COAL ACQUISITION AMENDMENT ACT 1997[*]

The *Coal Acquisition Amendment Act 1997* has now been passed by the New South Wales Parliament. When it is proclaimed to commence, it will amend the *Coal Acquisition Act 1981* and the *Coal Ownership (Restitution) Act 1990.*

Background

The *Coal Acquisition Act* vested all coal in New South Wales in the Crown and provided that compensation arrangements may be made for the payment of compensation in respect of such vesting. No other compensation is payable for such vesting. Arrangements in the form of the Coal Acquisition (Compensation) Arrangements 1985 (the Arrangements) have been made. Under those Arrangements, compensation was payable for coal within a colliery holding by reference to a 90 cent formula and compensation for coal outside a colliery holding was payable in the manner determined by the Coal Compensation Board. The Board has determined to apply the same formula for claims outside a colliery holding.

Where a claim for compensation for coal outside a colliery holding was determined by the Board, a claimant could either accept the compensation or apply under the *Coal Ownership (Restitution) Act* to have that coal re-vested in the claimant. Until recently, the applications for coal restitution have been granted on a routine basis. The Government has recently discovered that there will be a substantial loss of coal royalty revenue to the State if that practice continues without reference to the potential loss of revenue to the State and if some of the coal granted under restitution applications is not re-vested in the Crown.

Amendments to *Coal Ownership (Restitution) Act*

The amendments to the *Coal Ownership (Restitution) Act* make it clear that the Minister has the power to refuse a restitution application and a ground for that refusal can be that he is of the opinion that the Crown would lose significant revenue were the coal to cease to be vested in the Crown.

Amendments to *Coal Acquisition Act*

Amendments to the *Coal Acquisition Act* allow the Governor, on the recommendation of the Minister, to have re-vested in the Crown any coal that was restored to former owners pursuant to the *Coal Ownership (Restitution) Act.* In deciding whether to make 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. This power expires on 31 December 1998. The Minister may also acquire that coal by contract or other arrangement but only on the recommendation of the Coal Compensation Board.

Just and equitable compensation is payable for that coal and amendments are required to the Coal Acquisition (Compensation) Arrangements to the extent that those Arrangements do not provide for just and equitable compensation. Just and equitable compensation is also payable where the Minister refuses a restitution application and for that purpose a claim that has been determined by the Board in respect of which a restitution application has been made is required to be re-assessed on the basis of just and equitable compensation being payable.

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Implications of the amendments

The Government claims that the 90 cent formula in the Arrangements provides just and equitable compensation. It therefore remains to be seen what changes, if any, will be made to the Arrangements to give effect to the just and equitable requirement. That formula may provide just and equitable compensation in some circumstances but it may not do so in all circumstances.

Where coal is privately owned, seven eighths of any royalty paid on that coal by the holder of a mining lease is payable to the private owner of coal under the *Mining Act*. Where an owner of coal has his coal re-vested in the Crown, pursuant to the amendments made to the *Coal Acquisition Act*, then that owner will be deprived of that royalty. The owner will also lose the ability to sell that coal. However, that owner will be entitled to just and equitable compensation for that coal.

Where coal has been re-vested in an owner pursuant to the *Coal Ownership (Restitution) Act*, it is likely that such coal will be regarded as an asset subject to capital gains tax unless the owner can apply Section 160ZZL of the *Income Tax Assessment Act* by giving a notice to the Commissioner of Taxation. That Section allows the coal to be treated as an asset not subject to capital gains tax. The application of that Section depends on the Commissioner extending the period of time by which a notice needs to be given under that Section.

The royalty payable under a mining lease for coal (which includes consolidated coal leases) is currently at the prescribed base rate of $1.70 per tonne. An additional rate of 50 cents per tonne is prescribed in respect of coal recovered pursuant to a mining lease that contains a condition requiring the payment of additional royalty in accordance with Clause 56(2) of the Mining (General) Regulation 1992. The additional royalty has not been payable under some mining leases that relate to privately owned coal. In these cases, the mining lease conditions will need to be amended to include a condition about additional royalty before that additional royalty becomes payable. The Minister does not have the power to include such a condition in a mining lease at any time under the current *Mining Act*. He can only include that condition on the renewal or transfer of a mining lease. Consequently, in such cases, the additional royalty will not be payable until, at the earliest, the mining lease is renewed or transferred.

JUDICIAL REVIEW OF COAL COMPENSATION REVIEW TRIBUNAL DECISIONS*

In (1997) 16 AMPLJ pages 6 and 7, three NSW Supreme Court decisions relating to determinations of the above Tribunal were noted. Those three decisions were appealed to the NSW Court of Appeal and those judgements were handed down on 29 July 1997 and 5 August 1997. The decisions which are unreported are:

- *NSW Coal Compensation Board v NSW Coal Compensation Tribunal, JAA Gilder (No 1) Pty Ltd, JAA Gilder (No 2) Pty Ltd, Barama (Singleton) Pty Ltd and Buchanan Borehole Collieries Pty Ltd CA40732/96*,

- *NSW Coal Compensation Board v NSW Coal Compensation Review Tribunal and Bloomfield Collieries Pty Ltd CA40035/96* and

- *Buchanan Borehole Collieries Pty Ltd v NSW Coal Compensation Review Tribunal and Anor CA40033/97.*