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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COAL RESEARCH ASSISTANCE AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and Energy,
the Honourable Simon Crean MP)

COAL RESEARCH ASSISTANCE AMENDMENT BILL 1992

GENERAL OUTLINE

This Bill gives effect to the transfer of responsibility for coal research and development in Australia from a Commonwealth Government-run system to an industry-funded and managed scheme. This new arrangement was announced by the Government on 2 December 1991 as part of a major package of institutional reform in the coal industry.

These amendments:

- Transfer to a company set up by the Australian Coal Association on behalf of the Australian coal industry – Australian Coal Research Limited – the monies, assets, liabilities and commitments (including unfunded commitments) of the Coal Research Trust Account
- Transfer coal research grant agreements including associated intellectual property rights
- Provide for the Commonwealth to take back responsibility for coal research and development (R & D) in the event that the industry is unable to fulfil its obligations.

FINANCIAL IMPACT STATEMENT

The proposed amendments put forward in this Bill will not affect Government expenditure.

Staffing implications within the Department of Primary Industries and Energy is that officers in the section which administers the coal research program have been notionally redeployed pending final transfer of the program.

The amendments provide for the transfer from the Commonwealth to Australian Coal Research Limited of:

- the balance of the Coal Research Trust Account of around \$8 million, with the coal industry taking responsibility for outstanding commitments of around \$17.2 million of which about \$9.2 million will be met from future revenues collected from the coal industry by Australian Coal Research Limited
- Commonwealth-owned equipment used by grantees until the completion of research contracts (this is then sold and the monies earned are reinvested in further research). Based on initial purchase price this equipment cost around \$7.2 million
- computer equipment, data base and software (valued at around \$35,000) currently used in grants administration.

The Commonwealth Excise of 5c per tonne of coal invoiced which funded the Coal Research Trust Account to the value of around \$8 million per year is being suspended through consequential amendments to the Excise Tariff Act 1921. The Australian Coal Association has undertaken to raise an equivalent amount from the coal industry to fund the new industry-run coal research and development program.

NOTES ON CLAUSES

Clause 1 – Short title etc.

1. This clause provides for the Act to be cited as the Coal Research Assistance Amendment Act 1992. Reference to the "Principal Act" means the Coal Research Assistance Act 1977.

Clause 2 – Commencement

2. Provides that the Act will come into operation on the day it is proclaimed or in six months from the date the Act receives Royal Assent.

Clause 3 – Long Title

3. Repeals the title of the Principal Act and substitutes the title "An Act relating to coal research" in order to take account of the new provisions in the Principal Act.

Clause 4 – Interpretation

4. This clause adds new definitions to the Principal Act of "Australian Coal Research Limited", "grant agreement", "intellectual property rights", and "unfunded commitment".

Clause 5 – Money to be paid into the Research Account

5. Section 5 of the Principal Act is repealed and the following sections substituted:
Paragraphs 5(1) to 5(3) provide that funds raised from the current coal excise of 5 cents per tonne of black coal produced (which is to be suspended through consequential amendment of the Excise Tariff Act 1921) cease being paid into the Coal Research Trust Account. The reason for this is because the coal industry has undertaken to maintain the total level of collective research funding for coal industry R & D at the same level per tonne as would have been collected each year under the current coal excise.
6. Provision is made so that funds can recommence being paid into the Coal Research Trust Account at an amount not exceeding 5 cents per tonne of coal (produced) only if the Minister for Primary Industries and Energy makes a determination to do so. This is to make provision for the Commonwealth to be able to recommence coal research funding arrangements in the event that the coal industry ceases to have responsibility for coal research. To fund the payment into the Trust Account would require the recommencement of the 5 cents per tonne excise on coal. Paragraph 8D provides for a reversion of coal R & D to the Commonwealth.
7. Paragraph 5(4) provides that if funds recommence being paid into the Coal Research Trust Account, they are appropriated and paid out of consolidated revenue.

Transfer of Research Account funds

8. Paragraph 5A transfers the balance of the Commonwealth's Coal Research Trust Account to Australian Coal Research Limited. The transfer of the funds of the Coal Research Trust Account to the company is necessary to transfer the existing Commonwealth coal research arrangements to the coal industry. Other related sections of this Bill are paragraph 8 which transfers grant agreements, paragraph 8A transferring intellectual property rights, and paragraph 8B transferring assets and liabilities.

Clause 6 – Application of the Research Account

9. This clause makes section 6 (1) of the Principal Act subject to paragraph 5A.

Clause 7 – Transfer of grant agreements

10. This clause repeals section 8 of the Principal Act and substitutes the following paragraphs: Paragraph 8 provides for the substitution of the Commonwealth as a party to grant agreements by Australian Coal Research Limited, and changes references to the Commonwealth, the Department, or the Secretary in the grant agreements to the company. This is in order to enable Australian Coal Research Limited to take over formal administration of grant agreements.

Transfer of intellectual property rights

11. Paragraph 8A provides for the transfer of the Commonwealth's intellectual property rights arising from grant agreements to Australian Coal Research Limited as the Commonwealth will no longer require these interests once the coal industry takes over running coal research.

Transfer of assets

12. Paragraph 8B (1) provides that the Minister may determine in writing assets and liabilities of the Commonwealth in relation to coal research that are to be transferred to Australian Coal Research Limited. The reason for this is to set out specifically those assets and liabilities of the Commonwealth which relate to coal research as distinct from all other Commonwealth assets and liabilities.
13. Paragraph 8B (2) provides that Australian Coal Research Limited becomes liable to pay and discharge all of the Commonwealth's debts, liabilities and obligations relating to assets transferred under paragraph 8B (1).
14. Paragraph 8B (3) provides that where the Minister has made a determination under paragraph 8B (1) transferring assets held by the Commonwealth in relation to coal research to Australian Coal Research Limited, the determination is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. This provides for the tabling in Parliament of the determination.

Exemption from stamp duty

15. Paragraph 8C provides that Australian Coal Research Limited does not have to pay Commonwealth, State or Territory stamp duty in relation to the transfer to the company of coal R & D arrangements from the Commonwealth.

Reversion to Commonwealth

16. Paragraphs 8D (1) to 8D (3) provide that if Australian Coal Research Limited ceases to have responsibility for coal research, the Minister may determine and have published in the Gazette that the company's assets and liabilities, as specified in the regulations, be transferred to the Commonwealth so that the Commonwealth can recommence administration of coal R & D. To protect the rights of any parties caught up in any reversion, provision is made for regulations to be made for savings and transitional provisions.

Transfer of unfunded commitments

17. Paragraph 8E (1) and 8E (2) provide that if research and development reverts from Australian Coal Research Ltd to the Commonwealth under Paragraph 8D, the Commonwealth will not accept back unfunded grant commitments of a value greater in real terms than those originally transferred and outlines how the value in real terms is to be calculated. This is to ensure that if coal R & D came back to the Commonwealth, a large debt of unfunded grant commitments is not inherited.

Compensation for acquisition of property

18. Paragraphs 8F (1) to 8F (3) protects the rights of parties involved in the operations of paragraphs 8 (transfer of grant agreements), 8 (A) (transfer of intellectual property), 8 (B) (transfer of assets), and 8 (D) (reversion to the Commonwealth). This paragraph provides that any acquisition of property, can only be on "just terms" as defined in paragraph 51 (xxxi) of the Constitution. If terms are not just, provision is made for the Commonwealth to pay agreed compensation or for the courts to settle the matter.

Clause 8 – Section 9 of the Principal Act is repealed

19. This section deals with the tabling in Parliament of annual reports on the operations of the Coal Research Trust Account. This is no longer necessary as the Trust Account ceases to operate.

Clause 9 – Regulations

20. This clause provides for the amendment of paragraph 10 of the Principal Act regarding the making of regulations, by adding:
Paragraphs (2) (a), (b) and (c) which prescribe the method that assets, liabilities, unfunded commitments or any other matter would be transferred back to the Commonwealth from Australian Coal Research Limited if the company ceased to have responsibility for coal research under paragraphs 8D and 8E.



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