

# ***Resources Safety and Health Legislation Amendment Regulation 2024***

## **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 and Critical Minerals provide this human rights certificate with respect to the *Resources Safety and Health Legislation Amendment Regulation 2024* (which may be made by the Governor in Council under:

- section 282 of the *Coal Mining Safety and Health Act 1999*;
- section 51A and 135 of the *Explosives Act 1999*;
- section 262 of the *Mining and Quarrying Safety and Health Act 1999*;
- section 149 of the *Petroleum Act 1923*; and
- sections 669 and 859 of the *Petroleum and Gas (Production and Safety) Act 2004*.

In my opinion, the *Resources Safety and Health Legislation Amendment Regulation 2024*, 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 certificate.

## **Overview of the Subordinate Legislation**

The *Resources Safety and Health Legislation Amendment Act 2024* (the Act) amended the *Coal Mining Safety and Health Act 1999* (CMSHA), the *Explosives Act 1999* (Explosives Act), the *Mining and Quarrying Safety and Health Act 1999* (MQSHA) and the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).

The Act includes a broad range of important changes to improve 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; introducing 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 *Resources Safety and Health Legislation Amendment Regulation 2024* (the Amendment Regulation) amends 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 the package of reforms 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 prescribe 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.

The Amendment Regulation is consistent with the:

- objects of the CMSHA which are to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation;
- purpose of the Explosives Act, which is to regulate the handling of, and access to, explosives to protect public health and safety, property and the environment;
- objects of the MQSHA which are to protect the safety and health of persons at mines and persons who may be affected by operations; and to require that the risk of injury or illness to any person resulting from operations is at an acceptable level; and
- main purpose of the P&G Act, which is to facilitate and regulate the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry.

## **Human Rights Issues**

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

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

- Recognition and equality before the law (section 15 of the HR Act)
- Right to life (section 16 of the HR Act)
- Freedom of movement (section 19 of the HR Act)
- Peaceful assembly and freedom of association (section 22 of the HR Act)
- Property rights (section 24 of the HR Act)
- Privacy and reputation (section 25 of the HR Act)
- Right to liberty and security of person (section 29 of the HR Act).

A number of the changes in the Amendment Regulation aim to improve the safety and health of workers in Queensland's resources sector and in my opinion, the overall effect of these changes will promote the right to life (section 16 of the HR Act) and the right to liberty and security of person (section 29 of the HR Act). The right to life protects the lives of all persons and includes the right not to be arbitrarily deprived of life. In the context of the resources sector, these rights require the State to ensure that industry has put in place adequate measures to protect the safety and health of workers and ensure that risk is kept to an acceptable level. 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.

Workers' right to life and right to liberty and security of person are enhanced by changes in the CMSHR and the MQSHR to supervisor's responsibilities, training requirements, access to information relevant to the performance of a worker's role and requirements when workers are carrying out tasks. These changes will ensure that workers are appropriately supervised in their duties, have the requisite training and access to information necessary for the safe and effective performance of their duties, such as ready access to standard operating procedures, and that they have the appropriate supervision, competency and resources to carry out their work tasks. These changes will contribute to the safety and health of all mining and quarrying workers by helping to keep risk at an acceptable level.

The property rights (section 24 of the HR Act) and right to freedom of movement (section 19 of the HR Act) of mining and quarrying workers are also positively supported in the Amendment Regulation by ensuring workers have the right to access their training and assessment reports and if the Board of Examiners recognises an interstate certificate of competency, by enabling that person to participate in the practising certificate scheme. Property rights include a person's position of employment, and the remuneration earned from that position while the right to freedom of movement protects a person's right to move freely within Queensland and to enter and leave it, and the freedom to choose where to live. By ensuring that mining and quarrying workers can access their training and assessment records and participate in the practising certificate scheme administered by the Board of Examiners, workers will be better able to gain or change their employment in the mining and quarrying sector and meet the requirements for a prospective role.

The changes to the PG Regulation in relation to a limited capacity biogas system will also engage but not limit the property rights of homeowners. Property rights include the right to own property and the right not to have property taken arbitrarily. Property includes real and personal property, such as land and chattels, and may include statutory rights and other economic interests. The changes clarify that the use of a limited capacity biogas system, which is primarily used for domestic purposes, will not require regulatory compliance in the same way that larger industrial systems currently do. This will give homeowners another renewable energy option when considering powering their home and clarify any ambiguity that may exist around the regulatory requirements to use these systems.

The changes to the CMSHR in relation to the election of site safety and health representatives (SSHR) will engage but not limit the right to peaceful assembly and freedom of association (section 22 of the HR Act). The right to peaceful assembly includes the right of individuals to gather for a common purpose to share information and express opinions. The right to freedom of assembly includes the right of association with others, and to form and join associations. The proposed changes will support workers' rights by ensuring that elections for SSHR are held in a fair and transparent way, with the requirements for the election of site safety and health representatives legislated primarily in the CMSHA, rather than in the CMSHR.

### **Consideration of reasonable limitations on human rights (section 13 HR Act)**

In my opinion, the proposed limitations to the following human rights are reasonable and demonstrably justifiable as outlined below:

- Recognition and equality before the law (section 15 of the HR Act).
- Property rights (section 24 of the HR Act).
- Privacy and reputation (section 25 of the HR Act).

The Amendment Regulation gives effect to the Act by changing a number of regulations to support the new competency requirements for key safety critical roles and to enable the enforceability of the existing CPD schemes under the CMSHA and MQSHA.

The Explosives Regulation is amended to provide exemptions for government entities and Commonwealth entities from certain security clearance requirements under the Explosives Act, including for employees of the Queensland Police Service (QPS) and for executive officers of government entities and Commonwealth entities in relation to a 'corporate' security sensitive authority held by such an entity.

The CMSHR and MQSHR are amended to give effect to the enhanced incident reporting that is required under the Act. These changes include notification obligations for accidents, incidents, diseases and injuries as well as civil penalties that can apply for failing to meet these obligations.

#### (a) the nature of the right

##### **Right to Recognition and Equality before the Law**

The right to recognition and equality before the law recognises that every person is equal before the law and is entitled to equal protection of the law without discrimination. This right upholds the principle of equality, specifically regarding individuals' access to opportunities.

The amendments in relation to competency for key safety critical roles and the enforcement of the existing CPD schemes may limit the right to recognition and equality before the law as only those people who can meet and maintain the requirements will be able to work in key safety critical roles.

The exemption from security clearance requirements for QPS employees and executive officers of government entities and Commonwealth entities may inadvertently limit the right to recognition and equality before the law as these exemptions create an inequality for those individuals who will still need to hold a security clearance, including an employee if

they are to have unsupervised access to an explosive as part of their employment, or executive officers of a corporation other than a listed corporation in relation to a security sensitive authority held by the corporation.

### **Property Rights**

Property rights protect a person's right to own property and from having their property taken arbitrarily. Property includes real and personal property, such as chattels and money, and may include statutory rights and other economic interests. It can include a person's position of employment and the remuneration that the person receives for that employment.

The changes to key safety critical roles including changes to responsibilities and duties, and requirements for obtaining certificates of competency and participating in a practising certificate scheme may also limit a person's property rights by restricting their ability to gain and maintain employment in a key safety critical role if they cannot meet these requirements.

To give effect to the Act, the Amendment Regulation will extend the civil penalty obligations under the CMSHR and MQSHR so that failure to comply with the obligations may result in a civil penalty. When a civil penalty is imposed, a person's property rights will be limited due to the economic loss. The civil penalties under the CMSHR will include obligations relating to notification of accidents, death, incidents and reportable diseases while the MQSHR will be expanded to include civil penalties for obligations relating to notification of accidents, incidents, deaths and diseases.

### **Right to Privacy and Reputation**

The right to privacy and reputation protects the individual from all interferences with their privacy. It is very broad in scope and includes personal information and data collection. The changes to incident reporting and the notification obligations in the CMSHR and MQSHR may limit the right to privacy as it places a positive obligation to disclose to Resources Safety and Health Queensland (RSHQ) the personal health information of mine and quarry workers should they be diagnosed with certain diseases unless certain circumstances exist, and to report to RSHQ on accidents and incidents, which may include disclosing the personal information of anyone involved such as an injured worker and the injuries they have suffered, without necessarily requiring their consent.

- (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

The requirement that workers in key safety critical roles must hold the requisite certificate of competency and participate in the CPD scheme is in response to the important function these roles have towards the effective management of risk and the ongoing safety and health of workers in the mining and quarrying industry. Key safety critical roles require a high level of skill and knowledge to be performed effectively. The certificates of competency and the practising certificate scheme provide a way of ensuring the people in those roles have the necessary skills and knowledge to adequately perform the role including current knowledge of the Queensland mining safety legislative framework and current understanding of contemporary practices to manage hazards. While the requirements impose obligations on individuals who wish to work in the key safety critical roles, they

are reflective of the positive obligations that the State has to protect the safety and health of all workers and is consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of the notification obligations and the civil penalties that may be imposed if they are not met, is to ensure that RSHQ receives the information it needs when there has been an incident, accident or an occurrence of a specific disease in the mining and quarrying industry in Queensland. As the regulator, this information enables RSHQ to meet its statutory function to protect the safety and health of workers and monitor compliance with and the effectiveness of the CMSHA and MQSHA. Given these important statutory functions to protect workers, the limitation on property rights and the right to privacy of those impacted individuals, is consistent with a free and democratic society.

The security clearance exemptions aim to remove security screening requirements where appropriate. The exemption for QPS employees will remove duplicative security screening processes currently required under the Explosives Act as QPS employees undergo equivalent security screening on becoming a QPS employee and are subject to comparable continuous monitoring for any changes to the employee's criminal or domestic violence history. The security clearance exemption for government entities and Commonwealth entities will enable such an entity to apply for, and hold, a 'corporate' security sensitive authority without each executive officer of the entity needing to hold a security clearance. These changes are consistent with a free and democratic society based on human dignity, equality and freedom because it removes duplicative and unnecessary requirements (and the associated costs) for these cohorts without reducing safety outcomes.

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

The requirements for people employed in key safety critical roles to meet the requisite competency requirements and participate in the CPD scheme, ensures that people in those roles have the necessary skills and knowledge to perform the role effectively, resulting in better management of risk and ultimately, better protections for workers. The requirements are consistent with frameworks for other professions in Australia, such as health practitioners, lawyers, teachers and engineers. The competency requirements and CPD scheme are based on expert advice.

The use of positive notification obligations ensures that RSHQ receives the information it needs to fulfill its statutory function while the potential imposition of civil penalties if those obligations are not complied with, emphasises the importance of the information to be disclosed and acts as a deterrent to non-compliance.

The security clearance exemptions remove the requirement for QPS employees and executive officers of government entities and Commonwealth entities unnecessarily needing to obtain and hold a security clearance under the Explosives Act, reducing red tape and unnecessary regulatory and cost burdens for government without reducing explosives safety and security outcomes.

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

The requirement for workers in key safety critical roles to meet competency requirements for the role and participate in the CPD scheme is the least restrictive and reasonably available way to ensure that people in these roles can effectively discharge their responsibilities to keep risk at an acceptable level and protect the safety and health of workers. A person's human rights are only limited if they are unable to meet the competency and CPD requirements and are unable to work in the role. The specific requirements to be met differ based on the needs of the role and are informed by expert advice. Other professions use the same requirements to ensure that people working in their industry have the necessary skills and knowledge required for the role.

The use of positive notification obligations is the least restrictive and reasonably available way of ensuring that obligation holders are aware of their responsibilities and that RSHQ receives the information it needs to adequately perform its role as the mining and quarrying industry regulator. This information can contribute to the identification of hazards and help determine the controls that should be implemented to minimise harm. It can also lead to early intervention to prevent serious accidents or fatalities.

The civil penalties for failing to comply with the notification obligations are also considered to be the least restrictive and reasonably available way to ensure compliance with those obligations and reflect the importance of the information to be provided. An individual's property rights will only be limited if they are found to have failed to comply with their obligation.

The security clearance exemptions are the least restrictive and reasonably available way to remove the burden of duplicative and superfluous processes for those individuals who are already subject to security clearances, or who hold executive roles in government entities and Commonwealth entities without diluting explosives safety and security outcomes, including public safety.

(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 limitations on the human rights as outlined above are outweighed by the need to protect the safety and health of workers in the mining and quarrying industry and ensure public safety.

The limitation on an individual's property rights because they are unable to meet the competency requirements to work in a key safety critical role, is only limited if they are unable to meet the requirements and is significantly outweighed by the need to protect the safety and health of workers and their right to life and property rights by being fit and able to work and be paid.

The limitation on an individual's right to privacy and the disclosure of their personal information as part of a notification of an accident, incident or occurrence of a serious disease is balanced with the potential harm to others that could be minimised or the serious accidents or fatalities that could be prevented.

Flowing from that, the imposition of civil penalties for failing to comply with the notification obligations, and the resulting limitation on that individual's property rights, is also considered as a necessary and reasonable way to ensure compliance given the importance of the information that is to be disclosed and how it may contribute to the safety and health of other workers.

While the security clearance exemptions promote the rights of those individuals who benefit from the exemptions, the inequality for those who must still comply with the security clearance requirements is balanced with the need to protect public safety and ensure that only those who hold a security clearance, or who are subject to comparable security screening processes, have unsupervised access to explosives.

(f) any other relevant factors

There are no other relevant factors to be considered.

## **Conclusion**

I consider that the *Resources Safety and Health Legislation Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**SCOTT STEWART MP**  
**Minister for Resources and Critical Minerals**

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