



Construction Work at Coal Workplaces and Mining Workplaces

NSW DPI Guidance Notes:

- **GNM-005 Construction Work at Mining Workplaces &**
- **GNC-007 Construction Work at Coal Workplaces**



NSW DPI Guidance Note: Construction Work at Coal Workplaces and Mining Workplaces

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PURPOSE

The purpose of this guidance note is to explain how health and safety legislation relating to construction work applies at NSW coal and mining workplaces.

SCOPE

What legislation applies to construction work?

The *Occupational Health and Safety Act 2000* (OHS Act) and *Occupational Health and Safety Regulation 2001* (OHS Regulation) set out duties that must be followed when undertaking construction work at a coal workplace or mining workplaces.

All Chapters of the OHS Regulation apply to construction work.

Chapter 8 of the OHS Regulation sets out particular requirements and risk controls relevant to construction work.

Codes of Practice made under the OHS Act may also be relevant considerations when undertaking construction work.

Construction-specific Codes of Practice are listed in this Guidance Note.

The *Coal Mine Health and Safety Act 2002* (CMHS Act) and the *Mine Health and Safety Act 2004* (MHS Act) and their regulations should also be considered when determining legal requirements associated with undertaking construction work in the mining industry.

When do the new safety laws apply?

- | | |
|------------------------------|---|
| From 1 September 2009 | <ul style="list-style-type: none">▪ the licensing requirements of Chapter 9 of the OHS Regulation apply▪ the requirements to register 'general industry' plant used in mining workplaces applies |
| From 1 September 2008 | <ul style="list-style-type: none">▪ the OHS Regulation generally applies to the mining industry▪ the MHS Act applies |
| From 23 December 2006 | <ul style="list-style-type: none">▪ the CMHS Act applies |

DEFINITIONS

Definitions relevant to construction work can be found in the OHS Act and its Regulation as well as in the CMHS Act or MHS Act and their regulations.

Terms used in this Guidance Note

OHS legislation where used in this Guidance Note means the OHS Act and OHS Regulation.

Mine Safety legislation where used in this Guidance Note means the CMHS Act and the MHS Act and the regulations made under those acts.

Coal/Mine Operator where used in this Guidance Note means the coal operator appointed under the CMHS Act or the mine operator appointed under the MHS Act.

Definitions used in the OHS Legislation

Construction work means any of the following:

- a) **Building**; which includes the construction (including the manufacturing of prefabricated elements of a building at the place of work concerned), alteration, renovation, repair, maintenance and demolition of all types of buildings.
- b) **Civil engineering**; including the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours, inland waterways, dams, river and avalanche and sea defence works, roads and highways, railways, bridges and tunnels, viaducts, and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies,
- c) **Excavation**; conducted for the purposes of building or civil engineering, including the excavation or filling of trenches, ditches shafts, wells, tunnels and pier holes, and the use of caissons and cofferdams, but not excavation work at a coal workplace or mining workplace for the purposes of extracting minerals or quarry product (see clause 3 of the OHS Regulation).

principal contractor in relation to construction work (or a construction project involving construction work), means a person who is, under clause 210 of the OHS Regulation, for the time being appointed or taken to be the principal contractor for the construction work (see clause 209 of the OHS Regulation).

high risk construction work means any of the following:

- construction work involving structural alterations that require temporary support,
- construction work at a height above 3 metres,
- construction work involving excavation to a depth greater than 1.5 metres,
- demolition work for which a licence is not required under Chapter 10 to carry on the business of that work,
- construction work in tunnels,
- construction work involving the use of explosives,
- construction work near traffic or mobile plant,
- construction work in or around gas or electrical installations,
- construction work over or adjacent to water where there is a risk of drowning (clause 209 of the OHS Regulation).

Definitions used by the Mine Safety legislation

construction zone includes any building construction or demolition being undertaken at a coal operation or mining workplace.

RELATIONSHIP BETWEEN THE OHS ACT, CMHS ACT AND MHS ACT

A person must comply with the duties set out in the OHS legislation and the Mine Safety legislation.

Where a person cannot comply with the duties under both pieces of legislation they must, in the first instance, comply with the OHS legislation.

PREVENTION OF INJURY AND INCIDENT THROUGHOUT THE LIFE CYCLE OF BUILDINGS AND STRUCTURES

Research into construction work incidents and injuries reveals that a significant percentage can be traced to decisions taken at the design and planning stage of the work.

Accordingly, it is vitally important that persons involved in the design and planning of a project – designers, owners, coal/mine operators or principal contractors – systematically consider opportunities to eliminate or control risk at the design stage of a project.

Legislation places duties on persons to ensure the health, safety and welfare of persons at all stages of the life cycle of buildings and structures, including design and planning, tender pre-qualification, construction, use and maintenance.

This Guidance Note details some of those duties.

Also set out below is a simple best practice checklist that persons should follow to assure themselves that safe outcomes are being systematically pursued at all stages of the project life cycle. Coal/mine operators should use these as a guide when planning construction work and reviewing the adequacy of health and safety management systems.

BEST PRACTICE CHECKLIST
<p><i>Design & Planning</i></p> <ul style="list-style-type: none"> ▪ OHS included in the contract conditions for all projects. ▪ An OHS design review is carried out for all projects. ▪ Where practicable, risks to health and safety are designed out or minimized. ▪ Remaining risks to be formally passed on to the construction team to be resolved or included in appropriate tender packages.
<p><i>Tender Pre-Qualification</i></p> <ul style="list-style-type: none"> ▪ Specific OHS requirements communicated at tender for all contracts. ▪ Pre-qualification based on previous performance of contractor and the degree to which the bid addresses specified OHS requirements. ▪ Tender voided if OHS contract conditions are not satisfied when OHS plan submitted.
<p><i>During Construction</i></p> <ul style="list-style-type: none"> ▪ All management personnel trained in company OHS&R management system. ▪ All employees received appropriate OHS induction training. ▪ Employees/subcontractors involved in development and review of trade specific Safe Work Method Statements (SWMS). ▪ SWMS are site specific. ▪ Variations to the scope of work recorded in tool box talks and reflected in SWMS. ▪ Safety documentation reviewed prior to commencement of works by each subcontractor. ▪ Regular performance appraisal of subcontractor works against SWMS through audits. ▪ OHS Committee meetings are pro-active based on scheduled upcoming project activities. ▪ OHS Committees provide positive feedback to site on safety performance. ▪ Recurring issues identified for attention with formal "close out" of outstanding risks.
<p><i>Performance Appraisal</i></p> <ul style="list-style-type: none"> ▪ All accident and incident statistics recorded. Trends determined company wide and alerts issued across the company and industry. ▪ Key performance indicators communicated to workforce. ▪ Minimum OHS performance standards established in key areas of fatality or injury, e.g. working at height, overhead protection and manual handling. ▪ Positive safety measures reinforced, e.g. compliance with safety alerts. ▪ Subcontractor performance measured and recorded. ▪ Repeat items and close out of non-conformances monitored. ▪ Internal and independent external audits of safety management system conducted. ▪ Lead positive performance indicators developed to assess upstream management activity affecting downstream outcomes. ▪ Coal/mine operator's own OHS performance appraisal includes subcontractor performance.

DUTIES

Design of structures, buildings, and shafts

The OHS Regulation places a duty on a controller of premises to ensure that hazards are identified:

- a) during any design of the premises, and
- b) before the premises are provided for use as a place of work (see clause 34 of the OHS Regulation).

The controller of premises must also assess the risk from any identified hazard and eliminate or, where that is not reasonably practicable, control the risk (see clauses 35 and 36 of the OHS Regulation).

The *Mine Health and Safety Regulation 2007* (MHS Regulation) requires that the mine operator ensure that:

- all structures and buildings, including temporary structures, at a mine are:
 - a) designed, constructed, and maintained so as to ensure the health, safety and welfare of persons, and
 - b) periodically assessed for integrity by a competent person (see clause 69 of the MHS Regulation);
- the design of any structure or building at the mine (including a temporary structure) is such that any person who constructs, maintains, repairs or demolishes the structure or building, and uses the structure or building, is not, in doing so, exposed to risk (see clause 70 of MHS Regulation);
- Where a risk cannot be eliminated from the design of the structure or building, the operator must ensure that appropriate controls are put in place to minimise the risks to such persons (see clause 70 of the MHS Regulation);
- information regarding risks identified, and not eliminated, during the design of the structure or building are documented and recorded for the life of the structure or building (see clause 71 of the MHS Regulation);
- all relevant information on risks identified, and not eliminated, during the design of a structure or building, and any measures recommended to control the risk, are communicated to persons supervising the construction, maintenance, repair or demolition of the structure or building (see clause 72 of the MHS Regulation).

The MHS Regulation also details particular risk controls in relation to the design, construction and use of shafts (see clauses 50, 51 and 52 of the MHS Regulation).

'CHAIR' (the Construction Hazard Assessment Implication Review) is a tool to assist designers, owners, coal/mine operators, constructors, and other key stakeholders to reduce construction, maintenance, repair and demolition safety risks associated with the design of works.

The primary aim of a CHAIR is to identify and eliminate or minimise risks in a design as soon as possible in the life of a project. The tool may be found at www.dpi.nsw.gov.au/minesafety.

Determining the person in control of construction work

The OHS legislation and the Mine Safety legislation are based on a set of common principles. One of those principles is that the person in control of a workplace has particular responsibilities to co-ordinate the safety arrangements of the site.

The Mine Safety legislation provides that the person with the right to mine must nominate who is the employer in control of the workplace – namely, a 'coal operator' in the case of a coal operation and a 'mine operator' in the case of a mining workplace.

Accordingly, the OHS legislation provides that the owner of a place of work is not required to appoint a principal construction contractor if a coal/mine operator has been nominated under the Mine Safety legislation.

Therefore, that part of Chapter 8 of the OHS Regulation that assigns duties to a principal contractor **does not apply** to a coal workplace or a mining workplace that is a mine for which a coal/mine operator has been duly nominated.

What are the duties of coal/mine operator and subcontractors/employers in relation to a construction site?

The Mine Safety legislation places certain duties on a coal/mine operator. The same duties apply to construction work carried out at a coal or mining workplace.

Importantly, this includes having and implementing a safety management plan and co-ordinating safety in respect of contractors and subcontractors on site.

In addition to the Mine Safety legislation, Chapter 8 of the OHS Regulation sets out certain duties for subcontractors and employers. For example, subcontractors have a duty to develop and adhere to safe work method statements (see clause 229 of the OHS Regulation).

Where the OHS Regulation places a duty on a subcontractor to interact with the 'principal contractor' the subcontractor should read the reference to the 'principal contractor' to mean the 'coal/mine operator'. For example, clause 229 OHS Regulation which provides that the subcontractor must not

commence work unless the subcontractor has been provided by the principal contractor with a copy of the occupational health and safety management plan.

Construction Zone

The Mine Safety legislation requires that if building construction or demolition work is being undertaken, the coal/mine operator must designate a 'construction zone' (see clause 77 of the MHS Regulation and clause 87 of the CMHS Regulation).

The 'construction zone' must be designated by being described or marked clearly on a plan, and designated by means of appropriate signage, other markings or fencing.

It should be noted that the designation of a 'construction zone' by a coal/mine operator cannot limit the area or work activity that is subject to the OHS Regulation, including the requirements set out in Chapter 8.

The OHS Regulation will apply whenever construction work is undertaken as defined by the OHS Regulation.

What specific risk controls apply to construction work under the OHS Regulation?

Subcontractors and employers undertaking construction work must abide by the health and safety duties set out in Chapters 1 - 12 of the OHS Regulation.

Chapter 8 of the OHS Regulation specifies circumstances in which construction subcontractors must provide safe work method statements to the person in control. Chapter 8 of the OHS Regulation sets out duties relevant to construction work in the following areas:

- Construction induction training,
- safe work method statements,
- overhead protective structures,
- safe means of lowering materials,
- prevention of collapse of formwork and other structural frames used for permanent or temporary support of buildings and other structures,
- prevention of collapse of existing buildings and other structures affected by construction work,
- site security and unauthorised access to construction sites,
- use of compressed air in construction work,
- use of lasers in construction work,
- excavation work other than excavation work for the purposes of extracting mineral product,
- demolition work,
- asbestos work, and
- diving work.

The following Codes of Practice on construction work made under the OHS Act apply to the mining industry and provide valuable guidance:

- *Electrical practices for construction work*
- *Mono-strand post-tensioning of concrete buildings*
- *Safety line systems*
- *Cutting and drilling concrete and other masonry products*
- *Amenities for construction work*
- *OHS induction training for construction*
- *Formwork*
- *Safe work on roofs - commercial and industrial*
- *Excavation*
- *Moving plant on construction sites*
- *Safe work on roofs - part 2 – residential*

Codes of Practice provide guidance to industry on implementing the legislation. Compliance with a Code of Practice is not mandatory. However, a person should implement a risk control measure that provides an equivalent or better standard of safety to the Code if they decide not to follow a recommendation made by a Code.

In addition, other guidance on managing risks pertaining to construction work can be found at: <http://www.workcover.nsw.gov.au/Publications/Industry/Construction>

OHS Induction Training

The OHS legislation provides that an employer must ensure that a person receives the necessary instruction, training and information to perform work safely (see clause 13 of the OHS Regulation).

The OHS Regulation at Chapter 8 places particular duties on an employer in relation to ensuring a person receives the appropriate induction training to be able to safely perform construction work.

The induction training requirements of Chapter 8 of the OHS Regulation are supplemented by the Code of Practice on *OHS induction training for construction*.

The construction induction training requirements of the OHS Regulation have been amended in the following respects to address the circumstances of the mining industry:

- Firstly, a person at a mining workplace or coal operation is not required to hold a WorkCover General Construction Induction Certificate if they have received an equivalent standard of induction training from the mine operator and are not principally or regularly undertaking construction work.
- Secondly, the particular 'Work Activity' induction training provisions of Chapter 8 of the OHS Regulation do not apply to the mining industry. (However, the mine operator and employer still have general duties to

ensure a person receives the necessary training to be able to undertake the work safely).

Certificates of Competency

Certain types of high risk work require certificates of competency. The types of work are outlined in Part 9.1 of the OHS Regulation and include:

- Scaffolding
- Dogging
- Rigging
- Operation and use of cranes
- Operation and use of hoists
- Operation and use of truck-mounted concrete-placing booms

Persons undertaking this work will need to obtain a national certificate of competency by 1 September 2009. The certificates of competency will be issued by WorkCover NSW. Applications may be lodged at an Australia Post Office. Further information may be obtained from your local DPI office or by visiting the WorkCover website at www.workcover.nsw.gov.au.

Particular requirements for Demolition and Asbestos work

In addition to specific risk controls for set out in Parts 8.6 and 8.7 of the OHS Regulation, the Regulation also sets out business licensing requirements (Chapter 10), Permit requirements (Chapter 11) and Notification requirements (Chapter 12) in relation to Demolition Work and Asbestos Work.

All applications for licences and permits as well as notification requirements when demolition or asbestos removal work is to be undertaken must be made to WorkCover NSW.

NOTE: The OHS Regulation presently provides that notifications in relation to asbestos and demolition work must be made to DPI. However, by agreement between DPI and WorkCover NSW, persons should submit their notifications pursuant to clause 345(1)(c) and (d) of the OHS Regulation (in relation to demolition and bonded asbestos) direct to WorkCover NSW as the licensing authority and not NSW DPI. WorkCover will provide a copy of such notification to NSW DPI to enable DPI to fulfil its functions as the regulatory authority.



NSW DPI Mineral Resources offices located in mining regions

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