



Overview of the new safety legislation for the NSW coal mining industry

Coal Mine Health and Safety Act 2002 ***Coal Mine Health and Safety Regulation 2006***

New laws for health and safety

The NSW coal mining industry is moving to a new, modern and more relevant legislative framework based on risk management principles and consultation.

The Occupational Health and Safety Act 2000 and the extended application of the *Occupational Health and Safety Regulation 2001* to coal operations, along with the *Coal Mine Health and Safety Act 2002* and the *Coal Mine Health and Safety Regulation 2006*, will give the coal mining industry the tools to help achieve its goal of improved OHS performance.

The *Coal Mine Health and Safety Act 2002* replaces the *Coal Mines Regulation Act 1982*.

There will be an orderly and phased-in implementation of the new *CMHS Act* and *CMHS Regulation*.

Working with the OHS Act

The *OHS Act* is the main legislation in NSW dealing with health, safety and welfare at work. The *OHS Act* applies to workplaces in the coal mining industry such as exploration sites, open-cut and underground mines and coal preparation plants.

The *OHS Regulation* supports the *OHS Act* and sets out detailed risk management provisions for general industry.

The *CMHS Act* supports the *OHS Act*. It creates particular responsibilities for people in the coal mining industry and sets out particular powers and administrative arrangements.

If the *OHS Act* and *CMHS Act* both deal with the same matter - a person must comply with the *OHS Act*. If possible, the person must also comply with the *CMHS Act*. If it is not possible to comply with both Acts, then the person must comply with the provisions in the *OHS Act*.

Key changes

The key changes made by the *CMHS Act* and *CMHS Regulation* include:

- people with health and safety duties are more clearly identified
- every coal operation must have a nominated operator who is the employer with the day-to-day control of the coal operation
- when more than one person has a responsibility under the Regulation each retains responsibility for the matter and the responsibility is to be discharged in a co-ordinated manner
- an operator must have a documented health and safety management system and an emergency management system
- an operator must have a management plan for all major hazards

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- an operator must ensure contractors work safely and follow a safe work method statement
- a contractor must provide a safe work method statement before starting work
- a new Coal Competence Board will oversee health and safety competence in the coal mining industry
- employees have the right to elect check inspectors
- penalties for offences are increased significantly

Application of Act

The *CMHS Act* may apply anywhere in a colliery holding where people work. This includes offices, workshops and other buildings, vehicles, roads, open land as well as mines and coal processing plants.

Some locations at a colliery holding are included even if they are not a workplace – such as discontinued shafts. The *CMHS Act* also applies at:

- a drilling site on the surface (known as a coal exploration site)
- an emplacement area
- an abandoned coal mine

Colliery holder

The *CMHS Act* places certain obligations on a colliery holder, which it defines as “a person who has the right to mine for coal or to carry out coal mining purposes on any colliery holding”.

A colliery holder must provide health and safety information to the nominated operator and ensure that:

- no mining takes place unless an operator has been nominated

- mining ceases if the Chief Inspector rejects the nomination of an operator
- shafts and outlets at any abandoned mine are sealed and maintained.

Nominating an operator

The colliery holder nominates an operator. The operator must be the employer with day to day control of the coal operation.

The colliery holder can nominate themselves as the operator if they are the employer in control. Different operators can be nominated for separate coal operations at the same colliery holding.

The Chief Inspector can reject a nomination within 28 days if the Chief Inspector believes the nominated operator is not the employer with day-to-day control.

The chief inspector can also reject a nomination if more than one operator is nominated for a colliery holding and the Chief Inspector believes:

- having more than one operator would be detrimental to safety, or
- the different coal operations at the colliery holding are not sufficiently distinct to warrant separate operators.

If the Chief Inspector rejects a nomination, the colliery holder must prevent mining from continuing until the Chief Inspector is provided with a further written nomination.

Coal operation

A coal operation is any workplace where coal is mined. A coal operation includes a coal mine and a coal preparation plant.

The following locations are specifically excluded from being a coal operation:

- any place where someone is drilling for coal
- any place outside a colliery holding where coal is blended (such as loading facilities at a port)
- abandoned mines and emplacement areas outside a colliery holding.

Coal operator

An operator has all the duties of an employer in the *OHS Act*. This includes the general duty of care in section 8 of the *OHS Act* and the duty to consult employees in sections 13 to 19 of the *OHS Act*.

In addition the *CMHS Act* gives an operator a duty to:

- prepare a health and safety management system and an emergency management system
- control health and safety at all locations at the coal operation - including but not limited to mining operations
- manage the activities of contractors with respect to health and safety
- provide information and notices to specified people
- create and maintain records
- consult employees and their representatives
- implement Ministerial orders and inspection notices.

OHS management system

An operator must prepare and implement a health and safety management system. The system must be implemented before mining commences.

The health and safety system must include:

- a health and safety policy
- systems for risk management, training and competence, information control and system evaluation
- plans for managing any major hazards
- a management structure including positions, responsibilities and accountabilities of managers and supervisors
- a plan for managing the risks associated with the use of contractors.

People working at the coal operation (including contractors) must be consulted when the system is being prepared.

The operator must not implement the system or commence mining until 21 days after giving information about the system to the Chief Inspector and an industry check inspector. The Chief Inspector can object to the system and require changes or improvements before mining commences.

The management system must be reviewed 12 months after mining commences and then at least every 3 years. Relevant parts of the system must be reviewed if operations change significantly, or if there is a death or a serious incident that could have caused a death.

Management structure

An operator prepares a management structure that is appropriate for the coal operation. The management structure is documented in the health and safety management system. The management structure must include people with competence in mechanical and electrical engineering and include the following positions:

- manager of mining engineering
- manager of electrical engineering in an underground mine
- manager of mechanical engineering in an underground mine
- an adequate number of supervisors

An operator must keep an on-site register which lists the current occupant of each position in the management structure and all people who have occupied each position in the last five years.

Major hazards

An operator must prepare a major hazard management plan for major hazards. The plans are included in the health and safety management system for the operation.

A major hazard management plan must state how the health and safety of people is protected. It can incorporate other documents such as published standards and must take account of any requirements in regulations.

For the purposes of section 32 of the *CMHS*, the following hazards to people are prescribed as major hazards to which Subdivision 2 of Division 2 of Part 5 of the Act applies:

- a) in relation to all surface parts of a coal operation:
 - i) hazards arising from slope instability (including high walls, low walls, stockpiles and overburden dumps), and
 - ii) hazards arising from the use and operating environment of plant used for the transport of people or materials on the surface part of the operation,
- b) in relation to all underground parts of a coal operation:
 - i) hazards arising from the transport of people and materials, in particular from transport that is operated in the underground parts of the coal operation and locomotives that are operated on the surface part of the coal operation where the surface rail

- system operates jointly with the underground system, and
- ii) hazards arising from strata failure, and
 - iii) hazards arising from inrush into the underground parts of the coal operations of:
 - A) water or other fluid materials, or any materials that become fluid when wet, or
 - B) inflammable or noxious gases, and
 - iv) hazards arising from fire and explosion, and
 - v) hazards arising from the initiation and propagation of coal dust explosions, and
 - vi) outbursts of coal and gas, and
 - vii) spontaneous combustion,
- c) in relation to all parts of a coal operation:
 - i) hazards arising from the handling of explosives, and
 - ii) hazards arising from airborne dust.

The Minister can also require an operator to carry out a specified process to identify other major hazards.

Emergencies

An operator must prepare and implement an emergency management system. People with emergency functions must have appropriate training and the competence to perform those functions.

The emergency management system must include:

- an up-to-date plan of the coal operation and information about risks that could result in an emergency
- measures that will prevent or limit harmful consequences, including emergency procedures
- measures to identify the location of people who may be at risk

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- equipment, facilities and communication systems
- the control structure that applies in an emergency and the measures to communicate this throughout the coal operation
- identity of key personnel and resources available in an emergency
- procedures to test the effectiveness of the system.

An operator must provide information about the emergency management system to the Chief Inspector and an industry check inspector.

Contractors

An operator must ensure that all contractors:

- are familiar with any relevant parts of the operator's health and safety management system
- have arrangements for managing health and safety consistent with the operator's health and safety management system
- provide written work method statements (or in some circumstances a site specific health and safety management plan) before they commence work

An operator must also ensure that all contractors are monitored to make sure they comply with their work method statements and any relevant provisions in the *OHS Act* and *OHS Regulation*. If a contractor is not complying, the operator must direct the contractor to take immediate corrective action and to stop work immediately any non-compliance creates a risk.

A contractor must:

- comply with the health and safety management system prepared by the operator
- assess risks associated with the work the contractor is going to undertake
- prepare a written safe work method statement for the work the contractor is going to undertake and provide a copy to the operator or a nominee of the operator
- ensure that work is carried out in accordance with the safe work method statement, including stopping work that does not comply
- ensure that any sub-contractor complies with these requirements
- provide any changes to work method statements to relevant employees and sub-contractors.
- A safe work method statement must:
 - describe how work is to be carried out
 - identify work activities which have risks to health and safety and identify those risks
 - describe the control measures that will be applied to the work activities.

Manager duties

A manager or supervisor must:

- take reasonable care that their actions or omissions do not adversely affect the health or safety of people at the coal operation

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- co-operate with the operator and any relevant contractors to enable them to comply with their duties under the *OHS Act* and the *CMHS Act* and any supporting regulations.
- comply with the health and safety management system prepared by the operator
- inform the operator if they are aware that conduct of the coal operation does not comply with the *OHS Act* or *CMHS Act* or any regulations supporting those Acts.
- immediately report to their supervisor any health and safety risk that they can not control – the report is made to another senior person if the supervisor is not available.

For all mines, the manager of mining engineering and at underground mines the manager of mechanical engineering and electrical engineering have duties.

These managers must advise the operator about health and safety standards in their particular discipline and bring the attention of the operator to any significant deviation from those standards. If they become aware of any risks to health or safety they must also bring these to the attention of the operator.

Employee duties

An employee must take reasonable care to not adversely affect the health or safety of any people at the coal operation. They must co-operate with the operator and any relevant contractors to enable them to comply with their duties under the *OHS Act* and the *CMHS Act*.

An employee must also:

- comply with the health and safety management system prepared by the operator
- follow procedures set out in the operator's emergency management system
- inform the operator about any circumstances they consider may lead to loss of control of a major hazard
- keep under review the measures taken to ensure the health, safety and welfare of people at the coal operation, including procedures for risk control
- investigate any matter that may be a risk to health and safety
- request an investigation by an inspector if a health, safety or welfare matter is not resolved

Check inspector

Employees at a coal operation have the right to elect a site check inspector and an electrical check inspector.

To be elected as a site check inspector, a person must work at the coal operation and have at least 3 years experience at that coal operation or a similar coal operation.

An electrical check inspector does not need to work at the coal operation where they are elected and can be elected at more than one coal operation. An electrical check inspector must have at least 5 years experience in coal mines in New South Wales. An electrical check inspector can only take action in relation to electrical equipment and issues and risks arising from its use

A site check inspector and an electrical check inspector are members of any OHS committee established under the *OHS Act* at the coal operation. They have all the functions of a committee member set out in the *OHS Act* and *OHS Regulation*.

In addition the *CMHS Act* gives a site check inspector the following functions and powers:

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- inspect the coal operation to assess the level of risk to employees
- inspect shafts, roadways, working places, old workings and machinery and equipment at any time
- inspect documents and plans relating to health, safety and welfare that must be kept at the coal operation under the *OHS Act*, the *CMHS Act* or their regulations
- be present when an inspector makes a formal report to the operator about a health, safety or welfare matter
- accompany an employee (if requested by the employee) during an interview with the operator or a contractor about a health, safety or welfare matter
- inspect the place where a notifiable event occurred including testing the atmosphere (for example a fatal accident)
- inspect other places and equipment at the coal operation if it is necessary to ascertain the cause of the notifiable event
- observe any formal in-house investigation of a notifiable event
- require assistance and access to facilities if they are reasonably necessary to carry out their functions.

Industry check inspector

The Minister for Mineral Resources appoints industry check inspectors. Any person appointed must:

- be an employee or official of a trade union registered under the *Industrial Relations Act 1996* and

be authorised to act as an employee representative under the *OHS Act*

- be nominated by the Construction, Forestry, Mining and Energy Union (Mining and Energy Division)
- have a certificate of competence to be a deputy or an open cut examiner
- have completed the accredited course of training for site check inspectors required by section 165 of the *CMHS Act*.

An operator must provide an industry check inspector with information about the health and safety management system and the emergency management system for a coal operation. The operator must also notify an industry check inspector of certain events such as a work-related death or a dangerous incident that could have resulted in a death.

An industry check inspector has the power to:

- enter a workplace to investigate suspected breaches of the *OHS Act*, the *CMHS Act* or their regulations
- make searches and inspections at the workplace – including taking photographs and audio or video recordings
- require people to produce documents kept at or around the workplace that directly affect or deal with health and safety at the workplace
- inspect and copy those documents
- review the content and functioning of the health and safety management system for a coal operation required under the *CMHS Act*
- investigate any complaint about health or safety made by an employee

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- inspect shafts, roadways, working places, old workings and machinery and equipment at any time
- inspect documents and plans relating to health, safety and welfare that must be kept at the coal operation under the *OHS Act*, the *CMHS Act* or their regulations
- inspect the place where a notifiable incident occurred including testing the atmosphere (for example a fatal accident)
- inspect other places and equipment at the coal operation if it is necessary to ascertain the cause of the notifiable incident
- participate in investigations of events, occurrences or notifiable incidents
- assist in the training of site check inspectors.

An industry check inspector can also issue a written notice to an operator if they consider there is a danger to health or safety.

The written notice can set out actions the industry check inspector considers necessary to remove the danger and if necessary can direct the operator to suspend operations. A direction to suspend operations stays in effect until it is withdrawn by the industry check inspector or an inspector attends the coal operation and makes an assessment.

Inspectors, mine safety officers and investigators

The Minister for Mineral Resources can appoint a public servant as an inspector, a mine safety officer or an investigator. The *CMHS Act* refers to these positions as “Government Officials”.

Government officials have functions and powers in the *OHS Act* and the *CMHS Act*. The Minister can limit the functions and powers for an individual when they are appointed – for example giving mine

safety officers restricted powers.

The functions of a government official can include:

- considering complaints about health, safety or welfare at a coal operation
- investigating complaints and providing the relevant check inspector with a report
- auditing and reviewing the health and safety system for a coal operation at any time
- preparing a report (and recommendations for action) on an incident or other matter at a coal operation.

The powers given to a government official can include:

- entering a workplace covered by the *CMHS Act*
- inspecting documents, taking photographs, making video and audio recordings, taking samples for analysis to detect harmful substances,
- conducting biological tests
- requiring people to answer questions, provide information and produce documents
- take possession of equipment, substances and other things and use them for evidence
- issue investigation, improvement and prohibition notices
- require assistance and facilities
- institute legal proceedings before a Local Court or the Industrial Relations Commission.

The Chief Inspector oversees the operation of government officials and is responsible for functions such as reviewing the health and safety management systems prepared by operators.

Control of risks arising from the use of plant

The *OHS Regulation* has been amended to apply its provisions in relation to plant to the coal mining industry. (See Chapter 5 – Plant, of the *OHS Regulation*).

The following classes of people have duties with respect to plant:

- designers
- manufacturers
- suppliers (including sale, transfer, hire or lease arrangements)
- employers

Obligations in relation to plant include, but are not limited to:

- identifying hazards
- assessing risk
- determining and implementing control measures
- monitoring and reviewing risk assessment
- ensuring appropriate guarding and operational/emergency controls are in place and in use
- where applicable, ensuring designs meet relevant standards
- specifying and ensuring adherence to safe work systems and operator competencies
- providing necessary supervision and information, including testing, specifications for use, identified faults, maintenance or other records
- registration and renewal of design

or item registration where applicable

- appropriate maintenance, repair, testing, cleaning, installation, erection, commissioning and use of plant.

There are particular control measures found in Clauses 135–142 of the *OHS Regulation* and relate to all plant, not just that which needs registration:

- Installation, erection and commissioning of plant (Clause 135)
- Use of plant (Clause 136)
- Maintenance and repair of plant (Clause 137)
- Dismantling, storage and disposal of plant (Clause 138)
- Plant under pressure (Clause 140)
- Powered mobile plant (Clause 141)
- Plant designed to lift or move persons or other loads (Clause 142)

Employers must keep appropriate records and provide necessary information (see Clause 143 and 144).

Only certain items of plant must be registered. (See Chapter 5, Division 3 – Registration of Plant, *OHS Regulation* and the *OHS Amendment (Coal Workplaces) Regulation 2006*. However, there are requirements to ensure that hazards associated with all types of plant are identified and that risk assessment and control measures are implemented and reviewed.

Mining industry-specific plant

Pursuant to the *OHS Amendment (Coal Workplaces) Regulation 2006*, certain classes of mining-industry specific plant must be registered with the NSW DPI from the date of commencement.

Mining-industry specific plant required to be registered with NSW DPI that is already approved by NSW DPI will be deemed to be registered for an interim (transitional) period of up to 2 years.

General industry plant used in the coal mining industry

The *OHS Regulation* also specifies certain classes of plant that must be registered with WorkCover NSW. Plant used in the mining industry that is required to be registered with WorkCover must be so registered on and from 8 June 2007.

It should also be noted that the *CMHS Regulation* contains certain requirements for plant that is not subject to registration, including in relation to record keeping.

Competence standards

The Coal Competence Board is to be constituted under the control and direction of the Minister. It advises the Minister and oversees the development of health and safety competence standards and assessment of competencies.

One of the important factors to improve mine safety performance is to ensure that persons in the industry are competent to work safely.

When assessing a person's competence, the Board can accept assessments conducted by third parties – for example assessments conducted in other states or conducted by approved assessors.

Job functions that require a particular health and safety competence are:

- Functions of a manager of mining engineering at an open cut mine.
- Functions of a manager of mining engineering at an underground mine.
- Functions of a manager of electrical engineering at an underground mine.
- Functions of a manager of mechanical engineering at an underground mine.
- Functions of a mining supervisor
- Functions of a qualified electrical engineer.

- Functions of a qualified mechanical engineer.
- Functions of a qualified electrical tradesperson.
- Functions of a qualified mechanical tradesperson.
- A person who supervises the loading and detonation of explosives underground.
- A person who supervises the loading and detonation of explosives on the surface part of a coal operation.
- A qualified ventilation engineer at a coal operation that has underground parts.
- A qualified ventilation officer at a coal operation that has underground parts.

The Minister can issue certificates of competence to help in the administration of these requirements.

The Coal Competence Board will conduct examinations for the issue of Certificates of Competence with respect to the functions of manager of mining engineering at an open cut mine, manager of mining engineering at an underground mine, manager of electrical engineering at an underground mine, manager of mechanical engineering at an underground mine and mining supervisor as a means of assessing competencies.

The Regulation specifies evidence of competence required for other job functions listed above.

Disclaimer

This overview of the *CMHS Act* and *CMHS Regulation* presents a brief summary of the key points in the new legislation. The summary does not provide a complete statement of a person's legal rights or duties.

The full text of legislation summarised in this publication is available from NSW Government Information Bookshop or online at www.legislation.nsw.gov.au

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It may also be appropriate for a person to obtain advice from a legal practitioner with relevant qualifications and experience.

The NSW Department of Primary Industries is not responsible for the results of any actions taken on the basis of information in this publication, nor for any error or omission in this publication.

Further information

NSW DPI has prepared a series of Guidance Notes and guidelines that will assist industry in understanding and fulfilling their obligations under the new coal mine safety legislation.

Supporting material and documents can be downloaded at:

www.dpi.nsw.gov.au/minerals/safety/legislation

Related legislation

Occupational Health and Safety Act 2000
Occupational Health and Safety Regulation 2001
Coal Mine Health and Safety Act 2002
Coal Mine Health and Safety Regulation 2006

Explosives Act 2003
Explosives Regulation 2005

Legislation can be viewed online at www.legislation.nsw.gov.au

A summary of the *Occupational Health and Safety Act 2000* is available for download from:
www.workcover.nsw.gov.au/Publications/LawAndPolicy/Acts/ohsact2000.htm

A summary of the *Occupational Health and Safety Regulation 2001* is available for download from:
www.workcover.nsw.gov.au/Publications/LawAndPolicy/Regulations/summaryohsreg2001.htm

Discussion Paper on extension of OHS Regulation 2001

The NSW Government is finalising legislative amendments to extend the application of the *OHS Regulation* to the mining industry. A Discussion Paper detailing the issues for the mining industry arising from this extension is available for public comment during the first quarter of 2007 and available for download at:

www.dpi.nsw.gov.au/minerals/safety/legislation