



Queensland

Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020

Subordinate Legislation 2020 No. 108

made under the

Coal Mining Safety and Health Act 1999

Mining and Quarrying Safety and Health Act 1999

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[s 1]

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020*.

2 Commencement

- (1) Part 2 commences on 1 July 2020.
- (2) Part 3 commences on 1 September 2020.

Part 2 Amendment of Coal Mining Safety and Health Regulation 2017

3 Regulation amended

This part amends the *Coal Mining Safety and Health Regulation 2017*.

4 Amendment of s 44 (Definitions for division)

- (1) Section 44, definition *ILO guidelines*—
omit, insert—

ILO guidelines means the guidelines called ‘Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses’ published by the International Labour Organization.

Note—

The ILO guidelines are available at the International Labour Organization’s website.

-
- (2) Section 44, definitions *chest x-ray examination*, paragraph (a) and *further reading*, paragraph (a), after ‘pneumoconioses’—
insert—
or other respiratory diseases

5 Insertion of new s 49BA

After section 49B—

insert—

49BA Delaying part of health assessment or exit assessment

- (1) This section applies if an appointed medical adviser considers the risk to any person from delaying an examination to be lower than the risk to the person undergoing the examination of an adverse health effect of the examination.

Example—

An appointed medical adviser may consider the risk to a pregnant coal mine worker from delaying a chest x-ray examination to be lower than the risk to the worker of an adverse health effect of the examination.

- (2) Despite sections 46(2) and 49A(3)(a), the examination may be carried out up to 1 year after the period provided for in those provisions.
- (3) If an examination is delayed under subsection (2), the last health assessment or exit assessment is taken to have been carried out at the time of the examinations that were not delayed.
- (4) In this section—

examination means an examination forming part of a health assessment or exit assessment.

risk, to a person, includes a risk to an unborn child of the person.

[s 6]

6 Insertion of new s 49EA

After section 49E—

insert—

49EA Delaying part of former worker assessment

- (1) This section applies if an approved supervising doctor considers the risk to a former worker of an adverse health effect from delaying an examination to be lower than the risk to the former worker of an adverse health effect of the examination.

Example—

An approved supervising doctor may consider the risk to a pregnant former worker of an adverse health effect from delaying a chest x-ray examination to be lower than the risk to the former worker of an adverse health effect of the examination.

- (2) Despite section 49E(1), the examination may be carried out up to 1 year after the CEO receives the request.
- (3) If an examination is delayed under subsection (2), the most recent former worker assessment is taken to have been carried out at the time of the examinations that were not delayed.
- (4) In this section—

examination means an examination forming part of a former worker assessment.

risk, to a former worker, includes a risk to an unborn child of the former worker.

7 Insertion of new ch 6, pt 7

Chapter 6—

insert—

Part 7 **Transitional provision
for Mining Safety and
Health Legislation
(Health Surveillance)
Amendment Regulation
2020**

400 Application of ss 49BA and 49EA

Sections 49BA and 49EA apply in relation to a person undergoing an examination forming part of a health assessment, exit assessment or former worker assessment whether the assessment started before or after the commencement.

Part 3 **Amendment of Mining and
Quarrying Safety and Health
Regulation 2017**

8 **Regulation amended**

This part amends the *Mining and Quarrying Safety and Health Regulation 2017*.

9 **Amendment of s 4 (Ways of achieving an acceptable level
of risk)**

Section 4(1), ‘138(3)’—

omit, insert—

145D(4)

10 **Amendment of s 9 (Risk monitoring)**

Section 9(4)(d)—

[s 11]

omit, insert—

- (d) health surveillance or a respiratory health examination under section 145B or 145C.

11 Omission of s 138 (Health surveillance)

Section 138—

omit.

12 Insertion of new ch 2, pt 14, div 3

Chapter 2, part 14—

insert—

Division 3 Managing risk through health surveillance

Subdivision 1 Preliminary

145A Definitions for division

In this division—

additional examination means an examination mentioned in this section, definition *respiratory health examination*, paragraph (f).

chest examination means—

- (a) an examination of chest expansion; and
- (b) auscultation.

chest x-ray examination means an examination of an x-ray taken of a person's chest—

- (a) to screen for indications of pneumoconioses or other respiratory diseases; and

- (b) performed in compliance with the ILO guidelines.

comparative assessment, of a person's spirometry, means a comparison of the results of the person's spirometry with the results of the person's previous spirometries for the purpose of identifying trends.

former worker see section 145J.

further reading, of an x-ray taken of a person's chest, means an examination of the x-ray—

- (a) to screen for indications of pneumoconioses or other respiratory diseases; and
- (b) performed in compliance with the ILO guidelines; and
- (c) performed for the purpose of considering the classification of the x-ray under a previous chest x-ray examination and finally deciding the classification under the ILO guidelines.

further surveillance period, for a person, means—

- (a) within 5 years after the most recent respiratory health surveillance was carried out for the person; or
- (b) if the most recent health surveillance report for the person, or an appropriate doctor in consultation with the site senior executive, recommends respiratory health surveillance be carried out for the person within a period of less than 5 years—
 - (i) the period recommended; or
 - (ii) if there are 2 or more recommendations—the shortest of the periods recommended.

[s 12]

health surveillance report means information, other than a medical record, about—

- (a) the effects on a person's health related to the person's exposure to a hazard at a mine; and
- (b) the need, if any, for remedial action.

ILO guidelines means the guidelines called 'Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses' published by the International Labour Organization.

Note—

The ILO guidelines are available at the International Labour Organization's website.

respiratory health examination, for a person, means each of the following—

- (a) a chest examination;
- (b) a spirometry;
- (c) a comparative assessment of the person's spirometry if the results of 1 or more previous spirometries for the person are available;
- (d) a chest x-ray examination;
- (e) a further reading of the chest x-ray the subject of the examination under paragraph (d);
- (f) another examination the relevant appropriate doctor considers is necessary for the early detection of injury or illness to the person's respiratory system.

respiratory health surveillance, for a person, means health surveillance that includes all of the respiratory health examinations for the person.

Subdivision 2 General requirements

145B Requirement to arrange health surveillance

The site senior executive for a mine must arrange for health surveillance of a worker at the mine if the site senior executive reasonably believes, or ought reasonably to believe—

- (a) exposure to a hazard at the mine may cause, or result in, an adverse health effect; and
- (b) the health effect may happen under the worker's work conditions; and
- (c) either—
 - (i) a valid technique capable of detecting signs of the health effect exists; or
 - (ii) a valid biological monitoring procedure is available to detect changes from the current accepted values for the hazard.

Examples of changes from current accepted values—

- a higher than normal blood level of lead caused by exposure to substances containing lead
- a raised urinary mercury level caused by exposure to mercury vapour

145C Requirement to arrange respiratory health surveillance

- (1) The site senior executive for a mine must arrange, under subdivision 3, for respiratory health surveillance or a respiratory health examination of a person who becomes, is or stops being a worker at the mine.
- (2) Subsection (1) does not apply to a person whose

[s 12]

current or previous exposure to hazards is shown by a risk assessment to create a risk to the person's respiratory system so minimal that it can be managed effectively without respiratory health surveillance being carried out for the person.

145D Matters about carrying out health surveillance

- (1) This section applies if the site senior executive for a mine must arrange for health surveillance or a respiratory health examination of a person under section 145B or 145C.
- (2) The site senior executive must arrange for the health surveillance or respiratory health examination to be done by, or under the supervision of, an appropriate doctor.
- (3) The appropriate doctor must give—
 - (a) a copy of the health surveillance report for the health surveillance or respiratory health examination to the site senior executive; and
 - (b) a copy and explanation of the health surveillance report for the health surveillance or respiratory health examination to—
 - (i) the person; and
 - (ii) if requested by the person—another doctor nominated by the person.
- (4) The employer of a worker or the potential employer of a person who becomes a worker must pay for the worker's or person's health surveillance or respiratory health examination and the health surveillance reports.

Maximum penalty—30 penalty units.

- (5) Subsection (4) is not a safety and health obligation for the Act.

145E Keeping health surveillance reports

- (1) The site senior executive for a mine must ensure a health surveillance report obtained under this subdivision is kept for the following period—
 - (a) for a hazard with a cumulative or delayed effect—30 years;
Examples—
silica, noise or vibration
 - (b) for another hazard—7 years.
- (2) If the mine ceases operations in the period the health surveillance report is required to be kept under subsection (1), the site senior executive must ask for, and comply with, the CEO's directions about the report's storage.

Subdivision 3 Respiratory health surveillance for workers

145F Respiratory health surveillance for persons who become workers

- (1) This section applies in relation to a person who becomes a worker at a mine.
- (2) Respiratory health surveillance must be carried out for the person—
 - (a) if respiratory health surveillance has not previously been carried out for the person—before the person becomes a worker at the mine; or
 - (b) if respiratory health surveillance has previously been carried out for the person—within the further surveillance period for the person.
- (3) However, if the respiratory health surveillance is

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to include an additional examination and the additional examination can not be carried out within the period stated in subsection (2), the additional examination must be carried out as soon as practicable after the end of the period.

145G Respiratory health surveillance for persons who are workers

- (1) This section applies in relation to a person who is a worker.
- (2) Respiratory health surveillance must be carried out for the person within the further surveillance period for the person.
- (3) However, if the respiratory health surveillance is to include an additional examination and the additional examination can not be carried out within the further surveillance period, the additional examination must be carried out as soon as practicable after the end of the period.
- (4) Subsection (5) applies if the most recent health surveillance report for the person, or an appropriate doctor in consultation with the site senior executive, recommends a particular respiratory health examination be carried out for the person before respiratory health surveillance is carried out for the person under subsection (2).
- (5) The respiratory health examination must be carried out within the period recommended by the report or appropriate doctor.

145H Respiratory health surveillance for persons who stop being workers

- (1) This section applies to a person who—
 - (a) permanently stops being a worker; and
 - (b) was a worker for at least 3 years; and

-
- (c) during the 3 years before the person stops being a worker, did not have respiratory health surveillance.
 - (2) The person may ask the employer for respiratory health surveillance to be carried out—
 - (a) during the 6-month period that begins 3 months before the person stops being a worker; and
 - (b) at a time, or times, during that period when the person is available for the surveillance.
 - (3) If a person asks for respiratory health surveillance under subsection (2), the respiratory health surveillance must be carried out—
 - (a) within the period mentioned in subsection (2)(a); and
 - (b) at the time or times mentioned in subsection (2)(b).

145I Delaying respiratory health examinations

- (1) This section applies if an appropriate doctor considers the risk to any person from delaying a respiratory health examination to be lower than the risk to the person undergoing the examination of an adverse health effect of the examination.

Example—

An appropriate doctor may consider the risk to a pregnant worker from delaying a chest x-ray examination to be lower than the risk to the worker of an adverse health effect of the examination.

- (2) Despite sections 145F(2) and (3), 145G(2), (3) and (5) and 145H(3), the respiratory health examination may be carried out up to 1 year after the period provided for in those provisions.
- (3) If a respiratory health examination is delayed under subsection (2), the last respiratory health

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surveillance is taken to have been carried out at the time of the respiratory health examinations that were not delayed.

(4) In this section—

risk, to a person, includes a risk to an unborn child of the person.

Subdivision 4 Respiratory health surveillance for former workers

145J Application of subdivision

This subdivision applies to a person (a *former worker*) who—

- (a) has permanently stopped being a worker; and
- (b) was a worker for at least 3 years.

145K Request for respiratory health surveillance by former workers

- (1) A former worker may ask the CEO for respiratory health surveillance of the worker.
- (2) However, a former worker may not ask for respiratory health surveillance until at least 5 years after the former worker's last respiratory health surveillance.
- (3) Subsection (2) does not apply if—
 - (a) the most recent health surveillance report for the former worker recommends respiratory health surveillance be carried out within a period of less than 5 years; or

- (b) the former worker gives the CEO a medical certificate signed by a doctor stating the worker has symptoms that may indicate injury or illness to the worker's respiratory system caused by exposure to a hazard at a mine.

145L CEO must arrange for respiratory health surveillance for former workers

The CEO must, as soon as practicable after receiving the request under section 145K(1), arrange for the respiratory health surveillance to be done by, or under the supervision of, an appropriate doctor.

145M Delaying respiratory health examinations

- (1) This section applies if an appropriate doctor considers the risk to a former worker of an adverse health effect from delaying a respiratory health examination to be lower than the risk to the former worker of an adverse health effect of the examination.

Example—

An appropriate doctor may consider the risk to a pregnant former worker of an adverse health effect from delaying a chest x-ray examination to be lower than the risk to the former worker of an adverse health effect of the examination.

- (2) Despite section 145L, the respiratory health examination may be carried out up to 1 year after the CEO receives the request.
- (3) If a respiratory health examination is delayed under subsection (2), the last respiratory health surveillance is taken to have been carried out at the time of the respiratory health examinations that were not delayed.

[s 13]

(4) In this section—

risk, to a former worker, includes a risk to an unborn child of the former worker.

145N Other matters about respiratory health surveillance for former workers

(1) The CEO must ensure the appropriate doctor gives—

(a) a copy of the health surveillance report for the respiratory health surveillance, and the information or documents on which the report was based, to the CEO; and

(b) a copy and explanation of the health surveillance report for the respiratory health surveillance to—

(i) the former worker; and

(ii) if requested by the former worker—another doctor nominated by the former worker.

(2) The CEO must pay for—

(a) the respiratory health surveillance; and

(b) the giving of the copies and explanations of the report, and the information or documents, under subsection (1).

13 Insertion of new ch 4, pt 4

Chapter 4—

insert—

Part 4

Transitional provisions for Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020

170 Definition for part

In this part—

pre-amended regulation means this regulation as in force before the commencement.

171 Persons for whom health surveillance before commencement included respiratory health surveillance

- (1) This section applies if—
 - (a) on or within 2 years after the commencement, section 145C applies in relation to a person; and
 - (b) health surveillance was carried out for the person under the pre-amended regulation; and
 - (c) the health surveillance included respiratory health surveillance.
- (2) The health surveillance is taken to be respiratory health surveillance for the person for chapter 2, part 14, division 3, subdivision 3.
- (3) The next respiratory health surveillance must be carried out for the person under chapter 2, part 14, division 3, subdivision 3 before the later of the following—

[s 13]

- (a) 5 years after the health surveillance was carried out for the person under the pre-amended regulation;
- (b) 2 years after the commencement.

172 Persons for whom health surveillance before commencement included some but not all respiratory health examinations

- (1) This section applies if—
 - (a) on or within 2 years after the commencement, section 145C applies in relation to a person; and
 - (b) health surveillance was carried out for the person under the pre-amended regulation; and
 - (c) the health surveillance included 1 or more but not all of the respiratory health examinations.
- (2) Respiratory health surveillance must be carried out for the person under chapter 2, part 14, division 3, subdivision 3 within 2 years after the commencement.
- (3) A respiratory health examination carried out for the person within 3 years before the commencement is taken to have been carried out for the respiratory health surveillance under chapter 2, part 14, division 3, subdivision 3.

Example—

Health surveillance was carried out for a worker before the commencement and the health surveillance included all respiratory health examinations other than a further reading of a chest x-ray. The respiratory health examinations that were included in the health surveillance are taken to have been carried out for the respiratory health surveillance for the worker under chapter 2, part 14, division 3, subdivision 3. This means

only a further reading of a chest x-ray is needed to be carried out under that subdivision.

- (4) If respiratory health surveillance carried out for a person under subsection (2) does not include a respiratory health examination as provided under subsection (3), the person's respiratory health surveillance under subsection (2) is taken to have been carried out when the first respiratory health examination forming part of the respiratory health surveillance was carried out.

173 Other persons to whom section 145C applies

- (1) This section applies if—
 - (a) on or within 2 years after the commencement, section 145C applies in relation to a person; and
 - (b) neither section 171 nor section 172 applies to the person.
- (2) Respiratory health surveillance must be carried out for the person under chapter 2, part 14, division 3, subdivision 3 within 2 years after the commencement.

174 Application of s 145H

Section 145H applies only to a person who permanently stops being a worker after the commencement.

175 Application of ch 2, pt 14, div 3, sdiv 4

Chapter 2, part 14, division 3, subdivision 4 applies to a person whether the person permanently stopped being a worker before or after the commencement.

[s 14]

14 Amendment of sch 5A (Civil penalties)

Schedule 5A, part 3, item 2, from ‘section’—

omit, insert—

section 131 and chapter 2, part 14, division 3, subdivision 2 of this regulation (relating to health assessments, health surveillance and respiratory health examinations)

15 Amendment of sch 7 (Dictionary)

(1) Schedule 7, definition *appropriate doctor*—

omit.

(2) Schedule 7—

insert—

additional examination, for chapter 2, part 14, division 3, see section 145A.

appropriate doctor, for health surveillance or a health assessment of a person, means a doctor who—

- (a) is appropriately qualified; and
- (b) has demonstrated knowledge of the risks associated with activities performed by workers at the mine at which the person becomes, is or stops being a worker.

chest examination, for chapter 2, part 14, division 3, see section 145A.

chest x-ray examination, for chapter 2, part 14, division 3, see section 145A.

comparative assessment, of a person’s spirometry, for chapter 2, part 14, division 3, see section 145A.

former worker, for chapter 2, part 14, division 3, see section 145J.

further reading, of an x-ray taken of a person's chest, for chapter 2, part 14, division 3, see section 145A.

further surveillance period, for a person, for chapter 2, part 14, division 3, see section 145A.

health surveillance report, for chapter 2, part 14, division 3, see section 145A.

ILO guidelines, for chapter 2, part 14, division 3, see section 145A.

respiratory health examination, for a person, see section 145A.

respiratory health surveillance, for a person, see section 145A.

ENDNOTES

- 1 Made by the Governor in Council on 25 June 2020.
- 2 Notified on the Queensland legislation website on 26 June 2020.
- 3 The administering agency is the Department of Natural Resources, Mines and Energy.

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