



New South Wales

Coal Mines (Open Cut) Regulation 1999

under the

Coal Mines Regulation Act 1982

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Coal Mines Regulation Act 1982*.

The Hon. Edward Obeid, OAM, MLC

Minister for Mineral Resources

Explanatory note

There are presently 35 sets of regulations under the *Coal Mines Regulation Act 1982* dealing mainly with the administration and management of underground and open cut coal mines and coal preparation plants, and with health and safety matters in relation to those mines and plants. Those regulations are to be repealed and replaced by 3 regulations: a *Coal Mines (General) Regulation*, a *Coal Mines (Underground) Regulation* and a *Coal Mines (Open Cut) Regulation*.

The object of this Regulation, the *Coal Mines (Open Cut) Regulation 1999*, is to prescribe the provisions that will apply to open cut mines only. The new Regulation includes provisions requiring mine managers to develop and implement systems (such as inspection systems and shotfiring and explosives systems) that will cover some of the matters presently prescribed in the regulations under the Act.

The new Regulation contains provisions in respect of the following matters:

- (a) the general duty of mine managers to comply or ensure compliance with the Regulation (Part 1, clause 5),

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- (b) the development and implementation of inspection systems by mine managers (the main object of a mine inspection system is to provide a safe working environment for all persons at the mine, including the division of the mine into inspection areas, the assignment of examiners or other competent persons to inspection areas and the specification of the types and frequency of inspections to be carried out) (Part 2, Division 1),
- (c) the functions and duties of examiners (Part 2, Division 2),
- (d) the making of examinations and reports by mining officials (Part 2, Division 3),
- (e) the specification of incidents (such as fires, inrushes and accidents) that a mine manager must report to the district inspector and district check inspector immediately they occur (including provisions for the non-disturbance of the scenes of the incidents) (Part 2, Division 4, clause 16),
- (f) the matters with respect to which a mine manager must make transport rules for the mine (Part 2, Division 4, clause 17),
- (g) the use of mechanical or electrical equipment at mines (Part 2, Division 4, clauses 18–20),
- (h) the carrying out of shotfiring operations and the use of explosives at mines (including the development and implementation of systems to control the conduct of shotfiring and the handling of explosives) (Part 3),
- (i) the control of airborne dust at mines (Part 4),
- (j) other matters of a minor, consequential or ancillary nature (Parts 1 (clauses 1–4) and 5).

The Regulation is made under the *Coal Mines Regulation Act 1982*, including section 174 (the general regulation-making power) and various other provisions referred to in the Regulation.

The Regulation refers to:

- (a) Australian Standard 1747 (*Reeling, trailing and feeder cables used for mining—Repair and testing*) in connection with a provision relating to the repair of electrical cables (clause 20), and
- (b) Australian Standard 2985 (*Workplace atmospheres—Method for sampling and gravimetric determination of respirable dust*) in connection with provisions for the collection and analysis of dust samples (clause 33).

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The Regulation also refers to guidelines and other requirements applied to or in respect of mines by the Chief Inspector of Coal Mines (by Gazette notification under the Regulation or under the *Coal Mines (General) Regulation 1999*).

The Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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Clause 1 Coal Mines (Open Cut) Regulation 1999

Part 1 Preliminary

Coal Mines (Open Cut) Regulation 1999

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Coal Mines (Open Cut) Regulation 1999*.

2 Commencement

This Regulation commences on 1 September 1999.

3 Application

This Regulation applies to and in respect of open cut mines.

4 Definitions

(1) In this Regulation:

applied to, in relation to the application of guidelines to mines, means specified in respect of a mine by the Chief Inspector in a notice published under clause 14 of the *Coal Mines (General) Regulation 1999*.

competent means having appropriate experience, knowledge, skills and capability.

examiner, in relation to a mine, means a person appointed under section 43 of the Act to be an examiner of the mine.

specified (except in clause 35) means specified in writing by the Chief Inspector and published in the Gazette.

the Act means the *Coal Mines Regulation Act 1982*.

(2) In this Regulation, a reference to an Australian Standard is a reference to a Standard published by Standards Australia.

(3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

5 Duty of mine manager to comply or ensure compliance with Regulation

If a provision of this Regulation imposes a requirement in relation to a mine but does not impose that requirement on persons generally or on a particular person, it is the duty of the mine manager:

- (a) to comply with the provision, or
- (b) if it is not reasonably practicable for the manager to comply with the provision, to ensure that it is complied with.

Note. The general functions of mine managers are set out in section 37 of the Act. They include the control of mine employees and the enforcement of the observance, by those employees, of the Act and the regulations and of any related rules or schemes. Section 160 (d) of the Act provides, among other things, that a mine employee who contravenes any direction given by the mine manager for the purpose of securing compliance with the Act, the regulations, the rules or a scheme is guilty of an offence.

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Clause 6 Coal Mines (Open Cut) Regulation 1999

Part 2 Operations and working practices

Division 1 Inspection systems

Part 2 Operations and working practices

Division 1 Inspection systems

6 Inspection systems

- (1) A mine manager must, within 6 months after the commencement of this Regulation, develop and implement a system for the inspection of all places in the mine (an *inspection system*).
- (2) The main object of an inspection system is to provide a safe working environment for all persons at the mine.
- (3) In particular, an inspection system must provide for:
 - (a) the division of the mine into inspection areas, and
 - (b) the assignment of an examiner to each inspection area where mining operations are being carried out, and
 - (c) the assignment, to each of the other inspection areas, of a competent person to carry out the inspections required under the inspection system, and
 - (d) the carrying out of periodic inspections at the mine (the greater the risk to the safety or health of persons at a place, the more frequent the inspections, but in any case the inspection system must provide that at least 3 inspections (as equally spaced as practicable) of places where mining operations are being carried out are made every 24 hours), and
 - (e) the carrying out of pre-shift inspections if the frequency of the periodic inspections is interrupted.
- (4) The places and things to be inspected are to include, but are not limited to, the following:
 - (a) high walls,
 - (b) low walls,
 - (c) dumps,
 - (d) roadways,
 - (e) blast areas,
 - (f) overhead power lines and cables,

- (g) workshops,
 - (h) coal treatment plants.
- (5) An inspection system must include provisions for audits of the system's operation and for periodic reviews (at intervals not exceeding 2 years) of the system's effectiveness.
- (6) An inspection system must be documented and the relevant document or documents must be kept at the mine.

7 Employees' representatives to be consulted

Employees' representatives possessing appropriate skills, knowledge or experience must be consulted regarding (and be given an opportunity to participate in) the development and revision of an inspection system at a mine.

8 Copy to be supplied to district inspector and district check inspector

A mine manager must supply a copy of the mine's inspection system, and any revisions of it, to the district inspector and the district check inspector within 7 days of the system or revisions being put into effect.

9 Competency and training of personnel

- (1) A mine manager must ensure that the persons required to perform duties as part of an inspection system are competent to carry out those duties and are given appropriate training.
- (2) A mine manager must ensure that an examiner assigned to an inspection area or a person assigned to inspect any other area is fully acquainted with the area.

Division 2 Examiner's functions and duties

10 Examiner's functions and duties

- (1) An examiner at a mine, during the examiner's shift and subject to any instructions given by more senior mining officials:
 - (a) has charge of all workers in the examiner's inspection area, and

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Part 2 Operations and working practices

Division 2 Examiner's functions and duties

- (b) must:
 - (i) make such inspections as are required by the mine's inspection system to be made by the examiner, and
 - (ii) carry out such other duties with regard to general safety and working conditions as are required by the Act, this Regulation, the *Coal Mines (General) Regulation 1999* or any rules, schemes or systems.
- (2) An examiner must, at the commencement of a shift, read and initial the report prepared by the previous examiner.
- (3) An examiner must not, while workers remain in the examiner's inspection area, leave the area for any period that will affect the carrying out of inspections required by the mine's inspection system (unless with the consent of a more senior mining official).
- (4) If consent is given by a more senior mining official for a period that will affect the carrying out of the inspections, the mining official must perform the duties of the examiner, or appoint another person holding similar qualifications to perform the duties, for so long as workers remain in the inspection area.

11 Instructions to workers

An examiner must:

- (a) at the commencement of each shift ascertain the workers under the examiner's charge, and
- (b) where necessary, give to those workers such instructions (orally or in writing) as are necessary for them to comply with the requirements of the Act, this Regulation, the *Coal Mines (General) Regulation 1999* and any rules, schemes or systems, and
- (c) to the best of the examiner's ability, ensure that:
 - (i) workers under the examiner's charge understand their duties, and
 - (ii) all requirements of the Act, this Regulation, the *Coal Mines (General) Regulation 1999* and any rules, schemes or systems are observed by those workers.

12 Examiners not to engage in other activities

An examiner must not engage in any activity in a way that may compromise the examiner's ability to effectively oversee the safety and health of persons in the examiner's inspection area.

Division 3 Examinations and reports

13 Examinations and reports by managers and deputy managers

- (1) The manager of a mine and, where appointed, the deputy manager of a mine must examine every part of the mine at a frequency determined by the mine's inspection system.
- (2) The manager and the deputy manager must make a report on the general safety of the parts of the mine examined.
- (3) Each report must be durably recorded and the record must be retained at the mine for at least 3 years after being made.

14 Reports required by inspection systems

Any reports required to be made in accordance with a mine's inspection system must be lodged at the mine office as soon as practicable after they are made and workers employed at the mine must be given reasonable access to them.

15 Persons not to enter examiner's inspection area unless inspected and found safe

A person, other than a mining official, must not enter an examiner's inspection area unless that person is satisfied that the area has been inspected and found safe.

Division 4 General

16 Notifiable incidents

- (1) For the purposes of this clause, the following incidents are notifiable incidents:
 - (a) an outbreak of fire endangering persons or causing serious property damage,
 - (b) initial self-heating of the coal strata or overburden in a part of a mine,
 - (c) an abnormal inrush of water, or material that flows when wet, from any source such as to endanger persons or property,

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Division 4 General

- (d) the receiving by a person of an electric shock from a source, or the suffering by a person of burns received from an electric circuit, that is above extra low voltage (as defined in Australian Standard 3000 (*SAA Wiring Rules*)),
 - (e) the suffering by a person of bodily injury occasioned by an explosion or discharge of blasting material,
 - (f) an unplanned movement of a vehicle, machine or any item of plant or equipment such as to endanger persons or cause serious property damage,
 - (g) a fall, slumping, loss of strength, failure or collapse of the high wall, low wall or spoil area such as to endanger persons or property,
 - (h) a failure or collapse of any structure such as to endanger persons or property,
 - (i) an insurge of noxious or flammable gas from old workings,
 - (j) the ejection of flyrock outside the boundary of a mine's lease area during shotfiring such as to endanger persons or property.
- (2) If a notifiable incident occurs at a mine the mine manager must ensure that the district inspector and the district check inspector are:
- (a) notified of the incident immediately (in the form and manner specified, if any), and
 - (b) given an accurate description of the nature of the incident.
- (3) The scene of the incident must be left undisturbed for 24 hours after the incident's occurrence (unless both the district inspector and the district check inspector earlier release the scene).
- (4) Subclause (3) does not prevent reasonable measures being taken to secure health or safety at the scene of the incident.
- (5) As soon as practicable after the incident's occurrence, the mine manager must ensure that:
- (a) an investigation is carried out to establish the circumstances and cause of the incident, and
 - (b) a report (in the form and manner specified, if any) on the results of the investigation is submitted to the district inspector and district check inspector.

- (6) In this clause, *serious property damage* means property damage that, in the opinion of the mine manager concerned, is serious property damage.

17 Transport rules

For the purposes of section 101 (2) (b) of the Act, the following matters are prescribed as matters with respect to which a mine manager must make transport rules:

- (a) the conditions under which vehicles may be used,
- (b) the design standards (including appropriate signage and provision of adequate windrows) of roads on which vehicles may operate,
- (c) the maximum loads, whether by reference to weight, dimensions or other criteria, that may be carried in vehicles,
- (d) the maximum speeds at which vehicles may operate,
- (e) the steps to be taken by the operators of vehicles to ensure that the vehicles are safe for use,
- (f) the precautions to be observed when persons are conveyed on vehicles, including the provision of seating and the wearing of seat belts,
- (g) the operation of vehicles on roads where the condition of the roads may adversely affect safety.

18 Design of mobile equipment

Mobile mechanical or electrical equipment used at a mine must be designed with regard to any relevant guidelines applied to the mine.

19 Earthing of electrical equipment

- (1) A mine electrical engineer must ensure that all mains-fed electrical equipment at the mine is referenced to, and all conductive parts of that equipment (other than active conductors) is connected to, the general mass of earth in such a way that:
- (a) the values of voltage and current and their duration are not dangerous, and

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Division 4 General

- (b) the thermal effects of currents flowing in conductive parts do not cause danger arising from fires, fumes, arcing, explosions or the unintended operation of the equipment.
- (2) In particular, the mine electrical engineer must ensure that any connection to earth is by way of some form of earth fault current limiting device.

20 Repairs to electric cables

A mine electrical engineer must ensure that repairs to electric reeling, trailing and feeder cables used at the mine are carried out in accordance with Australian Standard 1747 (*Reeling, trailing and feeder cables used for mining—Repair and testing*).

Part 3 Shotfiring and explosives

21 Definitions

In this Part:

blast hole means a hole that is to be charged with explosives for blasting purposes.

explosive includes detonators.

shot means one or more charged blast holes.

shotfirer means a person appointed as a shotfirer in accordance with this Part.

22 Appointment of shotfirers

- (1) A person must not fire a shot at a mine unless the person has been appointed by the mine manager in writing as a shotfirer.
- (2) A person must not be appointed as a shotfirer at a mine unless the person is:
 - (a) qualified to be appointed as an examiner of an open cut mine, or
 - (b) the holder of a permit to act as a shotfirer at an open cut mine issued to the person by the Chief Inspector.
- (3) A mine manager must be satisfied that a person appointed as a shotfirer is competent and medically fit to carry out a shotfirer's duties.

23 Firing of shots by trainee

A person who is not a shotfirer may fire a shot or shots at a mine in the course of the person's training if the person is authorised in writing by the mine manager to do so and is under the immediate supervision of a shotfirer.

24 Shotfirer to be employed by mine owner

A person must not fire shots at a mine unless the person is employed and paid by the mine owner.

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Clause 25 Coal Mines (Open Cut) Regulation 1999

Part 3 Shotfiring and explosives

25 Shotfiring and explosives systems

- (1) A system to control the conduct of shotfiring and the handling of explosives (a *shotfiring and explosives system*) must, within 6 months after the commencement of this Regulation, be developed and implemented at a mine.
- (2) In developing a shotfiring and explosives system regard must be had to any relevant guidelines applied to the mine.
- (3) A shotfiring and explosives system must include provisions for audits of the system's operation and for periodic reviews (at intervals not exceeding 2 years) of the system's effectiveness.
- (4) A shotfiring and explosives system must be documented and the relevant document or documents must be kept at the mine.

26 Employees' representatives to be consulted

Employees' representatives possessing appropriate skills, knowledge or experience must be consulted regarding (and be given an opportunity to participate in) the development and revision of a mine's shotfiring and explosives system.

27 Copy to be supplied to district inspector and district check inspector

A copy of a mine's shotfiring and explosives system, and any revisions of it, must be supplied to the district inspector and the district check inspector within 7 days of the system or revisions being put into effect.

28 Competency and training of personnel

A mine manager must ensure that the persons required to perform duties as part of a mine's shotfiring and explosives system are competent to carry out those duties and are given appropriate training.

Part 4 Airborne dust

29 Definitions

In this Part:

analyse, in relation to a sample of airborne dust, means to determine, from that sample, whether a concentration of dust in the air at the place from which the sample was collected exceeds the specified limit.

specified limit, in relation to a concentration of dust of a type specified for the purposes of this definition, means the limit specified in respect of that type of dust.

30 Dust extraction at coal preparation plants and other points

At any coal preparation plant, or any point at a mine at which persons are likely to be exposed to a concentration of dust that exceeds the specified limit, there must be provided a dust extraction plant or other suitable apparatus that will reduce the concentration of dust to below the specified limit.

31 Airborne dust rules

- (1) A mine manager must make rules (*airborne dust rules*) for the purpose of reducing airborne dust arising from working practices at the mine.
- (2) The airborne dust rules must include provisions relating to the following matters:
 - (a) the use of water, or the use of other suitable methods, to reduce airborne dust during mining operations (including drilling operations),
 - (b) the use of water, or the use of other suitable methods, to reduce airborne dust during the transport of coal or stone (including the treatment of mine roadways),
 - (c) the treatment of coal or stone being transported by conveyor,
 - (d) the treatment of coal during loading and unloading operations,
 - (e) the treatment of dust in coal preparation plants,

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Part 4 Airborne dust

- (f) the treatment of dust in any other area of the mine where it may present a danger to health.
- (3) The airborne dust rules must detail the actions necessary to reduce concentrations of dust to below the specified limits so that no person is exposed to concentrations in excess of those limits.
- (4) For the purposes of:
 - (a) section 104 of the Act, the subject-matter referred to in subclause (1) in respect of which a mine manager is required to make rules is a prescribed subject-matter, and
 - (b) section 104 (2) (a) of the Act, a matter referred to in subclause (2) or (3) is a prescribed matter.

32 Appointment of persons to collect and analyse dust samples

- (1) A mine manager must appoint, in writing, persons to be responsible for:
 - (a) the collection of samples of airborne dust at the mine, and
 - (b) the analysis of such samples.
- (2) Despite subclause (1), samples of airborne dust at a mine may be collected or analysed by a person or persons appointed by the Joint Coal Board for the purpose.

33 Collection and analysis of dust samples

- (1) A person appointed to collect samples of airborne dust at a mine must collect the samples at such places, times and frequency as may from time to time be specified.
- (2) The samples must be collected in accordance with Australian Standard 2985 (*Workplace atmospheres—Method for sampling and gravimetric determination of respirable dust*).
- (3) A person appointed to analyse samples of airborne dust at a mine must analyse the samples or arrange for them to be analysed in accordance with Australian Standard 2985.

34 Action to be taken following analysis of dust samples

- (1) A mine manager must appoint a person for the purposes of this clause.
- (2) The person appointed must ensure that the result of every analysis of a sample of airborne dust at the mine required to be made by this Regulation is, without delay, recorded by a suitable method provided by the mine owner for the purpose.
- (3) The record must be kept at the mine.
- (4) If the result of an analysis reveals that a concentration of dust exceeds the specified limit, the person appointed must:
 - (a) report the result to the mine manager who must direct what action is to be taken to ensure that any concentration of dust in similar circumstances to those existing when the sample was collected is reduced, and
 - (b) confirm that such action is taken and so advise the mine manager, and
 - (c) enter in the record referred to in subclause (2) a report of the action directed by the mine manager to be taken and the date on which the action was taken.
- (5) If a result of an analysis of a sample is reported to a mine manager under subclause (4) (a), the manager must within 7 days ensure that the person in whose breathing zone (as defined in AS 2985) the sample was collected is informed of the result.
- (6) The mine manager must advise the district inspector when any action required to be taken under subclause (4) (a) has been taken.

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Clause 35 Coal Mines (Open Cut) Regulation 1999

Part 5 Exemptions

Part 5 Exemptions

35 Exemptions from complying with provisions of this Regulation

A mine manager may apply to the Chief Inspector in writing for an order under section 174 (5) of the Act that any specified provision of this Regulation:

- (a) does not apply to or in respect of any specified person or class of person or any specified act, matter or thing or class of act, matter or thing, or
- (b) does not so apply in specified circumstances.

Note. Offences and penalties. Section 160 (l) of the Act provides that a person who contravenes or fails to comply with any provision of the regulations is guilty of an offence against the Act. Under section 166 of the Act, the penalty for such an offence is 40 penalty units (for an individual) and 100 penalty units (for a corporation) or, if the offence was wilful and was likely to, or did, endanger safety, cause serious personal injury or cause a dangerous accident, imprisonment for up to 12 months.

Section 161 (1) of the Act provides that, if a person commits an offence against the Act in relation to a mine or declared plant, the owner and manager of the mine or plant and certain other officials are also each guilty of an offence.

Section 163 of the Act provides that a person who aids, abets, counsels, induces or procures, or consents to or connives at, the commission of an offence against the Act by another person is guilty of an offence.

Section 164 of the Act sets out certain defences to proceedings for offences against the Act.

BY AUTHORITY
