



Queensland

# Coal Mining Safety and Health Amendment Regulation (No. 1) 2012

## Subordinate Legislation 2012 No. 33

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) 2012*.

**2 Regulation amended**

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

**3 Insertion of new ch 2, pt 2B**

After section 12J—

*insert—*

**‘Part 2B Election of site safety and health representatives**

**‘12K When election under Act, s 93 must be held**

‘An election of a site safety and health representative for a coal mine or part of a coal mine must be held under section 93 of the Act if—

- (a) the office of a site safety and health representative for the coal mine or part is vacant or will become vacant before the election; and
- (b) a relevant coal mine worker—
  - (i) asks the chief inspector, in writing, for an election to be held; and
  - (ii) gives a copy of the request to the site senior executive for the coal mine.

**‘12L Who is to conduct election under Act, s 93**

- ‘(1) This section applies to an election for a site safety and health representative for a coal mine or part of a coal mine under section 93 of the Act.

- ‘(2) The election must be conducted by 1 or more of the following as decided by the chief inspector—
  - (a) a particular involved union, or particular involved unions, for the election;
  - (b) the site senior executive for the coal mine;
  - (c) a qualified body appointed by the chief inspector.
- ‘(3) However, subsection (2) does not compel an entity to conduct, or jointly conduct, the election.
- ‘(4) In making a decision under subsection (2), the chief inspector must have regard to any written submissions made by—
  - (a) an entity mentioned in subsection (2)(a) or (b); or
  - (b) a relevant coal mine worker.
- ‘(5) The chief inspector may inform himself or herself of any matter relevant to making the decision in the way he or she considers appropriate.
- ‘(6) The election must be conducted by secret ballot under the prescribed site safety and health representative election process unless the entity or entities conducting the election are or include an involved union, or involved unions, for the election.
- ‘(7) If the entity or entities conducting the election are or include an involved union, or involved unions, for the election, the election must be conducted by secret ballot under—
  - (a) fair rules of the involved union or fair rules agreed to between the involved unions; or
  - (b) the prescribed site safety and health representative election process.
- ‘(8) An organisation is an *involved union*, for an election, if—
  - (a) the organisation is a Federal or State industrial organisation of employees; and
  - (b) a coal mine worker who is a member of the organisation is an elector in the election; and

- (c) the worker is qualified to be a member of the organisation because of the work the worker performs in his or her employment at the mine.

**‘12M Obligations of entity or entities conducting election**

‘The entity or entities conducting an election under section 93 of the Act must ensure the election is—

- (a) supervised by a person who has had formal training as a returning officer; and
- (b) conducted under fair procedures that give each elector an equal opportunity to freely vote in the election.

**‘12N State to pay reasonable costs of qualified body in conducting election**

- ‘(1) This section applies if the chief inspector appoints a qualified body as the entity or 1 of the entities to conduct an election under section 93 of the Act.
- ‘(2) The reasonable costs of the qualified body in conducting the election are to be paid by the State.

**‘12O Term of appointment if coal mine workers do not decide term of appointment**

- ‘(1) This section applies if coal mine workers at a coal mine or in part of a mine elect a site safety and health representative for the coal mine or part, but no term of appointment to that office is decided by the workers as mentioned in section 93(1) or (2) of the Act.
- ‘(2) The term of the site safety and health representative’s appointment to that office is 3 years.

**‘12P Method of election for election under Act, s 94**

- ‘(1) This section applies to an election under section 94 of the Act that may be held because a site safety and health

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representative is not available when a coal mine operation is considered unsafe by affected coal mine workers.

‘(2) The method of election—

- (a) must be decided by the affected coal mine workers; and
- (b) must be as straightforward as practicable, having regard to the need to deal with the coal mine operation that is considered unsafe in a way that is appropriate in the circumstances.

**‘12Q When site safety and health representative is removed from office—Act, s 96(c)**

‘A site safety and health representative for a coal mine or part of a coal mine is removed from office if more than 50% of relevant coal mine workers advise the site senior executive for the coal mine, in writing, that the site safety and health representative is removed from office.’.

**4 Insertion of new s 372A**

Chapter 5, after section 372—

*insert—*

**‘372A Validation of site safety and health representative appointments**

‘An appointment of a person as a site safety and health representative for a coal mine or part of a coal mine at an election held under section 93 of the Act before the commencement of this section is valid if that section was complied with for the election, regardless of who conducted the election or the method of election.’.

**5 Insertion of new sch 1B**

After schedule 1A—

*insert—*

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## **‘Schedule 1B Prescribed site safety and health representative election process**

section 12L

### **‘1 Purpose of election**

‘Coal mine workers must be given reasonable opportunity to vote on—

- (a) their preferred candidates for site safety and health representatives; and
- (b) the number of site safety and health representatives; and
- (b) the term of appointment of the site safety and health representatives.

### **‘2 Returning officers**

‘(1) The entity conducting the election must appoint a returning officer for each or both of the following—

- (a) nominations;
- (b) the ballot.

‘(2) A returning officer must be—

- (a) if an election is conducted by only 1 involved union—an officer or employee of the involved union; or
- (b) if an election is conducted by only a qualified body appointed by the chief inspector—an officer or employee of the qualified body.

‘(3) The duties of a returning officer for nominations are to—

- (a) prepare and distribute an election notice that includes a call for nominations from eligible nominees; and
- (b) consider nominations received before the nomination closing time and decide whether the nominations have

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- been made in accordance with the prescribed site safety and health representative election process; and
  - (c) accept nominations that satisfy the requirements of the prescribed site safety and health representative election process; and
  - (d) advise an eligible nominee who nominates for election as a site safety and health representative—
    - (i) whether the person's nomination is successful or not; and
    - (ii) if the person's nomination is not successful, why the nomination is not successful.
- ‘(4) The duties of a returning officer for the ballot are to—
- (a) supervise the conduct of the ballot in an election for site safety and health representatives; and
  - (b) supervise the counting of votes cast in an election for site safety and health representatives; and
  - (c) advise the site senior executive and the chief inspector of the names of elected site safety and health representatives; and
  - (d) advise the site senior executive and the chief inspector of the term of appointment of a site safety and health representative.

### ‘3      **Roll of voters**

‘A returning officer must prepare a roll (the ***roll of voters***) of relevant coal mine workers (each a ***voter***) for the election.

### ‘4      **Election notice**

- ‘(1) The returning officer for nominations must prepare and publish an election notice in a way that ensures as many coal mine workers as reasonably practicable are aware that an election for site safety and health representatives is being held.

*Examples of ways to publish an election notice—*

- including the election notice in a site information brief or site-specific publication generally available to coal mine workers at the coal mine, or the part of the coal mine, for which the election is being held
- displaying the election notice on notice boards at the coal mine, or the part of the coal mine, for which the election is being held

‘(2) The election notice must—

- (a) state the name and contact details of the returning officer for nominations; and
- (b) list the functions and required health and safety competencies of a site safety and health representative; and
- (c) call for nominations from eligible nominees as candidates for election as a site safety and health representative; and
- (d) include the following information—
  - (i) the place where nomination forms may be obtained;
  - (ii) the nomination closing time;
  - (iii) the place where nomination forms must be lodged;
  - (iv) that a nominee may appoint a scrutineer; and
- (e) state the day and time (the ***election time***) for the election; and
- (f) identify the place (the ***polling site***) where coal mine workers may vote; and
- (g) include information about obtaining and returning ballot papers if a voter will be absent from the polling site at the election time; and
- (h) identify the place where the votes will be counted.

‘(3) The period of time for the election must be reasonable having regard to the following—

- (a) the size and geographic spread of the coal mine, or the part of the coal mine, for which the election is being held;

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- (b) the number of voting locations for the election;
- (c) the type of shift work undertaken at the coal mine, or the part of the coal mine, for which the election is being held.

## **‘5 Nominations**

- ‘(1) A nomination by a coal mine worker must be endorsed by another coal mine worker.
- ‘(2) The period of time between the publication of the election notice and the nomination closing time must be reasonable having regard to the following—
  - (a) the size and geographic spread of the coal mine, or the part of the coal mine, for which the election is being held;
  - (b) the type of shift work undertaken at the coal mine, or the part of the coal mine, for which the election is being held.
- ‘(3) However, the period between the publication of the election notice and the nomination closing time must be at least 21 days.
- ‘(4) Nominations must—
  - (a) include the following information—
    - (i) the full name of the nominee;
    - (ii) the form in which the nominee’s name is to appear on the ballot paper, if different to the nominee’s full name;
    - (iii) the contact details for the nominee;
    - (iv) the name and signature of the coal mine worker endorsing the nomination; and
  - (b) be signed by the nominee; and
  - (c) be lodged with the returning officer.
- ‘(5) If the returning officer for nominations considers a nomination by an eligible nominee does not meet the

requirements of this section, the returning officer must notify the person and, as far as is reasonably practicable, give the person an opportunity to correct the nomination.

- ‘(6) If the returning officer for nominations notifies an eligible nominee of a defect in the person’s nomination and the person does not correct the defect before the nomination closing time, the returning officer must reject the nomination.
- ‘(7) An eligible nominee may, by written notice given to the returning officer for nominations, withdraw the person’s nomination at any time before the nomination closing time.

## **‘6 No election if no nominations received**

- ‘(1) This section applies if, at the nomination closing time, no nominations are received for an election of site safety and health representatives.
- ‘(2) The returning officer for the ballot need not conduct a ballot for the election of site safety and health representatives.
- ‘(3) The returning officer for the ballot must—
  - (a) declare no site safety and health representatives have been elected; and
  - (b) within 14 days after the nomination closing time, give the site senior executive and the chief inspector written notice that—
    - (i) no nominations were received; and
    - (ii) no site safety and health representatives have been elected.

## **‘7 Election of unopposed candidate**

- ‘(1) This section applies if there is only 1 candidate for an election of site safety and health representatives.
- ‘(2) The returning officer for the ballot need not conduct a ballot for the election of site safety and health representatives.
- ‘(3) The candidate for the ballot is taken to have been elected unopposed.

- ‘(4) The returning officer for the ballot must—
- (a) declare the candidate to be elected; and
  - (b) within 14 days after the nomination closing time, give the site senior executive and the chief inspector written notice that the candidate has been elected unopposed.

## **‘8 Notice of returning officer for ballot**

‘If the returning officer for the ballot is not the same person as the returning officer for nominations, the returning officer for the ballot must prepare and display a notice at the polling site—

- (a) identifying the returning officer for the ballot; and
- (b) stating the contact details for the returning officer for the ballot.

## **‘9 Ballot papers**

- ‘(1) A ballot paper must include the following information—
- (a) the name of the coal mine, or the part of the coal mine, to which the election relates;
  - (b) the initials or other authenticating mark of the returning officer for the ballot;
  - (c) instructions for marking the ballot paper;
  - (d) instructions for returning the ballot paper;
  - (e) the name of and contact details for the returning officer for the ballot;
  - (f) the name of each candidate, listed in alphabetical order;
  - (g) a separate question as to whether the voter wants 1 or 2 safety and health representatives for the mine or part of the mine;
  - (h) a separate question as to the term of appointment of a site safety and health representative.

- ‘(2) The name of each candidate must appear on a ballot paper in the form provided to the returning officer by the relevant candidate in the candidate’s nomination form.
- ‘(3) A ballot paper must not include any information about the candidate other than the candidate’s name.

## **‘10 Voting**

- ‘(1) Voting in the election is not compulsory.
- ‘(2) Proxies are not allowed.
- ‘(3) A voter may vote for a candidate by—
  - (a) marking the ballot paper in the way described in the instructions on the ballot paper; and
  - (b) returning the ballot paper to the returning officer for the ballot by the election time.
- ‘(4) A ballot paper is invalid if a voter marks the ballot paper in a way that prevents a reasonable interpretation of the intention of the voter.
- ‘(5) A ballot paper is not invalid only because the voter has not indicated a preferred term of appointment for the site safety and health representatives.

## **‘11 Scrutineers**

- ‘(1) Each candidate may nominate 1 coal mine worker on the roll of voters to act as a scrutineer and represent the candidate’s interests in the ballot.
- ‘(2) A scrutineer—
  - (a) must be appointed by the candidate in writing; and
  - (b) can not be a candidate in the ballot; and
  - (c) may be present at any stage in the ballot.
- ‘(3) A scrutineer may undertake the following functions—
  - (a) countersign seals or put the scrutineer’s own seal on ballot boxes;

- (b) inspect the roll of voters;
- (c) notify the returning officer for the ballot of any irregularities in—
  - (i) the roll of voters; or
  - (ii) the distribution of the ballot papers; or
  - (iii) the acceptance of ballot papers; or
  - (iv) the counting of the votes.

## **‘12 Returning officer for ballot to count votes**

- ‘(1) At, or as soon as practicable after, the election time, the returning officer for the ballot must—
  - (a) check whether the person from whom the ballot paper was received is a voter; and
  - (b) accept each valid ballot paper and reject each invalid ballot paper; and
  - (c) count and record the number of votes for each candidate on the formal ballot papers; and
  - (d) count and record the number of votes for the election of—
    - (i) only 1 site safety and health representative; and
    - (ii) 2 site safety and health representatives; and
  - (e) count and record the votes for the term of appointment of a site safety and health representative.
- ‘(2) The returning officer may appoint a person as an assistant to help the returning officer examine the ballot papers and count the votes.
- ‘(3) However, the returning officer must not appoint as an assistant a person who is—
  - (a) a candidate; or
  - (b) a scrutineer appointed by a candidate.

**‘13 Declaration and notification of election results**

- ‘(1) The returning officer for the ballot must declare—
  - (a) if more than 50% of votes cast indicate a preference for only 1 site safety and health representative for the mine, or part of the mine—there is to be only 1 site safety and health representative for the mine, or part of the mine; or
  - (b) otherwise—there are to be 2 site safety and health representatives for the mine, or part of the mine.
- ‘(2) After making a declaration under subsection (1), the returning officer for the ballot must declare how many site safety and health representatives are to be elected.
- ‘(3) If only 1 site safety and health representative is to be elected, the returning officer for the ballot must declare the candidate who achieves the highest number of votes as having been elected.
- ‘(4) If 2 site safety and health representatives are to be elected, the returning officer for the ballot must declare the following candidates as having been elected—
  - (a) the candidate who achieves the highest number of votes;
  - (b) the candidate who achieves the second highest number of votes.
- ‘(5) The returning officer for the ballot must declare the term of appointment of a site safety and health representative to be the median of the terms for which voters have voted.
- ‘(6) The returning officer for the ballot must, within 14 days after the ballot closing, declare the result of the election by giving written notice of the result to the site senior executive and the chief inspector.’.

**6 Amendment of sch 9 (Dictionary)**

Schedule 9—

*insert—*

*‘election time* see schedule 1B, section 4(2)(e).

***eligible nominee*** means a coal mine worker who, at the nomination closing time, is a coal mine worker at the coal mine, or the part of the coal mine, for which the election of a site safety and health representative is being held.

***involved union*** see section 12L(8).

***nomination closing time*** means the day and time when nominations for election as a site safety and health representative for a coal mine close.

***prescribed site safety and health representative election process*** means the process set out in schedule 1B.

***qualified body***, in relation to an election for a site safety and health representative, means an independent body with qualifications and experience appropriate to conducting the election.

***relevant coal mine worker***, in relation to an election for a site safety and health representative, means—

- (a) if the election relates to a coal mine—the coal mine workers at the mine; or
- (b) if the election relates to a part of a coal mine—the coal mine workers in the part.

***required health and safety competencies*** means the safety and health competencies required under section 93(3) of the Act.

***roll of voters*** see schedule 1B, section 3.

***scrutineer*** means a scrutineer appointed by a candidate under schedule 1B, section 11.

***voter*** see schedule 1B, section 3.’.

ENDNOTES

- 1 Made by the Governor in Council on 16 February 2012.
- 2 Notified in the gazette on 17 February 2012.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Employment, Economic Development and Innovation.

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