



New South Wales

State Owned Corporations Regulation 2010

under the

State Owned Corporations Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *State Owned Corporations Act 1989*.

KRISTINA KENEALLY, MP
Premier

Explanatory note

The object of this Regulation is to provide for the entitlements of particular employees of certain SOC's (Country Energy, Delta Electricity, EnergyAustralia, Eraring Energy, Integral Energy Australia and Macquarie Generation) who will remain employed by those SOC's after the sale of some of the assets and parts of the businesses of those SOC's.

This Regulation is made under the *State Owned Corporations Act 1989*, including sections 20M and 38 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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State Owned Corporations Regulation 2010

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *State Owned Corporations Regulation 2010*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Definition

(1) In this Regulation:

the Act means the *State Owned Corporations Act 1989*.

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

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Part 2 Energy SOC retained employee entitlements

Part 2 Energy SOC retained employee entitlements

4 Definitions

In this Part:

business transfer date for an energy SOC means the date designated by the Treasurer under this Part as the business transfer date for the SOC.

casual employee means an employee of an energy SOC whose employment is in a category of employment that is described in or classified under a relevant award as casual employment or who is otherwise engaged as a casual employee.

contract employee means an employee of an energy SOC whose terms and conditions of employment are provided by an individual contract and not by a relevant award.

employment guarantee period for a retained employee is:

- (a) for a permanent employee—the period of 5 years after the business transfer date for the energy SOC that employs the employee, and
- (b) for a temporary employee—the remainder of the employee's current term of employment (as specified in the contract under which the employee was engaged as a temporary employee) immediately before the business transfer date for the energy SOC that employs the employee or the period of 5 years after the business transfer date, whichever period ends first.

energy SOC means Country Energy, Delta Electricity, EnergyAustralia, Eraring Energy, Integral Energy Australia or Macquarie Generation.

permanent employee means an employee of an energy SOC whose employment is of indefinite duration and who is not a casual employee, temporary employee or contract employee.

relevant award, in relation to an employee of an energy SOC, means an award, agreement or industrial instrument (under a law of the State or of the Commonwealth) that provides for the terms and conditions of employment of the employee.

relevant business transfer means the transfer of any business or assets of an energy SOC that is designated by the Treasurer under this Part as a relevant business transfer.

retained employee means an employee of an energy SOC who is designated by the Treasurer under this Part as a retained employee.

temporary employee means an employee of an energy SOC (other than a casual employee or contract employee) whose employment is in a category of employment that is described in or classified under a

relevant award as temporary employment or whose employment is, under the terms of his or her employment, for a limited period.

5 Designation of retained employees

The Treasurer may, by order in writing, designate an employee of an energy SOC as a retained employee if the Treasurer is satisfied that:

- (a) the employee is employed by the SOC in a part of the business of the SOC that will cease to be a business of the SOC as a result of a relevant business transfer and the employee is to remain in the employment of the SOC, or
- (b) the employee is employed by the SOC to exercise functions that will no longer be exercised by the SOC as a result of a relevant business transfer and the employee is to remain in the employment of the SOC, or
- (c) the employee is employed by the SOC in a position that will no longer be required as a result of a relevant business transfer and the employee is to remain in the employment of the SOC.

6 Designation of relevant business transfer and business transfer date

The Treasurer may, by order in writing, designate the transfer of any business or assets of an energy SOC as a relevant business transfer for the purposes of this Part and designate a date as the business transfer date for the energy SOC.

7 Terms and conditions of employment of retained employees

- (1) The employment of a retained employee is to remain on the same terms and conditions as applied to the employee under the relevant award immediately before the business transfer date for the energy SOC that employs the employee.
- (2) Those terms and conditions of a retained employee's employment cannot be varied during the employment guarantee period except:
 - (a) by agreement entered into by or on behalf of the retained employee, or
 - (b) by a variation resulting from any change made to the relevant award.

8 Termination of employment of retained employees

- (1) The employment of a retained employee cannot be terminated during the employment guarantee period, except:
 - (a) for serious misconduct, or

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Part 2 Energy SOC retained employee entitlements

- (b) pursuant to the proper application of reasonable disciplinary or performance management procedures, or
 - (c) pursuant to the proper application of reasonable procedures in relation to the termination of employment on the grounds of incapacity or lack of fitness to perform the duties of employment, or
 - (d) by agreement with the employee.
- (2) An energy SOC must not, during the 5 years after the business transfer date for the SOC, change any policy relating to the termination of the employment of its employees on the grounds of redundancy unless each industrial organisation of employees (within the meaning of the *Industrial Relations Act 1996*) to which any retained employees of the energy SOC belong has agreed to the change.

9 Retained employees who are promoted during employment guarantee period

- (1) Clauses 7 and 8 (1) do not apply to a retained employee who is promoted during the employment guarantee period.
- (2) A retained employee is promoted if the employee applies for and accepts an appointment as a permanent employee to a new position with remuneration that is at least 5% more than the employee's remuneration prior to the promotion.
- (3) In this clause, **remuneration** means the base remuneration and does not include remuneration for working overtime, working on weekends or public holidays or working shifts.