



Queensland

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

Explanatory Notes for SL 2012 No. 33

made under the

Coal Mining Safety and Health Act 1999

General outline

Short title

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

Authorising law

Section 282 of the *Coal Mining Safety and Health Act 1999* (CMSH Act)

Policy objectives and reasons for them

The policy objective of the amendment regulation is to help protect the safety and health of persons at coal mines by providing a means for site safety and health representatives (SSHRs) to be elected to represent the safety and health interests of coal mine workers.

Achievement of policy objectives

The amendment regulation sets out the administrative process for the election of SSHRs under the *Coal Mining Safety and Health Act 1999*. This will ensure the ongoing functioning of a key component of the safety management system that applies to Queensland coal mines by clarifying

the process of electing SSHRs where that process would otherwise be contested. SSHRs have responsibilities and powers under the CMSH Act including powers to assess and reduce risks, investigate complaints and stop mining operations if there is an immediate danger to workers.

Consistency with policy objectives of authorising law

The amendment regulation amends the *Coal Mining Safety and Health Regulation 2001* (CMSH Regulation) and is consistent with the objectives of the CMSH Act, being:

- (a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and
- (b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and
- (c) to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation.

The Act sets out that these objectives are to be achieved in a number of ways including:

- (e) providing for safety and health representatives to represent the safety and health interests of coal mine workers.

The amendment regulation will ensure there is a clear process for coal mine workers to elect safety and health representatives, and as such is fundamental to ensuring the CMSH Act continues to meet all of its objectives in the way that is contemplated by the Act.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other relevant legislation.

Alternative ways of achieving policy objectives

The only alternative to the amendment regulation that would be consistent with the objectives of the CMSH Act would be to set out the administrative process for the election of SSHRs within the Act itself. However, the Act specifically provides for the making of regulations to deal with matters of

an administrative nature, so the amendment regulation is consistent with the intended structure of the Act and its associated subordinate legislation.

Benefits and costs of implementation

The benefits of maintaining safe working conditions for coal mine workers and the importance of ensuring adequate representation of coal mine workers in the safety management system are clear. SSHRs contribute to delivering safety and health benefits by facilitating overall coal mine safety. In the past processes used to undertake SSHR elections have in the majority not been contested, so the clarification of an election process where such a process is contested is not expected to impose an appreciable overall cost. While the amendment regulation provides for the chief inspector of coal mines to appoint a qualified entity to conduct the election under the regulated rules where the process is contested, this cost is expected to be minimal. The amendment regulation provides that the cost associated with appointing an independent body to conduct an election will be met by the State. In turn this cost will be met through current funding sources in the form of the Safety and Health Fee collected under the Act.

A Preliminary Impact Statement completed in January 2012 determined the amendment regulation did not require a Regulatory Assessment Statement (RAS) as the proposal will not impose significant impacts on the community, business or government. Compliance with Part 5 of the *Statutory Instruments Act 1992* (SIA) is determined pursuant to section 43 of the SIA for the same reason.

Consistency with fundamental legislative principles

The amendment regulation has been drafted having regard to fundamental legislative principles and is considered to comply with these principles. The regulation will validate the election of SSHRs currently holding office, which could be seen to raise a minor FLP issue in that it could be seen to act retrospectively. However doing so would provide a benefit to those current appointees and the coal miners they represent that could otherwise be affected by any potential doubt about the validity of their appointment. Section 34 of the *Statutory Instruments Act 1992* relevantly provides that a beneficial provision of a statutory instrument may be given retrospective operation if the statutory instrument expressly provides for that operation. "Beneficial provision" is defined to mean "a provision that does not operate to the disadvantage of a person...by (a) decreasing the person's rights; or

(b) imposing liabilities on the person". The provision for validating these appointments would not decrease any person's rights or impose liabilities on any person.

Consultation

Consultation was undertaken with the Construction, Forestry, Mining and Energy Union, the Queensland Resources Council and coal mining companies.

All stakeholders consulted support the ongoing election of SSHRs in order to represent the safety and health interests of coal mine workers and ensure the integrity of Queensland's coal mine safety management system. While there were areas of disagreement regarding the process that should be used, the amendment regulation represents a reasonable compromise in providing for the use of a qualified entity to conduct elections where the election process would otherwise be contested.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Employment, Economic Development and Innovation.

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