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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COAL INDUSTRY AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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

COAL INDUSTRY AMENDMENT BILL 1992GENERAL OUTLINE

The purpose of this Bill is to amend the Coal Industry Act 1946. The amendments are designed to give effect to the Commonwealth and New South Wales Governments' decision to reform the powers, functions and activities of the Joint Coal Board.

2. Under the current legislation, the Board has wide powers to control all facets of the coal industry, including development, mining, employment and marketing. The Bill refocusses the Board's powers, functions and activities on the health and welfare of coalminers and their families and administration of the industry's workers compensation scheme. The Board has a proven record of performance in these areas and there was agreement by the Governments, industry and unions that the Board's role in these areas should continue.

3. Dust monitoring in coalmines is central to the health of coalminers and the Bill provides for the Board to continue its role on dust control until the industry parties can satisfy the Ministers with portfolio responsibility that there are suitable and effective alternative arrangements which may warrant a transfer of this function.

4. The Bill also provides for the Board to continue to have certain other functions and activities, specifically, the provision of international training courses and industry statistics. The latter service will continue until such time as portfolio Ministers otherwise direct.

5. The Bill proposes to place the Board under the direct control of portfolio Ministers, with improved standards of accountability in line with contemporary practice.

FINANCIAL IMPACT STATEMENT

6. The amendments put forward in the Bill will enable the Board to become largely self-funding from 1992/93. In 1992/93, it may be necessary for the Commonwealth, in conjunction with the New South Wales Government, to provide some assistance towards funding redundancy payments. The capacity of the Board to fund these payments from its own resources is being assessed. However, the Board has estimated that there may be a total shortfall of about \$1M. Funding for the Coal Industry Tribunal, which is provided through the Board, will continue.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 : Short title

7. The Act will be called the Coal Industry Amendment Act 1992. Reference to the "Principal Act" means the Coal Industry Act 1946.

Clause 2 : Commencement

8. The Coal Industry Amendment Act 1992 will commence on the day which it receives the Royal Assent. Clause 2 provides for the amendments in Schedules 1 to 4 to commence on a day to be fixed by Proclamation, with the exception of certain amendments concerning the Coal Industry Tribunal as set out in Schedule 5 which is taken to have commenced on the commencement of Part 1 of Chapter 4 of the Industrial Relations Act 1991 of New South Wales, that is, 31 March 1992.

9. Clause 2 does not provide for the usual six month limit on Proclamation as commencement of these amendments has to be in parallel with New South Wales' Coal Industry Amendment Act 1992.

Clause 3 : Amendment of Principal Act

10. Clause 3 gives effect to Schedules 1 to 5, amending the Coal Industry Act 1946.

11. Schedule 1 is concerned with amendments relating to the structure of the Joint Coal Board as contained in Part II of the Principal Act. The new provisions relating to the structure of the Board are substantially the same as the provisions to be replaced except that the three Board members are to be appointed by portfolio Ministers of the Commonwealth and New South Wales, and members could be appointed on either a full-time or part-time basis and could have other employment. The Schedule contains provisions requiring members to disclose any conflict of interests. Schedule 1 also inserts provisions relating to the procedure of Board meetings.

12. Schedule 2 is concerned with amendments relating to the powers and functions of the Board as contained in Part III of the Principal Act. The functions relating to the production and distribution of coal are omitted. The Board will no longer be empowered to operate coal mines or acquire coal or equipment used in relation to its procedure, treatment, handling or distribution.

13. Schedule 3 is concerned with amendments relating to financial matters as contained in Part IV of the Principal Act.

14. Schedule 4 is concerned with amending Part V of the Principal Act which deals with industrial matters and Part VI which deals with general matters. The amendments to Part V remove the Board's powers in relation to the Coal Industry Tribunal and the Local Coal Authorities.

15. Schedule 5 is concerned with amendments dealing with the Coal Industry Tribunal which are consequent on the enactment of the Industrial Relations Act 1991 of New South Wales.

Schedule 1 : Amendments relating to the structure of the Joint Coal Board

Section 4 of Principal Act

16. Definitions for "full-time member", "member", "part-time member", "the Commonwealth Minister" and "the State Minister" are inserted.

PART 2 - Administration

New sub-sections 5(2) and (3) : Joint Coal Board

17. Subsections 5(2) to 5(8) in the Principal Act are to be repealed and substituted by new subsections 5(2) and 5(3). Subsection 5(1) provides for the constitution of the Board through an arrangement between the Governor-General and the Governor of New South Wales. The new subsections 5(2) and 5(3) provide for the Board to be constituted as a body corporate, and allows the appointment of members of the Board by the Commonwealth Minister and the State Minister.

New section 6 : Body corporate

18. Sections 6 to 9 of the Principal Act are to be repealed and substituted by new sections 6 to 21. The new section 6 gives the Board the same legal rights and liabilities which apply to bodies corporate. The new section requires the Board to have a seal.

New section 7 : Members of the Board

19. The Board is to consist of 3 members to be appointed by both the Commonwealth and State Ministers as follows:

- . one independent Chairperson to be selected by both Ministers;
- . one to represent coal industry employers; and
- . one to represent coal industry employees.

20. The members may be appointed on either a full-time or part-time basis. The appointment cannot be challenged on the basis of any defect or irregularity in the appointment.

New section 8 : Terms of office of members

21. The Principal Act provides for appointment for up to 7 years. This new section provides for appointment for a period not exceeding 3 years and members, if so eligible, may be reappointed.

New section 9 : Appointment of persons to act for any member of the Board

22. If any of the 3 members are absent from duty because of illness or otherwise, or if a member's position is vacant, both the Commonwealth and State Ministers may appoint a person to act in that member's office. The person so appointed will carry out duties as per the requirement of the office, and will have all the powers and functions associated with that office, that is, as a Chairperson, or as a representative of coal industry employers or coal industry employees. His or her remuneration will be determined by both Ministers.

23. In the case of the Chairperson's office, both Ministers could either appoint one of the two members or a person to act.

24. After receiving agreement from the Commonwealth Minister, the State Minister may remove a person appointed to act.

25. The appointment cannot be challenged on the basis of any defect or irregularity in the appointment.

New section 10 : Vacancy in office of member

26. This new section defines the circumstances in which an office becomes vacant. Both Ministers may also

agree to remove a member from office for misbehaviour, incompetence or incapacity. The decision of both Ministers will be communicated to the member by the State Minister.

New section 11 : Vacancy does not invalidate Board's actions

27. The Board can exercise its powers as long as there are two members in office.

New section 12 : Filling of vacancy in office of member

28. Any member's office which becomes vacant is to be filled.

New section 13 : Remuneration

29. Remuneration for members will be determined by both the Commonwealth and State Ministers.

New section 14 : Disclosure of pecuniary interests

30. This new section specifies that a member may not be present and take part in a meeting of the Board where he or she has disclosed a conflict of interest on matters to be discussed unless the member has been given approval to do so by both the Commonwealth and State Ministers or by the Board.

31. A decision of the Board will not be made invalid because of a contravention of the provisions contained in this section.

New section 15 : Seal

32. The Chairperson is required to keep the Board's seal in safe custody. The seal must be affixed to a document which requires authentication by the Board in the presence of at least 2 members, and witnessed with the signatures of those members. This procedure could be bypassed if the document was signed by the Chairperson or by any staff member authorised to do so by the Chairperson.

New section 16 : General procedure

33. The Board will determine when to call meetings and the conduct of business at those meetings, subject to this Act and the regulations.

New section 17 : Quorum

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

New section 18 : Presiding member

35. The Chairperson is to preside at a meeting of the Board, and has a casting vote in the event of an equality of votes.

New section 19 : Voting

36. A decision taken at a meeting of the Board at which a quorum is present, becomes the decision of the Board if it has been voted on and supported by a majority of the votes cast.

New section 20 : Transaction of business outside meetings or by telephone etc.

37. This new section provides for Board meetings to be transacted by the circulation of papers, telephone, closed-circuit television or other means.

New section 21 : Delegation of Board's functions and powers

38. This is a delegation provision which gives the Board power to delegate its powers and functions to any members, staff and other persons. A power or function that has been delegated may still be exercised by the Board.

Schedule 2 : Amendments relating to the functions of the Joint Coal BoardLong Title and Preamble in the Principal Act

39. The long title and preamble are to be deleted and replaced as they are no longer appropriate given the

Board's revised powers and functions. The new preamble reflects the agreement between the Commonwealth and New South Wales Governments to 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.

40. Part III of the Principal Act (sections 12 to 19 which deal with the powers and functions of the Board) is to be repealed and replaced by a new Part 3 which comprises of new sections 22 to 28F.

Section 4 of Principal Act

41. The definition "coal" which is defined as including coke and other by-products is to be omitted as the Board will no longer be involved in the production and marketing of coal and coke.

PART 3 : Powers and functions of the Joint Coal Board

New section 22 : Vesting of powers in the Board

42. This new section vests in the Board all the powers and functions specified in the Act. Subject to the Constitution, these powers and functions are not to be in excess of the legislative power of the Commonwealth.

New section 23 : General powers and functions of the Board

43. Under this new section, the Board's powers and functions are focussed on the health of workers and the welfare of present and former workers, their dependants, and communities in coal mining areas. The section also provides for the Board to carry out international training courses and to refer matters relating to the safety of workers to the Chief Inspector of Coal Mines or to both Commonwealth and State Ministers.

New section 24 : Additional powers related to health

44. This new section empowers the Board to require mine owners or managers to do things or refrain from doing things, so as to protect the health of workers.

45. A person or company subject to such a requirement may apply to the Administrative Appeals Tribunal (AAT) for review of the requirement. Under the State Act, provision is made for the person or company to appeal against the requirement to the State Supreme Court. If a

person or company applied to both the AAT and to the Supreme Court, whichever body that the person or company has applied to first will need to make its determination before the other body could proceed on the application.

New section 25 : Other powers and functions of the Board

46. This new section empowers the Board to continue with its powers and functions in relation to workers' training, dust monitoring and other industry statistics not related to the health and welfare of workers until such time as both the Commonwealth and State Ministers direct.

New section 26 : Workers' compensation functions

47. This new section continues the Board's power to establish workers' compensation insurance schemes and to require any employer in the coal industry in New South Wales to effect workers' compensation insurance with the Board. This power is the same as that contained in the Principal Act.

New section 27 : Additional powers of the Board

48. This new section gives the Board power to undertake or arrange for research, inquiries, investigations, surveys, tests and inspections, and to require the coal industry to keep and furnish statistics, returns and other information.

New section 28 : Orders by Board

49. This new section empowers the Board to make orders in regard to its functions as set out in new sections 23 and 25 to 27 inclusive. The Board will need to obtain the approval of both the Commonwealth and State Ministers before making an order. Ministerial approval is also required before the Board can amend or revoke an order.

50. The order is not, as would normally be the case for such an instrument, disallowable. This is to avoid possible inconsistencies between the Commonwealth and State Parliaments, that is, where one Parliament disallows an order while the other Parliament allows it.

New section 28A : Publication of orders

51. An order made by the Board must be published in the Commonwealth and State Gazette. The order takes

effect on the day it is published, unless a later day is specified. In practice, an order will specify a commencement date so that there is consistency between the Commonwealth and State Gazette. Different commencement days for different parts of the order may also be specified.

New section 28B : Ministerial direction and control

52. Under the Principal Act, the Board is subject to policy directions from the Prime Minister and the Premier. This new section establishes joint Commonwealth and State Ministerial control. Both Ministers could direct the Board on matters of policy and also as to how the Board exercises its powers and functions and how it performs its duties. Either Minister, with the agreement of the other Minister, may write to the Board on these matters. The Board has the duty to carry out any direction so given.

New section 28C : Staff of Board

53. This new section retains the Board's power to employ staff, and it may determine the remuneration and conditions of staff's employment.

New section 28D : Arrangements with other agencies, consultants etc

54. To assist the Board in the exercise of its powers or functions, this new section empowers the Board to enter into arrangements with other persons or bodies (including government bodies) with relevant expertise for assistance, and to appoint consultants.

New section 28E : Annual operating plan

55. On or before 31 May of each year, the Board must submit an annual operating plan for the year commencing on 1 July of that year to both the Commonwealth and State Ministers. The plan must relate to the proposed strategy of the Board in regard to its powers and functions, and any other matters as may be prescribed.

56. The Board must amend the plan if required to do so by both Ministers. The Board may amend the plan as it thinks fit but must give both Ministers a copy of any such amendment.

New section 28F : Policy reports

57. Either the Commonwealth or State Minister may require the Board to furnish reports on the policy it is pursuing or proposes to pursue. The Board's report must go to both Ministers.

Schedule 3 : Amendments relating to financial matters

58. Schedule 3 substitutes Part IV of the Act (sections 19A to 27) with "Part 4 - Finance" which contains new sections 28G to 28U.

Section 4 of Principal Act

59. Definition for "approved bank" is inserted.

PART 4 - Finance

New section 28G : Part XI of the Audit Act not to apply to the Board

60. Divisions 2 and 3 of Part XI of the Audit Act 1901 do not apply to the Board. They are replaced by new sections 28P to 28T.

New sections 28H : Functions of the Board in relation to finance

61. This new section gives the Board power to receive money payable to the Board, to raise money, to make payments, and to invest money held.

New section 28J : Board may charge fees

62. The Board is empowered to charge fair and proper fees for services provided.

New section 28K : Payments by the Commonwealth

63. The Commonwealth may appropriate money from Parliament for the Board. This provision is required to cover the Commonwealth's contribution to the Coal Industry Tribunal.

New section 28L : Workers' compensation funds

64. This new section specifies how the Board may use its money received under the workers compensation insurance scheme. The money must be used to pay claims as required, expenses as incurred in the administration of the scheme, and expenses incurred in the provision of occupational health and rehabilitation services.

65. The Board, with the approval of the Commonwealth and State Ministers, may also use this money (after the payment of claims and expenses), for other purposes related to the coal industry such as welfare. This provision has been inserted to allow the Board to become involved in providing assistance in forthcoming changes to the miners' superannuation scheme, as supported by all industry parties.

New section 28M : Other funds

66. This new section provides for the Board to apply other moneys received (that is, other than moneys received under its workers compensation insurance) for such purposes connected with its powers and functions as it thinks fit.

New section 28N : Annual report

67. This new section requires the Board to submit an annual report to the Commonwealth and State Minister, and both Ministers must present the report before each House of Parliament. The contents of the Annual Report may be determined by the Commonwealth Minister for Finance as well as by both the Commonwealth and State Ministers.

New section 28P : Bank accounts

68. This new section requires the Board to open and maintain at least one account with an approved bank as defined in the Banking Act 1959 or as approved by the Commonwealth Treasurer. All moneys must be paid into an account.

New section 28O : Financial statements and practices

69. This new section requires the Board to keep proper accounts and records in accordance with commercial accounting principles. The Board's financial statements

will be in a form approved by the Commonwealth Minister for Finance.

New section 28R : Borrowing by the Board

70. This new section empowers the Board to borrow or otherwise raise money, including by dealings with securities. The approval of both the Commonwealth and State Ministers are required if total borrowing exceeds \$2M.

New section 28S : Investment of money of Board

71. This new section requires the Board to invest money not immediately required in Government securities, deposits with a bank or in any other way that is consistent with sound commercial practice.

New section 28T : Audit

72. The Auditor-General will inspect and audit the accounts, financial and asset records of the Board. The Auditor-General will report to the Commonwealth and State Minister the results of the inspection and audit which is to be carried out at least once in each financial year. The Commonwealth Minister will present the Auditor-General's report before each House of the Parliament.

New section 28U : Taxation

73. The property, income and operations of the Board is exempt from Commonwealth and State taxes.

Schedule 4 : Other Amendments

74. This schedule amends certain sections of the Principal Act which deal with industrial relations matters. The following proposed amendments will remove the Board's powers over industrial relations matters :

- the definition of "the Federation" in section 4 is to be deleted as it is obsolete;
- section 33(b)(iii) is to be deleted to remove the Board's power to direct the Coal Industry Tribunal to exercise any of its powers, duties and functions;

- section 34(1)(f) is to be deleted to remove the Board's power to direct the Coal Industry Tribunal to determine any matter affecting industrial relations in the coal industry;
- section 34(1B) is to be deleted to remove the Board's power to make an order which removes or inserts in an existing award, order or determination a class of work or classification of employees;
- section 34(1C) is to be deleted as it is no longer necessary with the deletion of section 34(1B);
- section 38(1)(e) is to be deleted to remove the Board's power to direct a Local Coal Authority to hear and settle any dispute referred to it by a Mine Conciliation Committee;
- section 38(4) is to be amended to delete the reference to the Board. This will remove the Board's power to direct the Local Coal Authority to refer any matters in dispute to the Coal Industry Tribunal;
- sections 42 and 43 are to be deleted to remove the Board's power to appoint Mine Conciliation Committees at coal mines (section 43 specifies the functions of these Committees);
- section 48 is to be deleted to remove the Board's power to appoint reporting officers in relation to industrial disputes.

Subsections 37(1), 37A(1) and 37A(2) of the Principal Act

75. This subsection which gives the Coal Industry Tribunal power to appoint persons to be Local Coal Authorities (LCA) is to be deleted and replaced with new subsections 37(1), 37(1A), 37(1B) and 37(1C). The new subsections give the Tribunal power to establish LCAs and to appoint the Chairperson of a LCA, and the other members are to be appointed by the Chairperson from persons approved by the Tribunal. The new subsections give effect to arrangements that are currently in practice.

76. Subsections 37A(1) and 37A(2) of the Principal Act are to be deleted as a result of the above-mentioned new subsections.

77. Schedule 4 also replaces Part VI of the Principal Act, which contains general provisions with "Part 6 - Miscellaneous". This new Part 6 consists of two divisions as follows :

- Division 1 provides for inspectors' powers and consists of new sections 49 to 52; and
- Division 2 provides for other general provisions such as the penalties to apply for offences, and consists of new sections 53 to 57.

PART 6 - Miscellaneous

Division 1 - Inspectors' powers

New section 49 : Inspectors

78. This new section empowers the Board to appoint employees of the Board to be inspectors for the purpose of making inspections referred to in new subsection 27(a).

New section 50 : Searches

79. This new section empowers an inspector to enter, at all reasonable times, any building, land and coal mines which are the subject of the Board's powers as specified under new section 27(a). An inspector must produce his or her authority for inspection to the occupier, and inform that person the purpose of the entry.

80. An inspector can only enter a residence if the occupier consents to the entry.

New section 51 : Power to require information etc.

81. An inspector who has entered a premise may, upon producing his or her written authorisation for inspection, require a person to answer any questions and to produce any books, records or documents requested.

New section 52 : Retention of books, records and documents

82. An inspector may retain possession of any book, record or document as is necessary to ascertain compliance with this Act, but must permit inspection by other persons entitled to do so if required.

Division 2 - General

New section 53 : Offences

83. This new section specifies a maximum penalty of \$3,000 in the case of an individual and \$10,000 in the case of a body corporate for :

- non-compliance with an order of the Board issued under new section 28 or a requirement issued under new section 24;
- refusal to answer any questions put by the inspector under new section 51;
- failure or refusal to produce any records under new section 51.

84. A maximum penalty of \$6,000 in the case of an individual and \$10,000 in the case of a body corporate is imposed for any false or misleading statement in answer to an inspector's inquiry, and if an inspector is assaulted, delayed, obstructed or impeded while carrying out his or her duties.

New section 54 : Service of documents etc.

85. A document may be served on the Board by either leaving it at, or by sending it by post to any of the Board's offices.

New section 55 : Personal liability of members etc.

86. A member, staff or any person who is acting under the direction of the Board is not personally liable if he or she is carrying out his or her duties in good faith.

New section 56 : Regulations

87. The Commonwealth Minister, with the agreement of the State Minister, may make recommendations to the Governor-General who may then make regulations as are required or prescribed by this Act. The maximum penalty for non-compliance of a regulation is \$500.

New section 57 : Savings and transitional provisions

88. This new section gives effect to a Schedule which will cover the savings and transitional provisions consequent on this Act. The Schedule will be attached to the Coal Industry Act 1946.

Proposed Schedule to the Coal Industry Act 1946 : Savings and transitional provisions consequent on the Coal Industry Amendment Act 1992

Clause 1 : Interpretation

89. The amendment day means the day on which clause 3(1) of the Coal Industry Amendment Act 1992 commences.

Clause 2 : Continuity of existence of the Board not affected

90. This clause provides for the Board to continue its existence and for members to continue his or her membership if he or she was a member immediately before the amendment day.

Clause 3 : Local Coal Authorities

91. This clause provides for Local Coal Authorities which existed immediately before the amendment day to continue to exist as if they were established under section 37 and persons who were members of the LCAs are taken to be appointed under new subsection 37(1C), with the same remuneration and allowance.

Clause 4 : Staff of the Board

92. This clause provides for staff to continue to be employed on the same terms and conditions unless their employment has been terminated immediately before the amending day.

Clause 5 : Certain orders to be continued

93. Orders Nos. 5, 10, 34, 35, 36 and 40 made under section 14(3) of the Principal Act are to continue in force as if they had been made under new section 28.

94. Orders 34, 36 and 40 will have no effect if both Ministers direct the Board to cease its functions referred to in new subsections 25(a), 25(b), and 25(c) respectively.

Clause 6 : Board's funds

95. Money standing to the credit of the Workers' Compensation Fund must be applied in accordance with new section 28L.

96. Money standing to the credit of the Welfare Fund immediately before the amendment day must be applied so as to promote the welfare of workers and former workers in the State, their dependants and communities in coal mining areas. Other money standing to the credit of the Board must be applied in accordance with new section 28M.

Clause 7 : Workers' compensation schemes

97. This clause provides for the continued operation of any workers' compensation scheme established by the Board as if they were established under new section 26.

Clause 8 : General effect of repeal etc. of provisions

98. The amendment or repeal of a provision of the Principal Act by the Coal Industry Amendment Act 1992 does not affect the previous operation of the provision. Any obligation or liability acquired, accrued or incurred; any penalty incurred; and any investigation, legal proceeding or remedy to be instituted are to continue or be enforced as if the provision had not been amended or repealed.

Clause 9 : Regulations

99. Further provisions of a savings or transitional nature may be made by regulations. Any such provision may take effect from the amending day or a later date. If a provision takes effect from a date that is earlier than the date of its publication in the gazette, the provision will not operate so as to disadvantage the rights of any person which existed before the date of its publication, nor will it impose liabilities on any person before the date of its publication.

Schedule 5 : Amendments consequent on the Industrial Relations Act 1991 of New South Wales

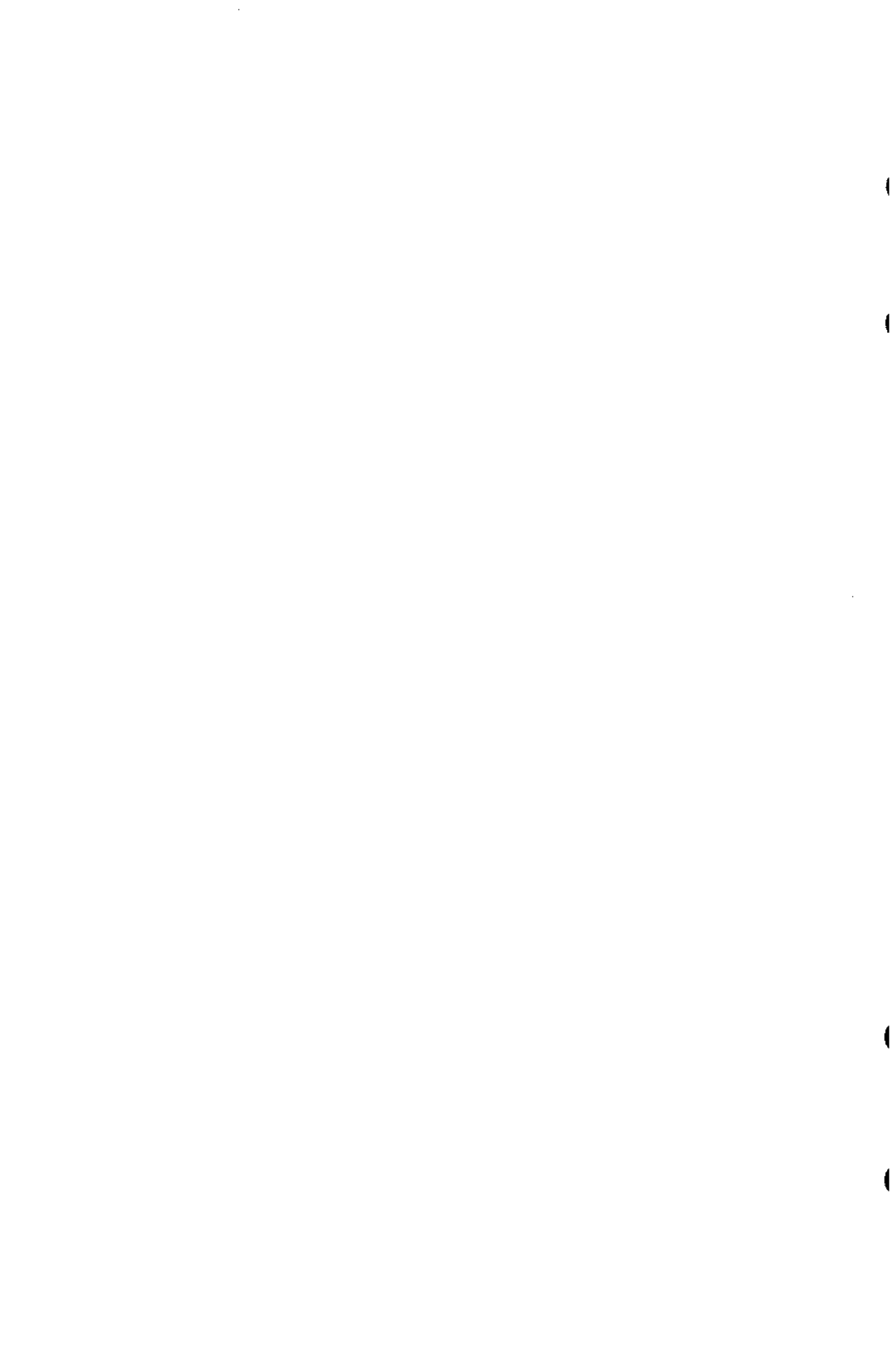
100. Sections 30(4)(a) and 30(4)(b) of the Principal Act are to be amended to replace "Conciliation and Arbitration Commission or as a member of the Industrial Commission of the State" with "Industrial Relations Commission, the Industrial Relations Commission of the State or the Industrial Court of the State".

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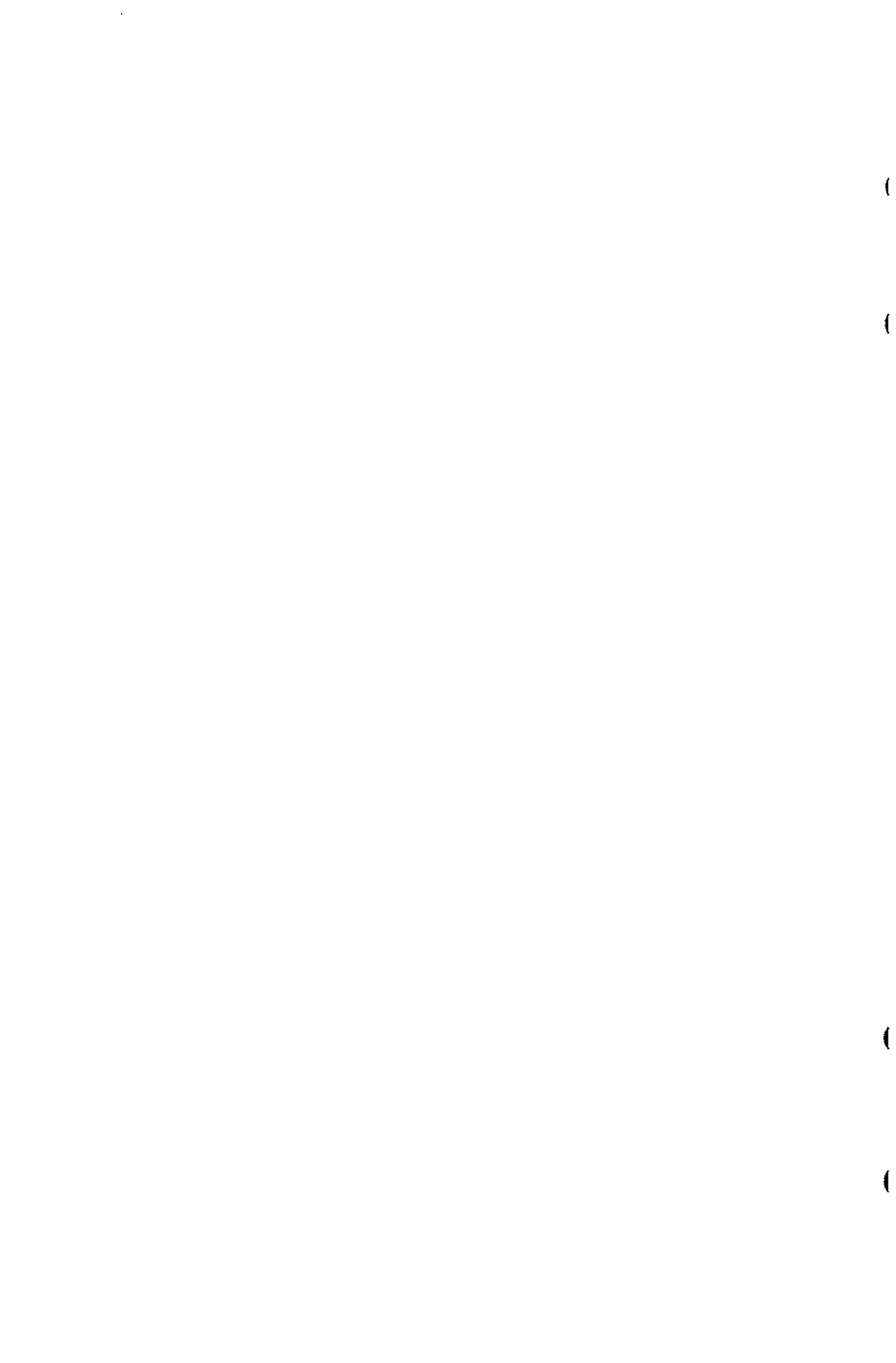


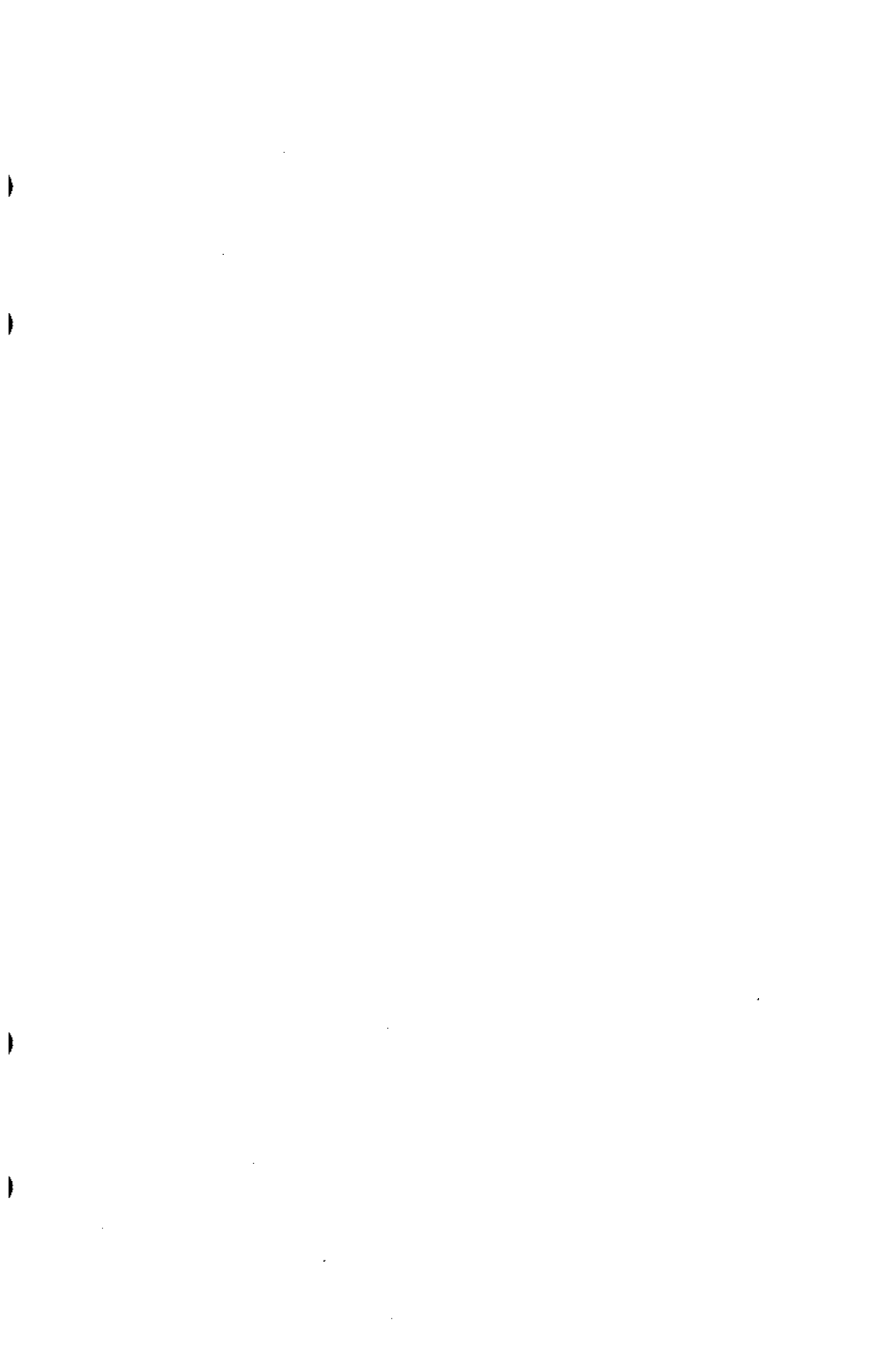
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