

## NEW SOUTH WALES

### NSW COAL COMPENSATION REVIEW TRIBUNAL DECISIONS\*

#### **Late Lodgment Of Appeal**

In Appeal No. CCRT2000/14 delivered 7 December 2000, in the matter of the application by Wambo Mining Corporation Pty Limited against the determination of the Coal Compensation Board, Wambo lodged a notice of appeal against a Board determination two years out of time. The requirement under the Coal Acquisition (Compensation) Arrangements is that a notice of appeal should be lodged within 30 days after notice of determination.

The Board refused the claim for compensation for coal reject. In recent times, Wambo has become aware of technology that would be available to permit recovery of coal reject and hence that coal reject now has some value. Wambo claimed that severe injustice would be occasioned to it if the appeal was not allowed to proceed out of time.

The Tribunal considered previous decisions in this area that it had made and confirmed that the requirement to lodge an appeal within 30 days should be read as a directory requirement and not mandatory but that it would only be in the most unusual circumstances of the case that a late lodgement of an appeal will be allowed. The Tribunal stated that there were no unusual circumstances put forward by Wambo.

The Tribunal considered that if the appeal had been lodged within time, it would have been finalised within 18 months and that even at that time, Wambo would not have been aware of the technology. It therefore regarded any compensation receivable now as a windfall occasioned by the delay in lodging the appeal and as a result no injustice would be occasioned to Wambo. The other factor to be considered related to public policy. It was stated that public policy dictates that claims should be finally determined as soon as possible and not allowed to be re-opened as and when new technological advances are achieved.

The Tribunal refused the application for lodging the notice of appeal out of time.

#### **Leave To Intervene**

In Appeal No. CRT2001/22, 23, 24 and 25 delivered 30 May 2001, in an application by Buchanan Borehole Collieries Pty Limited (**BBC**) seeking leave to intervene in the appeals of ARS Bowman, PP Bowman, ARB Bowman and Fidelis Nominees Pty Limited against the determination of the Coal Compensation Board. BBC sought to intervene in the appeal conducted by the other parties on the basis that it would suffer substantial injustice if those appeals were successful and the offset power in clause 17C of the Coal Acquisition (Compensation) Arrangements 1985 was used against it by the Board.

There is no specific provision in the Arrangements which allows for intervention of a third party in an appeal. There were a number of arguments for and against the Tribunal having the power to

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allow a third party to intervene. The Tribunal came to the view that it need not consider its power to allow intervention at this stage but rather should rest its decision on the basis that if a power exists would the Tribunal exercise it in this case in applying principles according to equity, good conscience and the substantial merits of the case. The Tribunal was not satisfied that the applicant should be permitted to intervene and refused the application on the basis that the use of clause 17C is only a possibility at this time and if the Coal Compensation Board subsequently sought to exercise the set-off power under clause 17C, then the applicant could itself challenge that off-set on appeal to the Tribunal and that there would be no injustice to the applicant if it did not participate in the current appeals.

### ***ELECTRICITY SUPPLY AMENDMENT ACT 2000\****

The *Electricity Supply Amendment Act* provides the statutory framework for the completion of the introduction of full retail competition within the electricity market in NSW by amending the *Electricity Supply Act 1995* and related legislation. In Victoria analogous changes have been made to the *Electricity Industry Act 1993* in accordance with the provisions of the *Electricity Industry Acts (Amendment) Act 2000*. The *Amendment Act* is of importance to distributors, retailers, generators and small users of electricity within NSW.

It also may be of interest to other persons involved in the general energy market with the introduction of the Electricity Tariff Equalisation Fund.

The *Amendment Act* was passed on 20 December 2000. The majority of the provisions of the Act have now commenced.

The main changes to the *Electricity Supply Act 1995* made by the *Amendment Act* are as follows:

- the abolition of the distinction and significance of customers being classified as franchise customers (customers who must obtain their electricity from a particular electricity retail supply) and non-franchise customers. All customers (not just large consumers) will be able to choose from whom they wish to purchase their electricity ;
- the grant to certain small retail customers (details of who a small retail customer is will be determined by regulation) of the right to receive electricity from a retail supplier of electricity in accordance with standard regulated terms and prices. A small retail customer can elect at any time to decide to enter into separate electricity supply contract with a retail supplier of electricity;
- the introduction of separate retail licences. A company which is not an electricity distributor can now hold a retail supply licence. Under the previous provisions of the *Electricity Supply Act* retail licences were granted to electricity distributors. A retail supply licence may be endorsed requiring such a retailer to provide electricity on standard terms to small retail customers within a particular area;
- the grant of power to the Independent Pricing and Regulatory Tribunal to set regulated retail tariffs, determining the price which electricity must be sold to persons falling within the definition of a "small retail customer";

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