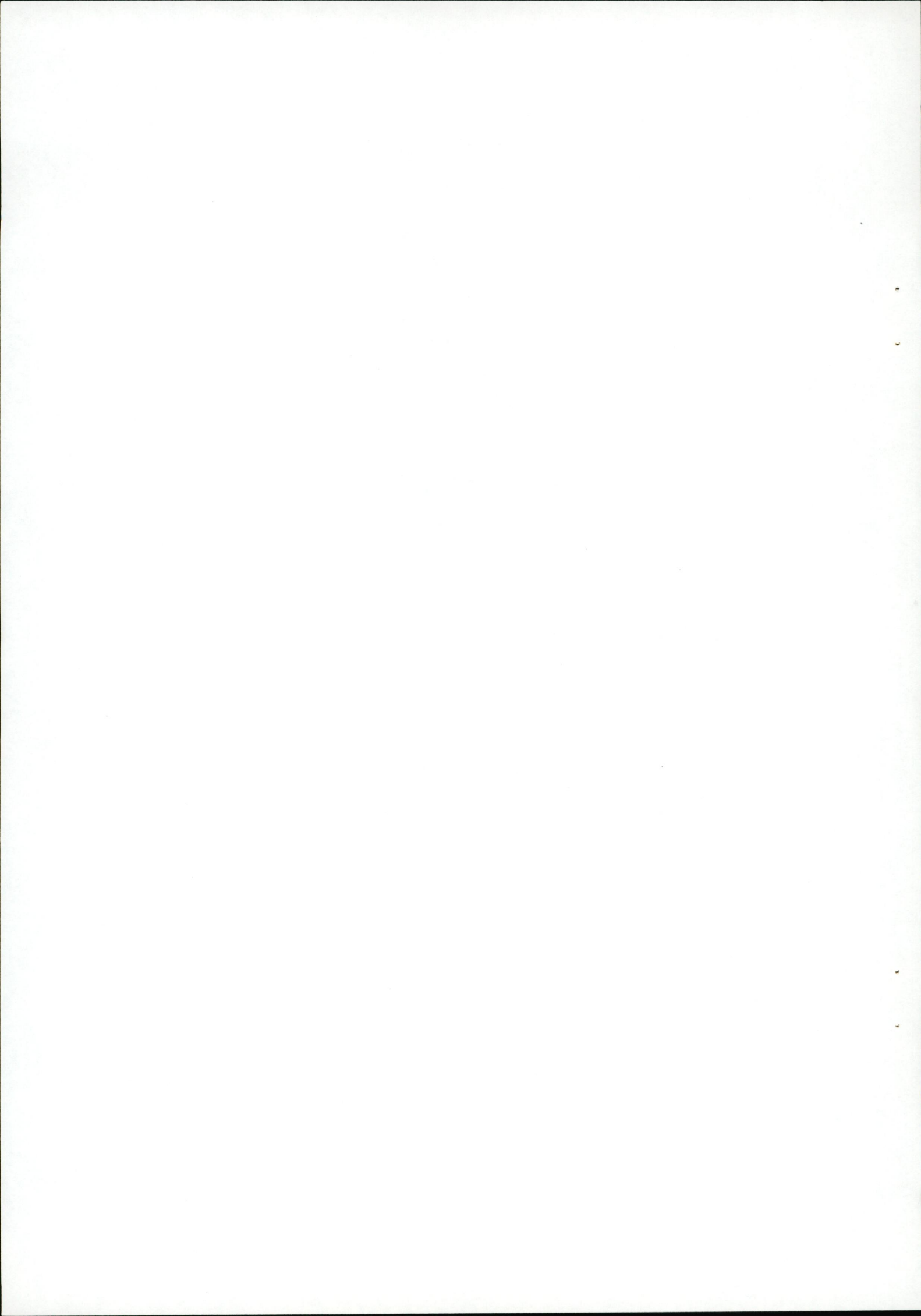
**Schedule 1 (6)** renumbers a clause of Schedule 1 to the Principal Act, to make way for the relocated clause 10, as mentioned above.

**Schedule 1 (7)** omits clause 2 of Schedule 1 to the Principal Act. That clause continued Local Coal Authorities in existence following amendments made in 1992. The clause is spent, and superfluous in light of the proposed abolition of such authorities.

**Schedule 1 (8)**—see Schedule 1 (5) above.

**Schedule 1 (9)** inserts savings and transitional provisions consequent on the passing of the proposed Act. These include the following:

- **Proposed clause 11.** This clause treats existing awards and orders of the Coal Industry Tribunal (and certain other decisions and agreements) made under State legislative power as awards of the Australian Industrial Relations Commission. This provision is contemplated by item 15 of Schedule 1 to the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth.
- **Proposed clause 12.** This clause treats matters pending before the Coal Industry Tribunal or a Local Coal Authority under State legislative power as matters pending before the Australian Industrial Relations Commission. This provision is contemplated by item 17 of Schedule 1 to the *Industrial Relations Legislation Amendment Act (No 2) 1994* of the Commonwealth.



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New South Wales

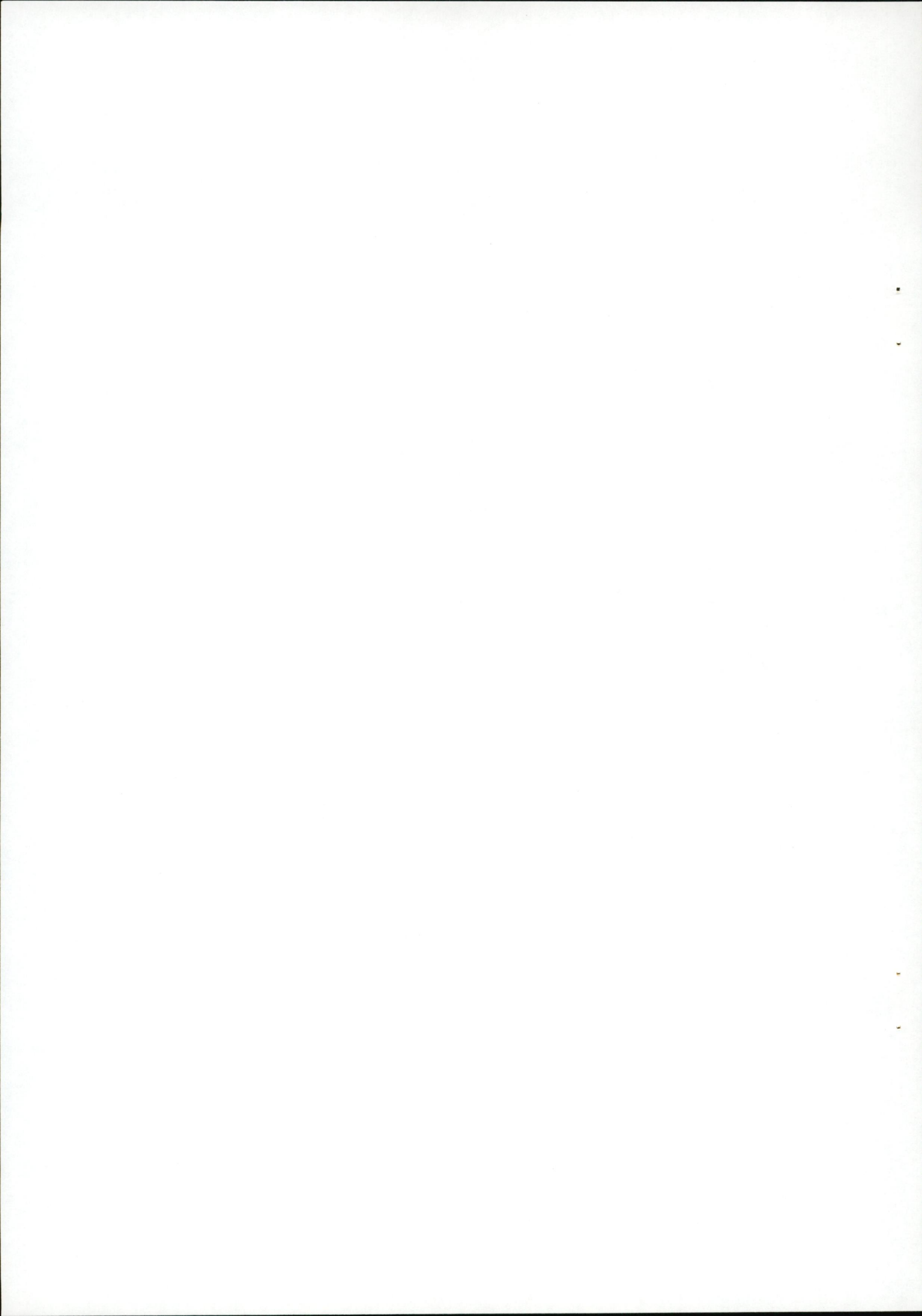
# Coal Industry Amendment Bill 1995

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(1), (2) Section 4 amended	
(3) Part 7 omitted	
(4) Part 7A inserted	
(5)–(9) Schedule 1 amended	

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New South Wales

## Coal Industry Amendment Bill 1995

No. , 1995

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### **A Bill for**

An Act to amend the *Coal Industry Act 1946* to abolish the Coal Industry Tribunal and Local Coal Authorities, to confer certain functions and powers on the Australian Industrial Relations Commission in connection with the coal industry in New South Wales, and for associated purposes.

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

**1 Name of Act**

This Act is the *Coal Industry Amendment Act 1995*.

**2 Commencement**

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

**3 Amendment of Coal Industry Act 1946 No 44**

The *Coal Industry Act 1946* is amended as set out in Schedule 1.



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## Schedule 1 Amendments

(Section 3)

### [1] Section 4 Interpretation

Insert in alphabetical order in section 4 (1):

*Australian Commission* means the Australian Industrial Relations Commission. 5

*coal mining industry* includes the shale mining industry.

*Commonwealth Industrial Relations Act* means the *Industrial Relations Act 1988* of the Commonwealth, and includes any rules of court or regulations in force under that Act. 10

### [2] Section 4

Omit the definitions of *industrial dispute*, *industrial matters*, *organisation*, *the Commission*, *the Court* and *the Tribunal*.

### [3] Part 7 Industrial matters 15

Omit the Part (sections 36–54A).

### [4] Part 7A

Insert before Part 8:

#### Part 7A Industrial matters

**54B Application of Commonwealth Industrial Relations Act to coal mining industry in the State** 20

(1) **Application of Commonwealth Industrial Relations Act**

The provisions of the Commonwealth Industrial Relations Act, as in force for the time being, and as 25

- modified by or under this Act, apply as a law of the State for the purpose of enabling the Australian Commission to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees. Those provisions so apply as if the Commonwealth Industrial Relations Act extends to disputes in the State that do not extend beyond the limits of the State. 5
- (2) **Functions and powers** 10
- The Australian Commission may accordingly perform functions and exercise powers under those provisions with respect to those matters, whether or not there is a dispute extending beyond the limits of the State.
- (3) **Interpretation of Commonwealth Act** 15
- The *Acts Interpretation Act 1901* of the Commonwealth, as in force for the time being, applies as a law of the State in relation to provisions applied by subsection (1), and so applies as if those provisions were respectively an Act of the Commonwealth or rules of court or regulations under such an Act, as the case requires. 20
- (4) **Non-application of State Interpretation Act**
- The *Interpretation Act 1987* does not apply in relation to the provisions applied by subsection (1).
- (5) **Modification of Commonwealth Act** 25
- The regulations may modify the provisions of the Commonwealth Industrial Relations Act for the purposes of this section.
- 54C State awards and orders**
- (1) **Functions and powers of State tribunals** 30
- Nothing in this Act affects the functions or powers of any State tribunal in relation to the coal mining industry, except as provided by subsection (2).

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(2) **Federal awards prevail**

No award or order of a State tribunal that has application in the coal mining industry (whether it was made before or after the commencement of this section) has effect to the extent that it is inconsistent with a federal award that has application in the coal mining industry.

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(3) **Definitions**

In this section:

*federal award* means:

- (a) an award of the Australian Commission to the extent that it is made under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B), or 10
- (b) an award referred to in clause 11 of Schedule 1 that is taken to have been made by the Australian Commission under those provisions. 15

*State tribunal* includes a State court.

**54D Industrial Relations Court of Australia**

The provisions of the Commonwealth Industrial Relations Act that apply under section 54B also apply for the purpose of enabling the Industrial Relations Court of Australia to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, in connection with federal awards as defined in section 54C. Jurisdiction to perform those functions and exercise those powers is conferred on that court accordingly.

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**[5] Schedule 1 Savings and transitional provisions**

Insert after the heading to the Schedule:

**Part 1 General**

**1 Regulations**

- (1) The regulations may make provisions of a savings or transitional nature consequent on the enactment of the following Acts: 5
- Coal Industry (Amendment) Act 1992
  - Coal Industry Amendment Act 1995
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 10
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 15
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 20
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**[6] Schedule 1** 25

Re-number existing clause 1 as clause 1A.

Insert before that clause the heading "**Part 2 Provisions consequent on enactment of Coal Industry (Amendment) Act 1992**".

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<b>[7]</b>	<b>Schedule 1</b>	
	Omit clause 2.	
<b>[8]</b>	<b>Schedule 1</b>	
	Omit clause 10.	
<b>[9]</b>	<b>Schedule 1</b>	5
	Insert at the end of the Schedule:	
	<b>Part 3 Provisions consequent on enactment of Coal Industry Amendment Act 1995</b>	
	<b>11 Existing awards, orders, decisions and agreements made under this Act</b>	10
	<b>(1) Definition of instrument</b>	
	A reference in this clause to an instrument is a reference to:	
	(a) an award or order made by the Coal Industry Tribunal, or	15
	(b) a decision given by a Local Coal Authority, or	
	(c) an agreement made at a hearing before the Coal Industry Tribunal or a Local Coal Authority, or	
	(d) an agreement made under a provision of an award made by the Coal Industry Tribunal,	20
	that had effect immediately before the commencement of this clause.	
	<b>(2) Existing instruments to become awards of Commission</b>	
	An instrument, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees,	25

has effect as, and is taken to be, an award made by the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B).

(3) **References to Tribunal or Authority in existing instruments** 5

A reference in an instrument referred to in subclause (2) to the Coal Industry Tribunal or to a Local Coal Authority is taken (except in relation to matters that occurred before the commencement of this clause) to be a reference to the Australian Commission. 10

(4) **Determinations and other things under existing instruments**

A determination made or any other thing done before the commencement of this clause by the Coal Industry Tribunal or a Local Coal Authority under an instrument referred to in subclause (2) has effect on and after that commencement as if it had been made or done by the Australian Commission. 15

(5) **Coverage of awards** 20

Without limiting the operation of the other provisions of this clause, an instrument that is taken to be an award made by the Australian Commission under this clause is varied, with effect from the end of the day immediately preceding the commencement of this clause, so that the instrument is to be read as naming as parties or respondents to the instrument all persons or organisations that were within its coverage immediately before that commencement. The award is taken to be binding on those persons or organisations, as if they were parties referred to in section 149 (1) of the Commonwealth Industrial Relations Act (as applied by section 54B), regardless of whether or not they or any of them were or were required to be registered under that Act. 25 30 35

**(6) Application of clause**

This clause applies to an instrument only to the extent to which it was made under powers conferred by State legislation.

**12 Matters pending before Coal Industry Tribunal or Local Coal Authority** 5**(1) Pending matters before Tribunal or Authority become matters before Australian Commission**

A matter pending before the Coal Industry Tribunal or a Local Coal Authority immediately before the commencement of this clause, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, is taken to be a matter before the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B). The Australian Commission may deal with the matter as if it had been before the Australian Commission since it arose.

**(2) Extent of operation of subclause (1)** 20

Subclause (1) applies only to the extent to which:

- (a) the matter was notified to the Coal Industry Tribunal or the Local Coal Authority for the purpose of the performance or exercise by the Tribunal or Authority of, or 25
- (b) the Tribunal or Authority was performing or exercising,

functions or powers in relation to the matter conferred by State legislation.

(3) **Previous evidence, arguments, decisions and other matters**

For the purpose of dealing with a matter under subclause (1), the Australian Commission may have regard to:

- (a) any evidence given, or arguments put, in proceedings relating to the matter before the Coal Industry Tribunal or the Local Coal Authority, and 5
- (b) any decision, recommendation, determination or report made by the Tribunal or Authority in relation to the matter. 10





New South Wales

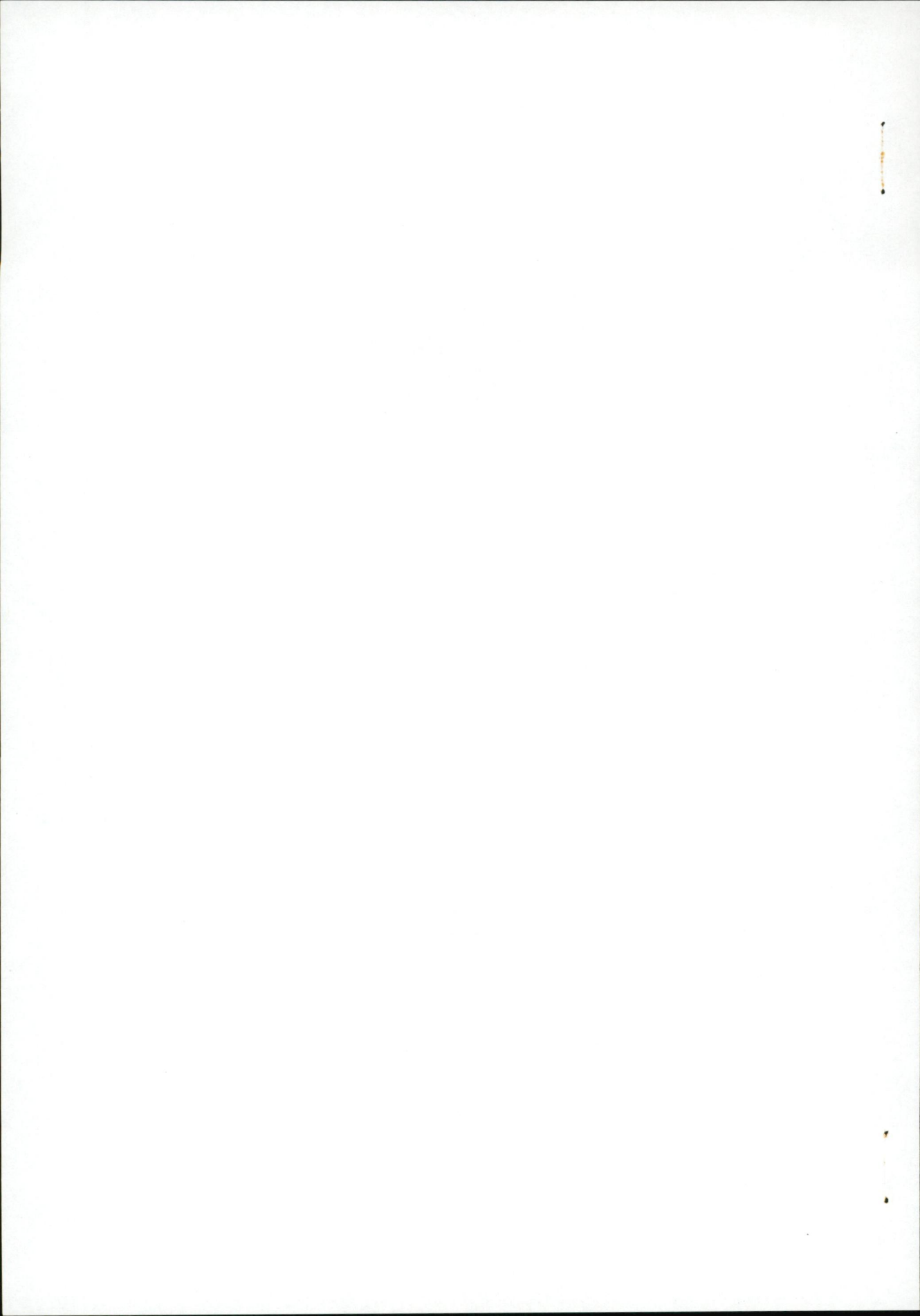
# Coal Industry Amendment Act 1995 No 19

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(1), (2) Section 4 amended	
(3) Part 7 omitted	
(4) Part 7A inserted	
(5)–(9) Schedule 1 amended	

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New South Wales

# Coal Industry Amendment Act 1995 No 19

Act No 19, 1995

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An Act to amend the *Coal Industry Act 1946* to abolish the Coal Industry Tribunal and Local Coal Authorities, to confer certain functions and powers on the Australian Industrial Relations Commission in connection with the coal industry in New South Wales, and for associated purposes. [Assented to 19 June 1995]

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

**1 Name of Act**

This Act is the *Coal Industry Amendment Act 1995*.

**2 Commencement**

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

**3 Amendment of Coal Industry Act 1946 No 44**

The *Coal Industry Act 1946* is amended as set out in Schedule 1.

## Schedule 1 Amendments

(Section 3)

### [1] Section 4 Interpretation

Insert in alphabetical order in section 4 (1):

*Australian Commission* means the Australian Industrial Relations Commission.

*coal mining industry* includes the shale mining industry.

*Commonwealth Industrial Relations Act* means the *Industrial Relations Act 1988* of the Commonwealth, and includes any rules of court or regulations in force under that Act.

### [2] Section 4

Omit the definitions of *industrial dispute*, *industrial matters*, *organisation*, *the Commission*, *the Court* and *the Tribunal*.

### [3] Part 7 Industrial matters

Omit the Part (sections 36–54A).

### [4] Part 7A

Insert before Part 8:

#### **Part 7A Industrial matters**

##### **54B Application of Commonwealth Industrial Relations Act to coal mining industry in the State**

###### **(1) Application of Commonwealth Industrial Relations Act**

The provisions of the Commonwealth Industrial Relations Act, as in force for the time being, and as

modified by or under this Act, apply as a law of the State for the purpose of enabling the Australian Commission to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees. Those provisions so apply as if the Commonwealth Industrial Relations Act extends to disputes in the State that do not extend beyond the limits of the State.

(2) **Functions and powers**

The Australian Commission may accordingly perform functions and exercise powers under those provisions with respect to those matters, whether or not there is a dispute extending beyond the limits of the State.

(3) **Interpretation of Commonwealth Act**

The *Acts Interpretation Act 1901* of the Commonwealth, as in force for the time being, applies as a law of the State in relation to provisions applied by subsection (1), and so applies as if those provisions were respectively an Act of the Commonwealth or rules of court or regulations under such an Act, as the case requires.

(4) **Non-application of State Interpretation Act**

The *Interpretation Act 1987* does not apply in relation to the provisions applied by subsection (1).

(5) **Modification of Commonwealth Act**

The regulations may modify the provisions of the Commonwealth Industrial Relations Act for the purposes of this section.

**54C State awards and orders**

(1) **Functions and powers of State tribunals**

Nothing in this Act affects the functions or powers of any State tribunal in relation to the coal mining industry, except as provided by subsection (2).

(2) **Federal awards prevail**

No award or order of a State tribunal that has application in the coal mining industry (whether it was made before or after the commencement of this section) has effect to the extent that it is inconsistent with a federal award that has application in the coal mining industry.

(3) **Definitions**

In this section:

*federal award* means:

- (a) an award of the Australian Commission to the extent that it is made under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B), or
- (b) an award referred to in clause 11 of Schedule 1 that is taken to have been made by the Australian Commission under those provisions.

*State tribunal* includes a State court.

**54D Industrial Relations Court of Australia**

The provisions of the Commonwealth Industrial Relations Act that apply under section 54B also apply for the purpose of enabling the Industrial Relations Court of Australia to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, in connection with federal awards as defined in section 54C. Jurisdiction to perform those functions and exercise those powers is conferred on that court accordingly.

**[5] Schedule 1 Savings and transitional provisions**

Insert after the heading to the Schedule:

**Part 1 General**

**1 Regulations**

- (1) The regulations may make provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - Coal Industry (Amendment) Act 1992
  - Coal Industry Amendment Act 1995
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**[6] Schedule 1**

Renumber existing clause 1 as clause 1A.

Insert before that clause the heading "**Part 2 Provisions consequent on enactment of Coal Industry (Amendment) Act 1992**".



**[7] Schedule 1**

Omit clause 2.

**[8] Schedule 1**

Omit clause 10.

**[9] Schedule 1**

Insert at the end of the Schedule:

**Part 3 Provisions consequent on enactment of  
Coal Industry Amendment Act 1995**

**11 Existing awards, orders, decisions and agreements  
made under this Act**

**(1) Definition of instrument**

A reference in this clause to an instrument is a reference to:

- (a) an award or order made by the Coal Industry Tribunal, or
- (b) a decision given by a Local Coal Authority, or
- (c) an agreement made at a hearing before the Coal Industry Tribunal or a Local Coal Authority, or
- (d) an agreement made under a provision of an award made by the Coal Industry Tribunal,

that had effect immediately before the commencement of this clause.

**(2) Existing instruments to become awards of Commission**

An instrument, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees,

has effect as, and is taken to be, an award made by the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B).

(3) **References to Tribunal or Authority in existing instruments**

A reference in an instrument referred to in subclause (2) to the Coal Industry Tribunal or to a Local Coal Authority is taken (except in relation to matters that occurred before the commencement of this clause) to be a reference to the Australian Commission.

(4) **Determinations and other things under existing instruments**

A determination made or any other thing done before the commencement of this clause by the Coal Industry Tribunal or a Local Coal Authority under an instrument referred to in subclause (2) has effect on and after that commencement as if it had been made or done by the Australian Commission.

(5) **Coverage of awards**

Without limiting the operation of the other provisions of this clause, an instrument that is taken to be an award made by the Australian Commission under this clause is varied, with effect from the end of the day immediately preceding the commencement of this clause, so that the instrument is to be read as naming as parties or respondents to the instrument all persons or organisations that were within its coverage immediately before that commencement. The award is taken to be binding on those persons or organisations, as if they were parties referred to in section 149 (1) of the Commonwealth Industrial Relations Act (as applied by section 54B), regardless of whether or not they or any of them were or were required to be registered under that Act.

**(6) Application of clause**

This clause applies to an instrument only to the extent to which it was made under powers conferred by State legislation.

**12 Matters pending before Coal Industry Tribunal or Local Coal Authority**

**(1) Pending matters before Tribunal or Authority become matters before Australian Commission**

A matter pending before the Coal Industry Tribunal or a Local Coal Authority immediately before the commencement of this clause, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, is taken to be a matter before the Australian Commission under the provisions of the Commonwealth Industrial Relations Act (as applying under section 54B). The Australian Commission may deal with the matter as if it had been before the Australian Commission since it arose.

**(2) Extent of operation of subclause (1)**

Subclause (1) applies only to the extent to which:

- (a) the matter was notified to the Coal Industry Tribunal or the Local Coal Authority for the purpose of the performance or exercise by the Tribunal or Authority of, or
- (b) the Tribunal or Authority was performing or exercising,

functions or powers in relation to the matter conferred by State legislation.

(3) **Previous evidence, arguments, decisions and other matters**

For the purpose of dealing with a matter under subclause (1), the Australian Commission may have regard to:

- (a) any evidence given, or arguments put, in proceedings relating to the matter before the Coal Industry Tribunal or the Local Coal Authority, and
- (b) any decision, recommendation, determination or report made by the Tribunal or Authority in relation to the matter.

[Minister's second reading speech made in—  
Legislative Council on 24 May 1995  
Legislative Assembly on 31 May 1995]