

# Coal Mining Safety and Health and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 221

made under the

*Coal Mining Safety and Health Act 1999*

*Explosives Act 1999*

*Mining and Quarrying Safety and Health Act 1999*

*Petroleum Act 1923*

*Petroleum and Gas (Production and Safety) Act 2004*

## General Outline

### Short title

*Coal Mining Safety and Health and Other Legislation Amendment Regulation 2019.*

### Authorising law

Section 282 of the *Coal Mining Safety and Health Act 1999* (CMSH Act)

Section 135 of the *Explosives Act 1999* (Explosives Act)

Section 262 of the *Mining and Quarrying Safety and Health Act 1999* (MQSH Act)

Section 149 of the *Petroleum Act 1923* (PA 1923)

Section 859 of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)

### Policy objectives and the reasons for them

The policy objectives of the *Coal Mining Safety and Health and Other Legislation Amendment Regulation 2019* (the Amendment Regulation) are to amend the *Coal Mining Safety and Health Regulation 2017* (CMSH Regulation), the *Explosives Regulation 2017* (Explosives Regulation), the *Mining and Quarrying Safety and Health Regulation 2017* (MQSH Regulation) and the *Petroleum and Gas (Safety) Regulation 2018* (P&G Safety Regulation) to:

- clarify that an employer's responsibility for the cost of an employee's health assessment under the CMSH Regulation and the MQSH Regulation is a civil penalty obligation;
- provide for quarterly invoicing of the safety and health fee under the CMSH Regulation, the Explosives Regulation and the MQSH Regulation and to clarify

fee census requirements for operators or authority holders with 5 or fewer workers; and

- clarify the relevant safety requirements for the inspection of gas systems in used caravans and the definition of 'construction and abandonment code', and make minor amendments to update references under the P&G Safety Regulation.

### Civil penalties

The primary objectives of the CMSH Act and the MQSH Act are to protect the safety and health of persons at mines and persons who may be affected by mining operations. The CMSH Act and the MQSH Act impose obligations and requirements on persons, including the requirements to protect the safety and health of persons at mines or affected by mining operations, and ensure the risk of injury or illness to persons is at an acceptable level.

The *Mines Legislation (Resources Safety) Act 2018* amended the CMSH Act and the MQSH Act to include civil penalty provisions. Civil penalties were introduced to enable timely action to be taken to address non-compliance.

Section 267F of the CMSH Act and section 246F of the MQSH Act provide that a relevant corporation is liable to pay a civil penalty if the relevant corporation, or a representative of the relevant corporation, contravenes a civil penalty obligation.

Ensuring effective and regular health assessments under the CMSH Act and MQSH Act are key obligations owed by employers and critical for the early identification of mine dust lung disease. To meet this obligation, employers are required under regulation to pay for a worker's health assessment.

Item 2, Part 3 of Schedule 7A to the CMSH Regulation and item 2, Part 3 of Schedule 5A to the MQSH Regulation provide that a civil penalty may be imposed for 'safety and health obligations' relating to health assessments under the relevant section of these regulations. Sections 47(3) of the CMSH Regulation and 131(7) of the MQSH Regulation provide that the obligation of an employer to pay for the health assessment, any subsequent assessment and the cost of giving the copies and explanations of the report, are not safety and health obligations.

Amendments are required to the CMSH Regulation and the MQSH Regulation to clarify the intent that an employer's responsibility for the cost of an employee's health assessment under section 47(2) of the CMSH Regulation and section 131(6) of the MQSH Regulation are obligations to which a civil penalty may apply.

### Quarterly invoicing of the safety and health fee

The CMSH Regulation, the Explosives Regulation and the MQSH Regulation provide for safety and health fees, which fund the Coal Mines, Mineral Mines and Quarries, and Explosives Inspectorates' regulatory and service delivery activities along with a range of associated Resources Safety and Health (RSH) division of the Department of Natural Resources, Mines and Energy (the department) functions.

Operators and authority holders report worker numbers through a quarterly census. Whilst the census cycle is quarterly, the safety and health fee is charged to operators

and authority holders annually under the CMSH Regulation, the Explosives Regulation and the MQSH Regulation.

The safety and health fee is calculated on the number of workers employed. Operators and authority holders with more than five workers are charged the safety and health fee detailed in the CMSH Regulation, the Explosives Regulation and the MQSH Regulation. Operators and authority holders reporting five or fewer workers are not required to pay a fee, but must still report worker numbers.

Quarterly census and annual invoicing cycles have the potential to complicate cash-flow planning and be administratively inefficient for industry. Amendments are required to align levy invoicing and payment cycles to assist with cash-flow management and improve the distribution of regulatory and other safety and health-related costs across the financial year.

For those operators or authority holders with five or fewer workers, amendments are also required to clarify that those operators or authority holders may choose to submit an annual rather than a quarterly census. As operators with five or fewer workers are not liable to pay the safety and health fee, they will not be affected by quarterly invoicing arrangements.

#### Relevant safety requirements for gas systems in used caravans

The P&G Safety Regulation supports the P&G Act in the safety regulation of Queensland's petroleum, coal seam gas and fuel gas industries. The P&G Act and the P&G Safety Regulation require petroleum or gas hazards or risks to be managed, to ensure the safety of workers, consumers and members of the community. The P&G Safety Regulation also states the safety requirements for fuel gas and gas device certification.

The 2018 remake of the safety provisions in the P&G Safety Regulation included changes relating to the relevant safety requirements for the inspection of a gas system and for the issuing of a gas compliance certificate. These changes have resulted in unintended consequences. Specifically, there is a requirement for compliance with the relevant Standard (e.g. Australian Standard or joint Australian/New Zealand Standard) specified, in order for a compliance certificate to be issued. These requirements apply to the inspection of a gas system of an older caravan as well as the gas systems of new caravans and those that have been altered from the date of the remake regulation. This is contrary to how Standards generally operate, as they are not usually retrospective. Therefore there is a need for amendments to clarify and correct the unintended outcome of applying Standards retrospectively for compliance certificates for gas systems in used caravans.

A minor typographical error has also been identified in schedule 5, part 2 of the P&G Safety Regulation for gas work licences. For the type of gas work licence (servicing and caravan certification), Column 3 should refer to "and certifying a gas system installed in a caravan".

#### Construction and Abandonment Code

Schedule 7 of the P&G Safety Regulation includes a definition for the "construction and abandonment code" and refers to the 'Code of practice for the construction and

abandonment of coal seam gas and petroleum wells, and associated bores in Queensland’.

Currently the definition refers to coal seam gas wells as a separate set of wells, which is misleading as coal seam gas wells are a subset of petroleum wells. There is a need to clarify that the definition should be to the ‘Code of practice for the construction and abandonment of petroleum wells and other associated bores in Queensland’. The name of the code of practice will also be updated to reflect this change.

#### APGA code of practice

Section 669 of the P&G Act provides that a regulation may make requirements (safety requirements), including for petroleum or fuel gas safety, including, for example, how to achieve an acceptable level of risk under the P&G Act.

Section 67 of the P&G Safety Regulation prescribes a safety requirement for a pipeline other than a distribution pipeline that is part of a distribution system. Section 67(2) of the P&G Safety Regulation requires the operator of the pipeline to ensure the design, construction, operation, maintenance and abandonment of the pipeline complies with one of three prescribed documents (each known as a pipeline code or standard). One of these documents is the ‘APGA code of practice upstream polyethylene gathering networks - CSG industry’ version 4.0 supplementary, August 2017. This document is now out of date.

An amendment is required to section 67(2)(a) of the P&G Safety Regulation to update the APGA code reference to prescribe the ‘APGA code of practice upstream polyethylene gathering networks - CSG industry’ version 5.0, August 2019.

## **Achievement of policy objectives**

#### Civil penalties

The Amendment Regulation amends the CMSH Regulation and the MQSH Regulation to clarify that an employer’s responsibility for the cost of an employee’s health assessment under section 47(2) of the CMSH Regulation and section 131(6) of the MQSH Regulation is a civil penalty obligation.

#### Quarterly invoicing of certain regulatory fees

The Amendment Regulation amends the CMSH Regulation, the Explosives Regulation and the MQSH Regulation to include the following:

- that the safety and health fee is to be invoiced on a quarterly basis;
- the inclusion of a quarterly rate for the safety and health fee;
- that operators or authority holders with five or fewer workers may choose to submit the safety and health census on a quarterly or annual basis; and
- where an operator or authority holder move from quarterly to annual reporting during a financial year, any fees paid for a quarter will be credited against the amount of the fee payable for the financial year to ensure no overpayment.

#### Relevant safety requirements for gas systems in used caravans

The Amendment Regulation amends the P&G Safety Regulation to ensure there are not retrospective requirements for gas systems in used caravans to comply with Australian Standards.

The amendment will ensure gas systems will be inspected in accordance with the relevant safety requirements that applied at the time of installation of the gas system and at the time of any alterations to the gas system.

The Amendment Regulation also amends a minor typographical error in schedule 5, part 2 of the P&G Safety Regulation for gas work licences. The type of gas work licence (servicing and caravan certification), Column 3 will refer to “and certifying a gas system installed in a caravan”.

#### Construction and abandonment code

The Amendment Regulation amends the definition of ‘construction and abandonment code’ to refer to the ‘Code of practice for the construction and abandonment of petroleum wells and associated bores in Queensland’.

#### APGA code of practice upstream polyethylene gathering networks

The Amendment Regulation amends section 67(2)(a) of the P&G Safety Regulation to update the APGA code reference to the ‘APGA code of practice upstream polyethylene gathering networks - CSG industry’ version 5.0, August 2019.

### **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the main objectives of the CSMH Act, the Explosives Act, the MQSH Act, the PA 1923 and the P&G Act.

### **Inconsistency with policy objectives of other legislation**

There is no inconsistency with the policy objectives of other legislation.

### **Benefits and costs of implementation**

The amendments to clarify that an employer’s responsibility for the cost of an employee’s health assessment are obligations to which a civil penalty may apply will address the original intent, provide certainty to employees and improve safety and health of workers in the mining industry.

The amendments to provide for quarterly invoicing of the safety and health fee will enable improved cash-flow planning for industry and provide for administrative efficiencies. No significant administrative costs associated with implementing the Amendment Regulation have been identified.

The amendments to clarify the safety and health fee census requirements for operators with five or fewer workers, the relevant safety requirements for the inspection of gas systems in used caravans, the definition for the 'construction and abandonment code' and update of the 'APGA code of practice upstream polyethylene gathering networks – CSG industry' reference will provide certainty to stakeholders.

## **Consistency with fundamental legislative principles**

The Amendment Regulation has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). One potential breach is addressed below:

- (i) *Legislation should allow the sub delegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act - section 4(5)(e) of the LSA*

The Amendment Regulation amends section 113 of the P&G Safety Regulation to clarify the relevant safety requirements for gas systems in used caravans.

The amendment to section 113 incorporates Australian Standard AS 5601 'Gas installations' (2004) as the relevant safety requirement for: (a) the inspection of a gas system installed in a vehicle or vessel before 31 December 2004; and (b) the inspection of an alteration of a gas system installed in a vehicle or vessel where the alteration was carried out before 31 December 2004.

The incorporation of the 2004 edition of AS 5601 is to clarify and correct the unintended outcome of potentially applying Standards retrospectively for compliance certificates for gas systems in older vehicles and vessels.

The potential breach of FLPs is that incorporation of Standards is a sub delegation. Standards are documents made by entities outside of the framework of government and this may be perceived as delegating law-making powers to those entities. However, the incorporation of Standards is common practice in State and Commonwealth legislation, particularly where consistency of requirements across jurisdictions is an intended outcome. Further, the P&G Safety Regulation incorporates various Standards as safety requirements to ensure requirements relating to gas systems under Queensland gas safety laws are consistent with other Australian jurisdictions systems (where relevant Australian Standards are also applied). In addition, Australian Standards (and joint Australian/New Zealand Standards) are prepared (and periodically reviewed) by Joint Technical Committees on behalf of Standards Australia. Joint Technical Committees comprise technical representatives from industry and government (including regulators), enabling government involvement in the Standards preparation and review process. Therefore, it is considered that the sub delegation of power, as outlined in clause 32 of the Amendment Regulation, is appropriate to clarify the relevant safety requirements for gas systems in used caravans.

## Consultation

Consultation has occurred with industry stakeholders. Industry stakeholders have indicated support for the amendments to the P&G Safety Regulation. Industry stakeholders did not oppose the proposals relating to invoicing and census requirements for the safety and health fee.

In relation to the civil penalties, the safety and health fee invoicing and census requirements, and the relevant safety requirements for gas systems in used caravans, the Office of Best Practice Regulation within the Queensland Productivity Commission was consulted regarding whether further regulatory impact assessment is required under the *Queensland Government Guide to Better Regulation* (the guidelines). The Office of Best Practice Regulation considered that amendments are unlikely to result in significant adverse impacts and advised that no further analysis is required under the guidelines.

In accordance with the guidelines, the Office of the Best Practice Regulation was not consulted in relation to the regulatory proposals relating to the construction and abandonment code and the reference to the APGA code of practice. The department applied the following self-assessable exclusions from undertaking further regulatory impact analysis (category (f) - Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice) in relation to the amendment regarding the definition of the construction and abandonment code; and (category (g) - Regulatory proposals that are of a machinery nature) in relation to the amendment to the outdated reference to the AGPA code of practice.