



New South Wales

Coal Industry Regulation 2020

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*.

JOHN BARILARO, MP

Deputy Premier, Minister for Regional New South Wales, Industry and Trade

Explanatory note

The object of this Regulation is to repeal and remake, without significant amendments, the *Coal Industry Regulation 2011*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation—

- (a) enables the Minister administering the *Coal Industry Act 2001* (currently, the Deputy Premier, Minister for Regional New South Wales, Industry and Trade) 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), and
- (b) requires 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 section 53 (the general regulation-making power) of the *Coal Industry Act 2001*.

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 2020*.

2 Commencement

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

Note. This Regulation repeals and replaces the *Coal Industry Regulation 2011* which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

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.

the Act means the *Coal Industry Act 2001*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(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 any of the following information (including copies of relevant documents) that is specified in the notice—

- (a) information on the status, terms of reference and membership of all board committees (including defunct or dissolved committees),
- (b) copies of the following documents—
 - (i) the constitution of the company,
 - (ii) advice provided to the company in relation to the company's workers compensation function under the Act (including the assumptions used for the advice) and documents detailing the underlying liabilities of workers compensation schemes (if any) administered by the company,
 - (iii) written contracts, memorandums of understanding or formal or informal arrangements entered into by the company (including drafts),
 - (iv) 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) trust deeds relating to the company (for example, trust deeds relating to a 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 principles and policies, including compliance or non-compliance (if any) with AS/NZS ISO 9001:2016, *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 recommendations of a board committee to the board),
 - (g) copies of documents prepared for the consideration of the company's board or a board committee,
 - (h) details of remuneration, allowances or other benefits paid to a director or other officer of the company,
 - (i) details of separation or termination payments made to a director or other officer of the company,
 - (j) details of past or current contracts between the company and a director of the company,
 - (k) details of overseas travel taken or proposed to be taken by a director or other officer of the company,
 - (l) copies of conflict of interest disclosures provided to the board by a 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) payments or proposed payments to the Coal Services Health & Safety Trust or another trust for which the company may appoint the trustee or trustees,
 - (ii) payments or proposed payments that are disbursements of the company's operating surplus,
 - (iii) payments made or proposed to be made as a contribution to the community,
 - (iv) payments or proposed payments 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 all persons engaged under a contract for service with the company,
 - (p) details of real property held by the company and the disposal of real property by the company,
 - (q) details of charges or mortgages over the property of the company,
 - (r) details of 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—
- (a) 14 days of the receipt by the approved company of the notice, or
 - (b) a longer period (if any) 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 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
 - (ii) a function of the company under another 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 the operating surplus (if any) 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.
- (2) Nothing in this clause affects the operation of a 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 another manner.

7 Repeal and saving

- (1) The *Coal Industry Regulation 2011* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Coal Industry Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.