



Queensland

Coal Mining Safety and Health Amendment Regulation (No. 1) 2010

Subordinate Legislation 2010 No. 262

made under the

Coal Mining Safety and Health Act 1999

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1 Short title

This regulation may be cited as the *Coal Mining Safety and Health Amendment Regulation (No. 1) 2010*.

2 Regulation amended

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

3 Amendment of s 44 (Application of div 2)

Section 44(2)—

omit.

4 Amendment of s 45 (Appointment of nominated medical adviser)

(1) Section 45(1)(a), after ‘appoint’—

insert—

‘, in writing,’.

(2) Section 45(1)—

insert—

‘(c) as soon as practicable after the appointment ends, give the chief executive a notice stating when the appointment ended.’.

5 Replacement of s 46 (Health assessment)

Section 46—

omit, insert—

‘46 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.

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- ‘(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 notice under section 49(3)—periodically, as decided by the adviser; and
 - (c) otherwise, periodically, as decided by the nominated medical adviser, but at least once every 5 years.
- ‘(3) An assessment must be carried out—
- (a) in accordance with the instructions, and covering the matters, in the approved form; and
 - (b) by, or under the supervision of, the nominated medical adviser.
- ‘(4) An assessment may include matters not covered in the approved form if, having regard to a risk assessment carried out for a task for which the person is to be employed, or is employed, the nominated medical adviser considers the person needs to be assessed in relation to the additional matters to achieve an acceptable level of risk.
- ‘(5) Despite subsection (3)(a), 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 approved form if—
- (a) the person has previously undergone a health assessment (a *previous assessment*); and
 - (b) the subsequent assessment relates to a matter identified at a previous assessment; and
 - (c) the 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).
- ‘(6) A medical examination of the person carried out by a doctor other than the nominated medical adviser is taken to be a

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health assessment carried out by the nominated medical adviser under subsection (3) if—

- (a) the medical examination is carried out under the instructions in the approved form and the nominated medical adviser gives the employer a health assessment report about the examination; or
- (b) the medical examination is for other purposes 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 in the approved form about the examination.’.

6 Amendment of s 47 (Employer’s responsibility for health assessment)

Section 47(1)—

insert—

- ‘(c) ensure, before an explanation of the report from the nominated medical adviser is given to the employer, the person to whom the health assessment report relates agrees to the giving of the explanation and is present.’.

7 Amendment of s 48 (Reviewing health assessment report)

- (1) Section 48(2)—

insert—

‘Note—

If section 48A applies in relation to a coal mine worker, section 48A(6) also imposes restrictions on the termination or demotion of the worker.’.

- (2) Section 48(6)—

omit.

8 Insertion of new s 48A

After section 48—

insert—

‘48A Conflicting health assessment reports

- ‘(1) This section applies if—
- (a) a health assessment report and a further health assessment report about a coal mine worker contain conflicting information about whether the worker is unable to carry out the worker’s tasks at the mine without creating an unacceptable level of risk; and
 - (b) the worker or the employer, within 28 days of being given a report under section 48(4)(b)(ii) (the *review report*), gives assessment documents for the worker to the chief executive and—
 - (i) if the worker gives the documents—the employer; or
 - (ii) if the employer gives the documents—the worker.
- ‘(2) The chief executive must appoint a relevant medical specialist to prepare a report (a *final report*) after the relevant medical specialist—
- (a) reviews—
 - (i) a copy of the approved form completed for the health assessment under section 46(3); and
 - (ii) the further health assessment report; and
 - (iii) the review report; and
 - (b) if the relevant medical specialist decides it is necessary—carries out another assessment of the worker’s health or a medical examination of the worker to resolve the conflict in the reports.
- ‘(3) The relevant medical specialist must not be the person who prepared the health assessment report or the further health assessment report in relation to the worker.
- ‘(4) The chief executive must give a copy of the final report to the worker and the employer.

- ‘(5) The chief executive must pay for—
- (a) the preparation of the final report; and
 - (b) any assessment of the worker’s health or medical examination of the worker carried out by the relevant medical specialist for the final report.
- ‘(6) The employer may take action to terminate the worker’s employment or demote the worker only if—
- (a) the relevant medical specialist asks the worker to submit to another assessment or medical examination under subsection (2)(b) and the worker does not undergo the assessment or examination when given a reasonable opportunity to do so; or
 - (b) the final report shows the worker is unable to carry out the worker’s tasks at the mine without creating an unacceptable level of risk.
- ‘(7) In this section—
- assessment documents***, about a conflict relating to a worker, means the following documents—
- (a) a written notice about the conflict;
 - (b) a copy of the health assessment report, further health assessment report and review report prepared in relation to the worker.
- further health assessment report*** means a report given under section 48(3)(b).’.

9 Amendment of s 50 (Records about health assessment)

- (1) 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 carried out by the nominated medical adviser under this division or taken to be carried out under section 46(6)—
- (a) the data on which the assessment was based;

(b) a copy of the approved form completed for the assessment under section 46(3) or (5).’.

(2) Section 50(3), ‘copy of the report’—

omit, insert—

‘copy of the approved form completed for the assessment or examination’.

10 Amendment of s 52 (Confidentiality of medical record)

(1) Section 52—

insert—

‘(2A) The chief executive must disclose the contents of the record to the worker if the worker gives the chief executive a written request for the record.’.

(2) Section 52(3)(a)—

omit.

(3) Section 52(3)(b) and (c)—

renumber as section 52(3)(a) and (b).

(4) Section 52(4), ‘subsection (3)(b)’—

omit, insert—

‘subsection (4)(a)’.

(5) Section 52(2A) to (6)—

renumber as section 52(3) to (7).

11 Amendment of sch 9 (Dictionary)

Schedule 9—

insert—

‘low risk task means a task shown by a risk assessment to create a risk that is so minimal it can be managed effectively without requiring the worker to undergo a health assessment.

relevant medical specialist, for a worker, means a specialist registrant under the *Medical Practitioners Registration Act*

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2001 for a branch of medicine that is relevant to the worker's condition.'.

ENDNOTES

- 1 Made by the Governor in Council on 30 September 2010.
- 2 Notified in the gazette on 1 October 2010.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Employment, Economic Development and Innovation.

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