



New South Wales

Occupational Health and Safety Amendment (Coal Workplaces) Regulation 2006

under the

Occupational Health and Safety Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 2000*.

IAN MACDONALD, M.L.C.,
Minister for Mineral Resources

Explanatory note

At present, the term *mine* is defined in the *Occupational Health and Safety Act 2000* to mean a mine within the meaning of the *Mines Inspection Act 1901* or the *Coal Mines Regulation Act 1982* (and to include a coal preparation plant that is a declared plant under Part 5A of the latter Act). Clause 4 (3) of the *Occupational Health and Safety Regulation 2001* provides that that Regulation does not apply to a mine, except as specified in Schedule 4 to that Regulation. Schedule 4 applies certain provisions of the Regulation to all mines and certain other provisions only to coal mines.

The *Coal Mine Health and Safety Act 2002* amended the *Occupational Health and Safety Act 2000* so that, in that latter Act, *mine* now refers only to a mine within the meaning of the *Mines Inspection Act 1901* and the term *coal workplace* is separately defined as a place of work to which the *Coal Mine Health and Safety Act 2002* applies.

The object of this Regulation is to amend the *Occupational Health and Safety Regulation 2001* as follows:

- (a) to separately specify which provisions of that Regulation apply to a coal workplace (Schedule 1 [1] and [8]),
- (b) to update references to a Department that has been abolished (Schedule 1 [2] and [5]),
- (c) to update references to “mine”, so as to refer separately to mines and coal workplaces (Schedule 1 [3] and [4]),
- (d) to provide for the sharing of information between WorkCover and the Department of Primary Industries (Schedule 1 [6]),

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- (e) to remake Schedule 4 so that it relates only to the application of the *Occupational Health and Safety Regulation 2001* to mines within the meaning of the *Mines Inspection Act 1901* (that is, not to coal workplaces) (Schedule 1 [7]).

This Regulation is made under the *Occupational Health and Safety Act 2000*, including section 33 (the general regulation-making power).

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Clause 1

Occupational Health and Safety Amendment (Coal Workplaces) Regulation 2006

under the

Occupational Health and Safety Act 2000

1 Name of Regulation

This Regulation is the *Occupational Health and Safety Amendment (Coal Workplaces) Regulation 2006*.

2 Commencement

This Regulation commences on 23 December 2006.

3 Amendment of Occupational Health and Safety Regulation 2001

The *Occupational Health and Safety Regulation 2001* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 4 Application of Regulation

Insert after clause 4 (3):

- (4) This Regulation does not apply to a coal workplace, except as specified in Schedule 4A.

[2] Clause 357 Additional officers authorised to consent to the institution of proceedings for offences

Omit "Mineral Resources". Insert instead "Primary Industries".

[3] Clause 357

Insert "or coal workplace" after "mine".

[4] Clause 358 Application of Act to mines and coal workplaces: references to WorkCover

Insert "or coal workplace" after "mine" wherever occurring.

[5] Clause 358

Omit "Mineral Resources" wherever occurring.

Insert instead "Primary Industries".

[6] Clause 358A

Insert after clause 358:

358A Sharing of information between WorkCover and Department of Primary Industries

- (1) WorkCover may, in connection with the administration or execution of the Act, provide any information concerning Chapter 6A to the Department of Primary Industries.
- (2) The Department of Primary Industries may, in connection with the administration or execution of the Act, provide any information concerning Chapter 6A to WorkCover.

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Schedule 1

[7] **Schedule 4**

Omit the Schedule. Insert instead:

Schedule 4 Application of Regulation to mines

(Clause 4 (3))

Note. *Mine* is defined in the Act as having the same meaning as in the *Mines Inspection Act 1901*.

1 Application of interpretation and other provisions of Chapter 1 to relevant provisions

To remove any doubt, to the extent that Chapter 1 or any other provision of this Regulation provides for the interpretation of a term used in, or application of, a provision referred to in this Schedule (a *relevant provision*), that Chapter and provision apply to the relevant provision in its application to a mine.

2 Application of workplace consultation provisions to mines

Chapter 3 applies to a mine.

3 Application of asbestos-related provisions to mines

The following provisions of this Regulation apply to a mine:

- (a) Division 1 (General duties of controllers of premises) of Part 4.2, to the extent that it imposes duties with respect to hazards caused by the presence of material containing asbestos,
- (b) Division 4 (Asbestos) of Part 4.2,
- (c) Part 8.7 (Asbestos—particular provisions),
- (d) Chapter 10 (Licensing of certain businesses), to the extent that it relates to asbestos removal work,
- (e) Chapter 11 (Permits for certain work), to the extent that it relates to friable asbestos removal work,
- (f) Part 12.3 (Notifications of proposed work), to the extent that it relates to bonded asbestos removal work.

Note. See also clause 5 of this Schedule (concerning hazardous substances).

4 Application of atmosphere provisions to mines

- (1) Clauses 50 and 51 apply to a mine, subject to subclause (2).

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- (2) Clauses 50 and 51 do not apply to the atmosphere of a mine to the extent that more stringent provision is made by or under another Act in relation to that atmosphere than is made by those clauses.

5 Application of hazardous substances provisions to mines

- (1) Parts 6.1–6.3 apply to a mine.
- (2) Clause 164, to the extent that it relates to use of a hazardous substance that is a form of asbestos, applies to a mine.
- (3) Clause 362 and Schedule 3 apply to the supply or use of chrysotile (white asbestos) in a mine.

6 Application of dangerous goods provisions to mines

Chapter 6A (Dangerous goods) applies to a mine.

7 Application of notification of proposed work provision to mines

Clause 345, to the extent that it relates to use of a notifiable or prohibited carcinogenic substance (as defined in Part 6.3) that is a form of asbestos, applies to a mine.

Note. See also clause 3 (f) of this Schedule (which relates to notifications of bonded asbestos removal work in mines).

8 Application of miscellaneous provisions to mines

- (1) Parts 12.4 and 12.5 apply to a mine.
- (2) Except as provided by subclause (3), a reference in a provision of Part 12.4 or 12.5 to WorkCover, in connection with the application of the provision to a mine, is taken to be a reference to the Director-General of the Department of Primary Industries.
- (3) Subclause (2) does not apply to any reference to the extent that it relates to:
- (a) an exemption from any provision of the Regulation in its application to asbestos in any form, or
 - (b) a decision made in respect of the use of asbestos in any form, or
 - (c) a requirement for which WorkCover is the nominated authority, or
 - (d) a provision in which WorkCover is the nominated authority.
- (4) Clauses 357 and 358 apply to a mine.

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Schedule 1

[8] **Schedule 4A**

Insert after Schedule 4:

Schedule 4A Application of Regulation to coal workplaces

(Clause 4 (4))

Note. *Coal workplace* is defined in the Act to mean a place of work to which the *Coal Mine Health and Safety Act 2002* applies.

1 Application of interpretation and other provisions of Chapter 1 to relevant provisions

To remove any doubt, to the extent that Chapter 1 or any other provision of this Regulation provides for the interpretation of a term used in, or application of, a provision referred to in this Schedule (a *relevant provision*), that Chapter and provision apply to the relevant provision in its application to a coal workplace.

2 Application of risk management provisions to coal workplaces

The following provisions of Chapter 2 apply to a coal workplace:

- (a) clause 9 (Employer to identify hazards),
- (b) clause 10 (Employer to assess risks),
- (c) clause 11 (Employer to eliminate or control risks),
- (d) clause 12 (Employer to review risk assessments and control measures),
- (e) clause 16 (Employer to obtain information),
- (f) clause 18 (Employer to provide amenities),
- (g) clause 19 (Maintenance of amenities and accommodation).

3 Application of workplace consultation provisions to coal workplaces

Chapter 3 applies to a coal workplace.

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4 Application of asbestos-related provisions to coal workplaces

The following provisions of this Regulation apply to a coal workplace:

- (a) Division 1 (General duties of controllers of premises) of Part 4.2, to the extent that it imposes duties with respect to hazards caused by the presence of material containing asbestos,
- (b) Division 4 (Asbestos) of Part 4.2,
- (c) Part 8.7 (Asbestos—particular provisions),
- (d) Chapter 10 (Licensing of certain businesses), to the extent that it relates to asbestos removal work,
- (e) Chapter 11 (Permits for certain work), to the extent that it relates to friable asbestos removal work,
- (f) Part 12.3 (Notifications of proposed work), to the extent that it relates to bonded asbestos removal work.

Note. See also clause 10 of this Schedule (concerning hazardous substances).

5 Application of provisions about noise coal workplaces

Division 4 (Noise management) of Part 4.3 applies to a coal workplace.

6 Application of atmosphere provisions to coal workplaces

- (1) Clauses 50 and 51 apply to a coal workplace, subject to subclause (2).
- (2) Clauses 50 and 51 do not apply to the atmosphere of a coal workplace to the extent that more stringent provision is made by or under another Act in relation to that atmosphere than is made by those clauses.

7 Application of provisions about working in confined spaces to coal workplaces

Division 9 (Working in confined spaces) of Part 4.3 applies to the surface of a coal workplace.

8 Application of provisions about manual handling to coal workplaces

Part 4.4 (Manual handling) applies to a coal workplace.

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9 Application of plant provisions to coal workplaces

- (1) Chapter 5 (Plant) applies to a coal workplace, with the modifications set out in this clause.
- (2) The Table to clause 107 is to be read as if it also included the following plant:
 - Diesel engine systems used in underground mines at a coal workplace
 - Powered winding systems (being any plant gazetted as such pursuant to the regulations under the *Coal Mine Health and Safety Act 2002* or a lift that provides access to the underground workings of a mine) used in underground mines at a coal workplace
 - Booster fans used in underground mines at a coal workplace
 - Braking systems on plant used in underground transport in an underground mine at a coal workplace
 - Canopies on continuous miners used in underground mines at a coal workplace
 - Portable or hand-held plant or items used to determine or monitor the presence of gases for the purposes of the *Coal Mine Health and Safety Act 2002* and used in underground mines at a coal workplace
 - Breathing apparatus to assist escape from the underground parts of the coal operation (including self-rescuers) used in underground mines at a coal workplace
 - Shotfiring apparatus used in underground mines at a coal workplace
 - Detonators used in underground mines at a coal workplace
 - Explosive-powered tools used in underground mines at a coal workplace
 - Refuge chambers used in underground mines at a coal workplace
- (3) On and from 8 June 2007, the Table to clause 107 is to be read as if it also included the following plant:
 - Conveyor belts used in underground mines at a coal workplace

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- (4) A reference in clauses 107–110 to WorkCover is, in relation to the registration of plant referred to in subclause (2), to be read as a reference to the Director-General of the Department of Primary Industries. On and from 8 June 2007, a reference in clauses 107–110 to WorkCover is, in relation to the registration of plant referred to in subclause (3), to be read as a reference to the Director-General of the Department of Primary Industries.
- (5) Clause 110 is to be read as if it included the following paragraph after clause 110 (1) (a):
- (a1) on the basis of information received by the Director-General of the Department of Primary Industries, the plant does not continue to meet current criteria for the registration of the same type of plant, or
- (6) Subdivision 1 of Division 3 of Part 5.2 is to be read as if it included the following clause:

112A Requirements for registration

The Director-General of the Department of Primary Industries may, by notice in the Gazette, specify requirements (such as design, certification, performance, assessment or installation requirements) that must be met prior to plant being registered.

- (7) The Table to clause 113 is to be read as if it also included the following items of plant:
- Booster fans used in underground mines at a coal workplace
- Diesel engine systems used in underground mines at a coal workplace
- Powered winding systems used in underground mines at a coal workplace
- (8) A reference in clauses 113–118 to WorkCover is, in relation to the registration of items of plant referred to in subclause (7), to be read as a reference to the Director-General of the Department of Primary Industries.
- (9) Clause 116 is to be read as if it included the following paragraph after clause 116 (1) (a):
- (a1) on the basis of information received by the Director-General of the Department of Primary Industries, plant does not continue to meet current criteria for the registration of the same type of plant, or

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- (10) Subdivision 2 of Division 3 of Part 5.2 is to be read as if it included the following clause:

119A Requirements for registration

The Director-General of the Department of Primary Industries may, by notice in the Gazette, specify requirements (such as design, certification, performance, assessment or installation requirements) that must be met prior to items of plant being registered.

- (11) A design or item of plant referred to in subclause (2) or (7) that was approved, or taken to be approved, under clause 70 of the *Coal Mines (General) Regulation 1999*, and any item that is in the opinion of the Chief Inspector equivalent to such an approved item:
- (a) if the approval was given less than 20 years before the date of repeal of that Regulation—is, for 2 years after the commencement of this clause, taken to be registered under Chapter 5 of this Regulation subject to the same conditions as to which it was approved, or
 - (b) if the approval was given 20 years or more before the date of repeal of that Regulation—is, for 1 year after the commencement of this clause, taken to be registered under Chapter 5 of this Regulation subject to the same conditions as to which it was approved.
- (12) The registration of an item referred to in subclause (11) may be varied, suspended or cancelled in accordance with Chapter 5.
- (13) Division 3 of Part 5.2, covering design and item registration of plant, applies to a coal workplace, in relation to plant not referred to in subclause (2) or (3), on and from 8 June 2007.

10 Application of hazardous substances provisions to coal workplaces

- (1) Parts 6.1–6.3 apply to a coal workplace.
- (2) Part 6.4 applies to a coal workplace.
- (3) A reference in any of the following provisions of Part 6.4 to WorkCover, in connection with the application of the provision to a coal workplace, is taken to be a reference to the Department of Primary Industries:
 - (a) clause 166,
 - (b) clause 171,

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- (c) clause 172,
- (d) clause 174.
- (4) Clause 362 and Schedule 3 apply to the supply or use of chrysotile (white asbestos) in a coal workplace.

11 Application of dangerous goods provisions to coal workplaces

Chapter 6A (Dangerous goods) applies to a coal workplace.

12 Application of notification of proposed work provision to coal workplaces

Part 12.3, to the extent that it relates to use of a notifiable or prohibited carcinogenic substance (as defined in Part 6.3) other than a substance that is a form of asbestos, applies to a coal workplace.

Note. See also clause 4 (f) of this Schedule (which relates to notifications of bonded asbestos removal work in coal workplaces).

13 Application of miscellaneous provisions to coal workplaces

- (1) Parts 12.4 and 12.5 apply to a coal workplace.
- (2) Except as provided by subclause (3), a reference in a provision of Part 12.4 or 12.5 to WorkCover, in connection with the application of the provision to a coal workplace, is taken to be a reference to the Director-General of the Department of Primary Industries.
- (3) Subclause (2) does not apply to any reference to the extent that it relates to:
 - (a) an exemption from any provision of the Regulation in its application to asbestos in any form, or
 - (b) a decision made in respect of the use of asbestos in any form, or
 - (c) a requirement for which WorkCover is the nominated authority, or
 - (d) a provision in which WorkCover is the nominated authority.
- (4) Clauses 357 and 358 apply to a coal workplace.