

1995—No. 114

## MINING ACT 1992—REGULATION

(Mining (Boards of Management) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Mining Act 1992, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY, MP.,  
Minister for Mines.

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### PART 1—PRELIMINARY

#### Citation

1. This Regulation may be cited as the Mining (Boards of Management) Regulation 1995.

#### Commencement

2. This Regulation commences on 13 March 1995.

#### Definitions

3. In this Regulation:

“**appointed member**” means a board member who is appointed by the Minister;

“**area of operations**” of a board means the area for which the board is constituted;

“**board**” means a board of management constituted by the Minister under section 359 of the Act;

“**the Act**” means the Mining Act 1992.

**PART 2—CONSTITUTION OF BOARDS OF MANAGEMENT****Boards to be constituted by Ministerial order**

**4. (1)** A board of management is constituted by means of an order published in the Gazette by the Minister.

**(2)** The order:

- (a)** must specify the board's name; and
- (b)** must describe the board's area of operations; and
- (c)** must specify the number of board members; and
- (d)** must specify the persons who are to be board members by virtue of their office; and
- (e)** must specify the persons or bodies who are to be authorised to nominate persons for appointment as board members, and the number of persons they are to be authorised to nominate; and
- (f)** must specify which of the board members is to be the chairperson of the board; and
- (g)** must identify the mining registrar who is to be the secretary of the board.

**(3)** The board members (other than those who are members by virtue of their office) are to be appointed by the Minister.

**(4)** The secretary of a board is to be the mining registrar of a mining division that is wholly or partly within the board's area of operations.

**(5)** An order under this clause commences on the day it is published in the Gazette or, if a later day for commencement is specified in the order, on the later day.

**Nominations for membership of board**

**5. (1)** The secretary of a board must cause a written notice to be sent to each person or body who is authorised to nominate a person for appointment as an appointed member of the board.

**(2)** Notices under this clause must be sent as follows:

- (a)** within one month after the publication in the Gazette of the order by which the board is constituted;
- (b)** at least one month before the end of a current appointed member's term of office;
- (c)** within one month after a casual vacancy arises in a current appointed member's office.

(3) Such a notice must invite the person or body concerned to send nominations to the secretary within the time (being at least 14 days) specified in the notice.

(4) If a person or body fails to nominate a person as a board member within the specified time, the Minister may appoint, as that member, any person who in the Minister's opinion represents the interests of the person or body.

#### **Vacancy in office of appointed member**

6. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) resigns the office by instrument in writing addressed to the Minister; or
- (c) is removed from office by the Minister under this clause; or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (e) becomes a mentally incapacitated person; or
- (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

#### **Filling casual vacancy in office of appointed member**

7. If the office of an appointed member becomes vacant, a person is, subject to this Regulation, to be appointed to fill the vacancy.

#### **Term of office**

8. Subject to this Regulation, an appointed member holds office:

- (a) for a period of 3 years; or
- (b) if the member has been appointed to fill a casual vacancy, for the unexpired portion of his or her predecessor's term of office,

but is eligible (if otherwise qualified) for reappointment.

**Alternates**

9. (1) A board member may appoint a person to act as the member's alternate.

(2) The appointment is invalid unless it is approved:

- (a) by the Minister; or
- (b) if the member has been appointed on the nomination of a particular person or body, by that person or body.

(3) In the absence of a board member, the member's alternate:

- (a) may act in the place of the member; and
- (b) while so acting, has all the functions of the member and is to be regarded as a board member.

(4) The alternate of a board member who is also the chairperson of the board has the member's functions as chairperson.

**PART 3—BOARD MEETINGS****Calling and frequency of board meetings**

10. (1) An ordinary board meeting is to be called by the chairperson at least once every 3 months.

(2) A special board meeting is to be called on the written request of at least 3 members or, if the number of members that constitutes a quorum at a board meeting is less than 3, of at least that number of members.

(3) The request:

- (a) must state the purpose of the meeting; and
- (b) must be signed by the board members making the request; and
- (c) must be lodged with the secretary in time for the secretary to call the meeting.

**Functions of secretary**

11. (1) The secretary of a board is to give written notice of a proposed board meeting to each member at least 7 days before the meeting.

(2) A board member must give written notice to the secretary, at least 14 days before a proposed board meeting, of any matter the member wishes to be placed on the agenda for the meeting.

(3) The secretary of a board (or, in the secretary's absence, a nominee of the secretary) must attend all board meetings.

### **Quorum**

12. A majority of a board's members for the time being (of whom one must be the chairperson or the chairperson's alternate) constitutes a quorum at a board meeting.

### **Functions of chairperson**

13. (1) The chairperson (or, in the chairperson's absence, the chairperson's alternate) is to preside at all board meetings.

(2) The person presiding at a board meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **General procedure at meetings**

14. The procedure for the conduct of board meetings is, subject to this Regulation, to be determined by the board.

### **Voting**

15. A decision supported by a majority of votes cast at a board meeting at which a quorum is present is the decision of the board.

### **Transaction of business outside meetings' or by telephone**

16. (1) A board may, if it thinks fit, transact any of its business by the circulation of papers among all the board members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the board.

(2) The board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the person presiding and each member have the same voting rights as they have at an ordinary board meeting.

(4) A resolution approved under subclause (1) is to be recorded in the minutes of the board meetings.

(5) Papers may be circulated among board members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **Disclosure of pecuniary interests**

#### **17. (1) If:**

- (a) board member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a board meeting; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a board meeting.

(2) A disclosure by a board member at a board meeting that the member:

- (a) is a member, or is in the employment, of a specified company or body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of that disclosure and which is required to be disclosed under this clause.

(3) The secretary is to record particulars of any disclosure made under this clause in a book kept for that purpose and that book is to open at all reasonable hours for inspection by any person.

(4) After a board member has disclosed the nature of an interest in any matter, the member must not, unless the board otherwise determines:

- (a) be present at any deliberation of the board with respect to the matter; or
- (b) take part in any decision of the board with respect to the matter.

(5) For the purposes of the making of a determination by the board under subclause (4), a board member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

**1995—No. 114**

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- (a) be present during any deliberation of the board for the purpose of making the determination; or
- (b) take part in the making by the board of the determination.

(6) A contravention of this clause does not invalidate any decision of the board.

(7) Nothing in this clause applies to or in respect of an interest of a board member in a matter or thing which arises merely because the member is associated with the organisation by which the member was nominated.

**Minutes**

**18. (1)** The secretary of a board must keep full and accurate minutes of the proceedings of each board meeting.

(2) The secretary must keep (in addition to the minutes) a separate record of resolutions decided by a casting vote.

(3) The record is to show the date of the meeting, the name of the presiding member and the wording of the resolution.

(4) A copy of the minutes must be forwarded to the Minister and to each member within one month of the meeting.

**Calling of first meeting**

**19.** The Minister may call the first board meeting in such manner as the Minister thinks fit.

**PART 4—MISCELLANEOUS****Annual report to Minister**

**20. (1)** On or before 31 July in each year, a board is to prepare and present to the Minister an annual report for the period of 12 months ending on the preceding 30 June.

(2) The report must set out the board's membership, a summary of its activities and achievements during the year and its plans for the following year.

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**NOTES**  
**TABLE OF PROVISIONS**

PART 1—PRELIMINARY

1. Citation
2. Commencement
3. Definitions

PART 2—CONSTITUTION OF BOARDS OF MANAGEMENT

4. Boards to be constituted by Ministerial order
5. Nominations for membership of board
6. Vacancy in office of appointed member
7. Filling casual vacancy in office of appointed member
8. Term of office
9. Alternates

PART 3—BOARD MEETINGS

10. Calling and frequency of board meetings
11. Functions of secretary
12. Quorum
13. Functions of chairperson
14. General procedure at meetings
15. Voting
16. Transaction of business outside meetings or by telephone
17. Disclosure of pecuniary interests
18. Minutes
19. Calling of first meeting

PART 4—MISCELLANEOUS

20. Annual report to Minister
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**EXPLANATORY NOTE**

The object of this Regulation is to provide for the constitution and procedure of boards of management under section 359 of the Mining Act 1992. The Regulation deals with the following matters:

- (a) the means by which such a board is to be constituted, that is, by means of an order published in the Gazette by the Minister (clause 4), being an order that sets out:
  - (i) the name of the board; and
  - (ii) the board's area of operations; and
  - (iii) the appointment of a mining registrar of a mining division wholly or partly within the board's area of operations as secretary of the board; and



- (iv) the number of board members and, if appropriate, the names of persons or bodies on whose nomination the board members are, or the chairperson of the board is, to be appointed;
- (b) other provisions with respect to the constitution of the board (clauses 5–9);
- (c) the procedure to be followed at meetings of the board (clauses 10–19);
- (d) the making of an annual report to the Minister (clause 20);
- (e) other formal matters (clauses 1, 2 and 3).

This Regulation is made under the Mining Act 1992, including section 388 (the general regulation making power) and section 359.

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