



NSW DEPARTMENT OF
PRIMARY INDUSTRIES



Guidance Note
GNC-001

NSW DPI Guidance Note
Nomination of the operator
and other duties of the colliery holder

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

February 2007 (version 2)



Guidance Note GNC-001

NSW DPI Guidance Note: Nomination of the operator

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PURPOSE

The purpose of this guidance note is to provide practical guidance on the duties of colliery holders to:

- nominate the operator of the coal operation; and
- give the operator health and safety information.

SCOPE

This guidance note applies to all places of work in New South Wales that are within a colliery holding which are governed by the *Coal Mine Health and Safety Act 2002*. This guidance note relates directly to the duty of a colliery holder to nominate the operator of the coal operation under Part 5, Division 1 of the *Coal Mine Health and Safety Act 2002*.

In reading this guidance note the following legislation should be considered:

- *Coal Mine Health and Safety Act 2002* (the Act)
- *Coal Mine Health and Safety Regulation 2006* (the Regulation).

The *Occupational Health and Safety Act 2000* deals broadly with the health, safety and welfare of people at work at the coal operation. The *Coal Mine Health and Safety Act 2002* is to be read in conjunction with the *Occupational Health and Safety Act 2000*.

DUTIES

The duty to nominate an operator is a new responsibility on the colliery holder commencing from the commencement of the Act with due consideration to savings and transitional arrangements outlined in the Regulation.

The *Coal Mine Health and Safety Act 2002* imposes certain obligations on the colliery holder. Key points include:

- A colliery holder must nominate the operator of a coal operation;
- A colliery holder must not undertake mining at an operation unless an operator has been nominated and not rejected;
- If there is more than one separate and distinct coal operation within a colliery holding, the colliery holder may nominate separate operators for each coal operation; and
- The Chief Inspector may reject a nomination within 28 days of receiving nomination. If rejected the nomination is considered not to have been made.

Note In the Act:
colliery holder means a person who has the right to mine for coal or to carry out coal mining purposes on any colliery holding.
colliery holding means a colliery holding registered in accordance with section 163 of the Mining Act 1992.

Duty to nominate the operator

The Act imposes duties on a colliery holder to nominate the operator of a coal operation as outlined in Part 5, Division 1 the Act as follows:

17 Duty to nominate the operator of a coal operation

- (1) *A colliery holder must not undertake any mining, or allow any other person to undertake any mining, at a coal operation within the colliery holding unless the colliery holder has nominated one person who is the employer with the day to day control of the coal operation as the operator of the coal operation.*
*Note. Because of the definition of **mine** (as a verb), this obligation applies to coal mines and preparation plants but not coal exploration sites.*
- (2) *A nomination must be made in writing to the Chief Inspector.*
- (3) *A colliery holder may nominate himself, herself or itself as the operator of a coal operation in the colliery holding.*
- (4) *If there is more than one separate and distinct coal operation within a colliery holding, the colliery holder may nominate the person who is the employer with the day to day control of each coal operation within the colliery holding.*
- (5) *A nomination under this section must be in the form prescribed by the regulations.*
- (5A) *The Chief Inspector may require a colliery holder to provide further information concerning a nomination.*
- (6) *The Chief Inspector must tell the colliery holder who made the nomination if the nomination has been rejected. This must be done within 28 days of receiving the nomination or within any further time specified by the Chief Inspector when the Chief Inspector requests further information under subsection (5A).*
- (7) *The Chief Inspector may reject a nomination under this section:*
 - (a) *if the Chief Inspector believes that the nominated operator is not the employer with the day to day control of the coal operation, or*
 - (b) *if more than one nominated operator is nominated and the Chief Inspector believes:*
 - (i) *that allowing the number of persons nominated to be operators would be detrimental to the safety of one or more coal operations, or*
 - (ii) *that the different parts of the colliery holding nominated under subsection (4) are not sufficiently distinct to warrant the appointment of separate operators, or*
 - (c) *in circumstances prescribed by the regulations.*
- (8) *If a nomination is rejected it is taken on and from the time the rejection is notified to the operator not to have been made.*
- (9) *If an operator whose nomination has not been rejected under this section ceases to be, the employer with the day to day control of the coal operation, the colliery holder must not undertake any mining, or allow any other person to undertake any mining, at the coal operation unless the colliery holder has nominated another operator of the coal operation. This section applies to a further nomination in the same way as it applies to an initial nomination.*
- (10) *This section does not require a colliery holder to nominate an operator if a previous colliery holder of the colliery holding nominated an operator other than himself, herself or itself and that nomination was accepted.*
- (11) *The regulations may provide for when a person is taken to cease to be the employer with the day to day control of a mine for the purposes of this section.*
- (12) *Subject to the regulations, the fact that an operator was not, when nominated as the operator under this section, the employer with the day to day control of the mine concerned does not affect the operator's obligations under this Act.*

- (13) *Subject to the regulations, the fact that an operator has ceased to be the employer with the day to day control of the mine does not affect the operator's obligations under this Act.*

Duty on the colliery holder to supply information

In addition, the colliery holder has a duty to give the operator sufficient information to develop and implement health and safety systems at the coal operation. Section 18 of the Act stipulates that:

18 Colliery holder must give operator health and safety information

- (1) *If a colliery holder nominates a person other than himself, herself or itself as the operator of a coal operation, the colliery holder must provide the person nominated with all information available to the colliery holder that may reasonably be relevant to the development and implementation of a health and safety management system for the coal operation (including any major hazard management plans that form part of that system).*
- (2) *The regulations may prescribe the information that must be provided under this section.*

METHOD

The nomination of the operator

The Regulation specifies how the nomination of the operator is to be made including form and content. NSW DPI has provided a 'form' to assist with the administrative process of nominating the operator.

When nominating the operator of a coal operation the colliery holder must provide sufficient information to NSW DPI to ensure an accurate determination can be made on the suitability of the nominee. If insufficient or inaccurate information is provided a nomination may be rejected.

Clause 7 of the Regulation prescribes the following:

(Extract of) 7 Nomination of operator by colliery holder

- (1) *For the purposes of section 17 (5) of the Act, if there is only one coal operation within a colliery holding, the nomination of the operator of a coal operation by the colliery holder must be in a form that contains at least the following information and signature:....*

A nomination form setting out what information is to be provided is contained in Attachment 2 of this guidance note. The reader may refer to the Regulation for further detail.

What if there is more than one colliery holder for the coal operation?

If there is more than one colliery holder for the coal operation, the nomination needs to be made by or for all of them. That is because, under section 17(1), a colliery holder must not either undertake or allow mining at the coal operation unless the colliery holder has nominated an operator. In situations where there is more than one colliery holder:

- the information completed in the nomination form and documents required to accompany it need to cover each colliery holder
- the form needs to be signed by each of them or by their authorised person. Alternatively, a colliery holder or its authorised person may sign on behalf of the other colliery holders if their written consent is provided with the form.

The keeping of records

Clause 9 of the Regulation requires a record of the operator be kept at the coal operation.

9 Keeping of record of operator

- (1) *A colliery holder must ensure that a record of the identity of the operator of each coal operation within the colliery holding is retained at the office of the coal operation.*
- (2) *That record must contain at least the following information:*
 - (a) *the name of the operator of the coal operation,*
 - (b) *the operator's Australian Business Number (ABN),*
 - (c) *the identity and contact details of the primary contact at the coal operation,*
 - (d) *the identity and contact details of an alternative contact at the coal operation.*

The provision and review of health and safety information

Section 18 of the Act states that the colliery holder must provide the nominated operator with information to assist in the development and implementation of a health and safety management system for the coal operation. Clause 11 of the Regulation prescribes that information.

11 Colliery holder must give operator health and safety information

The following health and safety information is prescribed as the information that, under section 18 of the Act, a colliery holder must give the operator of a coal operation within the colliery holding:

- any health and safety management system prepared for the coal operation, including any major hazard management plans required for the coal operation,*
- any relevant plans of the operation (including those required under section 47 (1) of the Act and any plans provided under clause 139),*
- any records relating to the coal operation required to be kept under the Act, or under the Coal Mines Regulation Act 1982 in the 5 years immediately before its repeal, being records that are no more than 5 years old,*
- geological and geotechnical information concerning the coal operation,*

- (e) *any engineering assessments concerning the coal operation,*
- (f) *all other information available to the colliery holder that may reasonably be relevant to the development and implementation of a health and safety management system for the coal operation.*

Where the colliery holder has provided health and safety information the nominated operator has a duty to review that information (clause 12 of the Regulation).

12 Duty of operator to review information

- (1) *The operator of a coal operation must, as soon as practicable after receiving information supplied by a colliery holder under section 18 of the Act, review that information.*
- (2) *The review is to involve:*
 - (a) *people with appropriate engineering expertise, and*
 - (b) *the manager of mining engineering for the coal operation, and*
 - (c) *in the case of an underground mine:*
 - (i) *the manager of electrical engineering for the coal operation, and*
 - (ii) *the manager of mechanical engineering for the coal operation.*

What if the nomination is rejected?

The Chief Inspector may reject a nomination under section 17(7) of the Act. If the nomination is rejected the nomination is taken not to have been made. The colliery holder must then nominate an operator who satisfies the prescribed guidelines taking into consideration the advice from NSW DPI on the reasons for rejection of the first or subsequent nomination.

What if there is more than one operation within a colliery holding?

Clause 7(2)(a) of the Regulation requires the submission of “*a detailed explanation of the basis on which each coal operation is considered a separate and distinct coal operation*”.

A nomination form (Attachment 2) has been provided outlining what information is required to satisfy the Chief Inspector (or delegated government official) that the coal operations are sufficiently distinct and warrant separate nominations. It includes a request for plans, statements and explanations to support the nominations.

Further information on this matter is found in the nomination of an operator form (Attachment 2).

REFERENCES

Coal Mine Health and Safety Act 2002

Coal Mine Health and Safety Regulation 2006

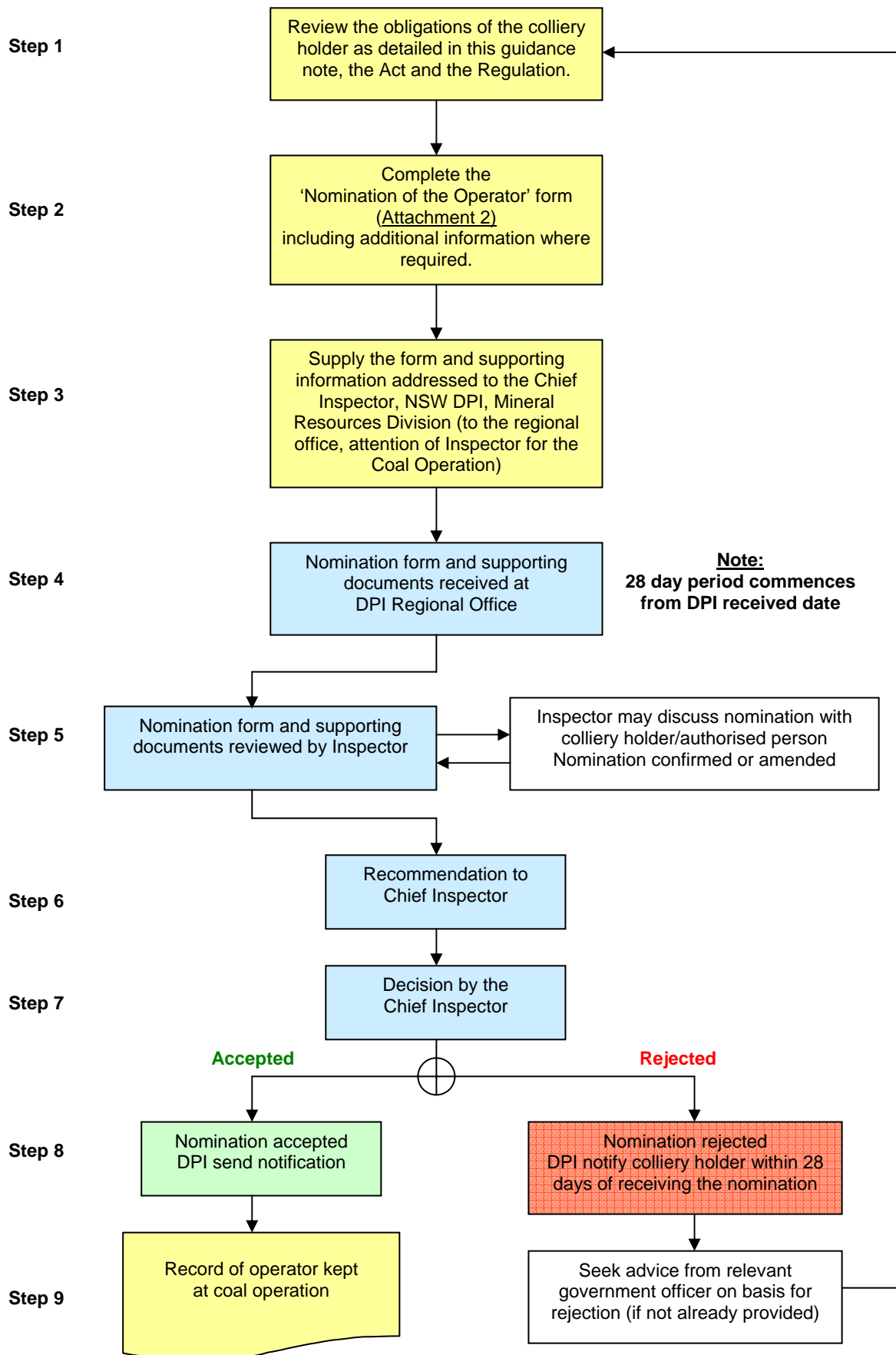


ATTACHMENTS

Guidance Note Coal – 001: Nomination of the Operator

GNC-001 Attachment 1	Workflow for nomination of the operator
GNC-001 Attachment 2	Form – Nomination of the operator

Attachment 1: Workflow for nomination of the operator



**Attachment 2: Form – nomination of the operator****NOMINATION OF THE OPERATOR**
Part 5, Division 1, Coal Mine Health And Safety Act 2002.**EXPLANATORY NOTES**

This nomination form is provided for colliery holders in NSW, governed by the *Coal Mine Health and Safety Act 2002*, who must nominate the operator of a coal operation. This form relates directly to colliery holders duties under Part 5, Division 1 of the *Coal Mine Health and Safety Act 2002*.

The colliery holder is required to complete the following form to a standard which satisfies the Chief Inspector. The nominator should consult Guidance Note GNC-001 issued by the NSW Department of Primary Industries. Copies of the Guidance Note are available from <http://www.dpi.nsw.gov.au/minerals/safety>.

Consideration should be given to the following matters when completing the nomination of an operator form:

- A colliery holder must not undertake mining at an operation unless an operator has been nominated and not rejected.
- The Chief Inspector may reject a nomination within 28 days of receiving the nomination. If the nomination is rejected the colliery holder must renominate an operator who satisfies the prescribed guidelines taking into consideration the advice from the Department on the reasons for rejection of the first or subsequent nomination.
- If there is more than one separate and distinct coal operation within a colliery holding the nomination of the operator of each coal operation by the colliery holder must include, as a minimum, a detailed explanation of the basis on which each coal operation is considered a separate and distinct coal operation, the information required by the regulation and relevant signatures.

LODGEMENT INSTRUCTION

1. Signed nomination form (**pages 8 to 12**) must be addressed to the Chief Inspector, marked for the attention of the Inspector for the coal operation, and submitted to the regional office of the NSW Department of Primary Industries, Mineral Resources Division (refer page 12 for office locations). Keep a copy for your records.
2. Information in support of the nomination is to be attached and forwarded with the original nomination form.

NOMINATION CHECKLIST

Please tick the appropriate box to ensure that your nomination is complete and secure prior to supply to the NSW DPI.

Tick (Applicant Use)

- Application form completed , signed and dated
- Organisation structure attached
- If there is more than one separate and distinct coal operation - additional information included
- Primary contact details
- Alternative contact details



**1. NOMINATION OF THE OPERATOR OF A COAL OPERATION MUST BE IN WRITING AND INCLUDE THE FOLLOWING INFORMATION FOR CONSIDERATION BY NSW DPI:
DETAILS OF COLLIERY HOLDER AND COAL OPERATION (USE CAPITAL LETTERS)**

(Please attach information separately where necessary)

(a) Name of the coal operation within a colliery holding:

(b) Description of area covered by the coal operation (plan may be included) _____

(c) Name of the colliery holder who has the right to mine (or carry out coal mining purposes on a colliery holding which is registered in accordance with Section 163 of the *Mining Act 1992*): _____

(d) Basis on which the colliery holder claims to be the colliery holder (include copies of any documents establishing colliery holder's right to mine for coal or carry out coal mining purposes) _____

(e) Whether there is, to the knowledge of the colliery holder, any other colliery holder for the coal operation, if so, the name and contact details of that colliery holder and the basis of the other colliery holder's right to mine for coal or to carry out coal mining purposes _____



DETAILS OF OPERATOR (USE CAPITAL LETTERS)

(f) Name of the operator (in most cases this will be a corporation who is the employer and has the day to day control of the coal operation, only rarely will it be a natural person who is the employer and has the day to day control of the coal operation):

(g) Operator’s Australian Business Number (ABN): _____

Operator's ACN (if a corporation): _____

(h) Details of the relationship between the nominated operator of the coal operation and the colliery holder. Where relevant the following information and documentation should be included. Show the relationship between the colliery holder and the following:

(i) Organisation structure showing the colliery holder and the operator(s) (attach): _____

(ii) Related joint venture companies (list): _____

(iii) Contractor operator(s) _____

(iv) Chairperson, directors and company secretaries (operator and colliery holder) _____

(v) Senior management (operator and colliery holder) _____

The key requirement is that the operator has the unquestioned authority to make decisions, allocate resources and expend funds in relation to the operators occupational health and safety duties, sufficient to ensure the health, safety and welfare of employees and other persons working or in attendance at the coal operation. Attach information separately if insufficient space.

(i) Identity and contact details of the primary contact (a natural person) at the coal operation. The minimum requirements are as follows:

Title/position at coal operation: _____

Family Name: _____ Given Name/s: _____

Operation Postal Address: _____

_____ State: _____ Postcode: _____

Operation Street Address: _____

_____ State: _____ Postcode: _____

Contact No (office): _____ Alternate No (mobile or personal): _____

Fax No: _____ E-mail: _____



(j) Identity and contact details of the alternative contact (a natural person) at the coal operation. The minimum requirements are as follows:

Title/position at coal operation: _____

Family Name: _____ Given Name/s: _____

Contact No (office): _____ Alternate No (mobile or personal): _____

Fax No: _____ E-mail: _____

(k) Detailed explanation (accompanied by copies of relevant supporting documents) of the basis that the nominated operator is considered the employer with the day to day control of the coal operation including, but not limited to the following:

NOTE: attach separate responses to the following.

- (i) Total number of people, including employees and non-employees, who work at the coal operation.

NB: An employee means an individual who works under a contract of employment or apprenticeship.

- (ii) The number of employees of the nominated operator who work at the coal operation.

- (iii) A statement that the nominated operator is the employer by virtue of the fact that the name of the nominated operator and the ABN appears on the workers payment summary required of employers by the Australian Taxation Office.

- (iv) The names of all other employers with some day to day control of part of the coal operation:

1. a statement describing the relationship of such employers to the nominated operator; and
2. how such employers are controlled by the nominated operator; or
3. the basis on which people are considered employees rather than contractors, including a statement describing the activities or areas such employers control and the level of control exercised by such employers compared to the nominated operator.



(l) The name and signature of the colliery holder, or the person authorised to sign on behalf of the colliery holder, is required as follows:

I (print your name in BLOCK LETTERS) _____ ,
the colliery holder / person authorised to sign on behalf of the colliery holder (strikeout not applicable) hereby declare, to the best of my knowledge, that the above information is true and correct.

Signature: _____ Date: _____

Position: _____

(m) Acceptance of nomination as an operator:

I (print your name in BLOCK LETTERS) _____ ,
the operator / person authorised to sign on behalf of the operator (strikeout not applicable) agree that the information supplied is correct to the best of my knowledge and accept the nomination as operator of (name of operation) _____ .

Signature: _____ Date: _____

Position: _____



2 MORE THAN ONE COAL OPERATION?

If there is more than one separate and distinct coal operation within a colliery holding, the colliery holder may nominate the person who is the employer with the day to day control of each coal operation within the colliery holding.

Clause 7(2)(a) of the Regulation requires the submission of “a detailed explanation of the basis on which each coal operation is considered a separate and distinct coal operation”. For the Chief Inspector to consider each case on its merits the following information should be included with the nomination of the operator form.

1. A report in general terms why each coal operation is considered separate and distinct.
2. A plan identifying the colliery holding and each coal operation within it.
3. Details of the manner in which the surface and, where relevant, underground boundaries of each coal operation are fenced or otherwise identified or segregated.
4. A checklist, as evidence, that each coal operation has its own health and safety management systems for the activities that it undertakes.
5. Evidence of consultation, including a risk assessment, with respect to the separate and distinct coal operations.
6. Where relevant, details of communication protocols between adjoining coal operations (*Communication may relate to ventilation, gas monitoring, vehicle movements, people movements, emergency incidents, withdrawal conditions etc*).
7. Details of operational overlaps, where the responsibility for such overlaps lies and the controls in place to manage any such overlaps. Note: that such overlaps must be minimised as far as practicable (*examples may be a shared facility or infrastructure eg bath-house, access road, shared services, shared personnel or equipment etc*).
8. Details of emergency procedures, particularly where an incident at one coal operation could involve or impact on another.

The information outlined above should be included by the colliery holder as an attachment to the nomination form(s).

NSW DPI Mineral Resources offices located in coal mining regions

North East Area

Maitland

516 High Street
Maitland NSW 2320
PO Box 344
Hunter Regional Mail Centre NSW 2310
Phone: (02) 4931 6666
Fax: (02) 4931 6790

Singleton

Level 1, 1 Civic Avenue
Singleton NSW 2330
PO Box 51
Singleton NSW 2330
Phone: 02 6572 1899
Fax: 02 6572 1201

South East Area

Lithgow

Suite 1, 1st Floor, 184 Mort Street
Lithgow NSW 2790
Phone: (02) 6350 7888
Fax: (02) 6352 3876

Wollongong

Level 3, Block F, 84 Crown Street
Wollongong NSW 2500
PO Box 674
Wollongong NSW 2520
Phone: (02) 4222 8333
Fax: (02) 4226 3851



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:

Manager Information and Communication
Mine Safety Performance
NSW Department of Primary Industries
PO Box 344
Hunter Regional 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.