

Resources Safety and Health Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 167

made under the

Coal Mining Safety and Health Act 1999

Explosives Act 1999

Mining and Quarrying Safety and Health Act 1999

Petroleum and Gas (Production and Safety) Act 2004

General Outline

Short title

Resources Safety and Health Legislation Amendment Regulation 2024

Authorising law

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

Sections 51A and 135 of the *Explosives Act 1999* (Explosives Act)

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

Sections 669 and 859 of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)

Policy objectives and the reasons for them

The *Resources Safety and Health Legislation Amendment Act 2024* (the Act) amends the *Resources Safety and Health Queensland Act 2020* (RSHQA), the CMSHA, the Explosives Act, the MQSHA and the P&G Act, collectively referred to as the Resources Safety Acts. The Act includes a broad range of important changes to improve the safety and health of resource sector workers, including the implementation of recommendations of the Board of Inquiry into the Grosvenor coal mine explosion and the Brady Review of fatalities in the mining and quarrying sectors.

The key reforms introduced under the Act aim to:

- facilitate growth in high-reliability organisation behaviours within the resources sector by improving the implementation of critical controls by industry; enhancing competency requirements for safety critical roles; mandatory continuing professional development (CPD) requirements; enhancing

information sharing and incident reporting; and strengthening protections for workers raising safety issues;

- modernise regulatory enforcement powers by enhancing existing tools such as directives and court orders and by introducing new tools such as enforceable undertakings;
- contemporise legislation by providing for emerging operations and enhancing existing frameworks, such as ensuring there is adequate coverage of labour hire agencies, remote operating centres and improving the coverage of industrial manslaughter offences; and
- ensure consistency and implement operational and minor amendments that help ensure legislation remains modern and effective.

The policy objectives of the Amendment Regulation are to amend the *Coal Mining Safety and Health Regulation 2017* (CMSHR), the *Explosives Regulation 2017* (Explosives Regulation), the *Mining and Quarrying Safety and Health Regulation 2017* (MQSHR) and the *Petroleum and Gas (Safety) Regulation 2018* (PG Regulation) to:

- support the implementation of certain provisions introduced by the Act;
- amend the Explosives Regulation to prescribe explosives that fall under the category of “security sensitive explosive” authorise the use of otherwise prohibited small arms and larger calibre ammunitions; and prescribed security clearance exemptions for government entities and Commonwealth entities; and
- amend the PG Regulation to facilitate reporting of prescribed incidents using an approved form, prescribe hydrogen as a fuel gas under the definition of ‘operating plant’ the amount of biogas that can be used for a limited capacity biogas system, and the types of gas device approval authorities.

Achievement of policy objectives

The Amendment Regulation will achieve its policy objective to support the implementation of certain provisions introduced by the Act through the following amendments to improve the safety and health of resource sector workers at or for coal mines.

Amendment of the CMSHA

The policy objective is achieved by:

- requiring the site senior executive (SSE) for a coal mine to ensure that a list of the mine’s current standard operating procedures, a copy of the current standard operating procedure for a particular activity, a list of the current recognised standards for the mine's coal mining operations and a copy of the current recognised standard for a particular coal mining operation are available and kept at the mine and any remote operating centre (ROC) for the coal mine in a location that is easily accessible by each ROC worker for the mine that is concerned with the activity;
- making consequential amendments to the CMSHR to support the changes to the election of a site safety and health representative under the amendments to the CMSHA by the Act;

- omitting prescribed types of high potential incidents (HPI) in the CMSHR and instead relying on the definition of HPI in the CMSHA. Under that definition an “HPI at a coal mine is an event, or a series of events, that causes or has the potential to cause a significant adverse effect on the safety and health of a person”;
- prescribing examples of reportable diseases;
- providing an exemption for an SSE from notifying a reportable disease; and
- requiring the SSE to give notice of incidents to the inspector within one month after the incident happens or, if the CEO or chief executive by notice gives a longer period, of not more than 12 months, within which to give the notice - within that longer period;
- prescribing responsibilities for a supervisor for a coal mine;
- requiring that it is the coal mine’s electrical engineering manager that must record matters about the mine’s electrical activities, equipment and installations at the mine and that the duties of a mechanical engineering manager include controlling and managing the maintenance of fixed and mobile plant and the installation or introduction of new plant at the mine;

The Amendment Regulation will amend the training scheme provisions in the CMSHR to:

- ensure that the training scheme applies to operational ROC workers for the mine; and
- covers the critical control management obligations under the SHMS in the CMSHA and information regarding the Act and Regulation.

The Amendment Regulation will also amend the CMSHR to:

- require the SSE to ensure a record is kept, in the mine record, of the training given to, and assessment of, coal mine workers at the mine and operational ROC workers for the mine;
- require the SSE to ensure that each operational ROC worker is given refresher training under the mine’s training scheme;
- require that an operational ROC worker for the coal mine, must not carry out a task unless the worker has been assessed as competent and is authorised by the mine’s SSE or the SSE’s representative, to carry out the task for the coal mine; and
- prescribes requirements for supervising workers.

The Amendment Regulation inserts a new part in the CMSHR that:

- requires a surface coal mine to have principal hazard management plans (PHMP) that provide for at least the following: roads, or other vehicle operating areas; ground or strata failure; airborne dust or any other airborne

contaminants; fire or explosion; and any other principal hazard identified by the coal mine operator or SSE for the surface mine.

The Amendment Regulation makes other amendments to the CMSHR to:

- require that if an operational ROC worker has provided information used to make a decision in relation to an unsafe thing at a mine that causes an unacceptable level of risk, and if thing is not made safe by the end of the shift in which the inspection was made, at the end of the shift, the open-cut examiner must report the matter to the operational ROC worker who has provided the information;
- require the SSE for a surface mine to ensure that the surface mine manager, and at least one open-cut examiner is involved in developing, reviewing and auditing the part of the mine's SHMS relating to the mining activities in and around the mine excavation;
- introduce an offence for a person to give a technical direction about a safety and health matter to a surface mine manager unless the person has competencies for the matter that are at least equivalent to those of a surface mine manager. This provision carries a maximum penalty of 200 penalty units;
- provide the surface mine manager the ability to notify particular persons of an abnormal circumstances declaration and to revoke an abnormal circumstances declaration;
- require an underground mine to have PHMP that provide for at least the following: emergency response failure; gas management; methane drainage; mine ventilation failure; gas outbursts; spontaneous combustion; ground or strata failure; inundation or inrush of any substance; mine shafts and winding systems; subsidence; airborne dust or any other airborne contaminants; fire or explosion; roads or other vehicle operating areas; and any other principal hazard identified by the coal mine operator or site senior executive for the underground mine;
- support the approval of CPD activities, issuing and renewal of practising certificates, and recognition of interstate certificates of competency by the Board of Examiners;
- provide the following transitional provisions for the Amendment Regulation:
 - the requirement for a surface coal mine to have PHMP under new section 102A, does not apply until one year after the commencement on 1 September 2024; and
 - the additional requirements for underground coal mine PHMP under section 149 do not apply until the day that is one year after the commencement on 1 September 2024.

- makes consequential amendments to the CMSHR schedules including for conducting site safety and health representative elections, reportable diseases, civil penalties, descriptions for fees and definitions in dictionaries.

The Amendment Regulation also makes important changes to the operation and administration of the Explosives Regulation and the PG Regulation through the following operational amendments.

Amendment of the Explosives Regulation

The Amendment Regulation will achieve its policy objectives through the following operational amendments by:

- prescribing certain small arms ammunitions as a “security sensitive explosive” and clarifying that a licence to use these explosives is a security sensitive authority for which the holder is required to have a security clearance;
- prescribing exemptions for government entities and Commonwealth entities from certain security clearance requirements, including to exempt the Queensland Police Service from employer’s obligations about employees regarding unsupervised access to explosives by employees; and government entities and Commonwealth entities (generally) from the executive officer security clearance requirements for a ‘corporate’ security sensitive authority held by such an entity; and
- enabling the chief inspector to issue a licence to use explosives in limited circumstances in relation to ammunition that would otherwise be a prohibited explosive.

Amendment of the MQSHR

The Amendment Regulation will achieve its policy objective to support the implementation of certain provisions introduced by the Act through the following amendments to improve the safety and health of resources sector workers at or for mineral mines and quarries.

The policy objectives are achieved by:

- omitting prescribed types of HPI in the MQSHR and instead relying on the definition of HPI in the MQSHA. Under that definition an “HPI at a mine is an event, or a series of events, that causes or has the potential to cause a significant adverse effect on the safety and health of a person”;
- ensuring that the induction training and assessment requirements apply to each operational ROC worker;
- ensuring the training scheme covers the critical control management obligations under the SHMS by referring to these obligations in the MQSHA;
- requiring the SSE to ensure a record is kept in the mine record of the training given to, and assessment of, each worker;

- prescribing responsibilities for a supervisor for a mine;
- requiring the SSE for a mine to ensure that each worker at the mine, and each operational ROC worker for the mine, is aware of the current written procedures and standard work instructions for the part of the mine's operation in which, or for which, the worker works;
- support the approval of CPD activities, issuing and renewal of practising certificates, and recognition of interstate certificates of competency by the Board of Examiners;
- amends the schedule of types of serious accidents and HPI prescribed that require permission from an inspector prior to interfering with a place at a mine; and
- makes consequential amendments to the MQSHR schedules following changes to reporting diseases made by the Act, including for civil penalties and definitions in dictionaries.

Amendment of the PG Regulation

The Amendment Regulation will achieve its policy objectives by:

- making amendments to the PG Regulation following amendments made by the Act to omit how a prescribed incident under the P&G Act must be notified as this will be replaced by reporting in the approved form; that is, the way approved by either the chief inspector or the CEO;
- prescribing the production of hydrogen as a fuel gas as an activity for the definition of operating plant and clarifying that this does not apply when the production of hydrogen as a fuel gas is an integral part of a fuel cell gas device or system;
- clarifying the regulatory treatment of biogas, when produced from a limited capacity system for domestic purposes, such as for cooking, heating and hot water. The regulation prescribes that the amount for a "limited capacity biogas system" is 50Kw. A limited capacity biogas system is defined in the Act to mean 'a system of devices that produces, stores and uses no more than the amount of biogas prescribed by regulation. The prescribed consumption rate of no more than 50Kw will remove the requirement to pay the safety and health fee, as any biogas device under 50Kw is not charged a fee;
- prescribing the types of gas device approval authorities to be either a gas device (type A) approval authority, a gas device (type A2) approval authority, a gas device (type B) approval authority, or a gas device (type B2) approval authority. The provision of the types of gas device approval authorities ensures that the gas device scheme has simpler and clearer legislative provisions and flexibility to create additional categories as new gas devices are developed; for example, hydrogen fuel cells; and

- making minor and consequential amendments to amendments made under the Act.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with policy objectives of other legislation.

Alternative ways of achieving policy objectives

Matters included in the Amendment Regulation are necessary to support the implementation of certain provisions of the Act.

Benefits and costs of implementation

The benefit of the Amendment Regulation is that it will support the Resources Safety Acts to:

- improve the resources sector's safety and health performance to reduce the occurrence of fatalities and serious accidents;
- facilitate growth in high reliability organisation behaviours within the resources sector;
- modernise regulatory enforcement powers; and
- ensure resources safety and health legislation is contemporary and effective.

Implementation of the amendments will not present additional capital or any significant administrative costs to government. Any implementation costs will be absorbed from existing resources and managed within the existing budget of RSHQ.

A summary Impact Analysis Statement has been prepared in accordance with the *Queensland Government Better Regulation Policy*. It outlines aspects of the regulation that are minor and machinery in nature which have no impacts, and includes the Decision Regulatory Impact Statement originally prepared for the amendments along with revisions for some proposals which will reduce their impacts.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to fundamental legislative principles of the *Legislative Standards Act 1992*.

Consultation

Consultation on the amendments to the Regulations occurred during consultation on the Resources Safety and Health Legislation Amendment Bill 2024 (the Bill).

Draft versions of the Bill and the Amendment Regulation, along with an information paper to explain the changes, was released for consultation on the RSHQ website and key stakeholders were directly informed of the consultation period, which went from 28 September to 10 November 2023.

Targeted stakeholder meetings were held with the Queensland Resources Council, the Mining and Energy Union, the Australasian Explosives Industry Safety Group Inc, the Australian Workers' Union, the Cement Concrete and Aggregates Australia and the Association of Mining and Exploration Companies, who were also provided with a consultation draft of the Bill.

Additionally, targeted consultation on proposed prohibited explosives amendments the Explosives Regulation occurred with key stakeholders between 5 March and 8 April 2024.

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