



## Queensland Small Miners Council

**Attn. Dean Barr**

**Dept. of Mines Health Safety Inspectorate**

### **QSMC Submission to the Proposed Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020**

The QSMC would like to express concerns over the proposed changes to the Mining and Quarrying Safety and Health regulation 2017 that the Department is proposing in the Draft Consultation Paper of December 2019.

The QSMC and our respective organisations and members are supportive of improving health and safety standards, however, what is being proposed by the Department is overzealous in many instances within this “proposed draft”, and will needlessly add considerable costs to mining operations when there is “no risk” or “low risk”, which could not be simply resolved by utilising PPE when required.

These proposed mandatory costs are likely to vastly exceed the \$700.00 every 5 years that the Department has arbitrarily projected in the document produced to inform participants of this review, in particular, when one actually considers and then reconciles that many mining operations are conducted in regional and remote areas of the State, with little or no access to these medical services and specialists.

This fact will add significant costs to the mine holder costs for travel, accommodation and wages which the department has not projected.

Additionally the medical testing methods proposed in the draft regulation may not achieve the benefit anticipated, for both baseline assessment and ongoing surveillance of a worker, given the scope of medical testing that is really required to properly diagnose silicosis and other mining related respiratory illnesses.

The QSMC are not supportive of the inclusion of these proposed amendments, as the current regulation already caters for these health surveillance and examination contingencies, therefore the QSMC require more information from the State about , why and how, that the review determined that the Small Scale Mining Sector (SSMS) be included in this Regulatory Impact Analysis.

The SSMS should actually be exempted from this proposed regulation, as the State could not provide evidence to support that small scale mining sectors are even at risk.

Given this fact, Qausi-regulation, as a “code of practice”, should actually be developed between the small scale mining sector and the department, which would provide the least restrictive alternative, which did not impose these unreasonable compliance costs on these small businesses, given the points raised herein and attached to this submission.

This should exempted small scale mining from this proposed regulation and differentiated small scale mining from the large miners and quarries that are undoubtedly the perpetrators of the health problems which have come to light by the department, which have initiated the department's kneejerk actions.

Regardless of these points, the QSMC has outlined its concerns on these topics raised above and for other matters in the proposed amendments presented as the Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020 in the attached submission.

The QSMC and its member organisations look forward to discussing these matters with the Department and developing a way forward with these QSMC proposed amendments and concerns raised after consideration by the department.

For once we are able to recognise a Department tor for consulting with small scale miners, the team is to be commended, and we look forward to being part of the RIS consultation process for this review.

*Kindly*

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*A list below provides you the details of these Mining Representative groups contact details*

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## Queensland Small Miners Council

### Submission to the

### Proposed Mining Safety and Health Legislation

### (Health Surveillance) Amendment Regulation 2020

#### ***Who is a worker ?***

Unfortunately the State has overlooked including a definition of a “Worker” in the proposed regulation, there is also ***no*** definition of “Worker” in Schedule 7 of the MQSH Regulation 2017, albeit there is a definition for a “visitor”

*Whilst the Mining and Quarrying Legislation 1999 Schedule 2 Dictionary defines a worker as the following:-*

***“worker is an individual who carries out work at a mine and includes—(a) an employee of the operator; and (b) a contractor or employee of a contractor***

As pointed out in the record of proceedings to Parliament in a speech by the Hon. Ann Leahy on the 31<sup>st</sup> October 2018 with regard to the Mines Legislation (Resources Safety ) Amendment Bill the Hon member raised a very valid point which to date still has not been addressed by the Department which is and quote an extract from the transcripts :-

***Sometimes the operation of these mines is a hobby for people. The current exemption remains for opal and gemstone miners with four or fewer workers. The problem is that the bill does not provide a clear definition of ‘worker’ in these mines. Family members might be working those opal mines. If the son or daughter of someone such who has such a lease goes out and does a bit of prospecting for opals, are they considered a worker?***

As a start point for this review the definition of a “Worker” should have been included so, in the Small Scale Miner’s context, the Holder or SSE of a mine can interpret and fathom the responsibilities and obligations under the Regulation.

*In the small scale mining and quarrying operators context we therefore ask the State's opinion on the following questions:-*

- 1. Are the holder/s, and/or, partner/s of a mine a "worker, and subject to these proposed State impositions, does this matter if they are undertaking mining activities as a hobby?*
- 2. Are friends and family helping on the site a "worker" be it periodical or regular?*
- 3. How frequent does one have to be on site to be considered a worker?*
- 4. Are Native Title parties conducting a Cultural Heritage Clearance inspection or monitoring a "worker" or just visiting and is the States position consistent with Cultural Heritage and Native Title agreements and legislation and regulation on this matter?*

Small scale mining operations are generally operated with Individuals perhaps with family and/or friends, perhaps in partnerships and possibly include sub-contractors and employee's or a combination- of all listed.

Time spent by these individuals mentioned above, on mining or mining related activities on the tenure area may be limited to "visitor" status in some instances, however may not, dependant on what the State eventually defines a "Worker" to be.

***A considered definition of what constitutes a "worker" is required to be added to the Regulation by the State after liaison with the QSMC and other interested parties (QRC) on these questions raised above.***

#### ***QSMC required Amendments to Respiratory Health Surveillance and Examination***

Whilst the draft regulation affords the SSE the right to "risk assess" under draft Subdivision 2, General requirements at section 145B (currently Section 138(1) ) of the Draft Regulation 2020, this assessment by the SSE is then undermined by this proposed regulation at 145C by now mandatorily imposing that all workers must now facilitate the costs of workers and future workers health examination/ surveillance.

This is conveyed in the following clauses :-

#### ***Extracts from the proposed amendment, Subdivision 2 Section***

*145C (1) The Site Senior Executive for a mine must arrange, under subdivision 3, for a Respiratory Health Surveillance or a Respiratory Health Examination of a person who is, or will be, a worker at the mine*

*(QSMC comment:-This proposed amendment forces the SSE to facilitate a mandatory Respiratory Health Surveillance (RHS) and Respiratory Health Examination (RHE) for a worker or anyone **who will be a worker** at the Mine.)*

145C (2)

*Subsection (1) does not apply to a person whose current or previous exposure to hazards is shown by risk assessment to create a risk to the persons respiratory system so minimal it can be managed without respiratory health surveillance being carried out for the person*

*The States Footnotes under proposed section 145C (2) in the Indicative reprint proclaims :- **\*“this clause recognises that exposure to some workers to respiratory hazards may be identified as minimal through a risk assessment. For those workers no RHS is required”***

**Whilst this footnote\* may be the intent of this clause 145C (2) it is understated and limiting to that effect stated, given that it’s drafting states “a person”.**

**The draft must be amended to reflect that “a position and/or work activity” could also be identified by Risk Assessment to be a minimal risk, providing a generic assessment for that position or work activity.**

**The QSMC therefore insist on the following amendment to give this proclaimed footnote and intent, its full affect -**



#### **QSMC proposed amendment to 145C (2)**

145C (2)

*Subsection (1) does not apply to a worker , or who will be a worker, whose exposure to respiratory hazards is shown by risk assessment for that work to create a risk to a workers respiratory system so minimal it can be managed without respiratory health surveillance being carried out for the person.*

*This QSMC amended clause, now, would give full affect to what the footnoted stated intent for 145C (2) proclaims, which again proclaims “this clause recognises that exposure to some **workers** to respiratory hazards may be identified as minimal through a risk assessment. **For those workers no RHS or RHE is required.***

**This QSMC amendment would alleviate the need for the SSE to organise RHS and RHE and the associated costs and also the protocols required under the proposed Subdivision 3 & 4, ‘when’ there is minimal risk of a work activity that can be managed with other care or PPE for both current and new workers.** (As previously stated , the need for a definition for “worker” is required to support this and other clauses where worker is mentioned”)

### **Risk Assessment and Monitoring**

Alluvial Gold, Hard rock mining, Sapphire Mining and Opal Mining all have varying operational sizes and level of risks, particularly when comparing mining techniques for open cut, underground and wet and dry extraction processes.

Ultimately it is up to the SSE to develop the Risk Assessment and monitoring processes, and the QSMC and member groups are always keen to co-operate with the State to develop risk assessment strategies so members are able to be best informed how to implement and quantify their risk assessment processes to the satisfaction of the State, but more importantly, providing protection of themselves and their worker/s.

### **Costs associated with RHS and RHE**

The costs of facilitating the RHS and RHE under these current proposed regulation have been proposed to be burdened onto the Mine Operator by the State.

These amounts are likely to vastly exceed more than the \$700.00 every 5 years the Department as suggested in the document produced by the Department called **“Proposed Mandatory Health Surveillance for Mine and Quarry Workers”**.

The real cost implications of the States mandatory proposal is likely to cost the mine holder thousands of dollars per worker for the medical consultation alone, so as to comply with the proposed regulation, including the costs of the workers examinations.

This is without the administration costs to organise the “surveillances and examinations” and to satisfy compliance with the proposed section 145 E - **‘Keeping Health Surveillance Reports.’**

*If an RHS or RHE must be conducted for a worker in particular for a new worker it is not unreasonable in our context, that the Worker can provide their own medical records citing a current RHS or RHE at their own costs to the Mine Operators SSE.*

*Additionally a new worker would be able to be repatriated some of these costs by their medical insurances and/or Medicare, and should be willingly undertaken if they wish to prove they are physically healthy to the standard of the SSE/employer should they want to be employed.*

*It is not prudent for the State to be so frivolous with committing costs to businesses in particular where the SSE has assessed the risk is minimal as imposed at proposed section 145D*

***Small scale miners are not “Big end of town miners” who gleefully dispose of their shareholders monies at the States whims, as their salary won’t be affected one way or the other.***

***The vast majority of Small Scale operators could not afford to outlay \$700.00 for each person that conducts activities on a mine, let alone the real costs that have not properly been assessed by the State.***

***The QSMC would seek that an RIS be undertaken by the Dept.in conjunction with the QPC under the OPSR best Practice Regulatory framework to evaluate the true cost in Regional Qld areas given the costings***

## **Respiratory Health Surveillance**

The benefit of the proposed amendments to the Regulation with regard to the methods of Health Surveillance is somewhat questionable, particularly when in many instances, miners may have been operating for many years, likely without having any spirometry testing, chest examinations and or x-rays, and there may be no clear baseline to make a comparative assessment.

*Spirometry*, which is a proposed method of testing under the proposed “*Respiratory Health Examination*” have many instances where contraindications may impair or give a false positive and may in fact not assist with any early diagnosis of a specific degeneration of lungs or any specific disease of the lungs. That is without the other problems of these devices which require regular calibration (refer *Qld. Health document # QH-GDL-386:2012*) which is certainly unavailable in Regional areas

The only ways that Silicosis and Asbestosis can actually be diagnosed is by CT scan, which “*may*” show distinctive patterns consistent with this disease, and “*if*” this imaging is inconclusive, which it can frequently be, then the only “conclusive method” is by biopsy of the affected tissues to diagnosis silicosis and asbestosis.

***These tests that are the only way of conclusively diagnosing these conditions are noticeably absent from the “Draft proposed amendments 2020”***

***Every other test is likely a false reassurance!***

The QSMC believe that the proposed amendments are to prescriptive by the inclusions of specific testing and that the amendments only need to assert that “Lung and Airway” examinations must be facilitated for the specified condition (i.e. asbestosis, silicosis) if requested by the Site Snr. Executive (SSE) and then it’s the Doctors duty to facilitate the testing required as assessed by them.

**Is it a Mining related illness?**

Respiratory Health surveillance must be conducted by a specialist doctor who must diagnose the respiratory illness.

Silicosis, asbestosis and other mining related lung and respiratory illnesses must also be differentiated from other diseases that cause pulmonary fibrosis and pulmonary nodules on imaging, coal workers pneumoconiosis, mycobacterial, fungal, and parasitic infections.

There are also the drugs that cause pulmonary fibrosis including bleomycin, cyclophosphamide, amiodarone, procainamide, penicillamine and nitrofurantoin to name a few.

Additionally smoking, or living in smog or bushfire zones and some viruses may cause idiopathic pulmonary fibrosis which could be misdiagnosed as silicosis or asbestosis.

Misdiagnoses could cause insurmountable problems for the “Worker/s” health and treatment.

Additionally the Holder of the Site Snr. Executive may unjustly be pursued with repercussions such as costs, fines, convictions and law suit’s which they may they may not be actually liable.

**This has never been a more critical issue given that the States proposed Industrial Manslaughter Laws**

**The QSMC are not satisfied that the proposed amendments protect and serve the parties involved and perceive that the amendments are hastily drafted without due consideration.**

**Additionally, the QSMC collectively believe that the existing Regulation was satisfactory and already had control measures to cater for these topics in the proposed amendments.**