

# Resources Legislation (Safety and Health Fees) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 176

made under the

*Coal Mining Safety and Health Act 1999*

*Explosives Act 1999*

*Mining and Quarrying Safety and Health Act 1999*

*Petroleum Act 1923*

*Petroleum and Gas (Production and Safety) Act 2004*

## General Outline

### Short title

*Resources Legislation (Safety and Health Fees) Amendment Regulation 2021*

### Authorising law

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

Section 135 of the *Explosives Act 1999*

Section 262 of the *Mining and Quarrying Safety and Health Act 1999*

Section 149 of the *Petroleum Act 1923*

Section 859 of the *Petroleum and Gas (Production and Safety) Act 2004* (PG Act)

### Policy objectives and the reasons for them

The *Coal Mining Safety and Health Act 1999* establishes a legislative framework with the objectives of: (a) protecting the safety and health of persons at coal mines, and persons who may be affected by coal mining operations; (b) requiring that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and (c) providing a way of monitoring the effectiveness and administration of provisions relating to safety and health under the Act.

The *Coal Mining Safety and Health Regulation 2017* supports the operation of the *Coal Mining Safety and Health Act 1999* by prescribing ways of protecting the safety and health of persons at coal mines; and by specifying safety and health fees.

The *Explosives Act 1999* provides a framework for regulating the handling of, and access to, explosives to protect public health and safety, property and the environment.

The *Explosives Regulation 2017* supports the operation of the *Explosives Act 1999* by prescribing ways of handling, and access to explosives to protect workers, the public, property and the environment; and by specifying safety and health fees.

The *Mining and Quarrying Safety and Health Act 1999* establishes a legislative framework aimed at protecting the safety and health of persons at mines, and persons who may be affected by mining operations; and requiring that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level.

The *Mining and Quarrying Safety and Health Regulation 2017* supports the operation of the *Mining and Quarrying Safety and Health Act 1999* by prescribing ways of protecting the safety and health of persons at mines; and by specifying safety and health fees.

The objective of the *Resources Legislation (Safety and Health Fees) Amendment Regulation 2021* (the Amendment Regulation) is to amend the *Coal Mining Safety and Health Regulation 2017*, *Explosives Regulation 2017*, and the *Mining and Quarrying Safety and Health Regulation 2017* to replace the safety and health fee tiers, with additional tiers and adjusted progressive fees, to recover the cost of Resources Safety and Health Queensland's activities as regulator of mining safety and health including coal workers' pneumoconiosis, and explosives safety and security.

In May 2017, the Coal Workers' Pneumoconiosis Select Committee released a report which recommended structural and funding changes to the resources safety and health regulator. The government's response to the report recognised and supported the importance of appropriate independence of the regulator, and acknowledged that reform of the funding model for the regulator was necessary.

In late 2017, the government established a Project Management Office (PMO), led by a person independent of existing government agency structures, to develop options and provide advice, including about a sustainable funding model.

The PMO recommended replacing the existing safety and health fees, with additional tiers and adjusted fees that spread the cost burden more widely and progressively based upon an operator's number of workers.

To establish the independence of the regulator, Resources Safety and Health Queensland (RSHQ), commenced on 1 July 2020 through the *Resources Safety and Health Queensland Act 2020*, as a statutory body that regulates safety and health in the Queensland resources sector.

RSHQ operates under a self-funding model, charging fees to recover the costs of regulatory activities across the respective resources sectors. The current safety and health fee structure for mining and explosives is not sufficient to recover the costs of the associated regulatory activities of the new RSHQ statutory body. The new fee structure changes the fee, calculated on the number of workers employed, by sharing the costs of the regulator across the industry in line with increases in size and complexity of operations. The new fee structure ensures full recovery of the regulatory activities of RSHQ.

The *Petroleum and Gas (Production and Safety) Act 2004*, facilitates and regulates the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry.

The *Petroleum and Gas (Safety) Regulation 2018* supports these aims and specifies safety and health fees for the industry.

The *Petroleum Act 1923* regulates the mining for petroleum and natural gas in Queensland and is an authorising Act for the *Petroleum and Gas (Safety) Regulation 2018*.

### *Biogas safety and health fee*

All biogas operators are currently liable to pay a safety and health fee of \$4771.00 under the *Petroleum and Gas (Safety) Regulation 2018*, regardless of their biogas production capacity. This one-size-fits-all fee is considered inconsistent with the different size and scale of plant operations and the risk-based approach used by RSHQ. Imposing a blanket fee has inequitable implications on small scale biogas operators who are required to pay the same amount as large scale biogas operators.

To ensure a more equitable approach is taken to the safety and health fee and also to align the fee with the appropriate amount of regulatory intervention required at each site it is necessary to amend the safety and health fee structure for biogas and biomethane facilities.

## **Achievement of policy objectives**

The Amendment Regulation achieves its objective by amending the *Coal Mining Safety and Health Regulation 2017*, *Explosives Regulation 2017*, and the *Mining and Quarrying Safety and Health Regulation 2017* to implement the new funding model for RSHQ.

The amendments provide for full cost recovery of RSHQ's mining regulatory activities, including coal workers' pneumoconiosis related activities, and explosives regulatory activities.

The amendments provide for four safety and health fee tiers, to improve the progressivity of charging based upon the size of an operation. Previously, an operation for example with 11 workers paid the same fee per worker, as an operation with more than 99 workers.

The additional tiers of 11 to 19 workers, 20 to 99 workers, and 100 workers or more will replace the existing category of more than 10. The proposed four tiers are still based on a fee per worker.

Operations with five or fewer workers will continue to pay no fees. This tier represents approximately 82 per cent of mining operators, and explosives authority holders who will continue to be exempt from fees.

Operations with more than five workers but not more than 10 will pay \$7 more per worker per year. Operations with more than 10 workers but not more than 19 will pay

\$452 less per worker per year. Operations with more than 19 workers but not more than 99 workers will pay \$5 less per worker per year.

The largest operations with more than 99 workers, representing approximately four percent of operators, will pay \$315 more per worker per year. This is similar to the current approach where larger operators pay more. Under the new fee approach, the costs will be spread more broadly across more tiers.

The safety and health fee changes commence on 1 January 2022.

#### *Biogas safety and health fee*

The Amendment Regulation will revise the current biogas fee structure (including biomethane) and change it to a tiered safety and health fee structure based on the usage or capacity of biogas run equipment and the scale and risks posed by the biogas operations (including biomethane). The fees will be determined by the costs of providing regulatory functions for the biogas operators. As the risk level increases, more regulatory oversight is required. The sizes of the tiers for the safety and health biogas fees were determined based on the gas generation capacity of different facilities – with greater capacity comes an increased level of risk and more regulatory oversight is required, which correlates to a higher fee.

The biogas safety and health fee will commence on 1 July 2022.

### **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the respective Acts.

### **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with the policy objectives of any other jurisdictions.

### **Benefits and costs of implementation**

The additional fee tiers and adjusted fees will spread the cost burden more widely and progressively based upon an operator's or explosives authority holder's number of workers.

The changes will also provide for full cost recovery of RSHQ's mining and explosives regulatory activities, including coal workers pneumoconiosis related activities. A more reliable and sustainable revenue stream for RSHQ will be established.

#### *Biogas safety and health fee*

The introduction of a tiered fee system will have significant benefits to industry as it will ensure that there is equity in the fee payable amount. There will be a reduction in revenue to the petroleum and gas inspectorate of RSHQ however, it will be commensurate with the amount of regulatory intervention required as the introduction of the tiered fee structure will allow intervention to be more appropriately targeted. The

impact to the overall budget of the petroleum and gas inspectorate will be minor however, the benefit to stakeholders will be significant as all operators will pay either a reduced fee or will maintain the same fee payable amount.

## **Consistency with fundamental legislative principles**

The Amendment Regulation has been drafted to be consistent with fundamental legislative principles, as defined in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

In 2018, consultation about revising the safety and health fee model was conducted through the PMO's consultation paper, "Funding the resources safety and health regulator in Queensland".

The PMO also conducted a range of activities including a public information forum, and face to face meetings, in order to provide information to stakeholders, afford stakeholders the opportunity to discuss and interrogate data, and provide formal comment through public consultation.

Eight submissions from stakeholders were received about funding options. Five were from industry, one from a union, and two from individuals. A range of views were expressed, and none of the funding options had a clear majority support. The PMO therefore, relied upon its own economic analysis, to recommend the most appropriate funding model based upon the criteria of effectiveness, efficiency and transparency.

The Office of Best Practice Regulation (OBPR) was consulted regarding whether regulatory impact analysis was required under the *Queensland Guide to Better Regulation* (guidelines).

OBPR considered that the level of impact assessment and consultation undertaken by the PMO in the development of funding proposals was equivalent to that required when preparing a regulatory impact assessment under the guidelines. The OBPR advised that further regulatory impact analysis under the guidelines was not required.

### ***Biogas Safety and Health Fee***

Consultation with industry stakeholders on biogas regulation has been undertaken in recent years. A Terms of Reference and Discussion Paper were prepared in 2017 seeking industry input into the review of biogas regulation. The Discussion Paper sought industry feedback on the definitional issue and the safety and health fee, along with other technical issues that are being considered separately. The Petroleum and Gas Inspectorate within RSHQ undertook an engagement roundtable with industry stakeholders in May 2018. A key theme of the feedback was that the safety and health fee structure should be more equitable.

An updated Discussion Paper was drafted to progress the biogas amendments and was circulated to industry stakeholders in August 2020.

A further roundtable was held on 19 August 2020 with attendance by industry stakeholders who currently pay the Safety and Health fee to RSHQ.

OBPR was consulted regarding the need to prepare a Regulatory Impact Statement under the guidelines. OBPR advised that the proposals are unlikely to result in significant adverse impacts, and no further assessment is required.

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