



New South Wales

Coal Ownership (Restitution) Regulation 2005

under the

Coal Ownership (Restitution) Act 1990

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Coal Ownership (Restitution) Act 1990*.

IAN MACDONALD, M.L.C.,
Minister for Mineral Resources

Explanatory note

The object of this Regulation is to remake, with no substantive changes, the provisions of the *Coal Ownership (Restitution) Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision with respect to the manner of making applications for the restitution of ownership of coal under the *Coal Ownership (Restitution) Act 1990* and the procedures for dealing with those applications.

This Regulation is made under the *Coal Ownership (Restitution) Act 1990*, including sections 5 (2) and 9 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature.

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Coal Ownership (Restitution) Act 1990

1 Name of Regulation

This Regulation is the *Coal Ownership (Restitution) Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *Coal Ownership (Restitution) Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

section 5 application means an application under section 5 of the Act to the Compensation Board for the Board to make a recommendation to the Minister for the restitution of ownership of coal.

the Act means the *Coal Ownership (Restitution) Act 1990*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Applications for restitution of ownership of coal

(1) For the purposes of section 5 (2) (a) of the Act, a section 5 application:

- (a) must be in writing signed by the applicant, and
- (b) must be delivered, or sent by post, to the office of the Compensation Board in Sydney within 30 days after the relevant date or within such further period as the Board may allow.

(2) In this clause, **the relevant date** means the date on which a notice of determination of a claim made by the applicant was served on the applicant under clause 17 of the Compensation Arrangements.

5 Information to be contained in applications

For the purposes of section 5 (2) (b) of the Act, the information to be contained in a section 5 application is as follows:

- (a) the full name and residential address of the applicant,

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- (b) a statement as to whether or not any dispute has arisen between the applicant and any other person, whether before, on or after 1 January 1982, in respect of:
 - (i) the coal to which the application relates, or
 - (ii) the land within which the coal is situated, or
 - (iii) any entitlement to compensation under the Compensation Arrangements, or
 - (iv) eligibility for restitution of ownership of the coal under the Act, and
- (c) if there is such a dispute—particulars of the dispute, including particulars sufficient to identify the other person.

6 Documents to accompany applications

For the purposes of section 5 (2) (c) of the Act, the prescribed documents to accompany a section 5 application are documents (including copies of any relevant will or letters of administration) that support the particulars referred to in clause 5 (c).

7 Preliminary evaluation of applications

- (1) The Compensation Board is to make a preliminary evaluation of each section 5 application and is to notify the applicant in writing of the results of the preliminary evaluation. The notification to an applicant must indicate whether or not the Board proposes to recommend that the application be granted.
- (2) If the notification indicates that the Compensation Board proposes to recommend that the application not be granted, the applicant has 30 days after the notification is given to the applicant to make submissions to the Board with respect to the preliminary evaluation.
- (3) Before the Compensation Board determines the application, it is to consider and take into account any submissions made by the applicant within that 30 days.

8 Procedure for determining applications

- (1) In determining a section 5 application, the Compensation Board:
 - (a) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit, and
 - (b) is to act according to equity, good conscience and the substantial merits of the application without regard to technicalities or legal forms.

- (2) When considering a section 5 application, the Compensation Board must have regard to any other section 5 application which, in its opinion, might have some relevance to the outcome of the firstmentioned application.

9 Factors to be taken into account when determining applications

The factors to be taken into account in determining a section 5 application are as follows:

- (a) whether or not the coal was subject to any trusts, leases, licences, obligations, estates, interests or contracts immediately before 1 January 1982,
- (b) whether or not there exists a dispute of the kind referred to in clause 5 (b),
- (c) whether or not the coal was within a colliery holding at any time during the period beginning on 1 January 1982 and ending on 1 January 1986,
- (d) whether or not the Crown would lose significant revenue were the coal to cease to be vested in the Crown.

10 Title deed following restitution of coal ownership

As soon as practicable after the Minister determines to grant coal to an eligible claimant, the Compensation Board must lodge with the Registrar-General, together with the appropriate fees:

- (a) a plan delineating the land within which the coal is located, and
- (b) an application under the *Real Property Act 1900* for the creation, in respect of the coal, of a folio in the Register kept under that Act.

11 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Coal Ownership (Restitution) Regulation 2000*, had effect under that Regulation is taken to have effect under this Regulation.