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New Regulation for Health, Safety and Subsidence

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KEYNOTE ADDRESS

NEW REGULATION FOR HEALTH, SAFETY AND SUBSIDENCE

Rob Regan [1]

INTRODUCTION

As you may be aware, the *Occupational Health and Safety Act 2000* applies to every industry in New South Wales, including the coalmining industry. However, despite this, the Government has determined that in addition, specific coalmine health and safety laws should remain in force in this State.

The *Coal Mine Health and Safety Act 2002* (The Act) replaces the 20-year-old *Coal Mines Regulation Act* 1987 (CMRA) with modern legislation that aims to better protect the health, safety and welfare of people who work in the New South Wales coal industry.

The *Act* is complementary to the more general *Occupational Health and Safety Act 2002* and is to be read as if part of that Act. It provides a framework to manage the particular risks arising from coalmining, and lays the foundation for an integrated approach to mine safety through the development of health and safety management systems, major hazard management plans and emergency systems.

The central features of The Act are:

- application to all places of work within a colliery holding under the *Mining Act 1992*
- nomination of an operator for any coal operation by a colliery holder
- that the operator must be the employer with day-to-day control of a coal operation, and
- that a coal operation may be an underground mine, an open-cut mine or a coal preparation plant.

A central element of the Act is the requirement that operators develop and implement a comprehensive health and safety management system as a condition for mining to be undertaken.

At the present time a variety of rules, schemes, systems and plans are required under the CMRA to be prepared by a mine manager. The Act consolidates those requirements into a single, integrated and comprehensive health and safety management system.

The various rules, schemes, systems and plans will become important elements of the integrated system. Health and safety management systems will be required to cover such matters as major hazard management plans, the management structure for a coal operation and a contractor management plan.

The systems are comprehensive and cover all those at a coal operation, including employees, visitors and contractors. To maintain existing arrangements, training requirements for the systems will need to be compatible with training schemes required under the *Coal Industry Act 2002*.

An important part of an operator's health and safety management system will be a management structure. The management structure must include competent persons to perform key health and safety related functions. The Department of Mineral Resources Safety Operations Unit will monitor the ongoing operation of health and safety management systems. The inspectors will continue to have prohibition and improvement notice powers to ensure that identified safety deficiencies are remedied.

The Act requires that effective emergency provisions are also developed and maintained at coal operations. An emergency management system must be developed. This system would operate separately from the health and

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safety management systems for two important reasons. First, it reinforces the importance of adequate emergency preparedness. Second, it recognises that in an emergency different means of management, such as the formation of incident control teams and the close engagement of external emergency services may be necessary. As with the health and safety management system, an emergency system will cover employees, visitors and contractors at a coal operation.

The Act retains important provisions of the CMRA which are intended to protect the community from potential health and safety impacts of coalmining or to protect the safety of people in adjoining mines.
These include ability for the Minister to require:

- leaving barriers or protective pillars in mines,
- closing shafts or outlets in abandoned mines,
- control of emplacement areas, and
- permits for former mines to be used for tourist or educational activities.

To ensure appropriate compliance and enforcement of the new laws, a range of offences, in addition to those contained in the *Occupational Health and Safety Act*, are included in The Act. Penalties for offences in The Act are at a level commensurate with similar offences under the *Occupational Health and Safety Act 2000*. When enacted the legislation will be enforced in mines by inspectors and mine safety officers with powers under the *Occupational Health and Safety Act*.

Another important feature of The Act is the Coal Competence Board, which will replace the Coal Mining Qualifications Board. The Coal Competence Board will oversee the development of competence standards and assessment of people performing particular functions in coal operations. Importantly, the board will be able to continue to arrange for the examination of candidates and the issue of certificates of competence.

Standards of competence for those performing critical health and safety functions in coal operations are essential if risks are to be appropriately identified and managed. Those who work in coalmines need to have the recognised competencies to ensure that they are able to perform their duties without placing themselves and others at risk. The new Act will not commence without regulations being made that recognise these positions and the corresponding competency standards and functions. Those currently in statutory positions will be taken as having the necessary capability to perform the corresponding functions under The Act.

An important part of safety management is to ensure that employees, who often work in challenging conditions, are fit for work and not fatigued. Section 168 of The Act contains important safety provisions regarding powers of work. As part of the modern legislative framework, these provisions are not expressed in the new Act but, rather, will be retained in the regulations. It is important to note that the regulations will be a key component of the safety framework that gives operational effect to important provisions of The Act. To ensure a smooth transition to the new legislation, the regulations will be developed in close consultation with mining company representatives and mineworker representatives.

When necessary, the regulations will be able to make provision for existing arrangements under The Act to be acceptable as fulfilling requirements under the CMRA for a limited period. This will allow existing safety measures to satisfy the relevant requirements of the new legislation while the required work is undertaken to implement new safety standards. The Act provides a basis for a safer coal industry in New South Wales.

OBJECT OF COAL MINE HEALTH AND SAFETY ACT 2002

The objectives of this Act are:

- to assist in securing the object of the *Occupational Health and Safety Act 2000* in relation to coal operations[1] (including the object of securing and promoting the health, safety and welfare of people at work at coal operations or related places),
- to put in place special provisions necessary for the control of particular risks arising from the mining of or exploration for coal, and

[1] "coal operations" means a place at which coal is mined that is a place of work to which the *Coal Mine Health & Safety Act 2002* applies and includes the places that are taken to be part of a coal operation under section 4 of the Act.

- to ensure that effective provisions for emergencies are developed and maintained at coal operations and related places.

OBJECT OF OCCUPATIONAL HEALTH AND SAFETY ACT 2000

The objects of this Act are as follows:

- secure and promote the health, safety and welfare of people at work,
- to protect people at a place of work against risks to health or safety arising out of the activities of persons at work,
- to promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs,
- to provide for consultation and cooperation between employers and employees in achieving the objects of this Act,
- to ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled,
- to develop and promote community awareness of occupational health and safety issues,
- to provide a legislative framework that allows for progressively higher standards of occupational health and safety to take account of changes in technology and work practices, and
- to protect people (whether or not at a place of work) against risks to health and safety arising from the use of plant that affects public safety.

The new legislation is a significant step forward, reinforcing the general duty of care. It provides a powerful opportunity to make mines safer through consolidating risk management with requirements for safe systems. It addresses major issues in the mining sector eg major hazards, emergency preparedness, and contractor management

It encourages employee involvement in site-based arrangements, further enabling improved safety performance through active consultation for planning and implementation of safety management.
The new Act provides for improvements to be made in regulations and advances to be made with guidance material.

STRUCTURE

The structure of the new Act progressively introduces the reader to the relationship between the *Coal Mines Health & Safety Act 2002* and the *Occupational Health and Safety Act 2000* and the coal mining related matters that require special attention.

There are fourteen parts containing 226 sections that provide definitions, application, objects, relationship to the *OH&S Act 2000*, duties, safety of coal operations, notification of incidents, stop work orders, competence standards, oversight by government officials and workforce representatives, codes of practice, regulations, miscellaneous matters and repeals and amendments.

The new Act focuses clearly on health and safety. In doing so, there are a number of changes including notification of certain "high risk" activities (to be prescribed by regulation) and the removal of requirements to deal with environmental, heritage, cultural and land use issues traditionally administered through *section 138* of the *CMRA*. In regard to approval to extract coal by other than bord and pillar methods, The Act focuses on safety aspects, and other issues will be dealt with under the *Mining Act 1992* through lease conditions and the requirement for Subsidence Management Plans.

SUBSIDENCE MANAGEMENT PLANS

The development of the process for Subsidence Management Plans (SMP) had its trigger in the Gretley Inquiry where it was recommended that the process for granting approvals under section *CMRA* be reviewed.

The Healthy Rivers Commission also presented a report describing ways to protect the environmental values of river systems to the Government

In response to the Healthy Rivers Commission Report and as the *CMRA* was also under review, it was decided to separate the approval based on safety considerations from those based on environmental, cultural, heritage and land use.

Section 138 *CMRA 1982* was preceded by section 53BA *CMRA 1912,* which was added in 1964, in order to control resource recovery of private coal. Prior to this mining methods were implemented on a no objection basis.

This reason became redundant when the *Coal Acquisition Act 1981* was introduced.

As community expectations changed over time, the power has been used to control safety, environmental, cultural, heritage and land use conflict issues.

APPLICATION OF THE SMP PROCESS

The new process will require the preparation of a SMP and its approval by the Department of Mineral Resources. An approved SMP will be required wherever underground mining will potentially lead to subsidence.

The SMP process will be applied to all underground coal mines. In the case of new coal mines, the key approval remains the development consent and subsidence impacts will primarily be considered as part of the consent process. Subsidence and its impacts must be addressed within the necessary environmental impact statement. The Department will seek to ensure the full integration of conditions imposed under SMP approvals with those imposed under development consents and other approvals. Environmental impact assessment undertaken in association with development applications or other approvals will be taken into account in the SMP assessment process. The Department will seek to avoid duplication in assessment processes and approval conditions.

SUBSIDENCE MANAGEMENT PLANS

The draft SMP accompanying application for approval must include:

- full assessment of the potential environmental, land use and other impacts of that subsidence including significant ecological values, major surface infrastructure, known proposed surface developments, surface features of community significance;
- description of previous subsidence projections and impact assessment associated with any previous development application;
- proposals to minimise impacts of surface subsidence, particularly in areas of environmental, heritage or archaeological sensitivity or important built surface features;
- proposals for ground and surface water management;
- proposals for any necessary rehabilitation of subsidence impacts;
- details of any proposed Community Consultation Process.

Applicants are encouraged to submit applications for SMP approval in respect of complete longwall domains. Applications will also be required if significant variations are proposed to previous subsidence predictions, subsidence impact predictions, or subsidence management strategies and techniques. Extension or variation of the SMP approval may involve further assessment and altered conditions.

When approved, the SMP will form part of the Mining Operations Plan required under the mining lease, and therefore be subject to the requirement for lodgement and review of an Annual Environmental Management Report.

Departmental Approvals Process

The SMP will be subject to the approval of the Director-General of the Department of Mineral Resources. The draft SMP will be assessed by a Departmental SMP Review Committee comprising the Assistant Director Environment (Chair), Chief Inspector of Coal Mines, the Principal Subsidence Engineer, Manager Policy and Legislative Review, and Chief Geologist Coal and Petroleum. The SMP approval process will address development of conditions for the Director-General's approval.

Interagency Participation in SMP Approvals

An Interagency SMP Review Committee will be chaired by the Department's Assistant Director Environment and will include representatives from all agencies with significant interests affected by the proposed SMP. The trigger being significance to the agency concerned of the features or values subject to potential impact.

Submission of draft SMPs and Applications for Approval

During development of a draft SMP, applicants must engage in a process of community consultation, and are encouraged to apply the *Guidelines for Best Practice Community Consultation in the NSW Mining and Extractive Industries*, developed by the NSW Minerals Council.

In association with submitting a draft SMP and application for approval, applicants must advertise in a local and a State newspaper their submission of an application for an SMP approval.

The applicant may include proposals for a Subsidence Community Consultation Process (SCCP) within their draft SMP. An SCCP is a means by which the affected community is advised regarding the terms of an SMP approval, the proposed timetable for approved mining activities, the expected impacts of subsidence, proposed remediation and rehabilitation, and other information regarding the mining process that may be of interest to the community. The community will be given access to the final terms of the SMP approval.

Ongoing Community Monitoring

The SCCP may make provision for the involvement of the community in the ongoing monitoring of mining and mining-related impacts.

Subsidence Monitoring and Reporting Program

The Department may require that the titleholder appoint an Expert Review Panel or obtain an independent environmental audit of subsidence management and subsidence impacts.

The Department's SMP approval process will include development of advice on any additional security deposit considered necessary.

ENFORCEMENT OF SMP APPROVALS

All the enforcement provisions of the *Mining Act 1992* for adherence to conditions of title will apply in the case of SMP approvals. Additional environmental management conditions can also be attached to the mining lease under section 239(2). Applicants should refer to the revised Guidance Notes issued when the process is introduced, in preparing their draft SMP and application for approval.

CONCLUSION

The commencement of the *Coal Mine Health and Safety Act 2002* and the Subsidence Management Plan process will introduce significant changes for the NSW coal industry.

Our commitment is to provide stakeholders with sufficient information, education and counsel to ensure a positive transition for the benefit of all stakeholders.