



Coal Industry Regulation 2011

under the

Coal Industry Act 2001

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Coal Industry Act 2001*.

CHRIS HARTCHER, MP
Minister for Resources and Energy

Explanatory note

The objects of this Regulation are as follows:

- (a) to enable the Minister for Resources and Energy to require, by notice in writing, an approved company to provide the Minister with the information (including copies of documents) that is specified in the notice (being information relating to matters prescribed in this Regulation),
- (b) to require certain information regarding the significant activities that an approved company proposes to undertake, or take part in, during the following financial year to be included in the company's annual operating plan.

This Regulation is made under the *Coal Industry Act 2001*, including section 53 (the general regulation-making power) and clause 4 (2) (b) of Schedule 5 to that Act.

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

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1 Name of Regulation

This Regulation is the *Coal Industry Regulation 2011*.

2 Commencement

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

3 Definitions

(1) In this Regulation:

board means the board of directors of an approved company.

director means a director of an approved company.

officer, in relation to an approved company, means an officer of the company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

the Act means the *Coal Industry Act 2001*.

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

4 Approved company to provide information to Minister

(1) The Minister may, by notice in writing given to an approved company, require the company to provide the Minister with such of the following information (including copies of relevant documents) as is specified in the notice:

(a) information on the existence, terms of reference and membership of all board committees (including any defunct or dissolved committees),

(b) copies of the following documents:

(i) the company constitution,

(ii) any advice provided to the company in relation to the company's workers compensation function under the Act (including the assumptions used for any such advice) and

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- any document detailing any underlying liabilities of any workers compensation scheme administered by the company,
- (iii) any written contract, memorandum of understanding or formal or informal arrangement entered into by the company (or any draft of any such document prepared by or for the company),
 - (iv) any protocol or business procedure documents of the company the purpose of which is to ensure value for money and freedom from conflicts of interest in awarding contracts,
 - (v) any trust deeds relating to the company (for example, trust deeds relating to any trust for which the company is a trustee or an appointer of trustees),
- (c) details of current or past governance structures of the company,
 - (d) details regarding the company's compliance or non-compliance with best practice corporate governance policies, including compliance or non-compliance (if any) with AS 8000—2003 *Corporate governance—Good governance principles* and ISO 9001:2008 *Quality management systems—Requirements*,
 - (e) details of attendance of directors at board and board committee meetings,
 - (f) minutes of board and board committee meetings (including decisions of the board and board committees and any recommendations of a board committee to the board),
 - (g) copies of any document prepared for the consideration of the company's board or any board committee,
 - (h) details of any remuneration, allowances or other benefits paid to any director or other officer of the company,
 - (i) details of any separation or termination payments made to any director or other officer of the company,
 - (j) details of any past or current contracts between the company and any director of the company,
 - (k) details of any overseas travel taken or proposed to be taken by any director or other officer of the company,
 - (l) copies of conflict of interest disclosures provided to the board by any director or other officer of the company,

- (m) details of payments or proposed payments by the company, including but not limited to the following:
 - (i) any payment or proposed payment to the Coal Services Health and Safety Trust or any other trust for which the company may appoint the trustee or trustees,
 - (ii) any payment or proposed payment that is a disbursement of the company's operating surplus,
 - (iii) any payment made or proposed to be made as a contribution to the community,
 - (iv) any payment or proposed payment for purposes related to the coal industry, to the company's welfare functions or to workers formerly engaged in the coal industry as approved by the Minister under section 24 (1) (d) of the Act,
 - (n) details (including names) of all staff of the company,
 - (o) details (including names) of any person engaged under a contract for service with the company,
 - (p) details of any real property held by the company and any disposal of real property by the company,
 - (q) details of any charges or mortgages over any property of the company,
 - (r) details of any money received by the company from the Commonwealth Government or an agency of the Commonwealth Government.
- (2) An approved company must comply with a notice under this clause within 14 days of the receipt by the approved company of the notice (or such longer period as is specified in the notice).
Maximum penalty: 30 penalty units.

5 Operating plan

- (1) The annual operating plan of an approved company must include details of all significant activities that the company proposes to undertake, or take part in, during the period to which the plan relates, including in relation to each such activity:
- (a) details of the risks and financial impact of the activity on the company, and
 - (b) details identifying the source of power that enables the company to undertake, or take part in, the activity, including whether that source of power is:
 - (i) a function set out in the company's approval under section 9 of the Act, or

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- (ii) a function of the company under any other provision of the Act, or
 - (iii) a function of the company under another Act, or
 - (iv) a source of power deriving from another law, and
- (c) if the source of power that enables the company to undertake, or take part in, the activity is the function set out in section 10 (2) (b) of the Act, the basis of the determination by the directors of the company that the activity is of benefit to the coal industry in New South Wales.
- (2) The annual operating plan of an approved company must include a statement setting out the priorities for the use of any operating surplus of the company during the period to which the plan relates.
- (3) In this clause, a reference to an approved company proposing to undertake, or take part in, an activity includes a reference to an approved company proposing to continue to undertake, or continue to take part in, an activity.

6 Giving of notices

- (1) A notice that is authorised or required by this Regulation to be given to an approved company may be given by:
- (a) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the company or an address specified by the company for the service of documents, or
 - (b) sending it by email to the email address of the company specified by the company for the service of documents,
 - (c) sending it by facsimile transmission to the facsimile number of the company.
- (2) Nothing in this clause affects the operation of any provision of a law or of the rules of a court authorising a notice or document to be served on or given to a person in any other manner.