

Safety Matters Alert

Proposed changes to Queensland mining safety legislation

WHAT YOU NEED TO KNOW

On Wednesday 11 September 2013, the Queensland Government released "Queensland's Mine Safety Framework Consultation Regulatory Impact Statement" (RIS). The RIS proposes amendments to Queensland's coal and metalliferous mining legislation. It reflects changes identified as part of the National Mine Safety Framework, OHS harmonisation and other issues identified by the inspectorate.

Proposals contained in the RIS include changes to:

- executive officer liability provisions;
- penalties;
- statutory positions;
- directives by worker representatives to suspend operations;
- contractor management; and
- fitness for work (coal).

A copy of the RIS can be found [here](#).

WHAT YOU NEED TO DO

It is important for you to understand what the proposed changes mean for your business.

Consider whether you should provide a submission to the Department of Natural Resources and Mines, by 11 November 2013, setting out:

- the business's understanding of the proposed changes relevant to your business;
- whether or not the business agrees with the proposed changes; and
- any suggestions for improvement.

Introduction

The RIS has identified various changes to the existing statutory scheme on one or more of three grounds:

- the change is necessary to more closely align the mining legislation with the *Work Health and Safety Act 2011* (Qld) (WHS Act);
- the change is to bring greater alignment with mining legislation in New South Wales and Western Australia; or
- the change is an "evidence based" response to issues which the inspectorate has identified in the Queensland mining industry.

The RIS identifies a number of options as a means of implementing the changes. The preferred option is to

amend the *Coal Mining Safety and Health Act 1999* (Qld) (CMSH Act) and the *Mining and Quarrying Safety and Health Act 1999* (Qld) (MQSH Act).

There are a significant number of proposed changes outlined in the RIS. We discuss some of the key proposals below.

Executive officer / officer liability

The RIS proposes making executive officer obligations under the CMSH Act and MQSH Act consistent with the officer obligations under the WHS Act. If implemented, the amended officer obligations will apply to a narrower class of persons than the existing provisions, consistent with the definition of "officer" under section 9 of the *Corporations Act 2001* (Cth).

The reverse onus of proof which currently exists will also be removed.

Penalties and other orders

It is proposed that penalties will be increased to be consistent with those under the WHS Act. This means that the maximum penalty for a company will increase from \$1.1 million to \$3 million and for an officer from \$220,000 or 3 years imprisonment to \$600,000 or 5 years imprisonment. Imprisonment will only be available if a contravention has involved recklessness.

In addition the RIS suggests that punitive orders, such as adverse publicity orders, work health and safety project orders and training orders be introduced to provide additional sentencing options.

Statutory positions

The RIS suggests a number of changes in relation to statutory positions:

- site senior executives (SSE's) of underground coal mines will be required to have a first class certificate of competency. This proposal has been justified on the basis that SSE's without the competency are improperly influencing the manner in which underground mine managers discharge their obligations. The justification appears to ignore the existing prohibition on any persons without a first class certificate of competency giving the underground mine manager a direction about a technical matter.
- an increase in the number of statutory positions required at mines and coal mines, including undermanagers (underground coal mines) and surface mine managers.
- statutory certification will be obtained through the completion of a written exam on the legislation along with an oral exam by two industry personnel and an inspector.

It is also proposed that for a person to be a statutory position holder at a mine they will need to be employed by the mine operator.

ISHR / DWR

The RIS includes two proposals to limit the power granted to Industry Safety and Health Representatives¹ (ISHR) and District Worker Representatives² (DWR) to suspend operations.

Under existing legislation ISHRs and DWRs have the power to suspend operations in circumstances where

they believe that there is an unacceptable level of risk at the mine. This is a power which has been abused by ISHRs from time to time.

The proposals, which are expressed in the alternative are to:

- remove entirely from ISHRs and DWRs the power to suspend operations; or
- limit the use of the power to circumstances where:
 - the risk is imminent or immediate;³
 - the ISHR or DWR is on site; and
 - the directive lapses after 12 hours if it is not ratified by an inspector.

In addition, the RIS suggests increasing the number of ISHRs from three to four.

Contractor management

The RIS proposes amendments to clarify the obligations of SSEs and contractors to ensure that all persons working on site are following a single safety and health management system. The RIS envisages a more prescriptive process on this issue.

Fitness for work

The fitness for work provisions, as they apply to coal mines, are also undergoing significant changes. These changes will occur in two key areas:

- development of prescribed fitness for work policies; and
- the coal mine workers' health scheme.

The proposed changes to the process for developing fitness for work policies will mean that fitness for work policies are developed in the same manner as SOP's – without the prohibition on the SSE deciding legal or technical matters and without the requirement to obtain the agreement of the majority of the workforce.

The coal mine workers' health scheme will return to what was originally intended, and will be for the monitoring of incidents of slow onset occupational disease such as pneumoconiosis. The scheme will no longer be used as a tool to determine fitness for work, which will be determined outside of the statutory scheme.

Additional duty holders

The RIS proposes introducing additional obligations for designers, constructors, erectors and demolishers of

¹ Coal

² Metalliferous

³ The imminent or immediate test is included in the summary, but not in the body of the report.

structures. These obligations are expected to mirror those contained in the WHS Act.

Power to enter workplaces other than mines

The RIS proposes that the mines inspectorate be given the same powers to enter workplaces as those granted to inspectors under the WHS Act. This is justified on the basis that there is work being undertaken at places other than mine sites which can affect the safety and health of mine workers.

Other proposed changes

The RIS also proposes the following:

- changes to high risk work notifications;
- introducing SHMS requirements for small opal and gem mines;
- additional stonedusting and use of explosive barriers for underground coal mines;
- changes to the rights to appeal;
- a longer limitation period for commencing prosecutions;
- changes to the reprisal provisions;
- changed incident notification requirements;
- truncated regulations dealing with SSHR elections;

- changes to the requirements for the provision of mine plans to the inspectorate;
- a statutory power to release information about incidents;
- amendments to the mine record requirements.

Next steps

The RIS proposes significant changes to the manner in which mining safety is regulated in Queensland, some of which may have significant cost impacts on your business.

The Department of Natural Resources and Mines has asked for comment on the RIS by 11 November 2013. Given this timing it is important if you wish to make a submission to act quickly to prepare detailed evidence based responses to the proposals.

In preparing a response to the RIS, it is important that you fully appreciate the potential consequences that the proposed changes to the legislation may have for your business.

Any changes to the mining safety legislation arising from the RIS consultation process are expected to be tabled in State Parliament in the first half of 2014.

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