



Trade & Investment

Office of the Director General

Mr Greg Cole-Clark
Chief Executive Officer
Mine Subsidence Board
66 Regent Street
MAITLAND NSW 2320

Dear Mr Cole-Clark

I am pleased to advise that I have approved the renewal of your contract and your re-appointment as Chief Executive Officer, Mine Subsidence Board, for a term of five (5) years effective from 1 August 2011.

Attached is an Instrument of Appointment under section 17 of the Public Sector Employment and Management Act 2002. Also attached is a copy of your contract of employment.

I congratulate you on your re-appointment and I look forward to continuing to work with you to achieve the challenging goals set for our Department.

Yours sincerely,

Mark I Paterson AO
Director General

2/3/12

Encl



Trade & Investment

Office of the Director General

SENIOR EXECUTIVE SERVICE

Instrument of Appointment (s.17 of the Public Sector Employment and Management Act 2002)

I, Mark I Paterson AO, the Director General of the NSW Department of Trade and Investment, Regional Infrastructure and Services, under section 17 of the Public Sector Employment and Management Act 2002 appoint **Greg Cole-Clark** to the Senior Executive Service Level Three (3) position of **Chief Executive Officer, Mine Subsidence Board** for a term of five years, effective from 1 August 2011.

Dated the 27 February 2012

Signed:



NSW Government

NSW CHIEF AND SENIOR EXECUTIVE SERVICE

CONTRACT OF EMPLOYMENT

This Contract of Employment is made

on the 1st day of August 2011

between

Mark I Paterson AO	Director General, Trade & Investment, Regional Infrastructure & Services
<u>Name</u>	<u>Designation</u>
<i>hereinafter referred to as "the employer"</i>	

of Level 47, MLC Centre, 19 Martin Place, Sydney NSW 2001
show address for service of notices

and

<u>Greg Cole-Clark</u>
<i>hereinafter referred to as "the executive officer"</i>

of 66 Regent Street, Maitland NSW 2320
show address for service of notices

Contract Operation and Application

1. This Contract constitutes a contract of employment for the purposes of s. 69 of the Act, and governs the employment of the employee while employed in the position referred to in clause 4. The executive officer is not appointed by, nor is the executive officer's term of office fixed by this contract, except in circumstances where s. 69(4) of the Act applies.
2. The parties acknowledge that the employment of the employee is affected by Acts of Parliament and Regulations made under such Acts, including the Act, *Public Sector Executives Superannuation Act 1989* and the *Statutory and Other Offices Remuneration Act 1975*. The NSW Senior Executive Service Guidelines, Premier's Memoranda, Department of Premier and Cabinet and Public Employment Office Circulars and other Government directions contain information relevant to the executive officer's employment.

Interpretation

3. In this Contract, unless otherwise stated or the context otherwise indicates:

- ▶ "the Act" – means the New South Wales Public Sector Employment and Management Act 2002;
- ▶ "Chief Executive Officer" – means a person holding a position referred to in Schedule 1 to the Act;
- ▶ "Code of Conduct for Public Sector Executives" – means the document entitled "Code of Conduct for Public Sector Executives" as published by the Public Sector Workforce and as amended from time to time;
- ▶ "Employer" – means the person who is, for the time being, the employer within the meaning of Part 3.1 of the Act;
- ▶ "Employment Benefit Cost" – in relation to an employment benefit provided to the executive officer under the Contract, means the cost to the employer of providing that benefit, being the approved amount of that cost, or the amount of that cost calculated in the approved manner, within the meaning of Division 4 of Part 3.1 of the Act;
- ▶ "Executive Officer" – means a chief executive officer or a senior executive officer;
- ▶ "Month" – means a calendar month;
- ▶ "Performance Agreement" – means the agreement attached to Schedule B;
- ▶ "Performance Criteria" – means the performance criteria to which a performance review is to have regard;
- ▶ "Performance Review" – means a review of the executive officer's performance as referred to in s.71 of the Act;
- ▶ "the position" – means the position referred to in clause 4 of the Contract;
- ▶ "Senior Executive Officer" – means a person holding a position as defined by s.65 of the Act;
- ▶ "the Tribunal" – means the Statutory and Other Offices Remuneration Tribunal established by the Statutory and Other Offices Remuneration Act 1975.

Expressions corresponding to expressions that are defined in Part 3.1 of the Act have those meanings.

Remuneration of the Executive

15. The monetary remuneration and employment benefits for the executive officer undertaking the duties and responsibilities of the position are specified in Schedule C. The total amount of the monetary remuneration and the employment benefit cost of the benefits must equal the amount of the remuneration package determined by the Tribunal and this amount shall be specified in Schedule C.
16. Where the remuneration package has been determined by the Tribunal as a range of amounts, the total amount referred to in clause 15 is the amount nominated in Schedule C for the purpose of s.63(3)(a) of the Act.
 - a. The executive officer may request in writing at any time that the monetary remuneration and the employment benefits specified in Schedule C be varied and the employer shall not unreasonably refuse that request.
 - b. For the purposes of the preceding paragraph, it shall not be unreasonable for the employer to refuse a request where it is made sooner than 6 months after an earlier agreement by the parties relating to the amount of the monetary remuneration and the employment benefits to be provided to the executive officer. Despite this, where a request is made only to take account of a variation in the executive officer's remuneration package as a result of a determination by the Tribunal, the employer shall not refuse such a request.
 - c. Any variation to the monetary remuneration and the employment benefits specified in Schedule C may be by a further contract between the executive officer and the employer.

Right of Return

17. Where the employment benefits specified in Schedule C include the right of return to the public sector under Schedule 4 of the Act, the officer:
 - a. warrants that the officer is entitled under Schedule 4 of the Act to elect to retain a right of return to the public sector; and
 - b. makes that election.

General Provisions as to the Operation of the Contract

18. A reference in the contract to a Schedule refers to the Schedule then in force, and applies whether or not the Schedule has been physically attached to all or any counterparts of the Contract.
19. A reference in the Contract to the singular number includes the plural and vice versa.
20. The headings used in the Contract are for convenience of reference only, and are not intended to be resorted to for the interpretation of the Contract.
21. Where the employer lawfully authorises a person to act as his or her delegate and carry out any of the employer's duties, obligations or actions required to be carried out under the Contract, the Contract shall be construed as if any relevant reference to the employer included a reference to that delegate.

Information about Appointment

4. The position to which this Contract applies is:

Chief Executive Officer, Mine Subsidence Board
(An executive position within the meaning of Part 3.1 of the Act.)

5. The period for which the executive officer is to hold the position (unless sooner terminated) is the period of:

1st August 2011 – 31st July 2016

Duties and Obligations of the Executive Officer

6. During the term of the appointment, the executive officer must carry out any duties imposed by law with respect to the position and the additional duties and obligations specified in Schedule A of the Contract.
7. The duties specified in Schedule A may be varied by a further contract between the executive officer and the employer.
8. The executive officer agrees to comply with the *Code of Conduct for Public Sector Executives*.

Performance Agreement and Review

9. The Act provides for an executive officer's performance to be reviewed, at least annually, by the executive officer's employer or some officer nominated by that employer. Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.
10. The performance criteria specified in Schedule B may be varied by a further contract between the executive officer and the employer.
11. The employer must give the officer at least 7 days notice in writing that a performance review is to be conducted.
12. Within one month of the conclusion of a performance review, or as soon as is practicable thereafter, the employer will prepare and send to the executive officer a written statement which sets out:
- a. the employer's conclusions about the executive officer's performance during the period for which performance was reviewed;
 - b. any proposal by the employer to vary the performance criteria as a consequence of the performance review; and
 - c. any directions or recommendations made by the employer to the executive officer in relation to the executive officer's future performance of the duties of the position.
13. The employer undertakes that if a performance review is not held within the time contemplated by s.71 of the Act, this will not operate to the prejudice of the executive officer in any decision made by the employer in relation to the executive officer, unless the failure to hold the performance review within that time was the fault of the executive officer.
14. The employer and executive officer must, as soon as possible after the executive officer receives the written statement referred to in clause 12, attempt to come to agreement on any proposal by the employer to vary the performance criteria and on any recommendations by the employer as to the future performance of the duties of the position by the executive officer.

22. This Contract supersedes and replaces all other contracts, understandings or arrangements made between the executive officer and the employer prior to the execution of this Contract relating to the employment of the executive officer in the position.
23. This Contract shall be governed by the law of New South Wales and shall be deemed to be made in New South Wales.
24. Any notice or other communication under or relating to the Contract of employment must be in writing and is served by or on a party-
 - a. if delivered personally;
 - b. if left at or sent by post to:
 - (i) the address for service of notices as stipulated in this Contract (or as subsequently varied from time to time by notice under this Contract); or
 - (ii) the last known residential or business address of the person to be served; or
 - c. if sent by Facsimile transmission to the fax number (if any) stated in this Contract (or as subsequently varied from time to time by notice under this Contract).
25. Any written notice or other communication under or relating to the Contract of employment is taken to be served:
 - a. where served by express post at an address within New South Wales in the Express Post Network, on the next business day after it is posted;
 - b. where served by post otherwise in the ordinary course of postage, as set down in Australia Post's delivery standards and;
 - c. where sent by facsimile, on the next business day after it is sent.
26. The executive officer will not engage in any paid employment outside the duties of the executive officer's position without the written consent of the employer.
27. During employment the executive officer will not disclose without lawful authority:
 - a. any secret or confidential information acquired by him or her as a consequence of his or her employment;
 - b. any secret or confidential information acquired by him or her from any document to which he or she has access as a consequence of his or her employment.
28. Upon termination of employment the executive officer will not without lawful authority, disclose or make any use of any confidential or secret information acquired by the executive officer as a consequence of his or her employment by the employer.

29. This Contract and the schedules hereto (excluding the fact and term of the appointment as set out in clauses 2 & 3, and excluding Schedule B, the Performance Agreement) shall, except as required by law or as required for the proper negotiation, interpretation or application of this Contract, be treated by both parties as confidential and shall in no way be disclosed, published or circulated to any person except with the prior written agreement of both parties.

Signed by the employer

Christa Leisen

on the

27

day of

February 2012

in the presence of

Johanna Pitman *J.Pitman*

* Signed by (the executive officer)

[Signature]

on the

day of

20

in the presence of

PATRICIA MADDEN

P.A. Madden

* **Note:** By signing this contract, the executive officer is agreeing to accept accountability for the duties and responsibilities included in Schedule A.

Schedule A – Duties and Responsibilities

This Schedule operates from

on the 1st day of August 2011

The duties of the position additional to any statutory duties are as follows:

For the Chief Executive

Responsible for:

1. the general conduct and the effective, efficient and economical management of the functions and activities of the agency;
2. behaving ethically and maintaining high ethical standards;
3. the equitable management of staff of the agency;
4. manage and direct all operational, corporate and strategic activities of the Mine Subsidence Board to deliver objectives legislated by the Mine Subsidence Compensation Act 1961 in a timely and fair manner to the satisfaction of all stakeholders.

In addition you are expected to:

- provide the Minister with frank advice that is relevant, impartial, accurate and timely;
- keep the Minister fully informed on critical or agreed matters within the agency;
- ensure ethical work practices within the agency and ensure all staff receive ongoing training in ethics;
- ensure employees are aware of the procedures for making protected disclosures and of the protection provided by the *Public Interest Disclosures Act 1994*.
- manage key interfaces affecting the agency (eg major customer groups, stakeholders, other agencies);
- ensure that actions and policies of the agency accord with the strategic intent of the Government and are not in conflict with those of other organisations;
- ensure compliance with relevant legislative requirements;
- ensure that good employment principles operate within the agency, that people management, recruitment, training and development is based on employment equity principles, and that Equal Employment Opportunity outcomes are being met;
- increase the representation of Equal Employment Opportunity Groups through recruitment and appointment action;
- maintain effective corporate and human resource planning within the agency;
- maintain the agency's performance management system covering all employees;
- ensure satisfactory introduction and operation of internal controls, reporting systems (including protected disclosures), grievance procedures, the documentation of decision-making and sound financial management.

- ▶ develop agency procedures to ensure 1) the agency code of conduct is periodically reviewed so that it adequately reflects specific organisational values and requirements and 2) that each officer reads and is familiar with the code's content.

For the Senior Executive

Responsible for:

- ▶ behaving ethically and maintaining high ethical standards;
- ▶ ensuring employees are aware of the procedures for making protected disclosures and of the protection provided by the *Public Interest Disclosures Act 1994*;
- ▶ improving service delivery and productivity;
- ▶ ensuring that people management, recruitment, training and development are based on employment equity principles;
- ▶ increasing the representation of Equal Employment Opportunity Groups through recruitment and appointment action;
- ▶ completing designated action plans in the business plan; etc.

Schedule B – Performance Agreement and Criteria

This Schedule operates from

on the 1st day of August 2011

The key accountabilities and performance criteria are set out in the attached agreement. (It is to be noted that in relation to the performance agreement of Chief Executive Officers that criteria relating to eg improving occupational health and safety management, equitable management of staff, and a whole of government perspective to management, are to be included here).

Performance reviews will be based on the performance criteria in the performance agreement attached to this Schedule. The executive officer should ensure the performance criteria remain relevant and are amended as necessary by agreement with the employer to take into account major changes that impact on the executive officer's performance.

Schedule C

Remuneration Package, Monetary Remuneration and Employment Benefits

This Schedule operates from

on the 1st day of August 2011

The Total Remuneration Package (TRP) for this position is as follows: \$226,850

Recruitment Allowance per annum of: \$23,000

The Monetary Remuneration referred to in Clause 15 is as follows: Salary - \$205,908.80

The Employment Benefits and costs referred to in Clause 15 are as follows:

Compulsory Super - \$15,776.20

Motor Vehicle - \$5166

The remuneration period is from the date of commencement of the contract until amended by review.

Schedule C

Remuneration Package, Monetary Remuneration and Employment Benefits

This Schedule operates from

on the 1st day of August 2011

The Total Remuneration Package (TRP) for this position is as follows:

~~228,000~~

\$239,000 - Inclusive of Recruitment Allowance of \$23,000

The Monetary Remuneration referred to in Clause 15 is as follows:

\$218,058.80 - Salary

The Employment Benefits and costs referred to in Clause 15 are as follows:

\$15,775.20 - Compulsory Super

\$5,166.00 – Motor Vehicle

The remuneration period is from the date of commencement of the contract until amended by review.