Coal Mining Safety and Health (Coal Workers' Pneumoconiosis) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 102

made under the

Coal Mining Safety and Health Act 1999

General Outline

Short title

Coal Mining Safety and Health (Coal Workers' Pneumoconiosis) Amendment Regulation 2018.

Authorising law

Section 282 and Schedule 2, Part 2, Item 29 of the *Coal Mining Safety and Health Act 1999* (the Act).

Policy objectives and the reasons for them

The Coal Mine Workers' Health Scheme is established under the *Coal Mining Safety and Health Regulation 2017* (CMSHR), to protect the health of Queensland coal mine workers by ensuring workers undergo periodic health assessments by nominated medical advisers appointed by employers.

In 2015, the Monash University Centre for Occupational and Environmental Health was engaged to review the respiratory component of the Coal Mine Workers' Health Scheme, in collaboration with the University of Illinois at Chicago (the Monash review).

The Final Report of the Monash Review[1] in July 2016 cited structural failings in the design, and operation of the Coal Mine Workers' Health Scheme. The report made 18 recommendations comprising reforms across a range of issues including chest X-rays, lung function testing, medical practitioners, surveillance and digital records management. The government supported the implementation of all Monash review recommendations.

[1] *Review of Respiratory Component of the Coal Mine Workers' Health Scheme for the Queensland Department of Natural Resources and Mines - Final Report* https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0009/383940/monash-qcwp-final-report-2016.pdf, July 2016.

In September 2016, the Queensland Parliament established the Coal Workers' Pneumoconiosis Select Committee (CWP Select Committee) to conduct an inquiry into the re-emergence of coal workers' pneumoconiosis in Queensland. In May 2017, the CWP Select Committee released report no. 2 which made 68 recommendations, including recommendation 39(a) – (q) which related to adopting and implementing the Monash review recommendations into the Coal Mine Workers' Health Scheme.[2]

While a number of improvements to the Coal Mine Workers' Health Scheme have already been made, further amendments to the CMSHR are required to sustain and enhance the improvements made in implementing the Monash review recommendations.

Achievement of policy objectives

To achieve the objectives, the *Coal Mining Safety and Health (Coal Workers' Pneumoconiosis) Amendment Regulation 2018* (the Regulation), will:

- introduce health surveillance as a purpose of the Coal Mine Workers' Health Scheme
- incorporate a right to a respiratory health assessment for retired and former workers
- enable health surveillance and quality assurance
- increase the frequency of chest X-ray and spirometry examinations to every five years for aboveground workers
- establish a mandatory 'approved provider' framework
- incorporate consequential amendments including the replacement of the term 'nominated medical adviser' with 'appointed medical adviser'.

The objective of government action is to ensure legislation is effective in providing a health surveillance framework for the Coal Mine Workers' Health Scheme to support Queensland coal mine workers.

The amendments further support implementation of the Monash review recommendations and enable a best practice respiratory screening program focussed on the early detection of coal workers' pneumoconiosis and coal mine dust lung diseases (CMDLD).

It is not feasible to address these matters without regulatory amendments as these matters are dealt with under existing regulatory provisions.

Purpose of the Coal Mine Workers' Health Scheme

A key Monash review finding was that the respiratory component of the Coal Mine Workers' Health Scheme was focussed on fitness for work rather than the detection and management of CMDLD. Monash recommended that the purpose of the respiratory component should explicitly focus on the early detection of CMDLD among current and former coal mine workers.

[2] Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, *Black lung white lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland*, report no. 2, May 2017, p. 183.

The Monash review further stated that the purposes of the respiratory component of the Coal Mine Workers' Health Scheme should be to:

- provide respiratory health screening to detect early CMDLD in coal mine workers
- offer participation in the Coal Mine Workers' Health Scheme to former coal mine workers
- ensure appropriate referral for follow-up, diagnosis and management, including appropriate reductions in further exposure to dust, for coal mine workers with respiratory abnormalities
- collect, analyse and report group surveillance data to monitor trends in CMDLD, and to inform government, industry and trade union reviews of dust exposure levels and occupational exposure limits for coal mines.

The amendments explicitly include these within the purpose of the Coal Mine Workers' Health Scheme.

Former Worker Assessments

The Monash review recommended that the Coal Mine Workers' Health Scheme should be expanded to offer respiratory health screening for retired and former coal mine workers. This recognises the long latency period of CMDLD and provides a more complete view of the worker population and their health into retirement to inform health surveillance activities.

The Regulation provides a right to voluntary respiratory health assessments for retired and former coal mine workers through a 'former worker assessment' process, administered by the Department of Natural Resources, Mines and Energy (the department).

Health Surveillance and Electronic Records

Monash University separately identified the benefits to health surveillance from linking worker health data to other datasets such as cancer registries.

Under the current CMSHR, coal mine worker health data cannot be released for research purposes except in de-identified format or with the worker's consent. The difficulty of seeking consent from every current and former worker to release data is likely to impact on the quality of data available for surveillance.

The Regulation therefore includes amendments to allow the department to release identified data for the purposes of research if the research is approved by an ethics committee.

The Monash review also recommended that the department should transition to an electronic system of data entry and storage. The amendments enable this transition by allowing the department to define how doctors send health assessments to the department.

The Monash review also highlighted the importance of comparative assessments. Comparative assessments are already required under the Coal Mine Workers' Health

Scheme, however doctors can only meet this requirement if they have the worker's consent to access their previous health assessment results. This can be more difficult in cases where the previous assessment was completed by a different doctor.

The Regulation enables all workers to receive a comparative assessment by allowing the relevant doctor to access the worker's previous assessments from the department without the worker's consent.

Respiratory screening frequency

The CMSHR currently provides that all coal mine workers (other than low risk workers) must undergo respiratory screening at commencement of employment and at least once every five years for underground workers, or at least once every 10 years for aboveground workers.

The CMDLD Collaborative Group—a multi-disciplinary group of medical specialists in the field of respiratory medicine, including Dr Robert Cohen of the University of Illinois, Queensland Health and the department—recommended the frequency of screening should be at least every three to five years for both underground workers and for 'high risk' aboveground workers.

Given the potential for all coal mine workers to have exposure to dust, and that a number of aboveground workers have been diagnosed with CMDLD, the amendments increase the frequency of chest X-ray and spirometry for aboveground workers from at least once every 10 years to at least once every five years.

Mandatory approved provider framework

The Monash review recommended that there should be a much smaller pool of doctors with increased expertise performing health assessments for coal mine workers under the Coal Mine Workers' Health Scheme. The Monash review found there was inadequate initial and ongoing training for nominated medical advisers, who are to be renamed 'appointed medical advisers' under the proposed changes. The Monash review also identified issues with spirometry testing and with the taking and reading of chest X-rays. The department introduced a voluntary 'Register of Medical Providers' in July 2017 as an interim measure to address this.

Major coal companies agreed, where possible, to use registered medical providers to undertake health assessments. The amendments to the CMSHR makes the use of registered providers mandatory so as health assessments are only undertaken by a smaller cohort of providers in possession of increased skills and experience, who are approved by the department as appropriately qualified. Providers must meet defined standards, abide prescribed guidelines, meet specific performance requirements and be subject to audit. For doctors, this includes a training program and a visit to an operating coal mine, to enhance and maintain skills and knowledge in the area of coal mine worker' respiratory health.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising law as the objects of the Act include protecting the safety and health of persons at coal mines, and monitoring the effectiveness and administration of safety and health provisions under the Act (sections 6(a) and (c) of the Act).

The objects of the Act are achieved by means that include making regulations for the coal mining industry to require and promote risk management and control, and providing for the health assessment of coal mine workers (sections section 7(c) and (k) of the Act).

Inconsistency with policy objectives of other legislation

There is no inconsistency with policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives without regulatory amendments.

Benefits and costs of implementation

Amending the CMSHR will ensure that the regulatory framework sustains and enhances the improvements made in implementing the Monash review recommendations.

The new approved provider framework will improve the quality of workers' health assessments and assist in early detection of CMDLD. The framework enables and supports medical providers to raise and maintain their skills in coal mine worker health. It also gives workers and the community confidence in the health assessment system by ensuring that only approved providers are delivering health services.

There will be additional costs for medical providers under the framework, which includes accreditation fees. Some medical providers may also become ineligible to undertake assessments or examinations if they cannot meet defined standards. This may result in a smaller pool of medical providers delivering health assessments for coal mine workers in Queensland. There will be additional costs for coal companies as additional requirements are built into the health assessment.

Consistency with fundamental legislative principles

Potential breaches of fundamental legislative principles are addressed below.

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(3)

Subdivision 3B Approval of providers

The introduction of the approved provider framework potentially infringes upon the rights and liberties of medical providers to undertake assessments and examinations.

Although the department has introduced a voluntary registration framework to identify appropriately qualified providers, a mandatory framework is required to ensure satisfactory qualification and compliance, and therefore, implementation of the Monash recommendations. These recommendations relate to the further regulation of medical providers participating in the Scheme, in order to ensure quality of assessments and examinations.

Applicants who are refused approval or have their approval suspended or cancelled may apply for an internal review and then to the Queensland Civil and Administrative Tribunal for a review of the decision.

Sections 50 and 50A

The Regulation includes amendments to allow the department to specify how an appointed medical adviser must keep assessment documentation and for what period. It also includes amendments that enable the department to specify the way in which and the time in which an appointed medical adviser must provide those documents to the department.

These amendments allow the department to progressively deliver refined electronic data entry and storage solutions as they become available. They also avoid the need for frequent regulation amendments to keep pace with technological advances. The implementation of further electronic solutions is expected to reduce the burden on appointed medical advisers to store and give assessment documentation. The department will consult appointed medical advisers when determining changes to these requirements.

Section 52 (Confidentiality of medical record)

The Regulation includes amendments to allow the department to release identified information to an appropriately qualified person for approved research.

This allows the department or other researches to link coal mine worker health data with other data sources such as cancer registries. Such activities would enhance the breadth and overall value of the surveillance program, and hence its contribution to improved safety and health at coal mines.

Privacy issues are addressed by requiring approval by a specified ethics committee before identified data is released for research purposes, and employing other administrative controls, such as the inclusion of confidentiality provisions in agreements with research bodies.

Although this provision will apply retrospectively, that is, to records previously provided to the department, these amendments are justified as they enable better monitoring of trends in the diagnosis of CMDLD and a better understanding of CMDLD prevention strategies.

Consultation

Preliminary impact statements were prepared under the *Queensland Government Guide to Better Regulation*. The Office of Best Practice Regulation was consulted and advised that the proposed amendments did not require any further regulatory impact assessment beyond the preliminary impact statements provided.

The department has undertaken extensive targeted consultation with stakeholders that would be impacted by the proposal and used this to inform improvements to the Coal Mine Workers' Health Scheme. In general, stakeholders support the implementation of the Monash review recommendations and proposed amendments.

Consultation and position papers

The department released a series of consultation and position papers on the changes underpinning the amendments proposed in the Regulation.

The department engaged with stakeholders through a series of discussion and position papers on chest X-rays and spirometry under the Coal Mine Workers' Health Scheme in 2016 and 2017. In particular, the proposals in these papers included the adoption of a register of X-ray imaging and spirometry providers.

In May 2017, the department released the *Medical Practitioners and Health Assessment for the Coal Mine Workers' Health Assessment Consultation Paper*, on proposals regarding medical practitioners and their registration. This included proposals around the establishment of the register of providers for the Coal Mine Workers' Health Scheme.

The department released a subsequent paper to the Coal Mining Safety and Health Advisory Committee in December 2017. The paper collated stakeholder feedback on the *Medical Practitioners and Health Assessment for the Coal Mine Workers' Health Assessment Consultation Paper* of May 2017.

The consultation paper *Health Surveillance for the Coal Mine Worker's Health Scheme, Next steps in planning reform Consultation Paper* was circulated to stakeholders in March 2018 to outline and seek feedback regarding a new health surveillance framework for coal mine workers in Queensland. The proposed surveillance framework included retired and former coal miners and changes to the frequency of respiratory screening and disclosure of records.

The consultation paper *Purpose, roles and responsibilities for coal mine workers' respiratory health screening* was circulated to stakeholders in March 2018 to outline and seek feedback regarding the purpose of the respiratory component and to clarify the roles and responsibilities of the department, employers, unions and coal mine workers under the Coal Mine Workers' Health Scheme.

Exposure draft of proposed subordinate legislation

An exposure draft of the Regulation was provided to targeted stakeholders in April 2018, including employers, worker representatives, medical providers and their peak bodies.

Results of Consultation

Submissions on the consultation draft of the Regulation were received from coal mining companies and the Queensland Resources Council, the Construction, Forestry, Mining and Energy Union, doctors participating in the Coal Mine Workers' Health Scheme and the Commissioner for Mine Safety and Health.

Stakeholders generally supported the proposed amendments, with minor proposed changes to the drafting of specific provisions. Further changes to the Regulation were made following consultation including to clarify transitional arrangements for medical providers and incorporate examining medical officers into the approved provider framework.

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