



**Guidance Note
GNC-012**

**NSW DPI Guidance Note
Contractors (Coal Operations)**

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

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NSW DPI Guidance Note GNC-012: Contractors

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PURPOSE

The purpose of this guidance note is to provide guidance on the implementation of the *Coal Mine Health and Safety Act 2002* and the *Coal Mine Health and Safety Regulation 2006* as they relate to the duties of:

- Operators with respect to contractors working at their coal operations; and
- Contractors and subcontractors working at coal operations.

SCOPE

This guidance note applies to coal operations in NSW under the *Coal Mine Health and Safety Act 2002*.

The *Coal Mine Health and Safety Act 2002* is an act to secure the health, safety and welfare of persons in connection with coal operations including underground coal mines, open cut coal mines and coal preparation plants. The Act also deals with coal exploration sites.

This guidance note outlines the duties of contractors working at coal operations, and of operators with respect to those contractors in relation to maintaining health, safety and welfare and coordinating efforts to prevent injury to workers.

When reading this guidance note the reader should consider the following legislation:

- *Coal Mine Health and Safety Act 2002 (CMHSA)*
- *Coal Mine Health and Safety Regulation 2006 (CMHSR)*
- *Occupational Health and Safety Act 2000 (OHSA)*
- *Occupational Health and Safety Regulation 2001 (OHSR)*

Relevant extracts from the *Coal Mine Health and Safety Act 2002*, *Coal Mine Health and Safety Regulation 2006* and the *Occupational Health and Safety Act 2000* are provided.

DEFINITIONS

Contractor, in relation to a coal operation, means a person who is not an employee employed to work at a coal operation, who undertakes work at the coal operation, but does not include the operator of the coal operation. It should be noted that the term “contractor” in this document is referring to the legal entity (commonly a corporation) which has entered into a contract to provide services to the coal operation. It is not referring to the individual employees of the contractor who will be carrying out the services. This differs from the common industry usage of the term “contractor” which may be referring to the contracting company/employer &/or the individual employee(s) of a contracting company.

Contractor management plan refers to a plan required by the CMHSA to be prepared by the operator of a coal operation at which contractors are proposed to be used which states how the risks arising from the use of contractors at the coal operation will be managed.

Employee means an individual who works under a contract of employment or apprenticeship.

Employer means a person who employs persons under contracts of employment or apprenticeship.

Health and safety management system for a coal operation means a health and safety management system prepared by the operator of a coal operation stating how



the health and safety of the people who work at the operation, or who are directly affected by the coal operation will be protected.

Operator means the person (either natural or corporation) who is the employer with the day-to-day control of the coal operation.

OHS is a common acronym for occupational health and safety.

Safe work method statement (SWMS) is a written document prepared by a contractor that:

- (a) describes how work is to be carried out,
- (b) identifies the work activities assessed as having safety and health risks,
- (c) identifies the safety and health risks,
- (d) describes the control measures that will be applied to the work activities,
- (e) makes provision for the matters required by the regulations.

Site-specific occupational health and safety management plan means a plan required to be developed by contractors or subcontractors who are carrying out high-risk activities (as defined in clause 49 of the CMHSR) at a coal operation or blasting at an open cut coal operation.

Subcontractor means a contractor who has been contracted by a person other than the coal operator.



WHAT IS A CONTRACTOR?

The term contractor is defined under legislation. Generally speaking a contractor is a legal entity which undertakes work at a coal operation using employees that are not employed directly by the operator of the coal operation. Common legal entities which may operate as a “contractor” include corporations, partnerships and individuals.

The terms employee and employer are also defined under legislation but simple ways of determining who a person’s employer is include:

- Who pays the employee e.g. which name appears on their pay docket or group certificate?
- Who is responsible for providing the employee with tools, equipment, PPE, etc?
- Who determines which employees attend an operation to conduct the work?
- Who determines the hours of work for the employee?
- Who is responsible for providing workers compensation insurance and leave etc, for the employee?

There are occasions where companies closely related to the operator also directly employ persons at the coal operation. For example, ABC Mining Pty Ltd may be the nominated operator and employ the management for the operation. ABC Mining Company Pty Ltd, a wholly owned subsidiary, may employ the mineworkers working at the operation. In this type of situation the employees of the subsidiary or wholly related company would, for the purposes of this guidance note, be considered to be employees of the operator.

GENERAL CLASSIFICATIONS OF CONTRACTORS

Contractors who work at coal operations can be divided into three general sub-classifications based on the nature of the work they perform. These sub-classifications include:

1. **Non-mining or non-construction contractors.** This class of contractor provides ancillary services (i.e. not connected with mining or construction) to the operation and are not subject to specific duties created under the CMHSA or CMHSR. These types of contractors are described in detail in clause 41 of the CMHSR and include:
 - Delivery contractors
 - Office equipment service contractors
 - Office cleaning contractors
 - Catering contractors
 - Other contractors who are not engaged in mining work, construction work or work in connection with mining work or construction work.



2. **Specialised services contractors.** This class of contractor provide services to the operation that would not normally, at that particular operation, be performed by the employees of the operator. Examples of this type of contractor include contractors who:
 - Carry out major rebuilds of large equipment e.g. draglines,
 - Construct or demolish buildings, coal preparation plants etc.
 - Carry out specialised electrical or mechanical maintenance
 - Inject polymeric chemicals into underground strata
 - Provide expert advice and service in technical areas e.g. geotechnical matters, subsidence, engineering design, etc.

3. **Labour hire contractors.** This class of contractor provides supplementary labour to the operator. Labour hire contractors perform the type of work that would normally, at that particular operation, be performed by the employees of the operator. For example labour hire contractors may be hired to cover short-term absences in the normal workforce due to leave or recruitment difficulties. If, for example, an operator normally has 10 haul truck drivers on a shift and two are absent due to leave he may choose to use labour hire contractors to operate the spare haul trucks and supplement the shift's workforce.

It should be noted that the types of work performed by contractors may vary from operation to operation. Whether a contractor is a labour hire or specialised services class of contractor will depend on the normal practices in place at that operation. The examples provided, in this guidance note, for these types of contractors may not be applicable for every operation. For example:

- Some open cut coal mines use contractors to carry out all electrical maintenance work whilst others directly employ their own electricians
- Some underground coal mines use contractors to move or relocate their longwall equipment while others use their own directly employed mineworkers to carry out the task.

Individual operations should make their own assessment as to which contractors are providing labour hire or specialised services at their operation.

GENERAL DUTIES OF OPERATORS IN RELATION TO CONTRACTORS

Sections 39 to 43 (inclusive) of the CMHSA and clause 40 of the CMHSR set out the operator's specific duties regarding contractors. These can be summarised as:

- The operator must prepare a contractor management plan stating how the risks arising from the use of contractors at the coal operation will be managed

- The contractor management plan must make provision for:
 - Pre-assessment of contractor health and safety arrangements including safety management, competence and fitness for purpose of plant.
 - Site induction of contractors and subcontractors and their employees working on site.
 - Monitoring of contractor compliance with health and safety requirements and OHS legislation.



- The operator must consult with contractors, prior to them beginning work, to ensure that:
 - The contractor is familiar with the relevant parts of the health and safety and contractor management plans for the operation.
 - The contractor's arrangements for health and safety are consistent with the operation's health and safety management system.
- The operator must provide the contractor, prior to commencing work, with a copy of the parts of the operator's health and safety management system for the place of work that are relevant to the contractor.
- The operator must ensure that each contractor, prior to commencing work, provides the operator or their designate with a written safe work method statement (SWMS).
- The operator must ensure that the contractor is directed to comply with the relevant SWMS and OHS legislation.
- The operator must monitor the contractor's compliance and in the event of any non compliance, direct them to immediately comply.
- In the event that a non compliance results in a risk to health and safety the operator must direct the contractor to immediately cease the work giving rise to the risk until the non compliance is rectified. In the event that an immediate cessation of work may increase the risk to health and safety the operator must direct the contractor to stop work as soon as it is safe to do so.
- It should be noted that compliance with a SWMS does not override an employer's obligations to comply with relevant OHS legislation. An inadequate SWMS may not necessarily address all the matters required by OHS legislation. Where a SWMS is found to inadequately address the risks to health and safety or matters required by OHS legislation it should be corrected.

GENERAL DUTIES OF CONTRACTORS AT COAL OPERATIONS

Sections 72 to 77 (inclusive) of the CMHSA and clause 43 of the CMHSR set out the duties of contractors working at coal operations. These can be summarised as:

- Contractors must comply with the operator's health and safety management system
- Prior to commencing work at a coal operation a contractor must:
 - Assess the risks of the work to be carried out
 - Prepare a written SWMS that includes a copy of the assessment of the risks
 - Provide a copy of the SWMS to a person designated by the operator.
- Contractors must ensure that work carried out by them or their employees is carried out in compliance with the SWMS. In the event of a non compliance causing a risk to health and safety they must, as soon as it is safe to do so, cease work and rectify the non compliance



- If any change is made to a SWMS during the course of work, the contractor must provide a copy of the relevant changes to the operator and any affected subcontractor or employee of the contractor as soon as practicable
- Where there is a conflict between the operator's health and safety management system and the contractor's SWMS the operator's health and safety management system prevails.
- Contractors using subcontractors at a coal operation must ensure that:
 - The subcontractor provides the operator or their designate with a SWMS for the work the subcontractor is to carry out and a site-specific OHS management plan where required by the legislation – see below.
 - The subcontractor complies with the operator's OHS management system.

Site specific occupational health and safety management plans

The following types of contractors are required by section 75 of the CMHSA and clauses 43 and 49 of the CMHSR to have site-specific occupational health and safety management plans i.e. an OHS management plan specifically prepared for the coal operation at which they will be carrying out the work:

- Contractors (or subcontractors where applicable) carrying out high-risk activities as prescribed by clause 49 of the CMHSR. Examples of high-risk activities include the injection or application of polymeric chemicals and highwall mining. Contractors and operators should examine clause 49 to determine their specific requirements.
- Blast contractors at an open cut coal operation.

A site-specific occupational health and safety management plan must include:

- A statement of responsibilities listing the names, positions and responsibilities of persons who will be responsible for OHS at the operation.
 - Details for managing OHS incidents including reporting their occurrence to the operator in a timely fashion.
 - Any work-specific safety rules and the means for ensuring the relevant persons are informed of the rules.
 - SWMS for all work activities assessed as having safety or health risks.
- A contractor must, prior to commencing work, provide a copy of the site-specific OHS management plan to the operator.
 - A contractor must provide any relevant parts of the site-specific OHS management plan to their employees or subcontractors prior to them commencing work and advise them as soon as practicable if any changes are made to the relevant parts of the plan.
 - A contractor must, upon request, provide a copy of the site-specific OHS management plan to a government official or check inspector.
 - A contractor must ensure a copy of the site-specific OHS management plan is available for inspection by any person working or commencing work at the operation, representative of the operator, government official or check inspector.



- A contractor must ensure work is carried out in compliance with the site-specific OHS management plan.
- Where a conflict arises between the operator's OHS management system and a contractor's OHS plan, the operator's system shall prevail.

MANAGING NON-MINING OR NON-CONSTRUCTION CONTRACTORS

As already described the CMHSA and CMHSR do not create any specific duties relating to the management of non-mining or non-construction contractors. This means, for example, that the operator is not compelled under the coal legislation to ensure that these types of contractors are inducted and have a SWMS.

However, operators need to be aware that they still have OHS obligations towards this type of contractor arising out of section 8 (2) of the OHSA which states, "An employer must ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work".

The effect of the legislation is that the operator should manage this class of contractor to whatever degree is necessary to ensure compliance with section 8 (2) of the OHSA. The degree of management necessary should be commensurate with the types of hazards and the level of risk that the particular contractor is likely to be exposed to while working at the coal operation.

Low-risk types of contractors such as a catering contractor who delivers platters of sandwiches to the operation should be managed differently to a more-high risk type of contractor such as a delivery contractor using a vehicle-mounted crane to off load heavy equipment.

The operator may, for example, require that all contractors delivering heavy equipment to site have appropriate procedures, training and personal protective equipment in place whilst at the same time not requiring the catering contractor to have any specific safety measures.

Operators should assess the risks to non-mining or non-construction types of contractor and take whatever measures are necessary to minimise the risks to the lowest level reasonably practicable as per clause 5 of the OHSR.

MANAGING SPECIALISED SERVICES CONTRACTORS

Specialised services contractors should be managed in accordance with the requirements of Sections 39 to 43 (inclusive) and 75 of the CMHSA and clauses 40 and 43 of the CMHSR.

These requirements have been already summarised in General Duties of Operators in Relation to Contractors and General Duties of Contractors at Coal Operations and include pre-assessments, inductions, and safe work method statements, etc.



MANAGING LABOUR HIRE CONTRACTORS

Labour hire contractors should also be managed in accordance with the requirements of Sections 39 to 43 (inclusive) and 75 of the CMHSA and clauses 40 & 43 of the CMHSR as summarised.

It should be noted that the legislative requirement for SWMS also applies to labour hire contractors.

Practically speaking this may result in difficulties as it is common for operators who use labour hire contractors to supplement their workforce, to require the contractors to operate under the operator's existing safe work procedures, etc.

It is recommended that, where an operator is utilising labour hire contractors to supplement their workforce and require the contractors and their employees to work under the operator's safe work procedures etc, the following should occur.

The operator should:

- In consultation with the labour hire contractor/employer, determine and document the scope of work to be carried out by the contractor's employees whilst they are working at the coal operation.
- Provide copies of all relevant risk assessments and procedures in place at the operation relating to the tasks contained within the agreed scope of work to the labour hire contractor/employer.

Upon receipt of these documents the labour hire contractor/employer should:

- Formally review the relevant risk assessments and procedures for adequacy in ensuring the health, safety and welfare of their employees whilst working at the coal operation. This review should be conducted in consultation with the employees of the contractor and be documented
- In the event that the operator's risk assessments and/or procedures are determined to be adequate, formally adopt the procedures as their own SWMS's while the contractor's employees are working at the coal operation or
- In the event that the operator's risk assessments and/or procedures are determined to be inadequate, advise the operator of the inadequacies and request a joint review of the areas of concern.

Note: Any adoption or request for a review of the operator's risk assessments or procedures should be done in writing and should record the fact that the employees of the contractor have been consulted during the process.

The operator and contractor should ensure that copies of the agreed scope of works and relevant risk assessments and procedures are made available to the employees of the contractor being required to carry out the work. They should also be readily available for inspection by a government official or check inspector.

Note: Clause 44 of the CMHSR requires a mining supervisor to be an employee of the operator. A mining supervisor is defined as a person identified in the management



structure for the coal operation as a deputy, open cut examiner, under manager and manager. Where an operator wishes to use contract/labour hire mining supervisors they should first seek and obtain an exemption from the requirements of clause 44. This requirement does not apply to other (non-mining) supervisors.

SAFE WORK METHOD STATEMENTS

The minimum requirements for a safe work method statement, as prescribed by Section 42 of the CMHSA, are:

- (a) Describe how work is to be carried out
- (b) Identify the work activities assessed as having safety and health risks, and
- (c) Identify the health and safety risks
- (d) Describe the control measures that will be applied to the work activities, and
- (e) Make provision for the matters required by the regulations.

It is recommended that, in addition to any matters required to specifically address the identified risks or comply with legislation, operators and contractors ensure that the generic OHS matters required by section 8 of the OHS Act are adequately addressed in their SWMS's. These include:

- Safe premises
- Safe means of access to or exit from the premises
- Safe plant and substance
- Safe systems of work
- Safe working environment
- Provision of necessary information, instruction, training and supervision
- Adequate welfare facilities.

It should also be noted that clause 224 of the OHSR requires safe work method statements for construction work to also include:

- A description of the equipment used in the work
- The standards or codes to be complied with
- The qualifications of the personnel doing the work and
- The training required to do the work.

Further guidance for preparing safe work method statements can be found at:

- http://www.workcover.nsw.gov.au/Publications/OHS/SafetyGuides/Pages/guidelines_writing_work_method_statements.aspx
- http://www.workcover.nsw.gov.au/Documents/Publications/AlertsGuidesHazards/General/writing_work_method_statement_plain_english_guidelines_0231.pdf



ADDITIONAL INFORMATION

Suggested publications for additional information and guidance:

- (1) NSW Minerals Council Ltd – *Information for Principals and Contractors in the Mining Industry – Establishing and Maintaining Effective Contractors OHS.*

<http://www.nswmin.com.au/>

- (2) WorkCover NSW – *Subby Pack – OHS Contractor Management Tool*

<http://www.workcover.nsw.gov.au>



EXTRACTS OF RELEVANT LEGISLATION

Coal Mine Health and Safety Act 2002 No 129

Subdivision 4 Duties regarding contractors

39 Operator to prepare contractor management plan

As part of the health and safety management system for a coal operation, the operator of a coal operation at which contractors are proposed to be used must prepare a contractor management plan, stating how the risks arising from the use of contractors at the coal operation will be managed.

40 Content of contractor management plan

A contractor management plan for a coal operation must make provision for the matters prescribed by the regulations.

41 Operator to ensure contractor's familiarity with systems

The operator of a coal operation at which any contractor proposes to work must ensure, before that work commences, that consultation occurs with the contractor so that:

- a) The contractor is familiar with the relevant parts of the health and safety management system and the contractor management plan for the coal operation, and
- b) The contractor's arrangements for health and safety management are consistent with the health and safety management system for the coal operation.

42 Duties of operator regarding contractors

- 1) The operator of a coal operation must ensure that each contractor who proposes to work at the coal operation provides the operator, or a person designated by the operator, with:
 - a) a written safe work method statement for the work to be carried out by the contractor, and
 - b) if section 75 applies to the contractor, a site specific occupational health and safety management plan.

These must be provided before the contractor commences work at the coal operation.

- 2) A safe work method statement must:
 - a) describe how work is to be carried out, and
 - b) identify the safety and health risks and
 - c) describe the control measures that will be applied to the work activities and
 - d) make provision for the matters required by the regulations.
- 3) An operator must ensure;
 - a) that a contractor is directed to comply with
 - i. the safe work method statement that the contractor has provided, and



- ii. the requirements of this Act and the regulations, of the *Occupational Health and Safety Act 2000* and of the regulations made under that Act, and
 - b) the activities of a contractor are monitored to the extent necessary to determine whether or not the contractor is complying with:
 - i. the safe work method statement that the contractor has provided, and
 - ii. the requirements of the Act and the regulations of the *Occupational Health and Safety Act 2000* and of the regulations made under the Act, and
 - c) if the contractor is not so complying, that the contractor is directed to take action immediately to comply with the safe work method statement or the requirements of this Act and the regulations, of the *Occupational Health and Safety Act 2000* and of the regulations made under that Act, and
 - d) that if a risk to the health or safety of a person arises because of the non-compliance, the contractor is directed to stop work immediately and not to resume work until the safe work method statement or those requirements, or both, are complied with, unless an immediate cessation of work is likely to increase the risk to health or safety, in which event the contractor must be directed to stop work as soon as it is safe to do so.
- 4) A failure by an operator to give a direction, or to ensure that a direction is given, under this section does not affect any liability of the contractor under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations made under that Act.

43 Contractors must be given copy of health and safety management system

The operator of a coal operation must ensure that a contractor does not commence work at the coal operation unless the contractor has been provided with a copy of the parts of the operator's health and safety management system for the place of work that are relevant to the contractor.

Division 6 Duties of contractors

Note: A contractor who works at a coal operation will have obligations as an employer under section 8 of the *Occupational Health and Safety Act 2000* or as a self-employed person under section 9 of that Act. This Division imposes extra duties on contractors in relation to coal operations.

72 Contractor must comply with operator's health and safety management system

A contractor who works at a coal operation must comply with the health and safety management system of the operator for the coal operation to the extent that it applies to work done by the contractor.

73 Duties of contractors regarding safe work method statement

- 1) A contractor must not commence work at a coal operation unless the contractor:
 - a. has undertaken an assessment of the risks associated with the work to be carried out by the contractor, and
 - b. has prepared a written safe work method statement that includes a copy of the assessment of risks, and



- c. has provided a copy of that statement to a person designated by the operator of the coal operation.
- 2) A contractor
 - a. must maintain and keep up-to-date the contractor's safe work method statement for a place of work, and
 - b. must provide a person designated by the operator with any changes made to the safe work method statement.

Note: The requirements for a safe work method statement are set out in section 42.

74 Contractor to ensure work carried out in accordance with safe work method statement

- 1) A contractor must ensure that all work carried out by the contractor, or by an employee of the contractor, at a coal operation is carried out in accordance with the safe work method statement prepared by the contractor in relation to that coal operation.
- 2) If a risk to the health or safety of a person arises because of non-compliance with the statement, a contractor must ensure that work is stopped immediately and does not resume until the statement is complied with.
- 3) However, if the immediate cessation of work is likely to increase the risk to health or safety, the contractor is not required to stop the work immediately but must stop the work as soon as it is safe to do so.
- 4) There is a conflict between the health and safety management system for a coal operation and the safe work method statement of a contractor, the health and safety management system prevails.

75 Contractor must prepare and implement OHS management plan

- 1) This section applies to contractors of a class prescribed by the regulations.
- 2) A contractor must ensure that, before commencing work at a coal operation, a site-specific occupational health and safety management plan is prepared for that coal operation.
- 3) A contractor must ensure that the occupational health and safety management plan includes:
 - a. a statement of responsibilities, listing the names, positions and responsibilities of all people who will have specified responsibilities at the coal operation for occupational health and safety in relation to the contractor's work, and
 - b. details of the arrangements for managing occupational health and safety incidents, including the means of informing the coal operator in a timely fashion, and
 - c. any work specific safety rules and details of the arrangements for ensuring that all persons involved in the work are informed of the rules, and
 - d. safe work method statements for all work activities assessed as having safety or health risks, and
 - e. any other matters required by the regulations.
- 4) A contractor must supply a copy of the occupational health and safety management plan to the operator of the coal operation prior to work commencing at the coal operation.



- 5) If requested, a contractor must supply a copy of the occupational health and safety management plan to a government official or a check inspector as soon as practicable after the request. Such a request may be made before or after work commences.
- 6) A contractor must ensure that a copy of the occupational health and safety management plan is available for inspection during the course of work:
 - a. by any person working at the place of work concerned and by any person about to commence work at that place, and
 - b. by a representative of the coal operator, a government official or a check inspector.
- 7) A contractor must ensure that work carried out by the contractor at the coal operation is carried out in compliance with the occupational health and safety management plan for the coal operation.
- 8) If there conflict between the health and safety management system for a coal operation and the occupational health and safety management plan of a contractor, the health and safety management system prevails.

76 Contractor's duties regarding subcontractors

- 1) A contractor who works at a coal operation must ensure that any subcontractor of the contractor provides the operator of the coal operation, or a person nominated by the operator, with:
 - a. a written safe work method statement for the work to be carried out by the subcontractor, and
 - b. if section 75 applies to the subcontractor, a site-specific occupational health and safety management plan.

These must be provided before the subcontractor commences work at the coal operation.

- 2) A contractor who works at a coal operation must ensure that any subcontractor of the contractor complies with the health and safety management system of the operator of the coal operation.
- 3) A contractor to whom section 75 applies must ensure that a copy of any parts of the contractor's occupational health and safety management plan that are relevant to a subcontractor contracted by the contractor or employee employed by the contractor are provided to the subcontractor or employee before the subcontractor or employee commences work at the place of work concerned.
- 4) A contractor to whom section 75 applies must ensure that, if any change is made to the occupational health and safety management plan during the course of work, a copy of any part of the plan that has been changed and that is relevant to a subcontractor or employee of the contractor is provided to the subcontractor or employee as soon as practicable after the change is made.
- 5) A contractor must ensure that, if any change is made to the safe work method statement during the course of work, a copy of any part of the statement that has been changed and that is relevant to a subcontractor or employee of the contractor is provided to the subcontractor or employee as soon as practicable after the change is made.



77 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- d) in the case of an individual (not being a previous offender)—500 penalty units.

Coal Mine Health and Safety Regulation 2006

Division 4 Duties relating to contractors

40 Content of contractor management plan

The following are prescribed as matters for which a contractor management plan for a coal operation must make provision under section 40 of the Act:

- a) pre-assessment of contractor health and safety arrangements (including safety management, competence of people and fitness for purpose of plant) prior to engagement,
- b) site induction of contractors, sub-contractors and their employees,
- c) monitoring of contractor compliance with site health and safety requirements, including compliance with the Act and this Regulation.

41 Application of Part 5 of the Act to contractors

For the purposes of section 198 (1) (a) of the Act, the following classes of contractors are specified as contractors in relation to whom Subdivision 4 of Division 2 of Part 5 of the Act does not create any duties:

- a) delivery contractors,
- b) office equipment service contractors,
- c) office cleaning contractors,
- d) catering contractors,
- e) other contractors who are not engaged in mining work, construction work or work in connection with mining work or construction work.

Note: The result of this specification is that no duties binding on an operator with respect to the specified contractors are created by Subdivision 4 of Division 2 of Part 5 of the Act. An operator may still have duties to these classes of contractors by virtue of their being non-employees at the operator's place of work under section 8 (2) of the *Occupational Health and Safety Act 2000*.



42 Application of Division 6 of Part 5 of the Act to contractors

For the purposes of section 198 (1) (b) of the Act, all contractors who are referred to in clause 41 are specified as contractors in relation to whom Division 6 of Part 5 of the Act does not apply.

Note; The result of this specification is that Division 6 (Duties of contractors) of Part 5 of the Act does not apply to the relevant class of contractors: see section 198 (1) (b) of the Act.

43 Contractor must prepare and implement OHS management plan

For the purposes of section 75 (1) of the Act, the following classes of contractors are prescribed as contractors to whom section 75 of the Act applies:

- a) contractors undertaking activities prescribed by clause 49 as high risk activities to which Subdivision 6 of Division 2 of Part 5 of the Act applies,
- b) blast contractors at an open cut coal operation.

Note: Section 75 of the Act requires a contractor to whom the section applies to ensure that a site-specific occupational health and safety management plan is prepared for a coal operation before commencing work at the coal operation

40 High risk activities, waiting periods and information required

- 1) For the purposes of section 53 of the Act, each activity specified in the Table to this clause is prescribed as a high risk activity to which Subdivision 6 of Division 2 of Part 5 of the Act applies.
- 2) For the purposes of section 54 (1) (b) of the Act, the waiting period specified for each activity specified in the Table to this clause is prescribed as the waiting period that must elapse before that activity can commence.

Note: Section 54 (1A) of the Act provides for the Chief Inspector to vary the waiting period in relation to a particular high risk activity after consultation with the industry check inspector who has been notified of the activity.

- 3) For the purposes of section 54 (2) of the Act, a notice must be in a form that contains at least the following:
 - a) the nature of the high risk activity (as described in the Table to this clause),
 - b) the intended commencement date for the high risk activity,
 - c) the information required by subclause (4).
- 4) For the purposes of section 54 (2) of the Act, the information required to accompany any notice under section 54 of the Act in relation to each activity specified in the Table to this clause is the information set out in that Table in relation to that activity.
- 5) That information may be provided:
 - a) in paper form (in which case it must bear the signature of the operator or a person authorised by the operator), or
 - b) in electronic form (in which case the signed original must be retained at the coal operation for a period of at least 5 years after the completion of the high risk activity).



Table

High risk activity	Waiting period	Information
Single entry development, (being development of a roadway or a drift for more than 200 metres without the formation of an intersection)	1 month	<ol style="list-style-type: none"> 1) Identification of relevant major hazard management plans 2) A summary of risks identified and controls to be put in place 3) An engineering drawing, endorsed by the manager of mining engineering, of the work covered by the notice
Sealing, otherwise than in an emergency, when an explosive atmosphere may result	1 month unless notice has been given as part of a notice for secondary extraction	<ol style="list-style-type: none"> 1) Location and purpose of seals 2) Type of seals 3) Method and sequence of sealing 4) Expected time and duration for the presence of an explosive atmosphere 5) Monitoring arrangements, triggers and resultant actions
Working within an inrush control zone	1 month where the potential source of inrush cannot be inspected, otherwise 1 week	<ol style="list-style-type: none"> 1) Identification of relevant major hazard management plans 2) A summary of risks identified and controls to be put in place 3) An engineering drawing, endorsed by the manager of mining engineering, of the work covered by the notice
Injection or application of polymeric material for ventilation or strata	24 hours	Nature of material and purpose for injection or application
Cutting or welding in a hazardous zone underground	First occasion, 1 month Each subsequent occasion, 7 days	<ol style="list-style-type: none"> 1) Purpose of cutting or welding 2) Summary of cutting and welding management plan (that is, of safe work procedures to be used in cutting or welding)
High wall mining (mining by entry into a previously formed high wall and during which no people are underground)	1 month	<ol style="list-style-type: none"> 1) Identification of relevant major hazard management plans 2) A summary of risks identified and controls to be put in place 3) An engineering drawing, endorsed by the manager of mining engineering, of the work covered by the notice 4) Evidence of consultation with the workforce
Shotfiring underground, where shotfiring has not been undertaken within a year prior to the intended time of shotfiring	1 day	Location of shotfiring



Driving an underground roadway with a width greater than 55 metres	7 days	Information as to how dealt with under the strata failure management plan
Widening an existing underground roadway	7 days	Information as to how dealt with under the strata failure management plan
Shaft or drift sinking, raise boring or development of a new underground mine entry	3 months	Method and plant to be used A summary of risks identified and controls to be put in place
Installation of a booster fan underground	3 months	1) Plant location 2) Ventilation plan, a summary of risks identified and controls to be put in place
The introduction for the first time of a vehicle with a non-flameproof (fire protected) diesel engine to an underground part of a coal operation that is not a hazardous zone	3 months	How the risk of introduction has been assessed and the resulting controls put in place, together with procedures to be followed in the case of failure of a control

50 Information concerning high risk activities

The Chief Inspector may request a person who has given notice of a high risk activity under section 54 of the Act to provide to the Chief Inspector, before the end of the waiting period for that activity, such information as is specified in the request.

Occupational Health and Safety Act 2000 No 40

Part 2 Duties relating to health, safety and welfare at work

Division 1 General duties

8 Duties of employers

1) Employees

An employer must ensure the health, safety and welfare at work of all the employees of the employer.

That duty extends (without limitation) to the following:

- a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health,
- b) ensuring that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used,
- c) ensuring that systems of work and the working environment of the employees are safe and without risks to health,
- d) providing such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work,
- e) providing adequate facilities for the welfare of the employees at work.



2) **Others at workplace**

An employer must ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work.

Note: See section 12 for the penalty for an offence against this section and other provisions of this Division. Division 4 makes ancillary provision with respect to those offences, including:

- a) section 26—liability of directors and managers of corporations,
 - b) section 28—defence that compliance not reasonably practicable etc.
- See also Division 2 for duty of employer to consult employees.



FEEDBACK SHEET

Your comments will be very helpful in reviewing and improving this Guidance Note. Please copy and complete the Feedback Sheet and return it to:

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NSW Department of Primary Industries
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Hunter Region Mail Centre NSW 2310*

*Fax: (02) 4931 6790
Phone: (02) 4931 6666*

What do you find most useful about this guidance note?

What do you find least useful?

Do you have any suggested changes to the guidance note (and/or nomination form)?

(Optional) Name: _____ **Phone:** _____

Thank you for completing and returning this feedback sheet

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