



Queensland

# Mining Safety and Health Legislation (Coal Workers' Pneumoconiosis and Other Matters) Amendment Regulation 2016

## Subordinate Legislation 2016 No. 176

made under the

*Coal Mining Safety and Health Act 1999*

*Mining and Quarrying Safety and Health Act 1999*

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## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Mining Safety and Health Legislation (Coal Workers' Pneumoconiosis and Other Matters) Amendment Regulation 2016*.

### **2 Commencement**

This regulation commences on 1 January 2017.

## **Part 2 Amendment of Coal Mining Safety and Health Regulation 2001**

### **3 Regulation amended**

This part amends the *Coal Mining Safety and Health Regulation 2001*.

### **4 Amendment of ch 2, pt 3, hdg (Accidents, high potential incidents and injuries)**

Chapter 2, part 3, heading, after 'incidents'—  
*insert—*  
**, diseases**

### **5 Amendment of s 13 (Prescribed types of high potential incidents—Act, s 198)**

(1) Section 13, heading, 's 198'—  
*omit, insert—*  
**s 198(2)(b)**

(2) Section 13, 'schedule 1'—

*omit, insert—*

schedule 1C

## **6 Insertion of new s 13A**

After section 13—

*insert—*

### **13A Prescribed diseases that must be reported—Act, s 198(6)**

A disease mentioned in schedule 1, column 1, in the circumstances mentioned opposite the name of the disease in schedule 1, column 2, is prescribed for section 198(6) of the Act.

## **7 Replacement of s 46 (Health assessment)**

Section 46—

*omit, insert—*

### **46 Requirement for health assessment**

- (1) The employer must ensure a health assessment is carried out for each person who is to be employed, or is employed, by the employer as a coal mine worker for a task other than a low risk task.
- (2) An assessment must be carried out—
  - (a) before the person is employed as a coal mine worker; and
  - (b) if the nominated medical adviser considers the assessment is necessary after being given a copy of a notice under section 49(3)—periodically, as decided by the nominated medical adviser; and

- (c) otherwise—periodically, as decided by the nominated medical adviser, but at least once every 5 years.

#### **46A Content of health assessments**

- (1) A health assessment for a person must—
  - (a) be carried out—
    - (i) in accordance with all instructions, and covering all matters, stated in the approved form; and
    - (ii) by, or under the supervision of, the nominated medical adviser; and
  - (b) without limiting paragraph (a)(i), include an examination of the person's respiratory function and a chest x-ray examination—
    - (i) if the person is not yet employed as a coal mine worker; or
    - (ii) for a coal mine worker who is an aboveground worker—at least once every 10 years; or
    - (iii) for a coal mine worker who is, or was, an underground worker—at least once every 5 years; and
  - (c) if the results of 1 or more previous respiratory function examinations of the person are available and an examination of the person's respiratory function is required under paragraph (a)(i) or (b)—include a comparative assessment of the person's respiratory function.
- (2) Each examination carried out as part of a health assessment must be performed by a person qualified and competent to conduct the examination.

(3) In this section—

*aboveground worker* means a coal mine worker other than an underground worker.

*underground worker* means a coal mine worker who works underground at an underground mine.

#### **46B Other matters about health assessments**

- (1) This section applies despite section 46A(1)(a).
- (2) A health assessment may include matters not covered in the health assessment approved form if—
  - (a) a risk assessment has been carried out for a task for which a person is, or is to be, employed by the employer; and
  - (b) having regard to the risk assessment, the nominated medical adviser considers the person needs to be assessed in relation to the additional matters to achieve an acceptable level of risk.
- (3) Also, a person may undergo an assessment (a *subsequent assessment*) in accordance with some of the instructions only, and covering some of the matters only, in the health assessment approved form if—
  - (a) the person has previously undergone a health assessment; and
  - (b) the subsequent assessment relates to a particular matter identified by the previous assessment; and
  - (c) the subsequent assessment is carried out to ensure the person is able to carry out the person's tasks at the mine without creating an unacceptable level of risk having regard to the matter mentioned in paragraph (b).

- (4) A medical examination of a person carried out by a doctor other than the nominated medical adviser is taken to be a health assessment carried out by the nominated medical adviser under section 46A if—
- (a) both of the following apply—
    - (i) the medical examination is carried out in accordance with all instructions, and covering all matters, stated in the health assessment approved form; and
    - (ii) the nominated medical adviser gives the employer a health assessment report about the examination; or
  - (b) the medical examination is for another purpose and the nominated medical adviser—
    - (i) is satisfied the examination is equivalent to a health assessment; and
    - (ii) gives the employer a health assessment report about the examination.
- (5) In this section—
- health assessment approved form*** means the approved form mentioned in section 46A(1)(a)(i).

## 8 Amendment of s 47 (Employer's responsibility for health assessment)

- (1) Section 47(1), after 'employer must'—

*insert—*

, for each health assessment required to be carried out under section 46

- (2) Section 47(1)(a)—

*omit, insert—*

- (a) arrange for the health assessment, or a medical examination taken to be the health assessment under section 46B(4), to be carried out; and

## 9 Insertion of new ss 49A and 49B

After section 49—

*insert—*

### **49A Retirement examination may be asked for**

- (1) This section applies to a person who permanently retires from working as a coal mine worker.
- (2) The person may ask the employer for a retirement examination to be carried out—
  - (a) during the 6 month period that begins 3 months before the person retires; and
  - (b) at a time, or times, during that period when the person is available for the examination.
- (3) If a person asks for a retirement examination under subsection (2), the employer must—
  - (a) arrange for the retirement examination to be carried out within the period mentioned in subsection (2)(a); and
  - (b) ask the nominated medical adviser to give—
    - (i) a retirement examination report to the employer; and
    - (ii) a copy and explanation of the report to the person; and
  - (c) ensure, before an explanation of the report from the nominated medical adviser is given to the employer, the person agrees to the explanation being given and is present.
- (4) The nominated medical adviser must comply with a request under subsection (3)(b).



- (5) A retirement examination must be carried out—
  - (a) in accordance with all instructions, and covering all matters, stated in the approved form; and
  - (b) by, or under the supervision of, the nominated medical adviser.
- (6) This section does not apply if the person—
  - (a) worked as a coal mine worker for less than 3 years; or
  - (b) had, during the 3 years before the person retired, a health assessment that complied with section 46A and included—
    - (i) a chest x-ray examination; and
    - (ii) an examination of the person's respiratory function; and
    - (iii) if the results of 1 or more previous respiratory function examinations of the person were available—a comparative assessment of the person's respiratory function.

#### **49B Other matters about retirement examinations**

- (1) Each examination carried out as part of a retirement examination must be performed by a person qualified and competent to conduct the examination.
- (2) A medical examination of a person carried out by a doctor other than the nominated medical adviser is taken to be a retirement examination carried out by the nominated medical adviser under section 49A if—
  - (a) both of the following apply—
    - (i) the medical examination is carried out in accordance with all instructions, and

covering all matters, stated in the approved form mentioned in section 49A(5)(a); and

- (ii) the nominated medical adviser gives the employer a retirement examination report about the examination; or
- (b) the medical examination is for another purpose and the nominated medical adviser—
  - (i) is satisfied the examination is equivalent to a retirement examination; and
  - (ii) gives the employer a retirement examination report about the examination.
- (3) The employer must pay for the following—
  - (a) the retirement examination or medical examination;
  - (b) the retirement examination report about the examination to be prepared, and the copy and explanation of the report.

Maximum penalty—100 penalty units.

- (4) Subsection (3) is not a safety and health obligation for the Act.

## 10 Amendment of s 50 (Records about health assessment)

- (1) Section 50, heading, 'health assessment'—

*omit, insert—*

**health assessments and retirement examinations**

- (2) Section 50(1)—

*omit, insert—*

- 
- (1) Subject to subsection (2), a nominated medical adviser must, on behalf of the chief executive, keep the following records for each health assessment or retirement examination carried out by the nominated medical adviser under this division or taken to be carried out under section 46B(4) or 49B(2)—
- (a) the data on which the assessment or examination was based;
  - (b) a copy of the approved form completed for the assessment or examination.
- (3) Section 50(3), after 'health assessment'—  
*insert—*  
    , retirement examination

## 11 Amendment of s 52 (Confidentiality of medical record)

- (1) Section 52(7), definition *medical record*, after 'health assessment'—  
*insert—*  
    or retirement examination
- (2) Section 52(7)—  
*insert—*  
    *coal mine worker* includes a person who has permanently retired from working as a coal mine worker.

## 12 Amendment of s 89 (Dust)

- (1) Section 89(3), from 'can not be reduced'—  
*omit, insert—*  
    is above the levels stated in subsection (1)—

- (a) the controls for minimising dust must be reviewed; and
  - (b) the system must be changed to ensure the average concentration is reduced to, or below, the levels stated in subsection (1).
- (2) Section 89(5)—  
*omit, insert—*
  - (5) The system must provide for all of the following—
    - (a) monitoring, and preparing a record of, concentrations of respirable dust in the atmosphere of the work environment;
    - (b) keeping the record in a location that is easily accessible by each coal mine worker at the mine;
    - (c) submitting the record to the chief inspector—
      - (i) in a way, and in a format, approved by the chief inspector; and
      - (ii) for development operations or longwall operations—at least once every 3 months and as otherwise directed by an inspector; and
      - (iii) otherwise—
        - (A) as required under a recognised standard related to the monitoring of respirable dust at coal mines; or
        - (B) as otherwise directed by an inspector;
    - (d) the investigation and reporting procedure stated in section 89A for high average respirable dust concentrations.

## 13 Insertion of new section 89A

After section 89—

*insert—*

### **89A Dust monitoring and reporting procedure**

- (1) This section applies if the site senior executive for a coal mine becomes aware (the *first trigger event*) that the average concentration of respirable dust in the atmosphere of the work environment exceeds the levels stated in section 89(1).
- (2) The site senior executive must ensure—
  - (a) the cause of high average concentration is investigated; and
  - (b) the results of the investigation are recorded and analysed to identify trends and issues with the coal mine's safety and health management system; and
  - (c) the notification obligations under subsection (4) are complied with; and
  - (d) if any changes to the coal mine's safety and health management system required under section 89(3)(b) are made—the changes to the system are recorded; and
  - (e) a further sample is taken within 2 weeks after the first trigger event.
- (3) If the site senior executive receives the results of the further sample and the results indicate the average concentration of respirable dust in the atmosphere of the work environment exceeds the levels stated in section 89(1) (the *second trigger event*), the site senior executive must ensure—
  - (a) the cause of the continued high average concentration is investigated; and
  - (b) the results of the investigation are recorded and analysed to identify trends and issues

- with the coal mine's safety and health management system; and
- (c) the notification obligations under subsection (4) are complied with; and
  - (d) if any changes to the coal mine's safety and health management system required under section 89(3)(b) are made—the changes to the system are recorded.
- (4) For subsections (2)(c) and (3)(c), the notification requirements for the first trigger event and second trigger event are—
- (a) as soon as practicable after the event, coal mine workers in the similar exposure group for the risk created by the high average respirable dust concentration must be told about the high average concentration; and
  - (b) within 24 hours after the event, the following persons must be told about the high average concentration—
    - (i) an inspector;
    - (ii) an industry safety and health representative;
    - (iii) a site safety and health representative; and
  - (c) within 72 hours after the event, a record of concentrations of respirable dust in the atmosphere of the work environment must be submitted to the chief inspector in a way, and in a format, approved by the chief inspector.
- (5) In this section—
- further sample*** means a sample of the atmosphere of the work environment taken—

- 
- (a) after the first trigger event for the purpose of determining whether the average concentration of respirable dust in the atmosphere of the work environment continues to exceed the levels stated in section 89(1); and
- (b) in accordance with AS 2985; and

*Editor's note—*

AS 2985 'Workplace atmospheres—Method for sampling and gravimetric determination of respirable dust'

- (c) as far as practicable, in the same circumstances as the sample of the atmosphere of the work environment that resulted in the first trigger event.

*Example—*

The further sample is taken—

- 1 in an area of the mine similar to the area in which the initial sample was taken; and
- 2 using—
  - (a) the same coal mine worker used to take the initial sample; or
  - (b) another coal mine worker in the similar exposure group for the risk created by the high average respirable dust concentration.

## **14 Amendment and renumbering of sch 1 (Types of high potential incidents for section 198 of the Act)**

- (1) Schedule 1, heading, 'section 198'—

*omit, insert—*

### **section 198(2)(b)**

- (2) Schedule 1—

*renumber* as schedule 1C.

[s 15]

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**15 Insertion of new sch 1**

After schedule 1C—

*insert—*

**Schedule 1 Diseases for section  
198(6) of the Act**

section 13A

<b>Column 1</b>	<b>Column 2</b>
<b>Disease</b>	<b>Circumstances</b>
chronic obstructive pulmonary disease	When— (a) contracted by a person who— (i) is or was a coal mine worker at a coal mine; and (ii) was exposed to dust at the mine; and (b) a nominated medical adviser or another doctor has confirmed the diagnosis.
coal workers' pneumoconiosis	When— (a) contracted by a person who— (i) is or was a coal mine worker at a coal mine; and (ii) was exposed to coal dust at the mine; and (b) a nominated medical adviser or another doctor has confirmed the diagnosis.



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<b>Column 1</b>	<b>Column 2</b>
<b>Disease</b>	<b>Circumstances</b>
legionellosis	When— (a) contracted by a person who— (i) is or was a coal mine worker at a coal mine; and (ii) was exposed to a causative agent for legionellosis at the mine; and (b) a nominated medical adviser or another doctor has confirmed the diagnosis.
silicosis	When— (a) contracted by a person who— (i) is or was a coal mine worker at a coal mine; and (ii) was exposed to crystalline silica dust at the mine; and (b) a nominated medical adviser or another doctor has confirmed the diagnosis.

**16 Amendment of sch 7 (Prescribed tasks for section 76(3)(a) of the Act)**

Schedule 7—

*insert—*

- 9 carrying out respirable dust sampling at a coal mine in accordance with AS 2985

*Editor's note—*

AS 2985 'Workplace atmospheres—Method for sampling and gravimetric determination of respirable dust'

**17 Amendment of sch 9 (Dictionary)**

(1) Schedule 9—

*insert—*

***causative agent***, for a disease, means an agent that causes the disease.

***chest x-ray examination*** means an examination of an x-ray taken of a person's chest—

- (a) for the purpose of screening for indications of pneumoconioses; and
- (b) performed in accordance with the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2011.

*Editor's note—*

The Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2011 is available at the International Labour Organization's website.

***comparative assessment***, of a person's respiratory function, means a comparison of the results of an examination of the person's respiratory function to the results of available previous respiratory function examinations of the person for the purpose of identifying trends.

***examination***, of a person's respiratory function, includes spirometry and auscultation.

***previous respiratory function examination***, in relation to a health assessment or a retirement examination of a person, means an examination of the person's respiratory function performed, by a person qualified and competent to conduct the examination, before the health assessment or retirement examination.

***retirement examination***, in relation to a person, means an examination of the person that includes the following, whether carried out at the same time or at different times—

- (a) a chest x-ray examination;
- (b) an examination of the person's respiratory function;
- (c) if the results of 1 or more previous respiratory function examinations of the person are available—a comparative assessment of the person's respiratory function.

***retirement examination report*** means a report, in the approved form, about a retirement examination, or a medical examination taken to be a retirement examination under section 49B(2), of a person.

- (2) Schedule 9, definition *health assessment report*, after 'medical examination'—

*insert—*

taken to be a health assessment under section 46B(4)

- (3) Schedule 9, definition *recognised competency*, 'council'—

*omit, insert—*

committee

## Part 3 **Amendment of Mining and Quarrying Safety and Health Regulation 2001**

### 18 **Regulation amended**

This part amends the *Mining and Quarrying Safety and Health Regulation 2001*.

**19 Amendment of ch 2, pt 3, hdg (Accidents, incidents and injuries)**

Chapter 2, part 3, heading, after 'incidents'—

*insert—*

**, diseases**

**20 Amendment of s 12A (Prescribed types of high potential incidents—Act, s 195)**

Section 12A, heading, 's 195'—

*omit, insert—*

**s 195(2)(b)**

**21 Insertion of new s 12B**

After section 12A—

*insert—*

**12B Prescribed diseases that must be reported—Act, s 195(6)**

A disease mentioned in schedule 1A is prescribed for section 195(6) of the Act.

**22 Amendment of s 64 (Persons who may handle explosives)**

Section 64(2)(b)(i), 'council'—

*omit, insert—*

committee

**23 Amendment of sch 1 (Types of high potential incidents for section 195 of the Act)**

Schedule 1, heading, 'section 195'—

*omit, insert—*

**section 195(2)(b)**

**24 Insertion of new sch 1A**

After schedule 1—

*insert—*

**Schedule 1A Diseases for section  
195(6) of the Act**

section 12B

asbestosis

chronic obstructive pulmonary disease

legionellosis

occupational asthma

occupational cancer

silicosis

**25 Amendment of sch 7 (Dictionary)**

Schedule 7—

*insert—*

***occupational asthma***, in relation to a person, means asthma caused or exacerbated by the person's work or environmental factors at the person's workplace.

***occupational cancer***, in relation to a person, means cancer caused, wholly or partly, by the person's work or environmental factors at the person's workplace.

#### ENDNOTES

- 1 Made by the Governor in Council on 29 September 2016.
- 2 Notified on the Queensland legislation website on 30 September 2016.
- 3 The administering agency is the Department of Natural Resources and Mines.

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