

Mining and Quarrying Safety and Health (Lead) Amendment Regulation 2023

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Scott Stewart MP, Minister for Resources provide this human rights certificate with respect to the *Mining and Quarrying Safety and Health (Lead) Amendment Regulation 2023* (Amendment Regulation) made under the *Mining and Quarrying Safety and Health Act 1999* (MQSH Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The MQSH Act establishes the overall legislative framework for the safety and health of persons at mines with the following primary aims to:

- protect the safety and health of persons at mines and persons who may be affected by operations; and
- require that the risk of injury or illness to any person resulting from operations is at an acceptable level.

The *Mining and Quarrying Safety and Health Regulation 2017* (MQSH Regulation) supports these aims and includes requirements for managing risks from exposure to health hazards including lead, exposure limits, health assessments, and health surveillance to monitor workers' exposure.

The Amendment Regulation will reduce the risk of adverse health outcomes for workers, caused by exposure to lead at mineral mines. This will be achieved by regulating risk management controls, more stringent biological monitoring of workers in lead risk jobs as part of lead health surveillance, and by lowering allowable blood lead levels for workers.

The Amendment Regulation specifies risk management requirements including: providing information to workers about lead hazards, notification of lead risk jobs, control of lead risks, frequency of biological monitoring, blood lead levels for removing a worker from a lead risk job and returning a worker to a lead risk job.

Blood lead levels in workers must be reduced when necessary, by removing workers from lead risk jobs, and through other controls, until their blood lead levels are sufficiently reduced.

The Amendment Regulation consolidates existing general health surveillance, and respiratory health surveillance provisions, with new lead specific health surveillance provisions in a new schedule 2E titled "Health surveillance" in the MQSH Regulation.

The Amendment Regulation also enables the site senior executive to disclose the content of lead health surveillance reports, or parts of lead health surveillance reports about workers to the Chief Inspector through an approved form, to enable any diseases, lead exposure or blood lead exceedance trends to be identified for particular mines, lead risk jobs, and workers.

The Amendment Regulation also includes schedule 2E sections 21, 22, and 25 as three new civil penalty obligations. Civil penalties provide for a potential additional enforcement process to prosecution for the same breach. Civil penalties are established under sections 246E to 246K of the MQSH Act.

Existing obligations and requirements to which a civil penalty may be applied are already provided for under schedule 5A of the MQSH Regulation. There has been some renumbering of sections which are currently listed as category 3 civil penalty obligations.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights relevant to the Amendment Regulation are:

- right to life (section 16 of the *Human Rights Act 2019*);
- property rights (section 24 of the *Human Rights Act 2019*);
- privacy and reputation (section 25 of the *Human Rights Act 2019*);
- right to liberty and security of person (section 29 of the *Human Rights Act 2019*); and
- right to health services (section 37 of the *Human Rights Act 2019*).

The Amendment Regulation will improve risk management of lead and lead health surveillance at mineral mines. The amendments support the aims of the MQSH Act to protect the safety and health of persons at mines through requiring risk to safety and health, to be at an acceptable level.

In my opinion, the Amendment Regulation promotes the right to life and the right to security of the person protected by the *Human Rights Act 2019*.

The right to life protects the lives of all persons and includes the right not to be arbitrarily deprived of life. It imposes positive obligations on the State to take appropriate steps and adopt positive measures to protect the health and safety of its citizens.

The right to security of the person similarly places a positive obligation on the State to take appropriate steps to ensure the physical safety and health of those who are in danger of physical illness or harm.

The right to health services provides that every person has the right to access health services without discrimination.

The Amendment Regulation requires risk controls, and lead health surveillance to manage lead hazards. This protects the right to life, and right to security, through protecting the safety and health of workers at metalliferous mines. The Amendment Regulation upholds the right to health services through requiring lead health surveillance for workers exposed to lead.

Improved risk management and more stringent lead health surveillance of lead hazards will improve protection for metalliferous mine workers.

The Amendment Regulation provides for information from workers' health surveillance reports to be provided to the Chief Inspector through an approved form, without a worker's prior consent, and therefore engages the right to privacy. This is a similar approach to the regulator obtaining workers' health monitoring reports without a worker's consent under the Safe Work Australia Model Work Health and Safety Regulation.

The Amendment Regulation includes schedule 2E sections 21, 22 and 25 as three new civil penalty obligations. The Amendment Regulation also includes new sections 12C, 145J, 145K, and schedule 2E sections 23, 24, 26, and 29 which relate to reporting requirements, or payment by an employer for health surveillance, and contain maximum penalties ranging from 10 penalty units to 60 penalty units. New offence provisions engage property rights.

Consideration of reasonable limitations on human rights (section 13 of the *Human Rights Act 2019*)

The proposed legislation potentially limits the following human rights under the *Human Rights Act 2019*:

Section 24 – Property rights

Section 25 – Privacy and reputation.

Property rights

(a) The nature of the right

Section 24 of the *Human Rights Act 2019* provides that a person has a right to own property alone or with others. Further a person must not be arbitrarily deprived of their property, in the sense that it must not be capricious, unpredictable, or unjust or otherwise disproportionate to the legitimate aim that is sought.

The Amendment Regulation will add an additional three civil penalty provisions (ie. schedule 2E sections 21, 22 and 25) to the category 3 civil penalty provisions, as they are similar health surveillance obligations to some existing category 3 civil penalty provisions. The amendments add to the potential monetary penalties for a breach of a safety and health obligation, and the potential for an obligation holder to be monetarily penalised and have monetary livelihood affected.

New sections 12C, 145J, 145K, and schedule 2E sections 23, 24, 26, and 29 which relate to reporting requirements or payment by an employer for health surveillance, contain maximum penalties ranging from 10 penalty units to 60 penalty units, and add to the potential monetary penalties for a breach of a reporting or administrative requirement.

(b) The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Protecting the safety and health of workers is a key responsibility of government and is consistent with a free and democratic society based on human dignity, equality, and freedom.

The reason for the limitation on human rights through the potential application of three additional civil penalty obligations, is to deter non-compliance with important lead health surveillance requirements.

The amendments potentially limit the right to property by introducing three additional civil penalty obligations. Civil penalties enable swifter action to be taken compared to a prosecution, to address non-compliance with safety and health obligations or other requirements. This is particularly important if a breach has the potential to impact the safety and health of workers at a mine, for example, if lead health surveillance is not being conducted correctly.

The new civil penalty obligation provisions are however necessary as part of the compliance and enforcement framework to deter non-compliance by obligation holders, and to provide a swift enforcement option if lead health surveillance to protect the health of workers, is not conducted correctly.

The reason for the limitation on human rights through the potential application of penalties under new sections 12C, 145J, 145K, and schedule 2E sections 23, 24, 26, and 29 is to deter non-compliance with important lead risk management or lead health surveillance reporting requirements or administrative requirements. The information to be reported will significantly improve data collection related to lead health surveillance, so that more effective, data driven audits and inspections at mines can be conducted by the inspectorate who regulate compliance with safety and health obligations at mines. Administrative requirements relate to the employer arranging and paying for lead health surveillance, or part of the health surveillance of a worker.

An obligation holder's right to property may only be limited if a person breaches a civil penalty obligation provision, or a reporting or administrative obligation and is subject to a monetary penalty.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Lead health surveillance for workers exposed to lead processes at metalliferous mines is essential for ensuring the health of those workers.

The civil penalty obligation provisions do not arbitrarily deprive an obligation holder of their property, as they are only applied to breaches of lead health surveillance obligations.

Prescribing the breaches to which civil penalties can apply does not create any additional obligations or requirements. The MQSH Act contains overarching safety and health obligations that must be achieved to maintain an acceptable level of risk to the safety and health of workers at a mine. Property rights are only limited, if an obligation holder breaches an obligation to which a civil penalty can apply.

Similarly, in relation to the new reporting or administrative requirements, property rights are only limited, if an obligation holder breaches a reporting or administrative obligation to which a penalty applies.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways to achieve the purpose.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, the importance of the health of mine workers being protected through additional enforcement options, and more data driven regulation by the inspectorate of lead health surveillance outweighs any limitations imposed on the right to property of those who breach a civil penalty obligation or reporting or administrative obligation, and is reasonable and justified.

Privacy and reputation

- (a) The nature of the right

The right to privacy and reputation is very broad but contains internal limitations. The protection against interference with privacy is limited to unlawful or arbitrary interference. Arbitrary interference refers to interferences which may be lawful, but are unreasonable, unnecessary and disproportionate. The right protects privacy in the sense of personal information and data collection, as well as an individual's private life generally.

The Amendment Regulation enables information from workers' health surveillance reports to be provided to the Chief Inspector through an approved form, to improve the regulatory response to any blood lead level exceedances at particular mines, and to enable more targeted interventions by the inspectorate based upon data. Any information about particular workers will be kept confidentially within the data bases of Resources Safety and Health Queensland.

Timely provision of this data is necessary to enable effective regulation, and proper administration, and will be consistent with worker health surveillance information provided to regulators under comparable safety and health legislation including the *Coal Mining Safety and Health Regulation 2017*, and under Safe Work Australia's Model Work Health and Safety Regulation. Workers in lead risk jobs at mineral mines will benefit from improved oversight.

It is reasonable, necessary and proportionate for information from a health surveillance report to be provided promptly to the Chief Inspector, without first seeking a worker's consent, as the information relates to whether a worker has been affected by hazards at a mine.

- (b) The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Protecting the health and safety of workers is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of the limitation on a human right, is to enable the Chief Inspector to be notified of workers' health surveillance report information. This data will enable more effective regulation and intervention to protect workers in lead risk jobs.

- (c) The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation of a human right is necessary to ensure that the Chief Inspector receives necessary data to inform effective ongoing regulatory responses to hazards to workers' health at metalliferous mines.

- (d) Whether there are any less restrictive and reasonably available ways to achieve the purpose

The purpose can only be achieved through regulations and can not be achieved efficiently or comprehensively through any less restrictive means.

- (e) The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The benefits of receiving timely information in a Chief Inspector approved form about a worker's lead health surveillance, without first seeking a worker's consent, substantially outweigh the limitation on the right of privacy, and are reasonable and justified.

The Chief Inspector will be receiving information about whether risk controls have failed at a particular mineral mine based upon the blood lead levels of particular workers, or if a worker has been diagnosed with a prescribed workplace related disease.

Conclusion

I consider that the Amendment Regulation is compatible with the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and is demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* in a free and democratic society based on human dignity, equality and freedom.

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MINISTER FOR RESOURCES