

NSW COAL COMPENSATION BOARD - NOTES ON THE COMPENSATION ARRANGEMENTS

NEW SOUTH WALES - COMPULSORY ACQUISITION BY THE
STATE OF PRIVATELY OWNED COAL *

(Edited extracts)

OVERVIEW

The N S.W. Coal Compensation Board has been established by the Government of N.S.W. to consider claims for compensation by former owners of private coal and by persons who may have suffered certain categories of financial loss as a result of the Coal Acquisition Act, 1981.

The Board exercises powers pursuant to the Coal Acquisition (Compensation) Arrangements, 1985.

The Compensation Arrangements provide for the payment of compensation to former owners of private coal based on the expected future saleable coal production stream and yearly mineral rent stream from areas of formerly private coal.

The production and mineral rent streams are converted into an income stream by applying a maximum net royalty rate of 50 cents a tonne and a mineral rent of \$4 per hectare. This is converted into a single sum value by applying appropriate discount rates. Interest will be added to the sum from the 1st January, 1982 to the date when compensation is paid to the claimant.

Recent purchasers of coal rights may be eligible for an increased amount of compensation based on the purchase price of the coal rights.

Increased compensation may be payable to those charitable, religious and educational institutions, referred to in Clause 21 of the Arrangements, where it is established that substantial hardship or injustice would otherwise occur.

In some cases, persons who have suffered a financial loss attributable to the discharge, by Section 5 of the Coal Acquisition Act, 1981 of certain contracts and interests may also claim compensation.

An independent N.S.W. Coal Compensation Review Tribunal has been established to hear appeals from claimants.

THE COAL COMPENSATION BOARD

The Board is an independent body, consisting of a full-time Chairman and 3 part-time members.

The part-time members include a representative from Treasury, a representative from the Department of the Valuer-General and a person who is not employed by the Crown. All of the Board members are appointed by the Governor

ELIGIBILITY OF CLAIMANTS

The Compensation Arrangements allow for any person, other than the Crown or an instrumentality or agency of the Crown, to make a claim provided that:

- (i) the person was the owner of private saleable coal as at 31st December, 1981, and;
- (ii) that coal was situated within a colliery holding any time between 1st January, 1982 and 1st January, 1986.

In addition, a person may make a claim if they have sustained certain specified pecuniary losses as a result of the Coal Acquisition Act, 1981 and are not otherwise eligible to make a claim.

TYPE OF CLAIMANTS

Under the Compensation Arrangements there are three types of claimants who may submit a claim to the Coal Compensation Board on the appropriate form:

FORM A - A claimant who was, as at 31st December, 1981, the owner of coal within a registered colliery holding and who was the registered holder of that holding.

FORM B - A claimant who was, as at 31st December, 1981, the owner of coal within a registered colliery holding but was not the registered holder of that holding

FORM C - A claimant who has sustained a pecuniary loss which is directly attributable to the discharge of any trust, lease, licence, obligation, estate, interest or contract resulting from the operation of Section 5 of the Coal Acquisition Act, 1981.

CALCULATION OF COMPENSATION

Claims received by the Board are subject to a thorough technical assessment. The Board then determines the number of tonnes of saleable coal which has been extracted or will, in the opinion of the Board, be extracted from each subject area for the periods from 1st January, 1982 to 30th June, 1982 and then in respect of each successive period of twelve months until, in the opinion of the Board, the saleable coal reserves would have become exhausted

The schedule of saleable production for an area subject to a claim is then converted to an income stream by multiplying the saleable production in a year by fifty (50) cents.

A second income stream, based on the mineral rent, is generated by multiplying the area of private coal subject to a claim by four (4) dollars per year per hectare.

These two income streams are then discounted and summed, using appropriate discount rates, to a value as at the 1st January, 1982 in order to arrive at a compensation figure.

Interest, determined by Treasury, is paid on the sum from the 1st January, 1982 to the date when compensation is paid to the claimant.

Claimants who were receiving, or would have been entitled to receive royalty payments at a rate of less than fifty (50) cents a tonne, will have compensation determined at the lower rate

RECENT COAL PURCHASERS

Former owners of private coal who purchased coal rights on or after 1st November, 1975 may, in certain circumstances, have their claims determined by the Board on the basis of the amount paid by the claimant for the coal rights.

The compensation paid will be less any amount paid to the claimant as a result of owning the coal rights from this date up to the date of acquisition.

CHARITIES, RELIGIOUS AND EDUCATIONAL INSTITUTIONS

The Coal Compensation Board may increase the amount of compensation payable to Charities, Religious and Educational Institutions in circumstances where substantial hardship or injustice would otherwise arise.

DETERMINATION OF A CLAIM

After assessing a claim the Board will either allow or refuse it. In either event, the Claimant will be notified in writing of the Board's decision giving the basis for compensation or the reasons for refusing the claim.

THE COMPENSATION REVIEW TRIBUNAL

The Compensation Review Tribunal is an independent appeals body consisting of 3 members.

The Chairman is a person nominated by the Attorney-General who is, or is qualified to be, admitted as a barrister or solicitor of the Supreme Court. The other two members are persons nominated by the Minister for Mineral Resources and Energy who have expertise in the coal industry.

RIGHT OF APPEAL

Claimants may appeal against a Board's decision provided that, within 30 days of being notified of the Board's decision, the Claimant lodges with the Compensation Review Tribunal an appeal in writing which specifies the grounds of appeal and is accompanied by a lodgement fee of \$100.

COSTS

Costs involved in preparing claims and in any appeals must be borne by the claimant.

*[Full details of compensation arrangements may be found in the Coal Acquisition (Compensation) Arrangements 1985, published in Government Gazette No.95 of 21 June 1985 and No. 128 of 13 September, 1985. Further information may also be found in the Annual Report, 1985 of the New South Wales Coal Compensation Board, level 18, 8-18 Bent Street, Sydney, 2000].