



Coal Industry Amendment Act 1992

No. 66 of 1992

An Act to amend the *Coal Industry Act 1946*, in accordance with an agreement between the Commonwealth and New South Wales, to restructure the Joint Coal Board, to remove certain regulatory functions of the Board and to confer other functions on the Board, and for related purposes

[Assented to 26 June 1992]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Coal Industry Amendment Act 1992*.

(2) In this Act, “Principal Act” means the *Coal Industry Act 1946*¹.

Coal Industry Amendment No. 66, 1992

Commencement

2.(1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Subsection 3(1) commences on a day to be fixed by Proclamation.

(3) Subsection 3(2) is taken to have commenced on 31 March 1992.

Amendment of Principal Act

3.(1) The Principal Act is amended as set out in Schedules 1 to 4 (inclusive).

(2) The Principal Act is further amended as set out in Schedule 5.

SCHEDULE 1

Section 3

**AMENDMENTS RELATING TO THE STRUCTURE OF THE
JOINT COAL BOARD**

Section 4:

Insert the following definitions:

“ **‘full-time member’** means a full-time member of the Board, including the Chairperson if appointed as a full-time member;

‘member’ means any member of the Board, including the Chairperson;

‘part-time member’ means a part-time member of the Board, including the Chairperson if appointed as a part-time member;

‘the Commonwealth Minister’ means the Minister;

‘the State Minister’ means that Minister of the State who administers the State Act;”.

Heading to Part II:

Omit “II”, substitute “2”.

Subsections 5(2) to 5(8):

Omit the subsections, substitute:

“(2) The Board so constituted is a body corporate.

“(3) Nothing in this Act prevents the appointment of the members of the Board by the Commonwealth Minister and the State Minister in accordance with the arrangement.”.

Sections 6 to 9:

Repeal the sections, substitute:

Body corporate

“6. The Board:

- (a) has perpetual succession; and
- (b) is to have a seal; and
- (c) may take proceedings and be proceeded against in its corporate name; and
- (d) may, for the purpose of enabling it to exercise its powers and functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its powers and functions.

SCHEDULE 1—continued

Members of the Board

“7.(1) The Board constituted under the arrangement referred to in section 5 is to consist of 3 members.

“(2) One member is to be appointed as Chairperson of the Board.

“(3) Of the members other than the Chairperson:

- (a) one is to be a representative of coal industry employers; and
- (b) one is to be a representative of coal industry employees.

“(4) The members of the Board, including the Chairperson, may be either full-time or part-time members.

“(5) The appointment of a person as a member is not invalid merely because of a defect or irregularity in relation to the appointment.

Terms of office of members

“8. Subject to this Act, a member holds office for the period (not exceeding 3 years) specified in the member’s instrument of appointment, but may be re-appointed in accordance with this Act.

Appointment of persons to act for any member of the Board

“9.(1) The Commonwealth Minister and the State Minister may appoint a person to act for any member of the Board who is absent from duty because of illness or otherwise, and the person, while so acting, has all the powers and functions of the member and is taken to be the member.

“(2) If the absent member is a representative of coal industry employers or coal industry employees, the person appointed to act as the member is to be such a representative.

“(3) The Commonwealth Minister and the State Minister may, from time to time, appoint a member to act for the Chairperson if the Chairperson is absent from duty because of illness or otherwise, and the member, while so acting, has all the functions of the Chairperson and is taken to be the Chairperson.

“(4) The State Minister, with the agreement of the Commonwealth Minister, may remove any person from any office to which the person was appointed under this section.

“(5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Commonwealth Minister and the State Minister may from time to time determine in respect of the person.

“(6) For the purposes of this section, a vacancy in the office of a member or the Chairperson is taken to be an absence from office of the member or Chairperson.

SCHEDULE 1—continued

“(7) The appointment of a person to act for a member is not invalid merely because of a defect or irregularity in relation to the appointment.

Vacancy in office of member

“10.(1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Commonwealth Minister or the State Minister; or
- (d) in the case of a full-time member—is absent from duty, except on leave of absence granted by the Commonwealth Minister or the State Minister, for 7 consecutive days or for 14 days in any period of 12 months; or
- (e) in the case of a part-time member—is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Commonwealth Minister or the State Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Commonwealth Minister or the State Minister for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes permanently incapable of performing his or her duties.

“(2) The State Minister, with the agreement of the Commonwealth Minister, may remove a member from office for misbehaviour, incompetence or incapacity.

Vacancy does not invalidate Board's actions

“11. The Board can exercise its powers even if there is one (but not more than one) vacancy in its membership.

Filling of vacancy in office of member

“12. If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Remuneration

“13. A member is entitled to be paid such remuneration (including such travelling and subsistence allowances) as the Commonwealth Minister and the State Minister may from time to time determine in respect of the member.

SCHEDULE 1—continued

Disclosure of pecuniary interests

“14.(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member’s duties in relation to the consideration of the matter;

the member must disclose the nature of the interest to the Board as soon as possible after the relevant facts have come to the member’s knowledge.

“(2) A disclosure by a member to the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person;

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

“(3) Particulars of any disclosure made under this section must be recorded by the Board in a book kept for the purpose at the office of the Board and that book must be open at all reasonable hours to inspection by any person on payment of the prescribed fee (if any).

“(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Commonwealth Minister and the State Minister, or the Board, otherwise determine or determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

“(5) For the purposes of the making of a determination by the Board under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

“(6) A contravention of this section does not invalidate any decision of the Board.

SCHEDULE 1—continued

Seal

“15.(1) The Chairperson is required to keep the Board’s seal in safe custody.

“(2) The seal of the Board must be affixed to a document only:

- (a) in the presence of at least 2 members of the Board; and
- (b) with an attestation by the signatures of those members of the fact of the affixing of the seal.

“(3) Every document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if it is signed by the Chairperson or by any member of staff of the Board authorised to do so by the Chairperson.

“(4) Judicial notice is to be taken of the seal of the Board.

“(5) In any legal proceedings, the seal of the Board, when affixed to a document, is, until the contrary is proved, to be presumed to have been duly affixed to the document.

General procedure

“16. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

Quorum

“17. The quorum for a meeting of the Board is 2 members of the Board one of whom is to be the Chairperson.

Presiding member

“18.(1) The Chairperson is to preside at a meeting of the Board.

“(2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

“19. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone etc.

“20.(1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

“(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members participate by telephone, closed-circuit

SCHEDULE 1—continued

television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

“(3) For the purposes of:

- (a) the approval of a resolution under subsection (1); or
- (b) a meeting held in accordance with subsection (2);

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

“(4) A resolution approved under subsection (1) is to be recorded by the Board.

“(5) Papers may be circulated among members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

Delegation of Board’s powers and functions

“21.(1) The Board may, by writing under its seal, delegate its powers and functions, other than this power of delegation, to any member or employee of the Board or to any committee of persons (whether of members only or members and other persons).

“(2) A delegation:

- (a) may be general or limited; and
- (b) may be revoked, wholly or partly, by the Board.

“(3) A delegated power or function may be exercised only in accordance with any conditions to which the delegation is subject.

“(4) A delegated power or function that is duly exercised by a delegate is taken to have been exercised by the Board.

“(5) If the exercise of a power or function by the Board is dependent on the opinion, belief or state of mind of the Board in relation to any matter, the power or function may be exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to any such matter.

“(6) When a power or function is delegated to a particular member, the power or function may be exercised by the person for the time being acting for that member in accordance with section 9.

“(7) A power or function that has been delegated may, despite the delegation, be exercised by the Board.”.

SCHEDULE 2

Section 3

**AMENDMENTS RELATING TO THE FUNCTIONS OF THE
JOINT COAL BOARD**

Title:

Omit the title, substitute:

“An Act to make provision in relation to the coal industry in New South Wales and elsewhere, and for related purposes”.

Preamble:

Omit the Preamble, substitute:

“WHEREAS it has been agreed between the Governments of the Commonwealth and the State of New South Wales that they will jointly establish authorities vested with power to take action with respect to industrial relations, mineworkers’ health and welfare and certain other matters in the coal industry;

AND WHEREAS it has been further agreed that the two Governments are to take all practicable steps to secure the passage by the Parliament of the Commonwealth and the Parliament of the State of New South Wales of legislation within the constitutional powers of the respective Parliaments providing for these and other related matters;

AND WHEREAS each of the two Governments has undertaken not to take action, without the prior concurrence of the other, to repeal or amend any of the legislation covered by the agreement:”.

Section 4:

Omit the definition of “coal”.

Part III:

Repeal the Part, substitute:

**“PART 3—POWERS AND FUNCTIONS OF JOINT COAL
BOARD**

Vesting of powers in Board

“22.(1) In pursuance of an agreement between the Government of the Commonwealth and the Government of the State, it is declared that the Board is to have all the powers and functions specified in this Act in relation to the Board.

“(2) Subject to the Constitution, those powers and functions are by this subsection, and not otherwise, vested in the Board to the extent to which they are not in excess of the legislative power of the Commonwealth.

SCHEDULE 2—continued

General powers and functions of the Board

“23. The Board has the following powers and functions:

- (a) to provide occupational health and rehabilitation services for workers engaged in the coal industry, including providing preventive medical services, monitoring workers' health and investigating related health matters;
- (b) to collect, collate and disseminate accident and other statistics related to the health and welfare of workers engaged in the coal industry;
- (c) to refer matters relating to the safety of workers engaged in the coal industry, as it thinks fit, to the Chief Inspector of Coal Mines or the Commonwealth Minister and the State Minister for consideration;
- (d) to provide courses in the production and utilisation of coal under international development assistance programs sponsored or administered by the Commonwealth Government or approved by the Commonwealth Minister and the State Minister;
- (e) to report to the Commonwealth Minister and the State Minister as it thinks fit, or when requested by either Minister, on matters related to the health or welfare of workers engaged in the coal industry, or on any other matter concerning or arising out of the Board's powers or functions;
- (f) to publish reports and information of public interest concerning or arising out of the Board's powers or functions;
- (g) to promote the welfare of workers and former workers in the coal industry in the State, their dependants, and communities in coal mining areas.

Additional powers related to health

“24.(1) The Board may, if it is of the opinion that the health of workers at a coal mine is endangered, or is likely to be endangered, by any conditions at the mine or methods in operation at the mine, require the owner or manager of the mine, by written notice, to do or refrain from doing such things, specified by the Board, as are necessary to protect the health of the workers.

“(2) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a requirement made under this section.

“(3) If an application for review is made to the Administrative Appeals Tribunal after an appeal in respect of the same matter has been made to the State Supreme Court under the State Act and before that appeal is finally determined, the application is stayed until that final determination.

SCHEDULE 2—continued

Other powers and functions of the Board

“25. Until such time as the Commonwealth Minister and the State Minister direct, the Board has the following powers and functions:

- (a) to monitor, promote and specify adequate training standards relating to health and safety for workers engaged in the coal industry;
- (b) to monitor dust in coal mines;
- (c) to collect, collate and disseminate statistics related to the coal industry, other than statistics related to the health and welfare of workers.

Workers' compensation functions

“26. The Board has power to establish workers' compensation insurance schemes and to require any employer in the coal industry in the State to effect with or through the Board all workers' compensation insurance in respect of the employer's employees in that industry.

Additional powers of Board

“27. For the purpose of exercising its powers or functions, the Board may:

- (a) undertake or arrange for research, inquiries, investigations, surveys, tests and inspections; and
- (b) require the keeping and furnishing of statistics, returns and other information relating to matters concerning or arising out of the Board's powers and functions.

Orders by Board

“28.(1) The Board may, with the approval of the Commonwealth Minister and the State Minister, make orders, not inconsistent with this Act or the regulations, for or with respect to the Board's powers and functions under sections 23 and 25 to 27.

“(2) The Board may, with the approval of the Commonwealth Minister and the State Minister, by order amend or revoke any order made by the Board.

Publication of orders

“28A.(1) An order made by the Board must be published in the *Gazette* and the *State Gazette*.

“(2) An order takes effect on the day it is so published, or if a later day is specified in the order for that purpose, on the later day so specified.

“(3) Subsection (2) does not prevent an order from specifying different days for the commencement of different portions of the order.

SCHEDULE 2—continued

Ministerial direction and control

“28B.(1) The Board is, in the exercise of its powers and functions and the performance of its duties, subject to the joint control and direction of the Commonwealth Minister and the State Minister.

“(2) The Commonwealth Minister or the State Minister may, with the agreement of the other Minister, issue written directions to the Board on matters of policy, or as to the exercise of the Board’s powers or functions or the performance of its duties, and it is the duty of the Board to carry out any direction so given.

“(3) If the exercise of any power or function by the Board is dependent on the opinion or belief of the Board in relation to any matter and a direction is issued under this section in relation to that matter, the Board has the power to exercise the power or function or perform the duty in accordance with that direction.

Staff of Board

“28C.(1) The Board may employ such staff as is necessary to exercise its powers and functions under this Act.

“(2) The Board may determine the remuneration and conditions of employment of its staff.

Arrangements with other agencies, consultants etc.

“28D.(1) The Board may enter into arrangements with other persons or bodies (including government bodies) with relevant expertise for the provision of assistance to the Board in connection with the exercise of the powers and functions of the Board.

“(2) The Board may engage consultants to assist it in the exercise of its powers or functions.

Annual operating plan

“28E.(1) The Board must, on or before 31 May in each year, submit an annual operating plan for the year commencing on 1 July of that year to the Commonwealth Minister and the State Minister.

“(2) The annual operating plan must contain a plan relating to the proposed strategy of the Board in exercising its powers and functions in the period to which the plan relates and such other matters as may be prescribed.

“(3) The Board must amend an annual operating plan if required to do so by the Commonwealth Minister and the State Minister.

“(4) The Board may amend the annual operating plan and must give the Commonwealth Minister and the State Minister a copy of any such amendment.

SCHEDULE 2—continued

Policy reports

“28F. The Board must, as and when required by the Commonwealth Minister or the State Minister, furnish reports to the Minister concerned, and the other Minister, as to the policy it is pursuing or proposes to pursue in the discharge of its powers and functions.”.

SCHEDULE 3

Section 3

AMENDMENTS RELATING TO FINANCIAL MATTERS

Section 4:

Insert the following definition:

“**‘approved bank’** means a bank as defined in subsection 5(1) of the *Banking Act 1959* or another bank declared by the Treasurer, or by a person authorised by the Treasurer to give approvals for the purposes of this definition, to be an approved bank in relation to the Board.”.

Part IV:

Repeal the Part, substitute:

“PART 4—FINANCE

Part XI of the Audit Act not to apply to the Board

“28G. The Board is declared not to be an authority to which Division 2 or Division 3 of Part XI of the *Audit Act 1901* applies.

Functions of the Board in relation to finance:

“28H. The functions of the Board in relation to finance are:

- (a) to receive money payable to the Board, including money payable to the Board as fees for services provided by the Board; and
- (b) to raise such money, under section 28R, as is necessary to exercise its powers or functions; and
- (c) to make payments under sections 28L and 28M; and
- (d) to maximise returns on money held by the Board by investing the money under section 28S.

Board may charge fees

“28J. The Board may charge fair and proper fees for services provided by it in the exercise of any of its powers or functions.

Payments by the Commonwealth

“28K. There is payable to the Board such money as is appropriated from time to time by the Parliament to enable any authority constituted under this Act to exercise the powers and functions vested in it by this Act.

Workers’ compensation funds

“28L. All premiums and other money received under any workers’ compensation insurance scheme established by the Board and any other money received by the Board for the purposes of the scheme must be applied:

SCHEDULE 3—continued

- (a) to pay any sum required to be paid by the Board under any workers' compensation insurance scheme established by the Board; and
- (b) to pay any expenses incurred in the administration of any such scheme; and
- (c) to pay for the provision of occupational health and rehabilitation services; and
- (d) for such other purposes related to the coal industry, to the Board's welfare functions, to workers formerly engaged in the coal industry or to the administration of this Act as may be approved by the Commonwealth Minister and the State Minister.

Other funds

“28M.(1) The Board may apply money (other than money referred to in section 28L) received by the Board for such purposes, connected with the Board's powers and functions, as the Board thinks fit.

“(2) Without limiting the operation of subsection (1), the Board may apply any such money for any purpose referred to in section 28L.

Annual report

“28N.(1) The Board must, as soon as practicable after the end of the financial year of the Board, submit an annual report to the Commonwealth Minister and the State Minister.

“(2) The Minister must lay the report or cause it to be laid before each House of the Parliament within 21 sitting days of that House after receiving the annual report.

“(3) The annual report must contain a report of the Board's operations during the financial year, together with financial statements for that year and such other matters as may be approved by the Minister for Finance or the Commonwealth Minister and the State Minister.

Bank accounts

“28P.(1) The Board may open and maintain an account or accounts with an approved bank or banks and must maintain at all times at least one such account.

“(2) The Board must pay all money of the Board into an account referred to in subsection (1).

Financial statements and practices

“28Q.(1) The Board must cause proper accounts and records of its transactions and affairs to be kept in accordance with the accounting principles generally applied in commercial practice.

SCHEDULE 3—continued

“(2) The financial statements of the Board are to be in a form approved by the Minister for Finance.

“(3) The Board must do all such things necessary to ensure that all payments by it are correctly made and properly authorised and that adequate control is maintained over all assets of, or in the custody of, the Board and over the incurring of liabilities by the Board.

Borrowing by the Board

“28R.(1) The Board may borrow money for the exercise of its powers and functions.

“(2) The Board must not allow the total of outstanding debts incurred under subsection (1) to exceed \$2,000,000 without the approval in writing of the Commonwealth Minister and the State Minister.

“(3) An approval may be given in relation to a particular transaction or a class of transactions.

“(4) Money borrowed under an approval must be on terms and conditions specified in, or consistent with, the approval.

“(5) Money may be borrowed wholly or partly in foreign currency.

“(6) The Board must not borrow money except in accordance with this section.

“(7) The Board may give security over the whole or part of its assets for the performance of any obligation incurred under subsection (1).

“(8) In this section:

‘**borrowing**’ includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the Board.

Investment of money of Board

“28S. Money of the Board not immediately required for the purposes of the Board must be invested:

- (a) in securities of, or guaranteed by the State, the Commonwealth or another State; or
- (b) on deposit with an approved bank; or
- (c) in any other way that is consistent with sound commercial practice.

Audit

“28T.(1) The Auditor-General must:

- (a) inspect and audit:

SCHEDULE 3—continued

- (i) the accounts and records of financial transactions of the Board; and
 - (ii) the records relating to assets of, or in the custody of, the Board; and
- (b) immediately draw the attention of the Commonwealth and the State Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify doing so.

“(2) The Auditor-General may dispense with all or a part of the detailed inspection and audit of any accounts or records referred to in paragraph (1)(a).

“(3) The Auditor-General must, at least once in each financial year, report to the Commonwealth Minister and the State Minister the results of the inspection and audit carried out under paragraph (1)(a).

“(4) The Commonwealth Minister must lay the Auditor-General’s report or cause it to be laid before each House of the Parliament within 21 sitting days of that House after receiving the report.

“(5) An authorised auditor is entitled, at all reasonable times, to full and free access to all accounts, records and other documents of the Board being accounts, records and other documents relating directly or indirectly to:

- (a) the receipt or payment of money by the Board; or
- (b) the acquisition, receipt, custody or disposal of assets by the Board.

“(6) An authorised auditor may make copies of, or take extracts from, any accounts, records or other documents referred to in subsection (5).

“(7) An authorised auditor may require any person to give such information in the possession of the person, or to which the person has access, as the authorised auditor considers necessary for the purposes of the functions of the Auditor-General under this Act.

“(8) A person must comply with a requirement under subsection (7).

Penalty: \$1,000.

“(9) For the purposes of this section:

‘authorised auditor’ means the Auditor-General or a person authorised by the Auditor-General.

SCHEDULE 3—continued

Taxation

“28U. The property, income and operations of the Board are not liable to income tax, pay-roll tax or land tax under the laws of the Commonwealth or to taxation under any law of the State to which the Commonwealth is not subject.”

SCHEDULE 4

Section 3

OTHER AMENDMENTS

Heading to Part I:

Omit “Part I”, substitute “Part 1”.

Section 4:

Omit the definition of “the Federation”.

Heading to Part V:

Omit “V”, substitute “5”.

Subparagraph 33(b)(ii):

Add at the end “or”.

Subparagraph 33(b)(iii):

Omit the subparagraph.

Paragraph 34(1)(d):

Add at the end “and”.

Paragraph 34(1)(e):

Omit “Authority; and”, substitute “Authority.”.

Paragraph 34(1)(f):

Omit the paragraph.

Subsections 34(1B) and (1C):

Omit the subsections.

Subsection 37(1):

Omit the subsection, substitute:

“(1) The Tribunal may establish such Local Coal Authorities as may be necessary for the purposes of this Act.

“(1A) The members of a Local Coal Authority comprise:

(a) the Chairperson; and

(b) other members appointed to the Local Coal Authority where the Authority is to exercise its power in relation to a particular dispute or matter, being 2 or 3 members representative of employers and the same number of persons representative of employees.

“(1B) The Tribunal is to appoint the Chairpersons of Local Coal Authorities.

SCHEDULE 4—continued

“(1C) The other members of a Local Coal Authority are to be appointed by the Chairperson referred to in paragraph (1A)(a), according to the subject matter to be dealt with, from among persons approved by the Tribunal for the purposes of this section.”.

Subsection 37(2):

Before “a Local Coal Authority” insert “the Chairperson of”.

After Subsection 37(2):

Insert the following:

“(2A) Other members of a Local Coal Authority are to be paid such remuneration and allowances (if any) as the Tribunal, with the concurrence of the Board, determines.”.

Subsection 37(4):

Before “a Local Coal Authority” insert “the Chairperson of”.

Subsection 37(5):

Before “a Local Coal Authority” insert “Chairperson or other member of”.

After subsection 37(5):

Insert:

“(6) The Tribunal may dissolve a Local Coal Authority if the position of Chairperson is vacant.

Subsections 37A(1) and (2):

Omit the subsections.

Subsection 37A(3):

- (a) Omit “Chairman”, substitute “Chairperson”.
- (b) Omit “constituted in accordance with this section”.

Subsection 37A(4):

- (a) Omit “Chairman”, substitute “Chairperson”.
- (b) Omit “constituted in accordance with this section”.

Paragraph 38(1)(c):

Add at the end “and”.

Paragraph 38(1)(d):

Omit “Tribunal; and”, substitute “Tribunal.”.

Paragraph 38(1)(e):

Omit the paragraph.

Subsection 38(4):

Omit “the Board or”.

SCHEDULE 4—continued

Sections 42, 43 and 48:

Repeal the sections.

Part VI:

Repeal the Part, substitute:

“PART 6—MISCELLANEOUS

“Division 1—Inspectors’ powers

Inspectors

“49. The Board may appoint employees of the Board in writing to be inspectors for the purpose of making inspections referred to in paragraph 27(a).

Searches

“50.(1) An inspector may enter, at any reasonable time, any premises for the purpose of making an inspection referred to in paragraph 27(a) and may do any or all of the following:

- (a) search the premises;
- (b) take photographs, or make sketches, of the premises or any substance or thing at the premises;
- (c) inspect any book, record or document kept at the premises;
- (d) remove, or make copies of, any such book, record or document.

“(2) An inspector may not exercise any powers under this section in relation to premises unless he or she has:

- (a) produced his or her authority for inspection by the occupier; and
- (b) informed the occupier of the purpose of the entry.

“(3) An inspector may not, under this section, enter premises that are a residence unless the occupier of the premises has consented to the entry.

“(4) An inspector must use no more force than is reasonably necessary in effecting an entry on to the premises.

“(5) If damage is caused to property by an inspector in exercising a power of entry under this section, reasonable compensation is payable by the Board to the owner of the property unless the damage resulted from, or was connected with, obstruction of the inspector.

“(6) In this section:
‘premises’ includes buildings, land and coal mines.

SCHEDULE 4—continued

Power to require information etc.

“51.(1) An inspector who has entered premises for the purpose of making an inspection under paragraph 27(a) may, to the extent that it is reasonably necessary for that purpose to ascertain whether this Act, the regulations or orders or requirements made under this Act have been complied with, require a person to answer any questions put by the inspector and to produce any books, records or documents requested by the inspector.

“(2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces his or her written authorisation for inspection by the person.

Retention of books, records and documents

“52. If an inspector removes a book, record or document from premises under subsection 50(1) or a person produces a book, record or document to an inspector in accordance with a requirement under subsection 51(1):

- (a) the inspector may retain possession of the book, record or document for such period as is necessary and reasonable for the purpose of ascertaining whether this Act, the regulations or orders or requirements have been complied with; and
- (b) during that period the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector’s possession to inspect the book, record or document at all reasonable times.

“Division 2—General

Offences

“53.(1) A person must not fail, without reasonable excuse, to comply with an order made or taken to be made under section 28 or a requirement made under section 24 by the Board in accordance with this Act.

Penalty:

- (a) in the case of an individual—\$3,000; and
- (b) in the case of a body corporate—\$10,000.

“(2) A person must not, without reasonable excuse, refuse to answer any question referred to in section 51.

Penalty:

- (a) in the case of an individual—\$3,000; and
- (b) in the case of a body corporate—\$10,000.

“(3) A person must not, without reasonable excuse, fail or refuse to produce any books, records or documents referred to in section 51.

Penalty:

- (a) in the case of an individual—\$3,000; and

SCHEDULE 4—continued

(b) in the case of a body corporate—\$10,000.

“(4) A person must not knowingly make any false or misleading statement in answer to any inquiry referred to in section 51.

Penalty:

(a) in the case of an individual—\$6,000; and

(b) in the case of a body corporate—\$10,000.

“(5) A person must not assault, delay, obstruct, hinder or impede an inspector referred to in section 49 in the exercise of any powers conferred on the inspector under this Act.

Penalty:

(a) in the case of an individual—\$6,000; and

(b) in the case of a body corporate—\$10,000.

Service of documents etc.

“54.(1) A document may be served on the Board by leaving it at, or by sending it by post to, the office of the Board, or if it has more than one office, any of its offices.

“(2) A requirement made by the Board under section 24 may be served on any person subject to the requirement personally or by sending it by post to the person’s address last known to the Board.

Personal liability of members etc.

“55. A matter or thing done by the Board, a member of the Board or any person acting under the direction of the Board does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

Regulations

“56.(1) The Governor-General may, on the recommendation of the Commonwealth Minister with the agreement of the State Minister, make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

“(2) A regulation may create an offence punishable by a penalty not exceeding \$500.

Savings and transitional provisions

“57. The provisions in the Schedule have effect.”.

After Part VI:

Add the following Schedule:

SCHEDULE 4—continued

“SCHEDULE

Section 57

**SAVINGS AND TRANSITIONAL PROVISIONS
CONSEQUENTIAL ON THE COAL INDUSTRY AMENDMENT
ACT 1992**

Interpretation

“1. In this Schedule:

‘the amendment day’ means the day on which subsection 3(1) of the *Coal Industry Amendment Act 1992* commences.

Continuity of existence of the Board not affected

“2. Nothing in the *Coal Industry Amendment Act 1992* affects:

- (a) the continued existence of the Board; or
- (b) the continued membership of the Board of a person who was a member of the Board immediately before the amendment day.

Local Coal Authorities

“3.(1) Where, immediately before the amendment day, a Local Coal Authority existed (**‘the former Authority’**):

- (a) the Tribunal is taken to establish a Local Coal Authority (**‘the continued Authority’**) under section 37 on that day with the same limits as the former Authority; and
- (b) the person who constituted the former Authority is taken to be appointed as Chairperson of the continued Authority for the remainder of the period of his or her appointment as the former Authority and under the same terms and conditions.

“(2) The continued Authority is to exercise its powers in relation to any matter or dispute in relation to which the former Authority was exercising its powers immediately before the amendment day.

“(3) A person who, immediately before the amendment day, was a member of the former Authority selected under section 37A in relation to a dispute or matter as representing employers or employees, is taken to be appointed under subsection 37(1C) to the continued Authority in relation to that dispute or matter with the same remuneration and allowances (if any).

“(4) If the former Authority was, immediately before the amendment day, exercising its powers in relation to a dispute or matter that was not subject to section 37A, the continued Authority may decide the matter without any members appointed under paragraph 37(1A)(b).

Staff of the Board

“4. A person who, immediately before the amendment day, was an officer or employee of the Board continues to be employed as a member of the staff of the Board on the same terms and conditions.

SCHEDULE 4—continued

Certain Orders to be continued

“5.(1) Orders Nos. 5, 10, 34, 35, 36 and 40 made under this Act by the Board, and in force immediately before the amending day, continue in force and may be amended or revoked in the same way as an Order made by the Board under section 28.

“(2) Any approval or consent given under Order No. 34 or 40, and in force immediately before the amending day, has effect until amended or revoked by the Board or until the relevant provision of the Order ceases to have effect.

“(3) Despite subclause (1):

- (a) Order No. 34 has no effect if a direction is given that the Board is to cease to have the functions referred to in paragraph 25(a); and
- (b) Order No. 36 has no effect if a direction is given that the Board is to cease to have the functions referred to in paragraph 25(b); and
- (c) Order No. 40 has no effect if a direction is given that the Board is to cease to have the functions referred to in paragraph 25(c).

Board’s funds

“6.(1) Section 28L applies to money standing to the credit of the Workers’ Compensation Fund immediately before the amendment day.

“(2) Money standing to the credit of the Welfare Fund immediately before the amendment day must be applied, as the Board determines, so as to promote the welfare of workers and former workers in the coal industry in the State, their dependants and communities in coal mining areas.

“(3) Section 28M applies to other money standing to the credit of the Board immediately before the amendment day.

Workers’ compensation schemes

“7. Any workers’ compensation scheme established by the Board and in operation under this Act immediately before the amendment day is taken to have been established by the Board under section 26 of this Act as in force on that day.

General effect of repeal etc. of provisions

“8.(1) The amendment or repeal of a provision of this Act by the *Coal Industry Amendment Act 1992* does not affect:

- (a) the previous operation of the provision or anything duly suffered, done or commenced under the provision; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the provision; or

SCHEDULE 4—continued

(c) any penalty incurred in respect of any offence arising under the provision; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability or penalty;

and any such penalty may be imposed and enforced, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the provision had not been amended or repealed.

“(2) Without limiting the effect of subclause (1), the amendment or repeal of a provision does not affect the proof of any past thing, any right, privilege, obligation or liability saved by the operation of the provision or any amendment or validation made by the provision.

“(3) This clause applies in addition to, and without limiting the effect of, any other provision of this Schedule.

Regulations

“9.(1) The regulations may make further provision of a savings or transitional nature consequent on the enactment of the *Coal Industry Amendment Act 1992*.

“(2) Any such provision may, if the regulations so provide, take effect from the amendment day or a later date.

“(3) To the extent to which such a provision takes effect from 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.”.

SCHEDULE 5

Section 3

**AMENDMENTS CONSEQUENTIAL ON THE INDUSTRIAL
RELATIONS ACT 1991 OF NEW SOUTH WALES**

Paragraph 30(4)(a):

Omit “Industrial Commission of the State”, substitute “Industrial Relations Commission of the State or the Industrial Court of the State”.

SCHEDULE 5—continued

Paragraph 30(4)(b):

Omit “Industrial Commission of the State”, substitute “Industrial Relations Commission of the State or the Industrial Court of the State”.

NOTE

1. No. 40, 1946, as amended. For previous amendments, see No. 61, 1951; No. 30, 1952; No. 52, 1956; No. 61, 1957; No. 57, 1958; No. 11, 1965; No. 93, 1966; No. 216, 1973; No. 37, 1976; No. 36, 1978; and No. 126, 1979.

NOTE ABOUT SECTION HEADING

1. After the commencement of subsection 3(1) of this Act, the heading to section 37A of the Principal Act is altered to “**Proceedings of Local Coal Authorities**”.

[*Minister's second reading speech made in—
House of Representatives on 30 April 1992
Senate on 27 May 1992*]