



NSW DEPARTMENT OF
PRIMARY INDUSTRIES



Guidance Note
GNC-010

NSW DPI Guidance Note **Licensing**

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

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Guidance Note GNC-010

NSW DPI Guidance Note: Licensing

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1.0 PURPOSE

The purpose of this guidance note is to provide practical and general guidance to colliery holders and operators of coal operations on licensing certain activities, and to assist persons apply for a licence.

There are legal requirements in the *Coal Mine Health and Safety Regulation 2006* to obtain a licence from the New South Wales Department of Primary Industries (NSW DPI) for certain potentially hazardous activities related to a coal operation. There are also obligations set nationally in accordance with the *National Standard for Licensing Persons for High Risk Work (the Standard)*, which mesh with the state legislation. The objectives of the standard are to ensure persons have skills and knowledge to perform high risk work in a safe manner and to facilitate the operation of a nationally uniform and efficient licensing system for persons engaged in high risk work.

2.0 SCOPE

This guidance note applies to coal operations in New South Wales which are governed by the *Coal Mine Health and Safety Act 2002* (the Act) and the *Coal Mine Health and Safety Regulation 2006* (the regulation) which prescribes certain activities for the purposes of the act.

This guidance note is to assist in the preparation of licence applications. The regulation covers what activities are licensed and who is required to be licensed. There are provisions dealing with duties of an operator, what is required in licence applications and determination of applications. There are also provisions dealing with refusal, terms of licences, conditions and cancellations.

3.0 DUTIES

In the interests of maintaining a high level of health and safety in coal mining - related operations, NSW DPI is administering a process of licensing for activities which carry a high level of risk or which require a high degree of confidence in risk controls. Companies and individuals are required to hold licences for activities set out in the Regulation.

Further requirements are specified under the *National Standard for Licensing Persons for High Risk Work* (the standard), published by the Australian Safety and Compensation Council (ASCC).

3.1 What is licensing?

Licensing is a way of ensuring that people or organisations carrying on high risk activities in relation to coal operations have the proper training, competency, quality systems, equipment and procedures to conduct them safely or to restore critical risk controls to a suitable state.

Licensing is required where a person (including a corporation) carries on the business of a "licensed activity" as defined in the regulation. A person carries on a business either personally, in partnership, or through employees or agents; or if the person advertises that they carry on such a business. A person does work if they do it personally, in partnership or by employees or agents.

A person may be a natural person or a corporation. If that person directs another person to carry out a licensed activity, that other person also needs to be licensed. Neither person must contravene the licence conditions.

**150 Licensable activity not to be carried on without a licence**

(1) A person must not carry on the business of a licensable activity at, or in connection with, a coal operation otherwise than in accordance with a licence relating to that activity.

(2) A person must not employ, direct or allow another person to carry out a licensable activity unless that other person holds a licence relating to that activity.

(3) A person must not:

(a) contravene the conditions of a licence, or

(b) direct or allow another person to contravene the conditions of a licence.

3.2 What items need to be licensed?

A "licensable activity" is defined in the Regulation as follows:

149 Definitions

(a) overhaul and repair of explosion-protected electrical plant of the type referred to in clause 19 (1) (e) (i),

(b) repair of flexible reeling, feeder and trailing cables of the type referred to in clause 19 (1) (e) (ii) for use in hazardous zones,

(c) auditing of dust explosion management plans made under clause 36,

(d) sampling and analysis of airborne dust under clauses 38 and 39,

(e) a high risk activity of a type referred to in clause 49 Gazetted as a licensable activity,

(f) sampling and analysis of diesel engine exhaust under clause 74,

(g) sampling and testing of roadway dust under Subdivision 2 of Division 2 of Part 4 otherwise than by an explosion suppression officer,

(h) auditing of ventilation arrangements under Subdivision 7 of Division 3 of Part 4.

3.3 How activities are licensed to NSW DPI.

An application for a licence must specify the licensed activity for which it is required, must be in a form that contains any information specified by the Chief Inspector, and in the case of partnerships the application may be made by any one or more of those people. (For companies see cl 153 in 3.7)

152 Applications for licences

(1) An application for a licence:

(a) must specify the licensable activity for which the licence is required, and

(b) must be in a form that contains any particulars or information specified by the Chief Inspector for the activity, and

(c) must be given to the Chief Inspector.



(2) *An application by people who intend to carry on business in partnership may be made by any one or more of those people.*

Note 1. *Section 217 of the Act provides that if the regulations require something to be sent or given to the Chief Inspector, it is enough if it is sent or given to a person, or left at a place, specified by the Chief Inspector by order published in the Gazette.*

Note 2. *An applicant for a licence commits an offence under section 307A of the [Crimes Act 1900](#) if the applicant makes a false or misleading statement in the application.*

3.4 What documentation is required to be submitted?

Required documents of a licence application are listed in Section 7.2 of the standard are as follows; for a natural person:

- ***proof of identity and age of the applicant; and***
- ***A Statement of Attainment relating to the class of high risk work applied for and issued by an RTO (Registered Training Organisation) not more than 60 days before the date of the application, and***
- ***A declaration whether the applicant has had a licence for any class of high risk work cancelled or suspended by a licensing authority in the past five years, and***
- ***The fee required by the licensing authority. (nil fee for DPI)***

Where the application is by a corporation, the application must include the following:

- a) The name of the corporation
- b) Corporation's Australian Business Number (ABN)
- c) Corporation's ACN
- d) Identity and contact details of the primary contact at the corporation.
- e) Name and signature of the person authorised to sign on behalf of the corporation

Further, the licensing authority may make enquiries about the authenticity and suitability of documents presented with the application for a licence (7.3).

The licensing authority may request in writing to the applicant further information relating to the applicant's eligibility for a licence as specified in Part 5 of the standard (7.4).

A licence holder may apply to the licensing authority to renew a licence before the date of expiry of the licence (7.9 of the standard). This application should include (7.10 of the standard):

- *proof of identity of the applicant.*
- *a declaration that the licence holder has maintained the competencies required to perform the class or classes of high risk work that the licence relates to; and*
- *The fee required by the licensing authority.(nil fee for NSW DPI)*

The licensing authority can also request in writing further information relating to the application (7.11).



3.5 What is the cost of a licence?

No charge is made.

3.6 How does NSW DPI manage the licensing process?

When the NSW DPI receives an application the applicant will be notified of its receipt.

The application is reviewed for completeness and to ensure the set number of documents has been supplied. If all documentation has not been received the application is returned to the applicant.

If all documentation has been received, the application then goes to the relevant person in NSW DPI for assessment. If further information is requested, the applicant will be advised.

The appropriate NSW DPI officer will then contact the person to arrange for assessment. The licence may have conditions attached.

3.7 What are the assessment criteria for licences?

To be eligible for a licence, an applicant must be 18 years, or older, a fit and proper person, with appropriate qualifications.

Whether an individual or a corporation, the applicant is to state whether or not they have ever been convicted of a criminal offence and regard will be had to this when determining if the person applying is a fit and proper person.

A fit and proper person might be a person who is physically capable of carrying out a licensed activity safely and who has not had a licence for that activity cancelled in the past.

Appropriate qualifications include demonstrated knowledge of relevant safe working methods, or completion of a specified course, or relevant experience or training, or having any facilities or quality assurance arrangements.

Adequate arrangements must exist for the individual's employees to carry out a licensed activity safely.

Where the applicant is a corporation, it must be deemed a fit and proper person. At least one manager from the corporation needs to have appropriate qualifications and suitable arrangements must exist to ensure the corporation's employees do not carry out licensed activities unless they are adequately trained.

Refer to EES 007 *Licensing of Cable Repair Facilities for Reeling, Trailing and Flexible Feeder Cables used in NSW Underground Coal Mine Hazardous Zones* re licensing as a cable repair workshop; compliance will be assessed by a NSW DPI officer.

153 Eligibility for licence

(1) *A person is eligible for a licence if the Chief Inspector is satisfied that:*

(a) *in the case of an individual:*

(i) *the individual is of or above the age of 18 years, and*

(ii) *the individual is a fit and proper person to hold a licence, and*

(iii) *the individual has appropriate qualifications in relation to the relevant licensable activity, and*



- (iv) *appropriate arrangements exist to ensure that the individual's employees do not carry out a licensable activity unless they have had training in safe working methods in relation to the licensable activity, and*
- (b) *in the case of a corporation:*
- (i) *the corporation is a fit and proper person to hold a licence, and*
- (ii) *each director of the corporation would, if he or she were the applicant, be a fit and proper person to hold a licence, and*
- (iii) *at least one individual engaged in the management of the corporation has appropriate qualifications in relation to the licensable activity, and*
- (iv) *appropriate arrangements exist to ensure that the corporation's employees do not carry out the licensable activity unless they have had training in safe working methods in relation to the licensable activity, and*
- (c) *appropriate arrangements exist to ensure that, during the carrying out of the licensable activity, a person holding appropriate qualifications in relation to the licensable activity (whether or not the holder of the licence) will supervise the carrying out of the activity.*
- (2) *For the purposes of this Part, a person holds appropriate qualifications in relation to a licensable activity if the person:*
- (a) *has demonstrated his or her knowledge of safe working methods in relation to the licensable activity, or*
- (b) *has completed a course of training specified by the Chief Inspector in relation to the licensable activity, or*
- (c) *has, in the opinion of the Chief Inspector, appropriate experience or training in the carrying out of the licensable activity, or*
- (d) *has any facilities or quality assurance arrangements specified by the Chief Inspector.*

3.8 What must a licence show?

The standard specifies at 7.7 the following requirements to be shown on a licence:

- *The name, date of birth and signature of the licence holder (for a person)*
- *A photograph identifying the licence holder (for a person)*
- *Corporation name (for a corporation)*
- *ABN (for a corporation)*
- *The date of issue and expiry,*
- *The name of the licensing authority*
- *The class or classes of high risk work which the holder is authorised to perform;*
- *An identifying number unique to the licence holder*
- *Any conditions to which the licence is subject*



Applicants must include in their application any particulars or information specified by the Chief Inspector for the licensed activity (Clause 148 (b)).

3.9 What happens if a licence is granted?

A licence may be granted either unconditionally or subject to conditions, or be refused if the applicant is considered ineligible.

154 Determination of applications

(1) After considering an application, the Chief Inspector

(a) may grant the licence to which the application relates, either unconditionally or subject to conditions, or

(b) may refuse the application if the Chief Inspector is satisfied that the applicant is not eligible for the licence

The standard states the licensing authority must renew a licence if satisfied the applicant has met the requirements of section 7.10 (7.12).

3.10 Term of a licence

A licence lasts for five years, maximum.

156 Term of licences

A licence remains in force, unless sooner suspended or cancelled, for a period of 5 years commencing on the date on which it is granted, or for such other period as may be specified in the licence.

3.11 Who must be provided with a copy of the licence?

A licence if granted will be provided to the applicant. A person carrying on a licensed activity must make the licence available the place of the activity.

159 Licences to be displayed

A person who carries on a licensable activity at any place must cause a copy of the relevant licence to be displayed or available for examination at that place while the activity is being carried out.

3.12 Obligations of Coal Operators in relation to licensed activity

The operator of a coal operation must afford a person carrying out a licensed activity at the coal operation every reasonable facility in the undertaking of the activity in a safe manner (CI 151).

3.13 What happens if a licence is refused?

If the licence is refused, the Chief Inspector must give written notice of the refusal and the reason to the applicant.

The licensing authority must not renew a licence (7.13 of the standard) if it determines that the applicant:

- *has not met the requirements of 7.10 of the standard or*



- *is no longer competent to perform the kind of high risk work authorised by the licence.*

155 Notice of refusal

If the Chief Inspector refuses to grant a licence, the Chief Inspector must give written notice of the refusal, and of the reasons for the refusal, to the applicant.

3.14 Cancellation of a licence

A licence may be cancelled where the holder has made a false or misleading statement in the application; or has exposed any person to a health or safety risk; has contravened a condition; or has not complied with an improvement or prohibition notice under the Occupational Health and Safety Act 2000; or has been convicted of an offence against the Act or regulation, or is no longer a fit and proper person, or if a corporation, has a director no longer a fit and proper person.

Before suspending or cancelling a licence, the Chief Inspector must notify the licence holder and give them a reasonable opportunity to respond and must have regard to this response. Suspension or cancellation of a licence takes effect on the date on which the notice is given or a later date if specified. A cancelled licence must be returned to the Chief Inspector.

The standard adds the following requirements of the licensing authority (7.18) to cancel a licence if:

(b) the licence holder no longer has the competency to perform the kind of high risk work authorised by the licence without endangering the health and safety of the holder or another person, or

(c) the licence holder is not competent to perform the kind of high risk work authorised by the licence where the licence holder's Statement of Attainment has been issued by the RTO which has subsequently been de-registered or sanctioned.

The licence holder must surrender a suspended or cancelled licence to the licensing authority after receiving notice of the suspension or cancellation (7.20).

The licensing authority must return a surrendered licence at the end of the suspension to the person if the licence has not been further suspended or cancelled, (7.22).

The licensing authority may require a person whose licence is suspended, to undertake re-training and provide evidence of competency, before re-instating the licence, (7.23).

If a licensing authority or the Commonwealth regulatory authority has evidence that a licence issued by another licensing authority should be suspended or cancelled, it must advise the issuing licensing authority of its findings and recommendations. The issuing licensing authority must then conduct enquiries into the matter and if it deems appropriate suspend or cancel the licence, (7.24).

160 Suspension or cancellation of licences

(1) The Chief Inspector may suspend or cancel a licence if satisfied that the holder of the licence:



(a) has made a statement, in or in connection with an application for the licence, that the holder knew, when the statement was made, to be false or misleading in a material particular, or

(b) has carried out, or authorised the carrying out of, a licensable activity in such a manner as to expose any person (including any of his or her employees or agents) to a health or safety risk from the licensable activity that could reasonably have been avoided, or

(c) has contravened a condition of the licence, or

(d) has failed to comply with the requirements of an improvement notice or prohibition notice under the [Occupational Health and Safety Act 2000](#), or

(e) has been convicted of an offence against the Act or any regulation (including this Regulation) under the Act, or

(f) in the case of an individual, is no longer a fit and proper person to hold the licence, or

(g) in the case of a corporation, has a director who is no longer a fit and proper person to hold a licence.

(2) Before suspending or cancelling a licence, the Chief Inspector:

(a) must cause notice of the proposed suspension or cancellation to be given to the holder of the licence, and

(b) must give the holder of the licence a reasonable opportunity to make representations to the Chief Inspector in relation to the proposed suspension or cancellation, and

(c) must have regard to any representations so made.

(3) The suspension or cancellation of a licence takes effect on the date on which written notice of the suspension or cancellation is given to the holder of the licence or on such later date as may be specified in the notice.

161 Cancelled licences to be returned to the Chief Inspector

The holder of a cancelled licence must return the licence to the Chief Inspector within such period as may be specified in the notice of cancellation.

3.15 Application for exemption

A person may apply to the licensing authority for an exemption from holding a licence to perform a class of high risk work (7.14).

The application for exemption must be made in a manner and form determined by the licensing authority and must include (7.15):

- *the reasons for seeking an exemption and*
- *the alternative measures that will be used to ensure the high risk work is performed safely.*

The licensing authority may request in writing to the applicant further information relating to the application for exemption (7.16). Where an exemption is granted, the licensing authority may place restrictions on the performance of the high risk work (7.17).



3.16 Exemptions (clauses 200 and 201)

A person may apply for an exemption from the provision in the regulation requiring them to obtain a licence (cl 200). The person must give notice to all people employed at the coal operation or in accordance with any consultation arrangements agreed by the coal operator and the employees.

The notice must state the person seeks an exemption, its effect, invite people to whom the notice is given to respond and state to whom this response should be directed. The application must be in writing and include any related written submissions and a summary of any oral submissions made.

The Chief Inspector may in writing exempt the person if satisfied they are capable of achieving at least an equivalent level of safety as would have been otherwise achieved or the application of the provision to the person is inappropriate or unnecessary; or may dismiss the application.

The exemption may be given unconditionally or subject to such conditions as the Chief Inspector considers appropriate. The exemption, unless withdrawn, has effect for such period not exceeding five years as specified. The Chief Inspector may in writing withdraw the person's exemption if justified on health or safety grounds.

The Chief Inspector may by Gazettal exempt any class of people or things from the regulation (cl201). This may be unconditional or subject to such conditions as the Chief Inspector considers appropriate. Unless withdrawn this exemption has effect for such period not exceeding five years as specified. The Chief Inspector may, before granting, give notice of this proposed exemption to such bodies as deemed appropriate. The Chief Inspector may by Gazettal withdraw this exemption if satisfied it is justified on health and safety grounds.

3.17 Appeals process

A decision by the Chief Inspector to refuse to grant a licence, or to amend a condition of a licence or suspend or cancel a licence may be appealed to the Administrative Decisions Tribunal

209 Decisions reviewable by the Administrative Decisions Tribunal

(1) For the purposes of section 196 (1) of the Act, a person is authorised to apply to the Administrative Decisions Tribunal for a review of a decision of any of the following classes:

(d) a decision by the Chief Inspector under clause 154 to refuse to grant a licence,

(e) a decision by the Chief Inspector under clause 158 to amend a condition of a licence,

(f) a decision by the Chief Inspector under clause 160 to suspend or cancel a licence,

3.18 Conditions

It is a condition of a licence that during the licensed activity a person holding appropriate qualifications must supervise the activity. The Chief Inspector may amend or cancel any condition to which the licence is subject or impose further



conditions on the licence. An amendment or further condition takes effect on the date on which written notice is given to the licence holder.

157 Condition of licence relating to supervision

It is a condition of a licence that, during the carrying out of the licensable activity, a person holding appropriate qualifications in relation to the licensable activity (whether or not the holder of the licence) must supervise the carrying out of the activity.

158 Amendment of conditions of licences

(1) The Chief Inspector, on the application of the holder of a licence or on his or her own initiative:

(a) may amend or cancel any condition to which the licence is subject, or

(b) may impose further conditions on the licence.

(2) An amendment to a condition, or a further condition, takes effect on the date on which written notice of the amendment or imposition of a further condition is given to the holder of the licence or on such later date as may be specified in the notice.

3.19 Review of Decisions

The standard states in section 7.25 that decisions of the licensing authority may be appealed in accordance with the authority's procedures. The applicant or licence holder may lodge an appeal against:

(a) A refusal to issue or renew a licence or an endorsement on a licence or

(b) A refusal to grant an exemption from holding a licence or

(c) The suspension or cancellation of a licence.

3.20 Replacement of a lost, stolen or destroyed licence

The standard states in section 7.26 if a licence is lost, stolen, or destroyed, a licence holder may apply to the issuing authority for the reissue of the licence if the licence holder:

- *completes an application form and*
- *provides proof of identity and*
- *pays the fee required by the licensing authority and*
- *completes a statutory declaration setting out the circumstances in which the licence was lost stolen or destroyed.*

4.0 REFERENCES

- **Coal Mine Health and Safety Act 2002 and the Coal Mine Health and Safety Regulation 2006** (www.legislation.nsw.gov.au)
- **National Standard for Licensing Persons for High Risk Work** (available from the web site www.ascc.gov.au)

**5.0 ATTACHMENTS****Guidance Note Coal – GNC-010: Licensing**

GNC-010 Attachment 1	NSW DPI Technical Reference, Electrical Engineering Safety EES-007 Licensing of Cable Repair Facilities
GNC-010 Attachment 2 (A)	Licensing of certain activities - application form
GNC-010 Attachment 2 (B)	Licensing of facilities for repair and overhaul of Explosion-protected electrical plant - application form
GNC-010 Attachment 2 (C)	Licensing of facilities for the repair of reeling, trailing and flexible feeder cables in underground coal mine hazardous zones - application form

Attachment 1 – Technical Reference**NSW DPI Technical Reference - Electrical Engineering Safety EES 007****“Licensing of Cable Repair Facilities for Reeling, Trailing and Flexible Feeder Cables used in NSW Underground Coal Mine Hazardous Zones”**

A full copy of this document is available from NSW DPI mine safety website www.dpi.nsw.gov.au/minerals/safety or contact your local NSW DPI Minerals office.

Extract from EES 007**1.5 Definitions**

Licensed Cable Repair Workshop – a quality accredited facility, with at least one competent person in full-time employ and the necessary equipment and procedures deemed suitable to receive licensing as a cable repair workshop. Licensed workshops are required by the Department and Australian Standards to keep historical records of all repairs made to cables in NSW coal mines.

2.2 General Requirements

Good engineering practice is a primary goal of the cable repair workshop licensing scheme and associated competent person’s scheme and is a prerequisite to the granting of any cable repair workshop license.

Workshops licensed for the purposes of repair of cable shall comply with the requirements of AS/NZS1747.

The scope of work will typically encompass the overhaul, repair and testing of flexible mining cables and accessories such as restrained plugs, flit plugs, glands and stuffing boxes.



Occupational health and safety responsibilities embrace both the end-user and the workshop to ensure that all repaired cables are returned to service in a fit for purpose condition.

Assessment for licensing purposes will be conducted by either Inspectors of Electrical Engineering or Mine Safety Officers – Electrical Engineering of Mine Safety Operations, Department of Primary Industries.

Prior to implementation of any changes to workshop practices, processes or materials, the licensed workshop shall assess such changes for on-going compliance with their licence and advise the licensing authority where such changes may impact on the licence, in particular where the practices impact on the control of the Repair/Overhaul processes for cables and fittings.



6.0 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
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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