DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill —

- to provide for the health, safety and welfare of persons at work or affected by work; and
- to repeal the *Occupational Safety and Health Act 1984*; and
- to repeal the *Occupational Safety and Health Regulations 1996*; and
- to make consequential amendments to certain Acts; and
- for related matters.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government’s settled position.

Work Health and Safety Bill 2014

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Western Australia

LEGISLATIVE COUNCIL

Work Health and Safety Bill 2014

A draft for public comment of
A Bill for

An Act —
• to provide for the health, safety and welfare of persons at work or affected by work; and
• to repeal the Occupational Safety and Health Act 1984; and
• to repeal the Occupational Safety and Health Regulations 1996; and
• to make consequential amendments to certain Acts; and
• for related matters.

The Parliament of Western Australia enacts as follows:
1. Short title

This is the *Work Health and Safety Act 2014*.

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Object

(1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

(a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work; and

(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and

(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and

(d) promoting the provision of advice, information, education and training in relation to work health and safety; and

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

(f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
(g) providing a framework for continuous improvement and progressively higher standards of work health and safety.

(h) Note: Paragraph (h) is not required in WA.

(2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work as is reasonably practicable.

Division 3 — Interpretation

Subdivision 1 — Definitions

4. Definitions

In this Act:

approved code of practice means a code of practice approved under Part 14.

authorised, in Part 4 — see section 40.

Note: A definition of authorising authority is not required in WA.

Category 1 offence — see section 31.

Category 2 offence — see section 32.

Category 3 offence — see section 33.

compliance powers means the functions and powers conferred on an inspector under this Act.

condition includes limitation and restriction.

construct includes assemble, erect, reconstruct, reassemble and re-erect.

corresponding regulator:

(a) in relation to the Mines Safety and Inspection Act 1994 means the State mining engineer or the State coal mining engineer as defined in section 4(1) of that Act, as is applicable in the case; and

(b) in relation to the Dangerous Goods Safety Act 2004 means the Chief Officer as defined in section 3(1) of that Act; and

(c) in relation to any other law of this State that is prescribed as a corresponding WHS law, means the
person prescribed as the corresponding regulator for the purposes of that law; and

(d) otherwise means the holder of a public office, or a public authority, of the Commonwealth, or of a State, who or which is responsible for administering a corresponding WHS law.

corresponding WHS law:

(a) in this section in the definition of corresponding regulator and in sections 113(3)(b) and 271(3)(c)(v) means any of the following:

(i) the Work Health and Safety Act or occupational health and safety Act of another State;

(ii) the Mines Safety and Inspection Act 1994;

(iii) the Mine Health and Safety Act 2004 (New South Wales) or the Act that replaces that Act;

(iv) the Mining and Quarrying Safety and Health Act 1999 (Queensland) or the Act that replaces that Act;

(v) the Dangerous Goods Safety Act 2004;

(vi) any other law prescribed as a corresponding WHS law for the purposes of this paragraph;

(b) in sections 90(4)(c), 156(d) and 271(3)(c)(iv) and in Schedule 3 item 7.2 means any of the following:

(i) the Work Health and Safety Act or occupational health and safety Act of another State;

(ii) the Mines Safety and Inspection Act 1994;

(iii) the Mine Health and Safety Act 2004 (New South Wales) or the Act that replaces that Act;

(iv) the Mining and Quarrying Safety and Health Act 1999 (Queensland) or the Act that replaces that Act;

(v) any other law prescribed as a corresponding WHS law for the purposes of this paragraph.

court means a court constituted by a health and safety magistrate, except in references to a court of competent jurisdiction and in section 271(3)(d).

dangerous incident, in Part 3 — see section 37.

demolition includes deconstruction.
design, in relation to plant, a substance or a structure includes:
   (a) design of part of the plant, substance or structure; and
   (b) redesign or modify a design.

disclose, in relation to information, includes divulge or communicate to any person or publish.
discriminatory conduct, in Part 6 — see section 105.
document includes record.

Note: A definition of employee record is not required in WA.

employer organisation means an organisation of employers.
engage in conduct means doing an act or omitting to do an act.

handling includes transport.

health means physical and psychological health.

health and safety duty — see section 30.

health and safety magistrate means a person holding office as a health and safety magistrate under Schedule 5 clause 1.

health and safety representative, in relation to a worker, means the health and safety representative elected under Part 5 for the work group of which the worker is a member.

import means to bring into the State, whether from outside Australia or otherwise.

inspector means an inspector appointed under Part 9.

internal reviewer means:
   (a) the regulator; or
   (b) a person appointed by the regulator under section 225.

legal practitioner means an Australian legal practitioner within the meaning of that term in the Legal Profession Act 2008 section 3.

local authority means a local government or a regional local government.


notifiable incident — see section 35.
**officer** means:

(a) an officer within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth other than a partner in a partnership; or

(b) an officer of the Crown within the meaning of section 247; or

(c) an officer of a public authority within the meaning of section 252,

other than an elected member of a local authority acting in that capacity.

Note: A definition of *official of a union* is not required in WA.

**person conducting a business or undertaking** — see section 5.

Note: A definition of *personal information* is not required in WA.

**plant** includes:

(a) any machinery, equipment, appliance, container, implement and tool; and

(b) any component of any of those things; and

(c) anything fitted or connected to any of those things.

**prohibited reason**, in Part 6 — see section 106.

**public authority**:

(a) in section 156(b) means:

(i) a body, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State; or

(ii) a local government;

(b) in Part 13 Division 6 means a body corporate:

(i) listed in the *Financial Management Act 2006* Schedule 1; or

(ii) listed in the *Public Sector Management Act 1994* Schedule 1 column 2 or Schedule 2 column 2; or

(iii) established or continued for a public purpose under a written law; or

(iv) established by the Governor or a Minister; or

(v) over which control can be exercised by a Minister.
reasonably practicable, in relation to a duty to ensure health and safety — see section 18.

regulator means the person appointed under Schedule 2 Division 2 as the WorkSafe Western Australia Commissioner.

Note: A definition of relevant person conducting a business or undertaking is not required in WA.

Note: A definition of relevant State or Territory industrial law is not required in WA.

Note: A definition of relevant union is not required in WA.

Note: A definition of relevant worker is not required in WA.

representative:

(a) in relation to workers in section 52(1)(b) and in relation to a health and safety representative in section 80(1) in the definition of parties paragraph (c) (the HS representative), means any of the following:

(i) an authorised representative, as defined in the Industrial Relations Act 1979 section 49G, of an organisation of which at least 1 of the workers, or the HS representative, is a member;

(ii) an official of an organisation to whom a current entry permit has been issued under the Fair Work Act if at least 1 of the workers, or the HS representative, is a member of that organisation;

(iii) a legal practitioner who is authorised by at least 1 of the workers, or the HS representative, to represent him or her;

(b) in relation to a worker in sections 52(5) and 56(2) and in relation to a worker or workers in section 80(1) in the definition of parties paragraph (d), means any of the following:

(i) an authorised representative, as defined in the Industrial Relations Act 1979 section 49G, of an organisation of which the worker, or at least 1 of the workers, is a member;

(ii) an official of an organisation to whom a current entry permit has been issued under the Fair Work Act if the worker, or at least 1 of the workers, is a member of that organisation;
(iii) a legal practitioner who is authorised by the worker, or at least 1 of the workers, to represent him or her;

(iv) another worker at the workplace who is authorised by the worker, or at least 1 of the workers, to represent him or her;

(c) in relation to persons in section 152(e) means any of the following:

(i) the health and safety representative for at least 1 of the persons;

(ii) a union representing at least 1 of the persons;

(iii) any other person who is authorised by at least 1 of the persons to represent him or her;

(d) in relation to a person in section 171(4) means any of the following:

(i) an authorised representative, as defined in the Industrial Relations Act 1979 section 49G, of an organisation of which the person is a member;

(ii) an official of an organisation to whom a current entry permit has been issued under the Fair Work Act if the person is a member of that organisation;

(iii) a legal practitioner who is authorised by the person to represent him or her;

(iv) the health and safety representative for the person;

(v) a worker at the workplace who is authorised by the person to represent him or her.

serious injury or illness, in Part 3 — see section 36.

State includes Territory.

State or Territory industrial law has the same meaning as it has in the Fair Work Act.

structure means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

(a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and

(b) any component of a structure; and

(c) part of a structure.
substance means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.

supply — see section 6.

Note: A definition of this Act is not required in WA because of the Interpretation Act 1984 s. 46.

Tribunal has the meaning given to that term in Schedule 4 clause 2(2).

union means:

(a) an employee organisation that is registered, or taken to be registered, under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth; or

(b) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under a State or Territory industrial law.

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

Note: A definition of WHS entry permit is not required in WA.

Note: A definition of WHS entry permit holder is not required in WA.

work group means a work group determined under Part 5.

worker — see section 7.

workplace — see section 8.

Subdivision 2 — Other important terms

5. Meaning of person conducting a business or undertaking

(1) For the purposes of this Act, a person conducts a business or undertaking:

(a) whether the person conducts the business or undertaking alone or with others; and

(b) whether or not the business or undertaking is conducted for profit or gain.

(2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.

(3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a
person conducting the business or undertaking is to be read as a reference to each partner in the partnership.

(4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.

(5) An elected member of a local authority does not in that capacity conduct a business or undertaking.

(6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

(7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.

(8) In this section:

**volunteer association** means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

6. **Meaning of supply**

(1) A supply of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.

(2) A supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.

(3) A supply of a thing does not include:

(a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or

(b) a prescribed supply.

(4) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if:

(a) the financier has, in the course of the financier’s business as a financier, acquired ownership of, or another right in, the plant, substance or structure on behalf of a customer of the financier; and
7. Meaning of worker

(1) A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

(a) an employee; or
(b) a contractor or subcontractor; or
(c) an employee of a contractor or subcontractor; or
(d) an employee of a labour hire company who has been assigned to work in the person’s business or undertaking; or
(e) an outworker; or
(f) an apprentice or trainee; or
(g) a student gaining work experience; or
(h) a person of a prescribed class.

Note: Paragraph (h) is not required in WA.

(2) For the purposes of this Act:

(a) a police officer is taken to be a worker employed by the Crown; and
(b) the Crown is taken to be the employer of a police officer; and
(c) a police officer is at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise; and
(d) the functions that the Crown has under this Act because a police officer is taken to be a worker employed by the Crown are, so far as they concern a police officer, to be performed by the person holding the office of Commissioner of Police under the Police Act 1892.
(3) The person conducting the business or undertaking is also a worker if the person is an individual who carries out work in that business or undertaking.

(4) A person is not a worker if the person:

(a) is a volunteer; or

(b) is a prisoner as defined in the *Prisons Act 1981* section 3(1); or

(c) is a detainee as defined in the *Young Offenders Act 1994* section 3; or

(d) is an offender as defined in the *Sentence Administration Act 2003* section 76(1) who, under the pre-sentence order or community corrections order, carries out community work or community corrections activities of a kind mentioned in section 85(2)(a) of that Act; or

(e) is a young person to whom the *Young Offenders Act 1994* section 50 or 50A applies and who carries out community work under a youth community based order or an intensive youth supervision order as defined in section 3 of that Act; or

(f) is a young person to whom the *Young Offenders Act 1994* section 65 applies and who carries out community work under a community work order as defined in section 63 of that Act.

8. **Meaning of workplace**

(1) A workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

(2) In this section:

place includes:

(a) a vehicle, vessel, aircraft or other mobile structure; and

(b) any waters and any installation on land, on the bed of any waters or floating on any waters.

9. **Examples and notes**

(1) An example at the foot of a provision forms part of this Act.

(2) Despite the *Interpretation Act 1984* section 32(2), a note at the foot of a provision forms part of this Act.
A reference in a note to a provision that is not required in WA is a reference to the corresponding provision of the document entitled the Model Work Health and Safety Bill prepared under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety that was entered into by members of the Council of Australian Governments on 3 July 2008.

**Division 4 — Application of Act**

10. **Act binds the Crown**

   (1) This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

   (2) The Crown is liable for an offence against this Act.

   (3) Note: Subsection (3) is not required in WA.

11. **Extraterritorial application**

   Note: Section 11 is not required in WA.

12. **Scope**

   (1) In this section:

   instrument, except in subsection (3), means an instrument under subsection (4) or (5).

   specified means specified in an instrument.

   (2) This Act does not apply to or in relation to a workplace:

   (a) at which mining operations, as defined in the Mines Safety and Inspection Act 1994 section 4(1), are carried on; or

   (b) at which a petroleum operation or geothermal energy operation, as defined in the Petroleum and Geothermal Energy Resources Act 1967 section 5(1), is carried on; or

   (c) at which a pipeline operation, as defined in the Petroleum Pipelines Act 1969 section 4(1), is carried on; or

   (d) at which an offshore petroleum operation, as defined in the Petroleum (Submerged Lands) Act 1982 section 4, is carried on.
(3) This Act has effect subject to any instrument for the time being in force under the *Mines Safety and Inspection Act 1994* section 6A.

(4) The Minister and the Minister for the time being administering an Act referred to in subsection (2)(a), (b), (c) or (d) (the *other Act*) may, by instrument in writing, jointly declare that for a specified period this Act or a specified provision of this Act applies to or in relation to:

(a) a specified workplace or a specified part of a workplace at which an operation under the other Act is carried on, as if it were a workplace or a part of a workplace to which this Act applies; and

(b) a specified operation under the other Act as if it were an activity in carrying out work to which this Act applies; and

(c) a specified act, matter or thing as if it were an act, matter or thing to which this Act applies.

(5) An instrument may be revoked or amended by instrument in writing made by the Minister and the Minister for the time being administering the other Act that is the subject of the instrument to be revoked or amended.

(6) An instrument may contain provisions of a savings or transitional nature in relation to the application of this Act or the other Act to any person, activity, matter or thing.

(7) An instrument is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
Part 2 — Health and safety duties

Division 1 — Introductory

Subdivision 1 — Principles that apply to duties

13. Principles that apply to duties

This Subdivision sets out the principles that apply to all duties that persons have under this Act.

Note: The principles will apply to duties under this Part and other Parts of this Act such as duties relating to incident notification and consultation.

14. Duties not transferrable

A duty cannot be transferred to another person.

15. Person may have more than 1 duty

A person can have more than 1 duty by virtue of being in more than 1 class of duty holder.

16. More than 1 person can have a duty

(1) More than 1 person can concurrently have the same duty.

(2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.

(3) If more than 1 person has a duty for the same matter, each person:

(a) retains responsibility for the person’s duty in relation to the matter; and

(b) must discharge the person’s duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

17. Management of risks

(1) A duty imposed on a person to ensure health and safety requires the person:

(a) to eliminate risks to health and safety, so far as is reasonably practicable; and
Part 2 Health and safety duties
Division 2 Primary duty of care

s. 18

(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

(2) A person must comply with subsection (1) to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

Subdivision 2 — What is reasonably practicable

18. What is reasonably practicable in ensuring health and safety

In this Act:
reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

(a) the likelihood of the hazard or the risk concerned occurring; and
(b) the degree of harm that might result from the hazard or the risk; and
(c) what the person concerned knows, or ought reasonably to know, about:
   (i) the hazard or the risk; and
   (ii) ways of eliminating or minimising the risk; and
(d) the availability and suitability of ways to eliminate or minimise the risk; and
(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Division 2 — Primary duty of care

19. Primary duty of care

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:
(a) workers engaged, or caused to be engaged by the person; and
(b) workers whose activities in carrying out work are influenced or directed by the person,

while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

(3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:

(a) the provision and maintenance of a work environment without risks to health and safety; and

(b) the provision and maintenance of safe plant and structures; and

(c) the provision and maintenance of safe systems of work; and

(d) the safe use, handling and storage of plant, structures and substances; and

(e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and

(f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and

(g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

(4) If:

(a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
(b) the occupancy is necessary for the purposes of the worker’s engagement because other accommodation is not reasonably available,

the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.

(5A) Subsection (4) does not apply:

(a) if the occupancy is under a written agreement containing terms that might reasonably be expected to apply to a letting of the premises to a tenant; or

(b) to the occupation of accommodation by a person who works at a workplace referred to in section 12(2).

(5) A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.

Note: A self-employed person is also a person conducting a business or undertaking for the purposes of this section.

Division 3 — Further duties of persons conducting businesses or undertakings

20. Duty of persons conducting businesses or undertakings involving management or control of workplaces

(1) In this section:

person with management or control of a workplace means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include:

(a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or

(b) a prescribed person.

(2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.
21. **Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces**

(1) In this section:

*person with management or control of fixtures, fittings or plant at a workplace* means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings or plant, in whole or in part, at a workplace, but does not include:

(a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or

(b) a prescribed person.

(2) The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

22. **Duties of persons conducting businesses or undertakings that design plant, substances or structures**

(1) This section applies to a person (the *designer*) who conducts a business or undertaking that designs:

(a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or

(b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or

(c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

(2) The designer must ensure, so far as is reasonably practicable, that the plant, substance or structure is designed to be without risks to the health and safety of persons:

(a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed; or

(b) who handle the substance at a workplace; or

(c) who store the plant or substance at a workplace; or

(d) who construct the structure at a workplace; or
(e) who carry out any reasonably foreseeable activity at a workplace in relation to:

(i) the manufacture, assembly or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling or disposal of the plant; or

(ii) the manufacture or use of the substance for a purpose for which it was designed or the proper handling, storage or disposal of the substance; or

(iii) the manufacture, assembly or use of the structure for a purpose for which it was designed or the proper demolition or disposal of the structure; or

Example
Inspection, operation, cleaning, maintenance or repair of plant.

(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

(3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).

(4) The designer must give adequate information to each person who is provided with the design for the purpose of giving effect to it concerning:

(a) each purpose for which the plant, substance or structure was designed; and

(b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

(c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2)(a) to (e).

(5) The designer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to
23. **Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures**

(1) This section applies to a person (the *manufacturer*) who conducts a business or undertaking that manufactures:

(a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or

(b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or

(c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

(2) The manufacturer must ensure, so far as is reasonably practicable, that the plant, substance or structure is manufactured to be without risks to the health and safety of persons:

(a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured; or

(b) who handle the substance at a workplace; or

(c) who store the plant or substance at a workplace; or

(d) who construct the structure at a workplace; or

(e) who carry out any reasonably foreseeable activity at a workplace in relation to:

(i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or

(ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or

(iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or

Example

Inspection, operation, cleaning, maintenance or repair of plant.

(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the
workplace or whose health or safety may be affected by
a use or activity referred to in paragraph (a), (b), (c), (d)
or (e).

(3) The manufacturer must carry out, or arrange the carrying out of,
any calculations, analysis, testing or examination that may be
necessary for the performance of the duty imposed by
subsection (2).

(4) The manufacturer must give adequate information to each
person to whom the manufacturer provides the plant, substance
or structure concerning:

(a) each purpose for which the plant, substance or structure
was designed or manufactured; and

(b) the results of any calculations, analysis, testing or
examination referred to in subsection (3), including, in
relation to a substance, any hazardous properties of the
substance identified by testing; and

(c) any conditions necessary to ensure that the plant,
substance or structure is without risks to health and
safety when used for a purpose for which it was
designed or manufactured or when carrying out any
activity referred to in subsection (2)(a) to (e).

(5) The manufacturer, on request, must, so far as is reasonably
practicable, give current relevant information on the matters
referred to in subsection (4) to a person who carries out, or is to
carry out, any of the activities referred to in subsection (2)(a)
to (e).

24. Duties of persons conducting businesses or undertakings
that import plant, substances or structures

(1) This section applies to a person (the importer) who conducts a
business or undertaking that imports:

(a) plant that is to be used, or could reasonably be expected
to be used, as, or at, a workplace; or

(b) a substance that is to be used, or could reasonably be
expected to be used, at a workplace; or

(c) a structure that is to be used, or could reasonably be
expected to be used, as, or at, a workplace.
(2) The importer must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons:

(a) who, at a workplace, use the plant, substance or structure for a purpose for which it was designed or manufactured; or

(b) who handle the substance at a workplace; or

(c) who store the plant or substance at a workplace; or

(d) who construct the structure at a workplace; or

(e) who carry out any reasonably foreseeable activity at a workplace in relation to:

(i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or

(ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or

(iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or

Example

Inspection, operation, cleaning, maintenance or repair of plant.

(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

(3) The importer must:

(a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2); or

(b) ensure that the calculations, analysis, testing or examination have been carried out.
s. 25

(4) The importer must give adequate information to each person to whom the importer provides the plant, substance or structure concerning:

(a) each purpose for which the plant, substance or structure was designed or manufactured; and

(b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

(c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).

(5) The importer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

25. Duties of persons conducting businesses or undertakings that supply plant, substances or structures

(1) This section applies to a person (the supplier) who conducts a business or undertaking that supplies:

(a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or

(b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or

(c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

(2) The supplier must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons:

(a) who, at a workplace, use the plant or substance or structure for a purpose for which it was designed or manufactured; or

(b) who handle the substance at a workplace; or

(c) who store the plant or substance at a workplace; or

(d) who construct the structure at a workplace; or
(e) who carry out any reasonably foreseeable activity at a workplace in relation to:

(i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or

(ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage or disposal of the substance; or

(iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or

Example

Inspection, storage, operation, cleaning, maintenance or repair of plant.

(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

(3) The supplier must:

(a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2); or

(b) ensure that the calculations, analysis, testing or examination have been carried out.

(4) The supplier must give adequate information to each person to whom the supplier supplies the plant, substance or structure concerning:

(a) each purpose for which the plant, substance or structure was designed or manufactured; and

(b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

(c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was
26. Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures

(1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

(2) The person must ensure, so far as is reasonably practicable, that the way in which the plant or structure is installed, constructed or commissioned ensures that the plant or structure is without risks to the health and safety of persons:
   (a) who install or construct the plant or structure at a workplace; or
   (b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed or commissioned; or
   (c) who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning or dismantling of the plant or demolition or disposal of the structure; or
   (d) who are at or in the vicinity of a workplace and whose health or safety may be affected by a use or activity referred to in paragraph (a), (b) or (c).

Division 4 — Duty of officers, workers and other persons

27. Duty of officers

(1) If a person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.

(2) Subject to subsection (3), the penalty applicable under Division 5 of this Part for an offence relating to the duty of an
officer under this section is the penalty fixed for an officer of a
person conducting a business or undertaking for that offence.

(3) Despite anything to the contrary in section 33, if the duty or
obligation of a person conducting a business or undertaking was
imposed under a provision other than a provision of Division 2
or 3 of this Part or this Division, the penalty under section 33
for an offence by an officer under section 33 in relation to the
duty or obligation is the penalty fixed under the provision
creating the duty or obligation for an individual who fails to
comply with the duty or obligation.

(4) An officer of a person conducting a business or undertaking
may be convicted or found guilty of an offence under this Act
relating to a duty under this section whether or not the person
conducting the business or undertaking has been convicted or
found guilty of an offence under this Act relating to the duty or
obligation.

(5) In this section:

*due diligence* includes taking reasonable steps:

(a) to acquire and keep up-to-date knowledge of work
health and safety matters; and

(b) to gain an understanding of the nature of the operations
of the business or undertaking of the person conducting
the business or undertaking and generally of the hazards
and risks associated with those operations; and

(c) to ensure that the person conducting the business or
undertaking has available for use, and uses, appropriate
resources and processes to eliminate or minimise risks to
health and safety from work carried out as part of the
conduct of the business or undertaking; and

(d) to ensure that the person conducting the business or
undertaking has appropriate processes for receiving and
considering information regarding incidents, hazards
and risks and responding in a timely way to that
information; and

(e) to ensure that the person conducting the business or
undertaking has, and implements, processes for
complying with any duty or obligation of the person
conducting the business or undertaking under this Act; and
Examples
For the purposes of paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include:

- reporting notifiable incidents;
- consulting with workers;
- ensuring compliance with notices issued under this Act;
- ensuring the provision of training and instruction to workers about work health and safety;
- ensuring that health and safety representatives receive their entitlements to training.

(f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

28. Duties of workers

While at work, a worker must:

(a) take reasonable care for his or her own health and safety; and

(b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

(c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and

(d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

29. Duties of other persons at the workplace

A person at a workplace (whether or not the person has another duty under this Part) must:

(a) take reasonable care for his or her own health and safety; and

(b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

(c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the
person conducting the business or undertaking to comply with this Act.

Division 5 — Offences and penalties

30. Health and safety duty

In this Division:

health and safety duty means a duty imposed under Division 2, 3 or 4 of this Part.

31. Reckless conduct — Category 1

(1) A person commits a Category 1 offence if:

(a) the person has a health and safety duty; and

(b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and

(c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

(a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking), a fine of $300 000 or 5 years imprisonment or both;

(b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, a fine of $600 000 or 5 years imprisonment or both;

(c) in the case of an offence committed by a body corporate, a fine of $3 000 000.

(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

32. Failure to comply with health and safety duty — Category 2

A person commits a Category 2 offence if:

(a) the person has a health and safety duty; and

(b) the person fails to comply with that duty; and

(c) the failure exposes an individual to a risk of death or serious injury or illness.
Penalty:

(a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking), a fine of $150 000;

(b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, a fine of $300 000;

(c) in the case of an offence committed by a body corporate, a fine of $1 500 000.

33. **Failure to comply with health and safety duty — Category 3**

A person commits a **Category 3** offence if:

(a) the person has a health and safety duty; and

(b) the person fails to comply with that duty.

Penalty:

(a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking), a fine of $50 000;

(b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, a fine of $100 000;

(c) in the case of an offence committed by a body corporate, a fine of $500 000.

34. **Exceptions**

(1) A volunteer does not commit an offence under this Division for a failure to comply with a health and safety duty, except a duty under section 29.

(2) An unincorporated association does not commit an offence under this Act for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.

(3) However:

(a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 27; and
1 (b) a member of an unincorporated association may be
2 liable for failure to comply with a duty under section 28
3 or 29.
Part 3 — Incident notification

35. What is a notifiable incident

In this Act:

*notifiable incident* means:

(a) the death of a person; or
(b) a serious injury or illness of a person; or
(c) a dangerous incident.

36. What is a serious injury or illness

In this Part:

*serious injury or illness* of a person means an injury or illness requiring the person to have:

(a) immediate treatment as an in-patient in a hospital; or
(b) immediate treatment for:

(i) the amputation of any part of his or her body; or
(ii) a serious head injury; or
(iii) a serious eye injury; or
(iv) a serious burn; or
(v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
(vi) a spinal injury; or
(vii) the loss of a bodily function; or
(viii) serious lacerations; or
(c) medical treatment within 48 hours of exposure to a substance,

and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.

37. What is a dangerous incident

In this Part:

*dangerous incident* means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person’s health or safety emanating from an immediate or imminent exposure to:

(a) an uncontrolled escape, spillage or leakage of a substance; or
(b) an uncontrolled implosion, explosion or fire; or
(c) an uncontrolled escape of gas or steam; or
(d) an uncontrolled escape of a pressurised substance; or
(e) electric shock; or
(f) the fall or release from a height of any plant, substance or thing; or
(g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations; or
(h) the collapse or partial collapse of a structure; or
(i) the collapse or failure of an excavation or of any shoring supporting an excavation; or
(j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or
(k) the interruption of the main system of ventilation in an underground excavation or tunnel; or
(l) any other event prescribed by the regulations, but does not include an incident of a prescribed kind.

38. Duty to notify of notifiable incidents

(1) A person who conducts a business or undertaking must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

Penalty:

(a) in the case of an individual, a fine of $10 000;
(b) in the case of a body corporate, a fine of $50 000.

(2) The notice must be given in accordance with this section and by the fastest possible means.

(3) The notice must be given:

(a) by telephone; or
(b) in writing.

Example

The written notice can be given by facsimile, email or other electronic means.
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(4) A person giving notice by telephone must:
   (a) give the details of the incident requested by the regulator; and
   (b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.

(5) A written notice must be in a form, or contain the details, approved by the regulator.

(6) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking:
   (a) details of the information received; or
   (b) an acknowledgement of receiving the notice.

(7) Note: Subsection (7) is not required in WA.

39. Duty to preserve incident sites

(1) The person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

Penalty:
   (a) in the case of an individual, a fine of $10 000;
   (b) in the case of a body corporate, a fine of $50 000.

(2) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.

(3) Subsection (1) does not prevent any action:
   (a) to assist an injured person; or
   (b) to remove a deceased person; or
   (c) that is essential to make the site safe or to minimise the risk of a further notifiable incident; or
   (d) that is associated with a police investigation; or
   (e) for which an inspector or the regulator has given permission.
Part 4 — Authorisations

40. Meaning of authorised

In this Part:

authorised means authorised by a licence, permit, registration
or other authority (however described) as required by the
regulations.

41. Requirements for authorisation of workplaces

A person must not conduct a business or undertaking at a
workplace or direct or allow a worker to carry out work at a
workplace if:

(a) the regulations require the workplace or workplaces in
that class of workplace to be authorised; and

(b) the workplace is not authorised in accordance with the
regulations.

Penalty:

(a) in the case of an individual, a fine of $50 000;

(b) in the case of a body corporate, a fine of $250 000.

42. Requirements for authorisation of plant or substance

(1) A person must not use plant or a substance at a workplace if:

(a) the regulations require the plant or substance or its
design to be authorised; and

(b) the plant or substance or its design is not authorised in
accordance with the regulations.

Penalty:

(a) in the case of an individual, a fine of $20 000;

(b) in the case of a body corporate, a fine of $100 000.

(2) A person who conducts a business or undertaking must not
direct or allow a worker to use the plant or substance at a
workplace if:

(a) the regulations require the plant or substance or its
design to be authorised; and

(b) the plant or substance or its design is not authorised in
accordance with the regulations.

Penalty:

(a) in the case of an individual, a fine of $20 000;
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(b) in the case of a body corporate, a fine of $100 000.

43. Requirements for authorisation of work

(1) A person must not carry out work at a workplace if:

(a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and

(b) the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.

Penalty:

(a) in the case of an individual, a fine of $20 000;

(b) in the case of a body corporate, a fine of $100 000.

(2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:

(a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and

(b) the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with the regulations.

Penalty:

(a) in the case of an individual, a fine of $20 000;

(b) in the case of a body corporate, a fine of $100 000.

44. Requirements for prescribed qualifications or experience

(1) A person must not carry out work at a workplace if:

(a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and

(b) the person does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Penalty:

(a) in the case of an individual, a fine of $20 000;

(b) in the case of a body corporate, a fine of $100 000.
(2) A person who conducts a business or undertaking must not
direct or allow a worker to carry out work at a workplace if:
(a) the regulations require the work, or class of work, to be
carried out by, or under the supervision of, a person who
has prescribed qualifications or experience; and
(b) the worker does not have the prescribed qualifications or
experience or the work is not carried out under the
supervision of a person who has the prescribed
qualifications or experience.

Penalty:
(a) in the case of an individual, a fine of $20 000;
(b) in the case of a body corporate, a fine of $100 000.

45. **Requirement to comply with conditions of authorisation**

A person must comply with the conditions of any authorisation
given to that person under the regulations.

Penalty:
(a) in the case of an individual, a fine of $20 000;
(b) in the case of a body corporate, a fine of $100 000.
Part 5 — Consultation, representation and participation

Division 1 — Consultation, co-operation and co-ordination between duty holders

46. Duty to consult with other duty holders

If more than one person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.

Penalty:

(a) in the case of an individual, a fine of $20 000;
(b) in the case of a body corporate, a fine of $100 000.

Division 2 — Consultation with workers

47. Duty to consult with workers

(1) The person conducting a business or undertaking must, so far as is reasonably practicable, consult, in accordance with this Division and the regulations, with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety.

Penalty:

(a) in the case of an individual, a fine of $20 000;
(b) in the case of a body corporate, a fine of $100 000.

(2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.

(3) The agreed procedures must not be inconsistent with section 48.

48. Nature of consultation

(1) Consultation under this Division requires:

(a) that relevant information about the matter is shared with workers; and
(b) that workers be given a reasonable opportunity:

(i) to express their views and to raise work health or safety issues in relation to the matter; and
Consultation under this Division is required in relation to the following health and safety matters:

(a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;

(b) when making decisions about ways to eliminate or minimise those risks;

(c) when making decisions about the adequacy of facilities for the welfare of workers;

(d) when proposing changes that may affect the health or safety of workers;

(e) when making decisions about the procedures for:

   (i) consulting with workers; or

   (ii) resolving work health or safety issues at the workplace; or

   (iii) monitoring the health of workers; or

   (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or

   (v) providing information and training for workers; or

(f) when carrying out any other activity prescribed by the regulations for the purposes of this section.
Division 3 — Health and safety representatives

Subdivision 1 — Request for election of health and safety representatives

50. Request for election of health and safety representative

A worker who carries out work for a business or undertaking may ask the person conducting the business or undertaking to facilitate the conduct of an election for 1 or more health and safety representatives to represent workers who carry out work for the business or undertaking.

Subdivision 2 — Determination of work groups

51. Determination of work groups

(1) If a request is made under section 50, the person conducting the business or undertaking must facilitate the determination of 1 or more work groups of workers.

(2) The purpose of determining a work group is to facilitate the representation of workers in the work group by 1 or more health and safety representatives.

(3) A work group may be determined for workers at 1 or more workplaces.

52. Negotiations for agreement for work group

(1) A work group is to be determined by negotiation and agreement between:

(a) the person conducting the business or undertaking; and

(b) the workers who will form the work group or their representatives.

(2) The person conducting the business or undertaking must take all reasonable steps to commence negotiations with the workers within 14 days after a request is made under section 50.

(3) The purpose of the negotiations is to determine:

(a) the number and composition of work groups to be represented by health and safety representatives; and

(b) the number of health and safety representatives to be elected; and

(c) the workplace or workplaces to which the work groups will apply.
(4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.

(5) The person conducting the business or undertaking must, if asked by a worker, negotiate with the worker’s representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Penalty:
(a) in the case of an individual, a fine of $10 000;
(b) in the case of a body corporate, a fine of $50 000.

(6) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements concerning work groups.

53. Notice to workers

(1) The person conducting a business or undertaking involved in negotiations to determine a work group must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.

Penalty:
(a) in the case of an individual, a fine of $2 000;
(b) in the case of a body corporate, a fine of $10 000.

(2) The person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

Penalty:
(a) in the case of an individual, a fine of $2 000;
(b) in the case of a body corporate, a fine of $10 000.

54. Failure of negotiations

(1) If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the regulator to appoint an inspector for the purposes of this section.
(2) An inspector appointed under subsection (1) may decide:
   
   (a) the matters referred to in section 52(3), or any of those matters which is the subject of the proposed variation (as the case requires); or

   (b) that work groups should not be determined or that the agreement should not be varied (as the case requires).

(3) For the purposes of this section, there is a failure of negotiations if:

   (a) the person conducting the business or undertaking has not taken all reasonable steps to commence negotiations with the workers and negotiations have not commenced within 14 days after —

      (i) a request is made under section 50; or

      (ii) a party to the agreement requests the variation of the agreement; or

   (b) agreement cannot be reached on a matter relating to the determination of a work group (or the variation of an agreement concerning a work group) within a reasonable time after negotiations commence.

(4) A decision under this section is taken to be an agreement under section 52.

Subdivision 3 — Multiple-business work groups

55. Determination of work groups of multiple businesses

(1) Work groups may be determined for workers carrying out work for 2 or more persons conducting businesses or undertakings at 1 or more workplaces.

(2) The particulars of the work groups are to be determined by negotiation and agreement, in accordance with section 56, between each of the persons conducting the businesses or undertakings and the workers.

(3) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.

(4) The determination of 1 or more work groups under this Subdivision does not:

   (a) prevent the determination under this Subdivision or Subdivision 2 of any other work group of the workers concerned; or
56. Negotiation of agreement for work groups of multiple businesses

(1) Negotiations concerning work groups under this Subdivision must be directed only at the following:

(a) the number and composition of work groups to be represented by health and safety representatives;
(b) the number of health and safety representatives for each work group;
(c) the workplace or workplaces to which the work groups will apply;
(d) the businesses or undertakings to which the work groups will apply.

(2) A person conducting a business or undertaking must, if asked by a worker, negotiate with the worker’s representative in negotiations under this section (including negotiations for a variation of an agreement) and must not exclude the representative from those negotiations.

Penalty:

(a) in the case of an individual, a fine of $10,000;
(b) in the case of a body corporate, a fine of $50,000.

(3) If agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations commence under this Subdivision, any party to the negotiations may ask the regulator to appoint an inspector to assist the negotiations in relation to that matter.

(4) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements.

57. Notice to workers

(1) A person conducting a business or undertaking involved in negotiations to determine a work group must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.
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Penalty:
(a) in the case of an individual, a fine of $2 000;
(b) in the case of a body corporate, a fine of $10 000.

(2) A person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

Penalty:
(a) in the case of an individual, a fine of $2 000;
(b) in the case of a body corporate, a fine of $10 000.

58. Withdrawal from negotiations or agreement involving multiple businesses

(1) A party to a negotiation for an agreement, or to an agreement, concerning a work group under this Subdivision may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.

(2) If a party withdraws from an agreement concerning a work group under this Subdivision:
(a) the other parties must negotiate a variation to the agreement in accordance with section 56; and
(b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

59. Effect of Subdivision on other arrangements

To avoid doubt, nothing in this Subdivision affects the capacity of 2 or more persons conducting businesses or undertakings and their workers to enter into other agreements or make other arrangements, in addition to complying with this Part, concerning the representation of those workers.

Subdivision 4 — Election of health and safety representatives

60. Eligibility to be elected

A worker is:
(a) eligible to be elected as a health and safety representative for a work group only if he or she is a member of that work group; and
(b) not eligible to be elected as a health and safety representative if he or she is disqualified under section 65 from being a health and safety representative.

61. Procedure for election of health and safety representatives

(1) The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted.

(2) However, an election must comply with the procedures (if any) prescribed by the regulations.

(3) If a majority of the workers in a work group (the workers) so determine, the election may be conducted with the assistance of the following persons:

(a) if entry to a workplace is required for the assistance to be given:

(i) a person who is ordinarily entitled to be at the workplace and who the workers authorise to assist them;

(ii) an authorised representative, as defined in the Industrial Relations Act 1979 section 49G, of an organisation of which at least 1 of the workers is a member;

(iii) an official of an organisation to whom a current entry permit has been issued under the Fair Work Act if the organisation is entitled to represent the industrial interests under that Act of at least 1 of the workers;

(iv) a legal practitioner the workers authorise to assist them;

(b) otherwise, a union or other person or organisation.

(4) The person conducting the business or undertaking to which the work group relates must provide any resources, facilities and assistance that are reasonably necessary or are prescribed by the regulations to enable elections to be conducted.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.
62. Eligibility to vote

(1) A health and safety representative for a work group is to be elected by members of that work group.

(2) All workers in a work group are entitled to vote for the election of a health and safety representative for that work group.

63. When election not required

If the number of candidates for election as a health and safety representative for a work group equals the number of vacancies, the election need not be conducted and each candidate is to be taken to have been elected as a health and safety representative for the work group.

64. Term of office of health and safety representative

(1) A health and safety representative for a work group holds office for 3 years.

(2) However a person ceases to hold office as a health and safety representative for a work group if:
   (a) the person resigns as a health and safety representative for the work group by written notice given to the person conducting the relevant business or undertaking; or
   (b) the person ceases to be a worker in the work group for which he or she was elected as a health and safety representative; or
   (c) the person is disqualified under section 65 from acting as a health and safety representative; or
   (d) the person is removed from that position by a majority of the members of the work group in accordance with the regulations.

(3) A health and safety representative is eligible for re-election.

65. Disqualification of health and safety representatives

(1) An application may be made to the Tribunal to disqualify a health and safety representative on the ground that the representative has:
   (a) exercised a power or performed a function as a health and safety representative for an improper purpose; or
   (b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other
than in connection with the role of health and safety representative.

(2) The following persons may make an application under this section:

(a) any person adversely affected by:

(i) the exercise of a power or the performance of a function referred to in subsection (1)(a); or

(ii) the use or disclosure of information referred to in subsection (1)(b);

(b) the regulator.

(3) If the Tribunal is satisfied that a ground in subsection (1) is made out, the Tribunal may disqualify the health and safety representative for a specified period or indefinitely.

66. Immunity of health and safety representatives

A health and safety representative is not personally liable for anything done or omitted to be done in good faith:

(a) in exercising a power or performing a function under this Act; or

(b) in the reasonable belief that the thing was done or omitted to be done in the exercise of a power or the performance of a function under this Act.

67. Deputy health and safety representatives

Note: Section 67 is not required in WA.

Subdivision 5 — Powers and functions of health and safety representatives

68. Powers and functions of health and safety representatives

(1) The powers and functions of a health and safety representative for a work group are:

(a) to represent the workers in the work group in matters relating to work health and safety; and

(b) to monitor the measures taken by the person conducting the relevant business or undertaking or that person’s representative in compliance with this Act in relation to workers in the work group; and

(c) to investigate complaints from members of the work group relating to work health and safety; and
(d) to inquire into anything that appears to be a risk to the
health or safety of workers in the work group, arising
from the conduct of the business or undertaking.

(2) In exercising a power or performing a function, the health and
safety representative may:

(a) inspect the workplace or any part of the workplace at
which a worker in the work group works:

(i) at any time after giving reasonable notice to the
person conducting the business or undertaking at
that workplace; and

(ii) at any time, without notice, in the event of an
incident, or any situation involving a serious risk
to the health or safety of a person emanating
from an immediate or imminent exposure to a
hazard; and

(b) accompany an inspector during an inspection of the
workplace or part of the workplace at which a worker in
the work group works; and

(c) with the consent of a worker that the health and safety
representative represents, be present at an interview
concerning work health and safety between the worker
and:

(i) an inspector; or

(ii) the person conducting the business or
undertaking at that workplace or the person’s
representative; and

(d) request the establishment of a health and safety
committee; and

(f) receive information concerning the work health and
safety of workers in the work group; and

(g) whenever necessary, request the assistance of any
person, but if entry to a workplace is required for the
assistance to be given, from the following persons only:

(i) a person who is ordinarily entitled to be at the
workplace;

(ii) an authorised representative, as defined in the
Industrial Relations Act 1979 section 49G, of an
organisation of which at least 1 of the workers in
the work group is a member;

(iii) an official of an organisation to whom a current
entry permit has been issued under the Fair Work
Act if the organisation is entitled to represent the
industrial interests under that Act of at least 1 of
the workers in the work group.

Note: A health and safety representative also has a power under Division 7
of this Part to issue provisional improvement notices.

(3) Despite subsection (2)(f), a health and safety representative is
not entitled to have access to any personal or medical
information concerning a worker without the worker’s consent
unless the information is in a form that:

(a) does not identify the worker; and

(b) could not reasonably be expected to lead to the
identification of the worker.

(4) Nothing in this Act imposes or is taken to impose a duty on a
health and safety representative in that capacity.
69. **Powers and functions generally limited to the particular work group**

(1) A health and safety representative for a work group may exercise powers and perform functions under this Act only in relation to matters that affect, or may affect, workers in that group.

(2) Subsection (1) does not apply if:

(a) there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or

(b) a member of another work group asks for the representative’s assistance, and the health and safety representative for that other work group is found, after reasonable inquiry, to be unavailable.

(3) In this section:

*another work group* means another work group of workers carrying out work for a business or undertaking to which the work group that the health and safety representative represents relates.

**Subdivision 6 — Obligations of person conducting business or undertaking to health and safety representatives**

70. **General obligations of person conducting business or undertaking**

(1) The person conducting a business or undertaking must:

(a) consult, so far as is reasonably practicable, on work health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking; and

(b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and
(c) allow any health and safety representative for the work group to have access to information that the person has relating to:

(i) hazards (including associated risks) at the workplace affecting workers in the work group; and

(ii) the health and safety of the workers in the work group; and

(d) with the consent of a worker that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between the worker and:

(i) an inspector; or

(ii) the person conducting the business or undertaking at that workplace or the person’s representative; and

(e) Note: Paragraph (e) is not required in WA.

(f) provide any resources, facilities and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise his or her powers or perform his or her functions under this Act; and

(g) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided, but only if the person:

(i) is ordinarily entitled to be at the workplace; or

(ii) is an authorised representative, as defined in the Industrial Relations Act 1979 section 49G, of an organisation of which at least 1 of the workers in the work group is a member; or

(iii) is an official of an organisation to whom a current entry permit has been issued under the Fair Work Act if the organisation is entitled to represent the industrial interests under that Act of at least 1 of the workers in the work group; and

(h) permit a health and safety representative for the work group to accompany an inspector during an inspection of
any part of the workplace where a worker in the work

group works; and

(i) provide any other assistance to the health and safety

representative for the work group that may be required

by the regulations.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

(2) The person conducting a business or undertaking must allow a

health and safety representative to spend such time as is

reasonably necessary to exercise his or her powers and perform

his or her functions under this Act.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

(3) Any time that a health and safety representative spends for the

purposes of exercising his or her powers or performing his or

her functions under this Act must be with the pay that he or she

would otherwise be entitled to receive for performing his or her

normal duties during that period.
71. **Exceptions from obligations under section 70(1)**

(1) This section applies despite section 70(1).

(2) The person conducting a business or undertaking must not allow a health and safety representative to have access to any personal or medical information concerning a worker without the worker’s consent unless the information is in a form that:

- (a) does not identify the worker; and
- (b) could not reasonably be expected to lead to the identification of the worker.

Penalty:

- (a) in the case of an individual, a fine of $10 000;
- (b) in the case of a body corporate, a fine of $50 000.

(3) The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 70(1)(g).

(4)

Note: Subsection (4) is not required in WA.

(5) The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.

(6) If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.

72. **Obligation to train health and safety representatives**

(1) The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety that is —

- (a) approved by the Commission for Occupational Health and Safety established under Schedule 2 clause 4; and
- (b) a course that the health and safety representative is entitled under the regulations to attend; and
- (c) subject to subsection (5), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.
(2) The person conducting the business or undertaking must:

   (a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the course of training; and

   (b) pay the course fees and any other reasonable costs associated with the health and safety representative’s attendance at the course of training.

(3) If:

   (a) a health and safety representative represents a work group of the workers of more than 1 business or undertaking; and

   (b) the person conducting any of those businesses or undertakings has complied with this section in relation to the representative,

   each of the persons conducting those businesses or undertakings is to be taken to have complied with this section in relation to the representative.

(4) Any time that a health and safety representative is given off work to attend the course of training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

(5) If agreement cannot be reached between the person conducting the business or undertaking and the health and safety representative within the time required by subsection (2) as to the matters set out in subsections (1)(c) and (2), either party may ask the regulator to appoint an inspector to decide the matter.

(6) The inspector may decide the matter in accordance with this section.

(7) A person conducting a business or undertaking must allow a health and safety representative to attend a course decided by the inspector and pay the costs decided by the inspector under subsection (6).

Penalty:

   (a) in the case of an individual, a fine of $10 000;

   (b) in the case of a body corporate, a fine of $50 000.
73. **Obligation to share costs if multiple businesses or undertakings**

(1) If a health and safety representative represents a work group of workers carrying out work for 2 or more persons conducting businesses or undertakings:

(a) the costs of the representative exercising powers and performing functions under this Act; and

(b) the costs referred to in section 72(2)(b),

for which any of the persons conducting those businesses or undertakings are liable must be apportioned equally between each of those persons unless they agree otherwise.

(2) An agreement to apportion the costs in another way may be varied at any time by negotiation and agreement between each of the persons conducting the businesses or undertakings.

74. **List of health and safety representatives**

(1) A person conducting a business or undertaking must ensure that:

(a) a list of each health and safety representative for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and

(b) a copy of the up-to-date list is displayed:

(i) at the principal place of business of the business or undertaking; and

(ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,

in a manner that is readily accessible to workers in the relevant work group or work groups.

Penalty:

(a) in the case of an individual, a fine of $2 000;

(b) in the case of a body corporate, a fine of $10 000.

(2) A person conducting a business or undertaking must notify the regulator each time a person is elected, or is taken to be elected, as a health and safety representative for a work group.
Division 4 — Health and safety committees

75. Health and safety committees

(1) The person conducting a business or undertaking at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking:
   (a) within 2 months after being requested to do so by:
       (i) a health and safety representative for a work group of workers carrying out work at that workplace; or
       (ii) 5 or more workers at that workplace; or
   (b) if required by the regulations to do so, within the time prescribed by the regulations.

Penalty:
   (a) in the case of an individual, a fine of $5 000;
   (b) in the case of a body corporate, a fine of $25 000.

(2) A person conducting a business or undertaking at a workplace may establish a health and safety committee for the workplace or part of the workplace on the person’s own initiative.

Note: If a health and safety committee is not required to be established, other consultation procedures can be established for a workplace — see Division 2 of this Part.

76. Constitution of committee

(1) Subject to subsections (2) to (4), the constitution of a health and safety committee may be agreed between the person conducting the business or undertaking and the workers at the workplace.

(2) If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.

(3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.

(4) At least half of the members of the committee must be workers who are not nominated by the person conducting the business or undertaking.

(5) If agreement is not reached under this section within a reasonable time, any party may ask the regulator to appoint an inspector to decide the matter.
An inspector appointed on a request under subsection (5) may decide the constitution of the health and safety committee or that the committee should not be established.

A decision of an inspector under this section is taken to be an agreement under this section between the parties.

77. Functions of committee

The functions of a health and safety committee are:

(a) to facilitate co-operation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers’ health and safety at work; and

(b) to assist in developing standards, rules and procedures relating to health and safety that are to be followed or complied with at the workplace; and

(c) any other functions prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.

78. Meetings of committee

A health and safety committee may determine its own procedures, subject to the regulations.

79. Duties of person conducting business or undertaking

(1) The person conducting a business or undertaking must allow each member of the health and safety committee to spend the time that is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

(2) Any time that a member of a health and safety committee spends for the purposes set out in subsection (1) must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
(3) The person conducting a business or undertaking must allow the health and safety committee for a workplace to have access to information that the person has relating to:

(a) hazards (including associated risks) at the workplace; and

(b) the health and safety of the workers at the workplace.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

(4) Despite subsection (3), the person conducting a business or undertaking must not allow the health and safety committee to have access to any personal or medical information concerning a worker without the worker’s consent unless the information is in a form that:

(a) does not identify the worker; and

(b) could not reasonably be expected to lead to the identification of the worker.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

Division 5 — Issue resolution

80. Parties to an issue

(1) In this Division:

parties, in relation to an issue, means the following:

(a) the person conducting the business or undertaking or the person’s representative;

(b) if the issue involves more than 1 business or undertaking, the person conducting each business or undertaking or the person’s representative;

(c) if the worker or workers affected by the issue are in a work group, the health and safety representative for that work group or his or her representative;

(d) if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.
(2) A person conducting a business or undertaking must ensure that
the person’s representative (if any) for the purposes of this
Division:
   (a) is not a health and safety representative; and
   (b) has an appropriate level of seniority, and is sufficiently
       competent, to act as the person’s representative.

81. Resolution of health and safety issues

   (1) This section applies if a matter about work health and safety
       arises at a workplace or from the conduct of a business or
       undertaking and the matter is not resolved after discussion
       between the parties to the issue.

   (2) The parties must make reasonable efforts to achieve a timely,
       final and effective resolution of the issue in accordance with the
       relevant agreed procedure, or if there is no agreed procedure,
       the default procedure prescribed in the regulations.

   (3) A party to an issue may enter the workplace for the purpose of
       attending discussions with a view to resolving the issue.

82. Referral of issue to regulator for resolution by inspector

   (1) This section applies if an issue has not been resolved after
       reasonable efforts have been made to achieve an effective
       resolution of the issue.

   (2) A party to the issue may ask the regulator to appoint an
       inspector to attend the workplace to assist in resolving the issue.

   (3) A request to the regulator under this section does not prevent:
       (a) a worker from exercising the right under Division 6 of
           this Part to cease work; or
       (b) a health and safety representative from issuing a
           provisional improvement notice.

   (4) On attending a workplace under this section, an inspector may
       exercise any of the inspector’s compliance powers under this
       Act in relation to the workplace.
Division 6 — Right to cease unsafe work

83. Definition of cease work under this Division

In this Division:

cease work under this Division means:

(a) to cease, or refuse, to carry out work under section 84.

(b) Note: Paragraph (b) is not required in WA.

84. Right of worker to cease unsafe work

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker’s health or safety, emanating from an immediate or imminent exposure to a hazard.

85. Health and safety representative may direct that unsafe work cease

Note: Section 85 is not required in WA.

86. Worker to notify if ceases work

A worker who ceases work under this Division must:

(a) as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work under this Division; and

(b) remain available to carry out suitable alternative work.

87. Alternative work

If a worker ceases work under this Division, the person conducting the business or undertaking may direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.

88. Continuity of engagement of worker

If a worker ceases work under this Division, that action does not affect the continuity of engagement of the worker for prescribed purposes if the worker has not unreasonably failed to comply with a direction to carry out suitable alternative work:

(a) at the same or another workplace; and
89. Request to regulator to appoint inspector to assist

The health and safety representative or the person conducting the business or undertaking or the worker may ask the regulator to appoint an inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work.

Note: The issue resolution procedures in Division 5 of this Part can also be used to resolve an issue arising in relation to the cessation of work.

Division 7 — Provisional improvement notices

90. Provisional improvement notices

(1) This section applies if a health and safety representative reasonably believes that a person:

(a) is contravening a provision of this Act; or

(b) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated.

(2) The health and safety representative may issue a provisional improvement notice requiring the person to:

(a) remedy the contravention; or

(b) prevent a likely contravention from occurring; or

(c) remedy the things or operations causing the contravention or likely contravention.

(3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.

(4) A health and safety representative cannot issue a provisional improvement notice unless the representative has:

(a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or

(b) previously completed that training when acting as a health and safety representative for another work group; or

(c) completed training equivalent to that training under a corresponding WHS law.

(5) A health and safety representative cannot issue a provisional improvement notice in relation to a matter if an inspector has
already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

91. **Provisional improvement notice to be in writing**

A provisional improvement notice must be in writing.

92. **Contents of provisional improvement notice**

A provisional improvement notice must state:

(a) that the health and safety representative believes the person:

(i) is contravening a provision of this Act; or

(ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated; and

(b) the provision the representative believes is being, or has been, contravened; and

(c) briefly, how the provision is being, or has been contravened; and

(d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

93. **Provisional improvement notice may give directions to remedy contravention**

(1) A provisional improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention or the matters or activities causing the contravention or likely contravention to which the notice relates.

(2) A direction included in a provisional improvement notice may:

(a) refer to a code of practice; and

(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

94. **Minor changes to provisional improvement notice**

A health and safety representative may make minor changes to a provisional improvement notice:

(a) for clarification; or

(b) to correct errors or references; or

(c) to reflect changes of address or other circumstances.
95. **Issue of provisional improvement notice**

A provisional improvement notice may be issued to a person in accordance with section 209.

96. **Health and safety representative may cancel notice**

The health and safety representative may at any time cancel a provisional improvement notice issued to a person by written notice given to that person.

97. **Display of provisional improvement notice**

(1) A person to whom a provisional improvement notice is issued must as soon as practicable display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

Penalty:

(a) in the case of an individual, a fine of $5 000;
(b) in the case of a body corporate, a fine of $25 000.

(2) A person must not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) during the period that the notice is in force.

Penalty:

(a) in the case of an individual, a fine of $5 000;
(b) in the case of a body corporate, a fine of $25 000.

98. **Formal irregularities or defects in notice**

A provisional improvement notice is not invalid only because of:

(a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or

(b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.

99. **Offence to contravene a provisional improvement notice**

(1) This section applies if a provisional improvement notice has been issued to a person and an inspector has not been required under section 101 to attend at the workplace.
(2) The person must comply with the provisional improvement notice within the time specified in the notice.

Penalty:

(a) in the case of an individual, a fine of $50,000;

(b) in the case of a body corporate, a fine of $250,000.

100. Request for review of provisional improvement notice

(1) If a provisional improvement notice is issued to a person:

(a) the person to whom it was issued; or

(b) if the person is a worker, the person conducting the business or undertaking at the workplace at which the worker carries out work,

may ask the regulator to appoint an inspector to review the notice.

(2) If a request is made under subsection (1), the operation of the provisional improvement notice is stayed until the inspector makes a decision on the review.

(3) A request made under subsection (1) must be received by the regulator not later than the time specified in the provisional improvement notice for the purposes of section 99(2).

101. Regulator to appoint inspector to review notice

(1) The regulator must ensure that an inspector attends the workplace as soon as practicable after a request is made under section 100.

(2) The inspector must review the provisional improvement notice and inquire into the circumstances that are the subject of the provisional improvement notice.

(3) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired.

102. Decision of inspector on review of provisional improvement notice

(1) After reviewing the provisional improvement notice, the inspector must:

(a) confirm the provisional improvement notice; or

(b) confirm the provisional improvement notice with changes; or

(c) cancel the provisional improvement notice.
(2) The inspector must give a copy of his or her decision to:

(a) the applicant for the review of the provisional improvement notice; and

(b) the health and safety representative who issued the notice.

(3) A provisional improvement notice that is confirmed (with or without changes) by an inspector is taken to be an improvement notice issued by the inspector under this Act.

Division 8 — Part not to apply to prisoners

103. Part does not apply to prisoners

Note: Section 103 is not required in WA.
Part 6 — Discriminatory, coercive and misleading conduct

Division 1 — Prohibition of discriminatory, coercive or misleading conduct

104. Prohibition of discriminatory conduct

(1) A person must not engage in discriminatory conduct for a prohibited reason.

Penalty:

(a) in the case of an individual, a fine of $100 000;
(b) in the case of a body corporate, a fine of $500 000.

(2) A person commits an offence under subsection (1) only if the reason referred to in section 106 was the dominant reason for the discriminatory conduct.

Note: Civil proceedings may be brought under Division 3 of this Part in relation to discriminatory conduct engaged in for a prohibited reason.

105. What is discriminatory conduct

(1) For the purposes of this Part, a person engages in discriminatory conduct if:

(a) the person:

(i) dismisses a worker; or
(ii) terminates a contract for services with a worker; or
(iii) puts a worker to his or her detriment in the engagement of the worker; or
(iv) alters the position of a worker to the worker’s detriment; or

(b) the person:

(i) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement; or

(c) the person terminates a commercial arrangement with another person.
(d)

Note: Paragraph (d) is not required in WA.

(2) For the purposes of this Part, a person also engages in discriminatory conduct if the person organises to take any action referred to in subsection (1) or threatens to organise or take that action.

106. What is a prohibited reason

Conduct referred to in section 105 is engaged in for a prohibited reason if it is engaged in because the worker or prospective worker or the person referred to in section 105(1)(c) (as the case requires):

(a) is, has been or proposes to be a health and safety representative or a member of a health and safety committee; or

(b) undertakes, has undertaken or proposes to undertake another role under this Act; or

(c) exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function as a health and safety representative or as a member of a health and safety committee; or

(d) exercises, has exercised or proposes to exercise a power under this Act or exercises, has exercised or proposes to exercise a power under this Act in a particular way; or

(e) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way; or

(f) refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act or refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act in a particular way; or

(g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act; or
h) raises or has raised or proposes to raise an issue or concern about work health and safety with:

(i) the person conducting a business or undertaking;
or

(ii) an inspector; or

(iii) 

Note: Subparagraph (iii) is not required in WA.

(iv) a health and safety representative; or
(v) a member of a health and safety committee; or
(vi) another worker; or
(vii) any other person who has a duty under this Act in relation to the matter; or
(viii) any other person exercising a power or performing a function under this Act; or

(i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act; or

(j) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

107. Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct

A person must not request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct in contravention of section 104.

Penalty:

(a) in the case of an individual, a fine of $100 000;

(b) in the case of a body corporate, a fine of $500 000.

Note: Civil proceedings may be brought under Division 3 of this Part if a person requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason.
108. **Prohibition of coercion or inducement**

(1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the other person, or a third person:

(a) to exercise or not to exercise a power, or to propose to exercise or not to exercise a power, under this Act; or

(b) to perform or not to perform a function, or to propose to perform or not to perform a function, under this Act; or

(c) to exercise or not to exercise a power or perform a function, or to propose to exercise or not to exercise a power or perform a function, in a particular way; or

(d) to refrain from seeking, or continuing to undertake, a role under this Act.

Penalty:

(a) in the case of an individual, a fine of $100 000;

(b) in the case of a body corporate, a fine of $500 000.

Note: Civil proceedings may be brought under Division 3 of this Part in relation to a contravention of this section.

(2) In this section, a reference to taking action or threatening to take action against a person includes a reference to not taking a particular action or threatening not to take a particular action in relation to that person.

(3) To avoid doubt, a reasonable direction given by an emergency services worker in an emergency is not an action with intent to coerce or induce a person.

109. **Misrepresentation**

(1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person’s:

(a) rights or obligations under this Act; or

(b) ability to initiate, or participate in, a process or proceedings under this Act; or

(c) ability to make a complaint or inquiry to a person or body empowered under this Act to seek compliance with this Act.

Penalty:

(a) in the case of an individual, a fine of $100 000;

(b) in the case of a body corporate, a fine of $500 000.
Division 2 — Criminal proceedings in relation to discriminatory conduct

110. Proof of discriminatory conduct

Note: Section 110 is not required in WA.

111. Order for compensation or reinstatement

If a person is convicted or found guilty of an offence under section 104 or 107, the court may (in addition to imposing a penalty) make either or both of the following orders:

(a) an order that the offender pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the court considers appropriate;

(b) in relation to a person who was or is an employee or prospective employee, an order that:

   (i) the person be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
   
   (ii) the person be employed in the position for which he or she had applied or a similar position.

Division 3 — Civil proceedings in relation to discriminatory or coercive conduct

112. Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct

(1) An eligible person may apply to the Tribunal for an order under this section.

(2) The Tribunal may make 1 or more of the orders set out in subsection (3) in relation to a person who has:

(a) engaged in discriminatory conduct for a prohibited reason; or

(b) requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason; or

(c) contravened section 108.
(3) For the purposes of subsection (2), the orders that the Tribunal may make are:

(a) an injunction; or

(b) in the case of conduct referred to in subsection (2)(a) or (b), an order that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the Tribunal considers appropriate; or

(c) in the case of conduct referred to in subsection (2)(a) in relation to a worker who was or is an employee or prospective employee, an order that:

(i) the worker be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or

(ii) the prospective worker be employed in the position for which he or she had applied or a similar position; or

(d) any other order that the Tribunal considers appropriate.

(4) For the purposes of this section, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if a reason referred to in section 106 was a substantial reason for the conduct.

(5) Nothing in this section is to be construed as limiting any other power of the Tribunal.

(6) For the purposes of this section, each of the following is an eligible person:

(a) a person affected by the contravention;

(b) a person authorised by a person referred to in paragraph (a).

113. Procedure for civil actions for discriminatory conduct

(1) A proceeding brought under section 112 must be commenced not more than 1 year after the date on which the applicant knew or ought to have known that the cause of action accrued.

(2) Note: Subsection (2) is not required in WA.
(3) It is a defence to a proceeding under section 112 in relation to conduct referred to in section 112(2)(a) or (b) if the defendant proves that:
   
   (a) the conduct was reasonable in the circumstances; and
   
   (b) a substantial reason for the conduct was to comply with the requirements of this Act or a corresponding WHS law.

(4) To avoid doubt, the burden of proof on the defendant under subsection (3) is a legal burden of proof.

Division 4 — General

114. General provisions relating to orders

(1) The making of an order in a proceeding under section 112 in relation to conduct referred to in section 112(2)(a) or (b) does not prevent the bringing of a proceeding for an offence under section 104 or 107 in relation to the same conduct.

(2) If the Tribunal makes an order under section 112 in a proceeding in relation to conduct referred to in section 112(2)(a) or (b), the court cannot make an order under section 111 in a proceeding for an offence under section 104 or 107 in relation to the same conduct.

(3) If the court makes an order under section 111 in a proceeding for an offence under section 104 or 107, the Tribunal cannot make an order under section 112 in a proceeding in relation to conduct referred to in section 112(2)(a) or (b) that is the same conduct.

115. Prohibition of multiple actions

A person cannot:

   (a) commence a proceeding under Division 3 of this Part if the person has commenced a proceeding or made an application or complaint in relation to the same matter under a law of the Commonwealth or a State and that proceeding, application or complaint has not been withdrawn; or

   (b) recover any compensation under Division 3 of this Part if the person has received compensation for the matter under a law of the Commonwealth or a State; or

   (c) commence or continue an application under Division 3 of this Part if the person has failed in a proceeding,
application or complaint in relation to the same matter
under a law of the Commonwealth or a State, other than
a proceeding, application or complaint relating to
workers’ compensation.
Part 7 — Workplace entry by WHS entry permit holders

Note: Part 7 (sections 116 to 151) is not required in WA.
Part 8 — The regulator

Division 1 — Functions of regulator

152. Functions of regulator

The regulator has the following functions:

(a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;
(b) to monitor and enforce compliance with this Act;
(c) to provide advice and information on work health and safety to duty holders under this Act and to the community;
(d) to collect, analyse and publish statistics relating to work health and safety;
(e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;
(f) to promote and support education and training on matters relating to work health and safety;
(g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;
(h) to conduct and defend proceedings under this Act before a court or tribunal;
(i) any other function conferred on the regulator by this Act.

153. Powers of regulator

(1) Subject to this Act, the regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1), the regulator has all the powers and functions that an inspector has under this Act.

154. Delegation by regulator

(1) The regulator may delegate to any person employed in the Public Sector by or under an employing authority, as those terms are defined in the Public Sector Management Act 1994,
any power or duty of the regulator under another provision of this Act.

(2) The delegation must be in writing executed by the regulator.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the regulator to perform a function through an officer or agent.

Division 2 — Powers of regulator to obtain information

155. Powers of regulator to obtain information

(1) This section applies if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act or that will assist the regulator to monitor or enforce compliance with this Act.

(2) The regulator may, by written notice served on the person, require the person to do 1 or more of the following:

(a) to give the regulator, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge;

(b) to produce to the regulator, in accordance with the notice, those documents;

(c) to appear before a person appointed by the regulator on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.

(3) The notice must:

(a) state that the requirement is made under this section; and

(b) contain a statement to the effect that a failure to comply with a requirement is an offence; and
(c) if the notice requires the person to provide information or documents or answer questions:
   (i) contain a statement about the effect of sections 172 and 269; and
   (ii) state that the person may attend with a legal practitioner.

(4) The regulator must not make a requirement under subsection (2)(c) unless the regulator has taken all reasonable steps to obtain the information under subsections (2)(a) and (b) and has been unable to do so.

(5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Penalty:
   (a) in the case of an individual, a fine of $10 000;
   (b) in the case of a body corporate, a fine of $50 000.

(6) Subsection (5) places an evidential burden on the accused to show a reasonable excuse.

(7) Section 172 (with any necessary changes) applies to a requirement under this section.
Part 9 — Securing compliance

Division 1 — Appointment of inspectors

156. Appointment of inspectors

The regulator may, by instrument, appoint any of the following as an inspector:

(a) a public service officer;
(b) an employee of a public authority;
(ca) a person appointed under the *Main Roads Act 1930* section 10(1) to be an officer of the Commissioner of Main Roads;
(c) the holder of a statutory office;
(d) a person who is appointed as an inspector under a corresponding WHS law;
(e) a person in a prescribed class of persons.

157. Identity cards

(1) The regulator must give each inspector an identity card that states the person’s name and appointment as an inspector and includes any other matter prescribed by the regulations.

(2) An inspector must produce his or her identity card for inspection on request when exercising compliance powers.

(3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the regulator as soon as practicable.

158. Accountability of inspectors

(1) An inspector must give written notice to the regulator of all interests, pecuniary or otherwise, that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector’s functions.

(2) The regulator must give a direction to an inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.
159. **Suspension and ending of appointment of inspectors**

(1) The regulator may suspend or end the appointment of an inspector.

(2) A person’s appointment as an inspector ends when the person ceases to be eligible for appointment as an inspector.

**Division 2 — Functions and powers of inspectors**

160. **Functions and powers of inspectors**

An inspector has the following functions and powers under this Act:

(a) to provide information and advice about compliance with this Act;

(b) to assist in the resolution of:

(i) work health and safety issues at workplaces; and

(ii) issues related to access to a workplace by an assistant to a health and safety representative; and

(iii) [Note: Subparagraph (iii) is not required in WA.]

(c) to review disputed provisional improvement notices;

(d) to require compliance with this Act through the issuing of notices;

(e) to investigate contraventions of this Act and assist in the prosecution of offences.

(f) [Note: Paragraph (f) is not required in WA.]

161. **Conditions on inspectors’ compliance powers**

An inspector’s compliance powers are subject to any conditions specified in the instrument of the inspector’s appointment.

162. **Inspectors subject to regulator’s directions**

(1) An inspector is subject to the regulator’s directions in the exercise of the inspector’s compliance powers.

(2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.
Division 3 — Powers relating to entry

Subdivision 1 — General powers of entry

163. Powers of entry

(1) An inspector may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace.

(2) An entry may be made under subsection (1) with, or without, the consent of the person with management or control of the workplace.

(3) If an inspector enters a place under subsection (1) and it is not a workplace, the inspector must leave the place immediately.

(4) An inspector may enter any place if the entry is authorised by a search warrant.

Note: An inspector may enter residential premises to gain access to a workplace (see section 170(c)).

164. Notification of entry

(1) An inspector may enter a place under section 163 without prior notice to any person.

(2) An inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry:

(a) the relevant person conducting a business or undertaking at the workplace;

(b) the person with management or control of the workplace;

(c) any health and safety representative for workers carrying out work for that business or undertaking at the workplace.

(3) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.

(4) In this section:

*relevant person conducting a business or undertaking* means the person conducting any business or undertaking in relation to which the inspector is exercising the powers of entry.
165. General powers on entry

(1) An inspector who enters a workplace under section 163 may do all or any of the following:
   (a) inspect, examine and make inquiries at the workplace;
   (b) inspect and examine anything (including a document) at the workplace;
   (c) bring to the workplace and use any equipment or materials that may be required;
   (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
   (e) take and remove for analysis a sample of any substance or thing without paying for it;
   (f) require a person at the workplace to give the inspector reasonable help to exercise the inspector’s powers under paragraphs (a) to (e);
   (g) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.

(2) A person required to give reasonable help under subsection (1)(f) must not, without reasonable excuse, refuse or fail to comply with the requirement.

Penalty:
   (a) in the case of an individual, a fine of $10 000;
   (b) in the case of a body corporate, a fine of $50 000.

(3) Subsection (2) places an evidential burden on the accused to show a reasonable excuse.

166. Persons assisting inspectors

(1) A person (the assistant), including an interpreter, may accompany the inspector entering a workplace under section 163 to assist the inspector if the inspector considers the assistance is necessary.

(2) The assistant:
   (a) may do the things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise compliance powers; but
   (b) must not do anything that the inspector does not have power to do, except as permitted under a search warrant.
(3) Anything done lawfully by the assistant is taken for all purposes to have been done by the inspector.

Subdivision 2 — Search warrants

167. Search warrants

(1A) In this section:

remote communication means any way of communicating at a distance including by telephone, fax, email and radio.

(1B) A reference in this section to making an application includes a reference to giving information in support of the application.

(1) An inspector may apply to a magistrate for a search warrant for a place.

(2A) The application must be made in person before the magistrate unless:

(a) the search warrant is needed urgently; and

(b) the inspector reasonably suspects that a magistrate is not available within a reasonable distance of the inspector,

in which case:

(c) it may be made to a magistrate by remote communication; and

(d) the magistrate must not grant it unless satisfied about the matters in paragraphs (a) and (b).

(2B) The application must be made in writing unless:

(a) the application is made by remote communication; and

(b) it is not practicable to send the magistrate written material,

in which case:

(c) it may be made orally; and

(d) the magistrate must make a written record of the application and any information given in support of it.

(2C) The application must be made on oath unless:

(a) the application is made by remote communication; and

(b) it is not practicable for the magistrate to administer an oath to the inspector,

in which case:

(c) it may be made in an unsworn form; and
(d) if the magistrate issues a search warrant, the inspector must as soon as practicable send the magistrate an affidavit verifying the application and any information given in support of it.

(2D) If on an application made by remote communication a magistrate issues a search warrant, the magistrate must, if practicable, send a copy of the original search warrant to the inspector by remote communication, but otherwise:

(a) the magistrate must give the inspector by remote communication any information that must be stated in the search warrant; and

(b) the inspector must complete a form of a search warrant with the information received and give the magistrate a copy of the form as soon as practicable after doing so; and

(c) the magistrate must attach the copy of the form to the original search warrant and any affidavit received from the inspector and make them available for collection by the inspector.

(2E) The copy of the original search warrant sent, or the form of the search warrant completed, as the case may be, under subsection (2D) has the same force and effect as the original search warrant.

(2) Note: Subsection (2) is not required in WA.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a search warrant only if the magistrate is satisfied there are reasonable grounds for suspecting:

(a) there is a particular thing or activity (the evidence) that may provide evidence of an offence against this Act; and

(b) the evidence is, or may be within the next 72 hours, at the place.
(5) The search warrant must state:

(a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector’s compliance powers; and

(b) the offence for which the search warrant is sought; and

(c) the evidence that may be seized under the search warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 7 days after the search warrant’s issue, the search warrant ends.

168. Announcement before entry on warrant

(1) Before executing a search warrant, the inspector named in the warrant or an assistant to the inspector must:

(a) announce that he or she is authorised by the warrant to enter the place; and

(b) give any person at the place an opportunity to allow that entry.

(2) However, the inspector or an assistant to the inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure:

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

169. Copy of warrant to be given to person with management or control of place

If the person who has or appears to have management or control of a place is present at the place when a search warrant is being executed, the inspector must:

(a) identify himself or herself to that person by producing his or her identity card for inspection; and

(b) give that person a copy of the execution copy of the warrant.
Subdivision 3 — Limitation on entry powers

170. Places used for residential purposes

Despite anything else in this Division, the powers of an inspector under this Division in relation to entering a place are not exercisable in relation to any part of a place that is used only for residential purposes except:

(a) with the consent of the person with management or control of the place; or
(b) under the authority conferred by a search warrant; or
(c) for the purpose only of gaining access to a suspected workplace, but only:
   (i) if the inspector reasonably believes that no reasonable alternative access is available; and
   (ii) at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

Subdivision 4 — Specific powers on entry

171. Power to require production of documents and answers to questions

(1) An inspector who enters a workplace under this Division may:
   (a) require a person to tell the inspector who has custody of, or access to, a document; or
   (b) require a person who has custody of, or access to, a document to produce that document to the inspector while the inspector is at that workplace or within a specified period; or
   (c) require a person at the workplace to answer any questions put by the inspector.

(2) A requirement under subsection (1)(b) must be made by written notice unless the circumstances require the inspector to have immediate access to the document.

(3) An interview conducted by an inspector under subsection (1)(c) must be conducted in private if:
   (a) the inspector considers it appropriate; or
   (b) the person being interviewed so requests.
(4) Subsection (3) does not limit the operation of section 166 or prevent a representative of the person being interviewed from being present at the interview.

(5) Subsection (3) may be invoked during an interview by:
   (a) the inspector; or
   (b) the person being interviewed,

   in which case the subsection applies to the remainder of the interview.

(6) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Penalty:
   (a) in the case of an individual, a fine of $10 000;
   (b) in the case of a body corporate, a fine of $50 000.

Note: See sections 172 and 173 in relation to self-incrimination and section 269 in relation to legal professional privilege.

(7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

172. Abrogation of privilege against self-incrimination

(1) A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

(2) However, the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

173. Warning to be given

(1) Before requiring a person to answer a question or provide information or a document under this Part, an inspector must:
   (a) identify himself or herself to the person as an inspector by producing the inspector’s identity card or in some other way; and
   (b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
   (c) warn the person about the effect of section 172; and
(d) advise the person about the effect of section 269.

(2) It is not an offence for an individual to refuse to answer a question put by an inspector or provide information or a document to an inspector under this Part on the ground that the question, information or document might tend to incriminate him or her, unless he or she was first given the warning in subsection (1)(c).

(3) Nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person.

174. Powers to copy and retain documents

(1) An inspector may:

(a) make copies of, or take extracts from, a document given to the inspector in accordance with a requirement under this Act; and

(b) keep that document for the period that the inspector considers necessary.

(2) While an inspector retains custody of a document, the inspector must permit the following persons to inspect or make copies of the document at all reasonable times:

(a) the person who produced the document;

(b) the owner of the document;

(c) a person authorised by a person referred to in paragraph (a) or (b).

175. Power to seize evidence etc.

(1) An inspector who enters a workplace under section 163 may seize anything (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

(2) An inspector who enters a place with a search warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else at the place if the inspector reasonably believes:

(a) the thing is evidence of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.
176. Inspector’s power to seize dangerous workplaces and things

(1) This section applies if an inspector who enters a workplace under this Part reasonably believes that:

(a) the workplace or part of the workplace; or
(b) plant at the workplace; or
(c) a substance at the workplace or part of the workplace; or
(d) a structure at a workplace,

is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

(2) The inspector may seize the workplace or part, the plant, the substance or the structure.

(3) An inspector’s powers under this section may be exercised only by:

(a) the regulator; or
(b) a person to whom the regulator has, under section 154, delegated the powers and functions that the regulator has under section 153(2).

177. Powers supporting seizure

(1) Having seized a thing, an inspector may:

(a) move the thing from the place where it was seized (the place of seizure); or
(b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

Examples

1 Sealing a thing and marking it to show access to it is restricted.
2 Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.
(c) if the thing is plant or a structure—dismantle or cause to be dismantled the plant or structure.

(2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector’s approval.

Penalty:

(a) in the case of an individual, a fine of $10 000;
(b) in the case of a body corporate, a fine of $50 000.
To enable a thing to be seized, an inspector may require the person in control of it:

(a) to take it to a stated reasonable place by a stated reasonable time; and
(b) if necessary, to remain in control of it at the stated place for a reasonable time.

The requirement:

(a) must be made by written notice; or
(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

The person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (3) or (5).

Penalty:

(a) in the case of an individual, a fine of $10 000;
(b) in the case of a body corporate, a fine of $50 000.

Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

An inspector’s powers under this section in relation to a thing seized under section 176(2) may be exercised only by:

(a) the regulator; or
(b) a person to whom the regulator has, under section 154, delegated the powers and functions that the regulator has under section 153(2).

Receipt for seized things

As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

The receipt must describe generally each thing seized and its condition.
This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing’s nature, condition and value).

179. Forfeiture of seized things

A seized thing is forfeited to the State if the regulator:

(a) cannot find the person entitled to the thing after making reasonable inquiries; or

(b) cannot return it to the person entitled to it, after making reasonable efforts; or

(c) reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act.

Subsection (1)(a) does not require the regulator to make inquiries if it would be unreasonable to make inquiries to find the person entitled to the thing.

Subsection (1)(b) does not require the regulator to make efforts if it would be unreasonable to make efforts to return the thing to the person entitled to it.

If the regulator decides to forfeit the thing under subsection (1)(c), the regulator must tell the person entitled to the thing of the decision by written notice.

Subsection (4) does not apply if:

(a) the regulator cannot find the person entitled to the thing, after making reasonable inquiries; or

(b) it is impracticable or would be unreasonable to give the notice.

The notice must state:

(a) the reasons for the decision; and

(b) that the person entitled to the thing may apply within 28 days after the date of the notice for the decision to be reviewed; and

(c) how the person may apply for the review; and

(d) that the person may apply for a stay of the decision if the person applies for a review.

In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice
about a thing, regard must be had to the thing’s nature, condition and value.

(8) Any costs reasonably incurred by the State in storing or disposing of a thing forfeited under subsection (1)(c) may be recovered in a court of competent jurisdiction as a debt due to the State from that person.

(9) In this section person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

180. Return of seized things

(1) If a seized thing has not been forfeited, the person entitled to the thing may apply to the regulator for the return of the thing after the end of 6 months after it was seized.

(2) The regulator must return the thing to the applicant under subsection (1) unless the regulator has reasonable grounds to retain the thing.

(3) The regulator may impose any conditions on the return of the thing under this section that the regulator considers appropriate to eliminate or minimise any risk to work health or safety related to the thing.

(4) In this section person entitled to a thing means the person entitled to possess the thing or the owner of the thing.

181. Access to seized things

(1) Until a seized thing is forfeited or returned, the regulator must permit the following persons to inspect it and, if it is a document, to make copies of it at all reasonable times:

(a) the person from whom the thing was seized;

(b) the owner of the thing;

(c) a person authorised by a person referred to in paragraph (a) or (b).

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow inspection or copying.
Division 4 — Damage

182. Damage etc. to be minimised

In the exercise, or purported exercise, of a compliance power, an inspector must take all reasonable steps to ensure that the inspector, and any assistant to the inspector, cause as little inconvenience, detriment and damage as is practicable.

183. Inspector to give notice of damage

(1) This section applies if an inspector or an assistant to an inspector damages a thing when exercising or purporting to exercise a compliance power.

(2) The inspector must, as soon as practicable, give written notice of the damage to the person who the inspector believes on reasonable grounds, is the person in control of the thing.

(3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector’s or assistant’s control, the inspector may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

184. Compensation

Note: Section 184 is not required in WA.

Division 5 — Other matters

185. Power to require name and address

(1) An inspector may require a person to provide the person’s name and residential address if:

(a) the inspector finds the person committing an offence against this Act; or

(b) the inspector finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against this Act; or
(c) the inspector reasonably believes that the person may be able to assist in the investigation of an offence against this Act.

(2) When asking a person to provide his or her name and residential address, the inspector must:

(a) tell the person the reason for the requirement to provide his or her name and residential address; and

(b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.

(3) If the inspector reasonably believes that the name or residential address is false, the inspector may require the person to give evidence of its correctness.

(4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1) or (3).

Penalty: a fine of $10 000.

(5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

186. **Inspector may take affidavits**

An inspector is authorised to take affidavits for any purpose relating or incidental to the exercise of his or her compliance powers.

187. **Attendance of inspector at coronial inquests**

Note: Section 187 is not required in WA.

**Division 6 — Offences in relation to inspectors**

188. **Offence to hinder or obstruct inspector**

A person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.
189. **Offence to impersonate inspector**

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: a fine of $10 000.

190. **Offence to assault, threaten or intimidate inspector**

A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, an inspector or a person assisting an inspector.

Penalty:

(a) in the case of an individual, a fine of $50 000 or imprisonment for 2 years or both;

(b) in the case of a body corporate, a fine of $250 000.
Part 10 — Enforcement measures

Division 1 — Improvement notices

191. Issue of improvement notices

(1) This section applies if an inspector reasonably believes that a person:
   (a) is contravening a provision of this Act; or
   (b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.

(2) The inspector may issue an improvement notice requiring the person to:
   (a) remedy the contravention; or
   (b) prevent a likely contravention from occurring; or
   (c) remedy the things or operations causing the contravention or likely contravention.

192. Contents of improvement notices

(1) An improvement notice must state:
   (a) that the inspector believes the person:
      (i) is contravening a provision of this Act; or
      (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated; and
   (b) the provision the inspector believes is being, or has been, contravened; and
   (c) briefly, how the provision is being, or has been, contravened; and
   (d) the day by which the person is required to remedy the contravention or likely contravention.

(2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.

(3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.
193. **Compliance with improvement notice**

The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.

Penalty:

(a) in the case of an individual, a fine of $50,000;

(b) in the case of a body corporate, a fine of $250,000.

194. **Extension of time for compliance with improvement notices**

(1) This section applies if a person has been issued with an improvement notice.

(2) An inspector may, by written notice given to the person, extend the compliance period for the improvement notice.

(3) However, the inspector may extend the compliance period only if the period has not ended.

(4) In this section:

*compliance period* means the period stated in the improvement notice under section 192, and includes that period as extended under this section.

**Division 2 — Prohibition notices**

195. **Power to issue prohibition notice**

(1) This section applies if an inspector reasonably believes that:

(a) an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; or

(b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

(2) The inspector may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied.

(3) The direction may be given orally, but must be confirmed by written notice (a *prohibition notice*) issued to the person as soon as practicable.
(4) An inspector who is at the workplace when the inspector issues a prohibition notice prohibiting the carrying on of an activity, or the carrying on of an activity in a specified way, other than in respect of an activity as defined in subsection (5), must remain at the workplace until the activity or the carrying on of the activity in the specified way has ceased, unless it is not practicable to do so.

(5) The application of this section extends to accommodation premises that are being or may be occupied by a worker as mentioned in section 19(4) and for that purpose, in this Division and, insofar as they apply to a prohibition notice, in Divisions 4 and 6:

(a) **workplace** includes those premises; and

(b) references to a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard are to be read as applying only to a worker; and

(c) **activity** includes the occupation of those premises.

### 196. Contents of prohibition notice

(1) A prohibition notice must state:

(a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and

(b) briefly, the activity that the inspector believes involves or will involve the risk and the matters that give or will give rise to the risk; and

(c) the provision of this Act that the inspector believes is being, or is likely to be, contravened by that activity.

(2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in subsection (1)(c).

(3) Without limiting section 195, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying 1 or more of the following:

(a) a workplace, or part of a workplace, at which the activity is not to be carried out;

(b) anything that is not to be used in connection with the activity;
197. Compliance with prohibition notice

The person to whom a direction is given under section 195(2) or a prohibition notice is issued must comply with the direction or notice.

Penalty:

(a) in the case of an individual, a fine of $100 000;

(b) in the case of a body corporate, a fine of $500 000.

Division 3 — Non-disturbance notices

198. Issue of non-disturbance notice

An inspector may issue a non-disturbance notice to the person with management or control of a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers.

199. Contents of non-disturbance notice

(1) A non-disturbance notice may require the person to:

(a) preserve the site at which a notifiable incident has occurred for a specified period; or

(b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.

(2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out:

(a) the obligations of the person to whom the notice is issued; and

(b) the measures to be taken to preserve a site or prevent disturbance of a site; and

(c) the penalty for contravening the notice.

(3) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the site.

(4) A non-disturbance notice does not prevent any action:

(a) to assist an injured person; or

(b) to remove a deceased person; or

(c) any procedure that is not to be followed in connection with the activity.
(c) that is essential to make the site safe or to prevent a further incident; or
(d) that is associated with a police investigation; or
(e) for which an inspector has given permission.

200. Compliance with non-disturbance notice
(1) A person must not, without reasonable excuse, refuse or fail to comply with a non-disturbance notice issued to the person.
Penalty:
(a) in the case of an individual, a fine of $50 000;
(b) in the case of a body corporate, a fine of $250 000.
(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

201. Issue of subsequent notices
If an inspector considers it necessary to do so, he or she may issue 1 or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with section 199.

Division 4 — General requirements applying to notices

202. Application of Division
In this Division:
notice means improvement notice, prohibition notice or non-disturbance notice.

203. Notice to be in writing
A notice must be in writing.

204. Directions in notices
A direction included in an improvement notice or prohibition notice may:
(a) refer to a code of practice; and
(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

205. Recommendations in notice
(1) An improvement notice or prohibition notice may include recommendations.
(2) It is not an offence to fail to comply with recommendations in a notice.

206. Changes to notice by inspector

(1) An inspector may make minor changes to a notice:
   (a) for clarification; or
   (b) to correct errors or references; or
   (c) to reflect changes of address or other circumstances.

(2) An inspector may also, in accordance with section 194, extend the compliance period for an improvement notice.

207. Regulator may vary or cancel notice

Except as provided in section 206, a notice issued by an inspector may only be varied or cancelled by the regulator.

208. Formal irregularities or defects in notice

A notice is not invalid only because of:
   (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
   (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person in accordance with section 209.

209. Issue and giving of notice

(1) A notice may be issued or given to a person:
   (a) by delivering it personally to the person or sending it by post or facsimile or electronic transmission to the person’s usual or last known place of residence or business; or
   (b) by leaving it for the person at the person’s usual or last known place of residence or business with a person who appears to be over 16 years and who appears to reside or work there; or
   (c) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be the person with management or control of the workplace; or
   (d) in a prescribed manner.
(2) The regulations may prescribe:
   (a) the manner of issuing a notice; and
   (b) the steps a person to whom a notice is issued must take
to bring it to the attention of other persons.

210. Display of notice

(1) A person to whom a notice is issued must, as soon as possible,
display a copy of the notice in a prominent place at or near the
workplace, or part of the workplace, at which work is being
carried out that is affected by the notice.
   Penalty:
      (a) in the case of an individual, a fine of $5 000;
      (b) in the case of a body corporate, a fine of $25 000.

(2) A person must not intentionally remove, destroy, damage or
deface a notice displayed under subsection (1) while the notice
is in force.
   Penalty:
      (a) in the case of an individual, a fine of $5 000;
      (b) in the case of a body corporate, a fine of $25 000.

Division 5 — Remedial action

Note: Part 10 Division 5 (sections 211, 212 and 213) is not required in WA.

Division 6 — Injunctions

214. Application of Division

In this Division:
notice means improvement notice, prohibition notice or
non-disturbance notice.

215. Injunctions for noncompliance with notices

(1) The regulator may apply to a court for an injunction:
      (a) compelling a person to comply with a notice; or
      (b) restraining a person from contravening a notice.

(2) The regulator may do so:
      (a) whether or not proceedings have been brought for an
offence against this Act in connection with any matter in
relation to which the notice was issued; and
      (b) whether any period for compliance with the notice has
expired.
Part 11 — Enforceable undertakings

Note: Part 11 (sections 216 to 222) is not required in WA.
Part 12 — Review of decisions

Division 1 — Reviewable decisions

223. Which decisions are reviewable

(1) The following table sets out:

(a) decisions made under this Act that are reviewable in accordance with this Part (reviewable decisions); and

(b) who is eligible to apply for review of a reviewable decision (the eligible person).

<table>
<thead>
<tr>
<th>Item</th>
<th>Provision under which reviewable decision is made</th>
<th>Eligible person in relation to reviewable decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Section 54(2) (decision following failure to commence negotiations)</td>
<td>(1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b).</td>
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<td></td>
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<td>(2) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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<td></td>
<td>(3) A health and safety representative who represents a worker whose interests are affected by the decision.</td>
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<td>2</td>
<td>Section 72(6) (decision in relation to training of health and safety representative)</td>
<td>(1) A person conducting a business or undertaking whose interests are affected by the decision.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) A health and safety representative whose interests are affected by the decision.</td>
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<tr>
<td>3</td>
<td>Section 76(6) (decision relating to health and safety committee)</td>
<td>(1) A worker whose interests are affected by the decision.</td>
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<td></td>
<td></td>
<td>(2) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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<td>representative who represents a worker whose interests are affected by the decision.</td>
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<td>4</td>
<td>Section 102 (decision on review of provisional improvement notice)</td>
<td>(1) The person to whom the provisional improvement notice was issued.</td>
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<td>(5) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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<td>Note: Subitems (2), (3) and (4) are not required in WA.</td>
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<tr>
<td>5</td>
<td>Section 179 (forfeiture of thing)</td>
<td>The person entitled to the thing.</td>
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<tr>
<td>6</td>
<td>Section 180 (return of seized things)</td>
<td>The person entitled to the thing.</td>
</tr>
<tr>
<td>7</td>
<td>Section 191 (issue of improvement notice)</td>
<td>(1) The person to whom the notice was issued.</td>
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<td></td>
<td>(2) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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<td>Note: Subitems (3) and (4) are not required in WA.</td>
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<tr>
<td>8</td>
<td>Section 194 (extension of time for compliance with improvement notice)</td>
<td>(1) The person to whom the notice was issued.</td>
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<td></td>
<td>(2) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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### Item 9: Section 195 (issue of prohibition notice)

<table>
<thead>
<tr>
<th>Provision under which reviewable decision is made</th>
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</thead>
<tbody>
<tr>
<td>Section 195 (issue of prohibition notice)</td>
<td>(1) The person to whom the notice was issued.</td>
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<tr>
<td></td>
<td>(2) The person with management or control of the workplace, plant or substance.</td>
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<td></td>
<td>(3) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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<td>(4)</td>
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<td>Note: Subitems (3) and (4) are not required in WA.</td>
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</table>

### Item 10: Section 198 (issue of a non-disturbance notice)

<table>
<thead>
<tr>
<th>Provision under which reviewable decision is made</th>
<th>Eligible person in relation to reviewable decision</th>
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</thead>
<tbody>
<tr>
<td>Section 198 (issue of a non-disturbance notice)</td>
<td>(1) The person to whom the notice was issued.</td>
</tr>
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<td></td>
<td>(2) The person with management or control of the workplace.</td>
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<td></td>
<td>(3) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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<td>(4)</td>
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<td>Note: Subitems (4) and (5) are not required in WA.</td>
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### Item 11: Section 201 (issue of subsequent notice)

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<tr>
<th>Provision under which reviewable decision is made</th>
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<tbody>
<tr>
<td>Section 201 (issue of subsequent notice)</td>
<td>(1) The person to whom the notice was issued.</td>
</tr>
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<td>(2) The person with management or control of the workplace.</td>
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<td></td>
<td>(3) A person conducting a business or undertaking whose interests are affected by the decision.</td>
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### Part 12

**Division 1**

**Review of decisions**

s. 223

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<table>
<thead>
<tr>
<th>Item</th>
<th>Provision under which reviewable decision is made</th>
<th>Eligible person in relation to reviewable decision</th>
</tr>
</thead>
</table>
| 12   | Section 207 (decision of regulator to vary or cancel notice) | (1) The person to whom the notice was issued.  
(2) The person with management or control of the workplace.  
(3) A person conducting a business or undertaking whose interests are affected by the decision.  
(4)  
(5)  
(6) Note: Subitems (4), (5) and (6) are not required in WA. |
| 13   | A prescribed provision of the regulations | A person prescribed by the regulations as eligible to apply for review of the reviewable decision. |

(2) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to:

(a) making, suspending, revoking or refusing to make an order, determination or decision;

(b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission;

(c) issuing, suspending, revoking or refusing to issue an authorisation;

(d) imposing a condition;

(e) making a declaration, demand or requirement;

(f) retaining, or refusing to deliver up, a thing; or

(g) doing or refusing to do any other act or thing.
(3) In this section:

person entitled to a thing means the person from whom it was
seized unless that person is not entitled to possess it, in which
case it means the owner of the thing.

Note: Decisions under the regulations that will be reviewable decisions will
be set out in the regulations.

Division 2 — Internal review

224. Application for internal review

(1) An eligible person in relation to a reviewable decision, other
than a decision made by the regulator or a delegate of the
regulator, may apply to the regulator for review (an internal
review) of the decision within:

(a) the prescribed time after the day on which the decision
first came to the eligible person’s notice; or

(b) such longer period as the regulator allows.

(2) The application must be made in the manner and form required
by the regulator.

(3) For the purposes of this section, the prescribed time is:

(a) in the case of a decision to issue an improvement notice,
the period specified in the notice for compliance with
the notice; and

(b) in any other case, 14 days.

225. Internal reviewer

(1) The regulator may appoint a person or body to review decisions
on applications under this Division.

(2) The person who made the decision cannot be an internal
reviewer in relation to that decision.

226. Decision of internal reviewer

(1) The internal reviewer must review the reviewable decision and
make a decision as soon as is reasonably practicable after the
application for internal review is received.

(2) The decision may be:

(a) to confirm or vary the reviewable decision; or
(b) to set aside the reviewable decision and substitute
another decision that the internal reviewer considers
appropriate.

(3)

Note: Subsection (3) is not required in WA.

(4) The applicant must provide further information within the time
(being not less than 7 days) specified by the internal reviewer in
a request for information.

(5) If the applicant does not provide the further information within
the required time, the decision is taken to have been confirmed
by the internal reviewer at the end of that time.

(6)

Note: Subsection (6) is not required in WA.

227. Decision on internal review

As soon as practicable after reviewing the decision, the internal
reviewer must give the applicant in writing:
(a) the decision on the internal review; and
(b) the reasons for the decision.

228. Stays of reviewable decisions on internal review

(1) An application for an internal review of a reviewable decision
(other than a decision to issue a prohibition notice or a
non-disturbance notice) stays the operation of the decision.

(2) If an application is made for an internal review of a decision to
issue a prohibition notice or a non-disturbance notice, the
reviewer may stay the operation of the decision.

(3) The reviewer may make the decision to stay the operation of a
decision on the reviewer’s own initiative or on the application
of the applicant for review.

(4) The reviewer must make a decision on an application for a stay
as soon as is reasonably practicable within the period of
3 working days after the reviewer receives the application.

(5) If the reviewer has not made a decision to stay a decision within
the time set out in subsection (4), the reviewer is taken to have
made a decision not to grant a stay.
(6) A stay of the operation of a decision pending a decision on an internal review continues until whichever of the following is the earlier:

(a) the end of the prescribed period for applying for a review (an external review) of the decision made on the internal review;

(b) an application for external review is made.

Division 3 — External review

229. Application for external review

(1) An eligible person may apply to the Tribunal for review of:

(a) a reviewable decision, other than under section 179 or 180; or

(b) a decision made, or taken to have been made, on an internal review.

(2A) An eligible person may apply to a court for review of a reviewable decision under section 179 or 180 made by the regulator.

(2) The application must be made:

(a) if the decision was to forfeit a thing (including a document), within 28 days after the day on which the decision first came to the applicant’s notice; or

(b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant’s notice; or

(c) if the decision maker is required by the Tribunal or court to give the eligible person a statement of reasons, within 14 days after the day on which the statement is given to the eligible person.
Part 13 — Legal proceedings

Division 1 — General matters

230. Prosecutions

(1) Subject to subsection (4), proceedings for an offence against this Act may only be brought by:

(a) the regulator; or

(b) an inspector, or any other person, with the written authorisation of the regulator (either generally or in a particular case).

(2) An authorisation under subsection (1)(b) is sufficient authority to continue proceedings in any case where the court amends the charge, warrant or summons.

(3) The regulator must issue, and publish on the regulator’s website, general guidelines for or in relation to:

(a) the prosecution of offences under this Act.

(b) Note: Paragraph (b) is not required in WA.

(4) Subsection (1) does not limit the functions of the Director of Public Prosecutions under the Director of Public Prosecutions Act 1991 section 11.

(5) Subject to the Children’s Court of Western Australia Act 1988 section 19(1), proceedings for an offence against this Act must be heard and determined by a health and safety magistrate.

231. Procedure if prosecution is not brought

Note: Section 231 is not required in WA.

232. Limitation period for prosecutions

(1) Proceedings for an offence against this Act may be brought within the latest of the following periods to occur:

(a) within 3 years after the offence was committed;

(b) within 1 year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act.

(c) Note: Paragraph (c) is not required in WA.
(2) A proceeding for a Category 1 offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

233. Multiple contraventions of health and safety duty provision

(1) Two or more contraventions of a health and safety duty provision by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.

(2) This section does not authorise contraventions of 2 or more health and safety duty provisions to be charged as a single offence.

(3) A single penalty only may be imposed in relation to 2 or more contraventions of a health and safety duty provision that are charged as a single offence.

(4) In this section:

health and safety duty provision means a provision of Division 2, 3 or 4 of Part 2.

Division 2 — Sentencing for offences

234. Application of this Division

This Division applies if a court convicts a person, or finds a person guilty (the offender), of an offence against this Act.

235. Orders generally

(1) One or more orders may be made under this Division against the offender.

(2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

236. Adverse publicity orders

(1) A court may make an order (an adverse publicity order) in relation to the offender requiring the offender:

(a) to take either or both of the following actions within the period specified in the order:

(i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
(ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and

(b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.

(2) A court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

(3) If the offender fails to give evidence to the regulator in accordance with subsection (1)(b), the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order.

(4) However, if:

(a) the offender gives evidence to the regulator in accordance with subsection (1)(b); and

(b) despite that evidence, the regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order,

the regulator may apply to a court for an order authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions.

(5) If the regulator or a person authorised in writing by the regulator takes an action or actions in accordance with subsection (3) or an order under subsection (4), the regulator is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in relation to the reasonable expenses of taking the action or actions as a debt due to the regulator.

237. Orders for restoration

(1) The court may order the offender to take such steps as are specified in the order, within the period so specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender’s power to remedy.

(2) The period in which an order under this section must be complied with may be extended, or further extended, by order
of the court but only if an application for the extension is made before the end of that period.

238. Work health and safety project orders

(1) The court may make an order requiring the offender to undertake a specified project for the general improvement of work health and safety within the period specified in the order.

(2) The order may specify conditions that must be complied with in undertaking the specified project.

239. Release on the giving of a court-ordered WHS undertaking

(1) The court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions (a court-ordered WHS undertaking).

(2) A court-ordered WHS undertaking must specify the following conditions:
   
   (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;
   
   (b) that the offender does not commit, during the period of the adjournment, any offence against this Act;
   
   (c) that the offender observes any special conditions imposed by the court.

(3) An offender who has given a court-ordered WHS undertaking under this section may be called on to appear before the court by order of the court.

(4) An order under subsection (3) must be served on the offender not less than 4 days before the time specified in it for the appearance.

(5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered WHS undertaking, it must discharge the offender without any further hearing of the proceeding.
240. Injunctions

If a court finds a person guilty of an offence against this Act, the court may issue an injunction requiring the person to cease contravening this Act.

Note: An injunction may also be obtained under section 215 for noncompliance with a non-disturbance notice, improvement notice or prohibition notice.

241. Training orders

The court may make an order requiring the person to undertake or arrange for 1 or more workers to undertake a specified course of training.

242. Offence to fail to comply with order

(1) A person must not, without reasonable excuse, fail to comply with an order under this Division.

Penalty:

(a) in the case of an individual, a fine of $50,000;
(b) in the case of a body corporate, a fine of $250,000.

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

(3) This section does not apply to an order or injunction under section 239 or 240.

Division 3 — Infringement notices

Note: Part 13 Division 3 (section 243) is not required in WA.

Division 4 — Offences by bodies corporate

244. Imputing conduct to bodies corporate

(1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

(2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.
(3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

Division 5 — The Crown

245. Offences and the Crown

(1) If the Crown is guilty of an offence against this Act, the penalty to be imposed on the Crown is the penalty applicable to a body corporate.

(2) For the purposes of this Act, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.

(3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Crown for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.

(4) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the Crown for that offence if the person referred to in subsection (2) made that mistake of fact.

246. WHS civil penalty provisions and the Crown

Note: Section 246 is not required in WA.

247. Officers

(1) A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Crown is taken to be an officer of the Crown for the purposes of this Act.

(2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.

248. Responsible agency for the Crown

(1) A provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice or infringement
notice to be given to or served on the Crown under this Act may be given to or served on the responsible agency.

(2) If an infringement notice is to be served on the Crown for an offence against this Act, the responsible agency may be specified in the infringement notice.

(3) If proceedings are brought against the Crown for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceedings.

(4) The responsible agency in relation to an offence or a contravention of this Act is entitled to act in proceedings against the Crown for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused or defendant in the proceedings are conferred or imposed on the responsible agency.

(5) The person prosecuting the offence or bringing the proceedings may change the responsible agency during the proceedings with the court’s leave.

(6) In this section, the responsible agency:

(a) in relation to a notice referred to in subsection (1) is:

(i) in the case of a provisional improvement notice, improvement notice or infringement notice, the agency of the Crown the acts or omissions of which are alleged to contravene this Act;

(ii) in the case of a prohibition notice, the agency of the Crown which has control over the activity referred to in section 195(1)(a) or (b);

(iii) in the case of a non-disturbance notice, the agency of the Crown with the management and control of the workplace;

(iv) Note: Subparagraph (iv) is not required in WA.

and

(b) in relation to an offence or proceedings for a contravention of this Act, is the agency of the Crown:

(i) the acts or omissions of which are alleged to constitute the offence or contravention; or
(ii) if that agency has ceased to exist, that is the successor of that agency; or
(iii) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

Division 6 — Public authorities

249. Application to public authorities that are bodies corporate

This Division applies only to public authorities that are bodies corporate.

250. Proceedings against public authorities

(1) Proceedings may be brought under this Act against a public authority in its own name.

(2) Nothing in this Division affects any privileges that a public authority may have under the Crown.

251. Imputing conduct to public authorities

(1) For the purposes of this Act, any conduct engaged in on behalf of a public authority by an employee, agent or officer of the public authority acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the public authority.

(2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the public authority for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.

(3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the public authority for that offence if the person referred to in subsection (1) made that mistake of fact.

252. Officer of public authority

A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority is taken to be an officer of the public authority for the purposes of this Act.
253. **Proceedings against successors to public authorities**

(1) Proceedings for an offence against this Act that were instituted against a public authority before its dissolution, or that could have been instituted against a public authority if not for its dissolution, may be continued or instituted against its successor if the successor is a public authority.

(2) An infringement notice served on a public authority for an offence against this Act is taken to be an infringement notice served on its successor if the successor is a public authority.

(3) Similarly, any penalty paid by a public authority in relation to an infringement notice is taken to be a penalty paid by its successor if the successor is a public authority.

**Division 7 — WHS civil penalty provisions**

Note: Part 13 Division 7 (sections 254 to 266) is not required in WA.

**Division 8 — Civil liability not affected by this Act**

267. **Civil liability not affected by this Act**

Except as provided in Part 6, nothing in this Act is to be construed as:

(a) conferring a right of action in civil proceedings in relation to a contravention of a provision of this Act; or

(b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or

(c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be brought, in relation to breaches of duties or obligations imposed by the regulations.
Part 14 — General

Division 1 — General provisions

268. Offence to give false or misleading information

(1) A person must not give information in complying or purportedly complying with this Act that the person knows:
   (a) to be false or misleading in a material particular; or
   (b) omits any matter or thing without which the information is misleading.

Penalty:
   (a) in the case of an individual, a fine of $10 000;
   (b) in the case of a body corporate, a fine of $50 000.

(2) A person must not produce a document in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular without:
   (a) indicating the respect in which it is false or misleading and, if practicable, providing correct information; or
   (b) accompanying the document with a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
      (i) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
      (ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Penalty:
   (a) in the case of an individual, a fine of $10 000;
   (b) in the case of a body corporate, a fine of $50 000.

(3) Subsection (2) places an evidential burden on the accused to show that the accused had indicated the extent to which the document was false or misleading or that the accompanying document sufficiently explained the extent to which the document was false or misleading.
269. **Act does not affect legal professional privilege**

Nothing in this Act requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

270. **Immunity from liability**

(1) A person who is or has been an inspector, or other person engaged in the administration of this Act, incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act.

(2) A civil liability that would, but for subsection (1), attach to a person, attaches instead to the State.

271. **Confidentiality of information**

(1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act.

(2) The person must not do any of the following:

   (a) disclose to anyone else:

      (i) the information; or

      (ii) the contents of or information contained in the document;

   (b) give access to the document to anyone else;

   (c) use the information or document for any purpose.

Penalty:

   (a) in the case of an individual, a fine of $10 000;

   (b) in the case of a body corporate, a fine of $50 000.

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document:

   (a) about a person, with the person’s consent; or

   (b) that is necessary for the exercise of a power or function under this Act; or
(c) that is made or given by the regulator or a person authorised by the regulator if the regulator reasonably believes the disclosure, access or use:

(i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or

(ii) is necessary or convenient for the administration or enforcement of another Act of this State prescribed by the regulations, a Commonwealth law prescribed by the regulations or a law of another State prescribed by the regulations; or

(iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or

(iv) is necessary for the recognition of authorisations under a corresponding WHS law; or

(v) is required for the exercise of a power or function under a corresponding WHS law; or

(d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or

(e) that is required or authorised under a law; or

(f) to a Minister.

(4) A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to that other person unless:

(a) the disclosure is made with the consent of the complainant; or

(b) the disclosure is required under a law.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

272. **No contracting out**

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act or to transfer to another person any duty owed under this Act is void.
273. **Person not to levy workers**

A person conducting a business or undertaking must not impose a levy or charge on a worker, or permit a levy or charge to be imposed on a worker, for anything done, or provided, in relation to work health and safety.

**Penalty:**

(a) in the case of an individual, a fine of $5,000;

(b) in the case of a body corporate, a fine of $25,000.

**Division 2 — Codes of practice**

274. **Approved codes of practice**

(1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.

(2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if that code of practice, variation or revocation was developed by a process that involved consultation between:

(a) unions; and

(b) employer organisations.

(3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether:

(a) with or without modification; or

(b) as in force at a particular time or from time to time.

(4) An approval of a code of practice, or a variation or revocation of an approved code of practice, takes effect when notice of it is published in the *Government Gazette* or on such later date as is specified in the approval, variation or revocation.

(5) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister must ensure that notice of the approval, variation or revocation is published in the *Government Gazette* and a newspaper circulating generally throughout the State.

(6) The regulator must ensure that a copy of:

(a) each code of practice that is currently approved; and
275. **Use of codes of practice in proceedings**

(1) This section applies in a proceeding for an offence against this Act.

(2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.

(3) The court may:

   (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and

   (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Note: See section 18 for the meaning of *reasonably practicable*.

(4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

**Division 3 — Regulation-making powers**

276. **Regulation-making powers**

(1) The Governor may make regulations in relation to:

   (a) any matter relating to work health and safety; and

   (b) any matter or thing required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed to give effect to this Act.

(2) Without limiting subsection (1), the regulations may make provision for or in relation to matters set out in Schedule 3.

(3) The regulations may:

   (a) be of general or limited application; or
(b) differ according to differences in time, place or circumstance; or

c) leave any matter or thing to be, from time to time, determined, applied or approved by the regulator, an inspector or any other prescribed person or body of persons; or

d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether:

   (i) with or without modification; or

   (ii) as in force at a particular time or as in force or remade from time to time; or

(e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed; or

(f) allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator; or

(g) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribe the circumstances and way in which fees can be refunded, waived or reduced; or

(h) prescribe a penalty for any contravention of the regulations not exceeding a fine of $6 000 for an individual or $30 000 for a body corporate.

(i)

Note: Paragraph (i) is not required in WA.

(4) Nothing in subsection (3) limits the operation of the Interpretation Act 1984 in relation to regulations under this Act.

(5) A regulation made under this Act is inoperative to the extent that it is inconsistent with a regulation made under the Industrial Relations Act 1979 relating to the Tribunal.

Division 4 — Review of Act

277. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after every
fifth anniversary of the commencement of this section and, in the course of each review, the Minister must consider and have regard to —

(a) the outcomes of the most recently completed review of legislation in other Australian jurisdictions based on the Model Work Health and Safety Bill (mentioned in section 9(3)) conducted by the Select Council on Workplace Relations; and

(b) the effectiveness of the operations of the Commission and each committee, as those terms are defined in Schedule 2 clause 1; and

(c) the need for the continuation of the Commission and each committee.

(2) The Minister must prepare a report based on each review carried out under subsection (1) and, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.
Schedule 1 — Application of Act to dangerous goods and high risk plant

Note: Schedule 1 is not required in WA.
Schedule 2 — The WorkSafe Western Australia Commissioner and Commission for Occupational Health and Safety

Division 1 — Preliminary

1. Terms used

In this Schedule —

appointed member means a member of the Commission referred to in clause 5(1)(a) or (d);
Commission means the Commission for Occupational Health and Safety established under clause 4;
Commissioner means the person appointed as the WorkSafe Western Australia Commissioner under clause 2(1);
committee means a committee established by the Commission under clause 10;
department means the department of the Public Service principally assisting the Minister in the administration of this Act.

Division 2 — WorkSafe Western Australia Commissioner

2. WorkSafe Western Australia Commissioner

(1) The Minister may appoint an employee in the department to hold the office of the WorkSafe Western Australia Commissioner.

(2) The Commissioner is responsible to the Minister for the administration of this Act and any other law relating to occupational health and safety administered by the Minister.

(3) The offices of Commissioner and chief executive officer of the department may be held by the same person.

(4) In addition to the name referred to in subclause (1), the Commissioner may use, and operate under, the name “WorkSafe WA Commissioner”.

3. Terms etc.

(1) Subject to clause 30, the Commissioner holds office for such term, not exceeding 5 years, as is specified in the instrument of appointment and on the expiration of the term is eligible for reappointment.

(2) Subject to the Salaries and Allowances Act 1975, the Commissioner is entitled to such conditions of service as are determined by the
Minister from time to time on the recommendation of the Public
Sector Commissioner.

(3) A person appointed to be Commissioner who, immediately before the
appointment was a public service officer, retains all existing and
accruing rights on appointment as Commissioner despite the
appointment.

(4) A person appointed to be Commissioner who, immediately before the
appointment was a public service officer, is entitled upon resigning
the person’s office as Commissioner or upon ceasing to be
Commissioner to be appointed to an office in the Public Service not
lower in status than the office the person occupied immediately before
appointment as Commissioner.

(5) The Commissioner must not engage in paid employment outside the
Commissioner’s duties and functions under this Act without first
obtaining the approval in writing of the Minister.

Division 3 — Commission for Occupational Health and Safety

Subdivision 1 — The Commission

4. Commission established

A body called the Commission for Occupational Health and Safety is
established.

5. Membership of Commission

(1) The Commission consists of 13 members, of whom —
(a) one must be a person appointed by the Governor as the
presiding member on the nomination of the Minister; and
(b) one must be the Commissioner; and
(c) 2 must be public service officers of whom —
(i) one must be nominated by the Minister; and
(ii) the other must be an officer of the department, as
defined in the Mines Safety and Inspection Act 1994
section 4(1) or in an Act that replaces that Act,
nominated by the Minister to whom the
administration of that Act is committed;
and
(d) 9 must be appointed by the Governor, of whom —
(i) 2 must be persons nominated for appointment by the
body known as the Chamber of Commerce and
Industry of Western Australia (Inc); and
6. **Offence to use Commission’s names or similar**

   (1) A person other than the Commission must not use or operate under the name referred to in clause 4, “WorkSafe Western Australia”, or any name that is so similar that it is likely to be misunderstood as referring to the Commission.

   **Penalty:**
   
   (a) in the case of an individual, a fine of $10 000;
   
   (b) in the case of a body corporate, a fine of $50 000.

   (2) Nothing in subclause (1) —

   (a) prevents the department from using or operating under a name as referred to in subclause (1) if that designation is given to it under the Public Sector Management Act 1994 section 35; or
   
   (b) affects clause 2(4).

7. **Deputy presiding member**

   The Minister must appoint one of the members of the Commission to be deputy presiding member of the Commission.
8. Remuneration and allowances

A member of the Commission, or of a committee, must be paid such remuneration and allowances (if any) as are determined by the Minister on the recommendation of the Public Sector Commissioner.

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9. Functions

(1) The functions of the Commission are —

(a) to inquire into and report to the Minister upon any matters referred to it by the Minister; and

(b) to make recommendations to the Minister with respect to —

(i) any law or provision of a law, relating to work health and safety that is administered by the Minister and any law or provision of a law relating to work health and safety that is prescribed for the purposes of this paragraph; and

(ii) subsidiary legislation, guidelines and codes of practice proposed to be made under or for the purposes of any prescribed law;

and

(c) to examine, review and make recommendations to the Minister in relation to existing and proposed registration or licensing schemes relating to work health and safety; and

(d) to provide advice to and cooperate with Government departments, public authorities, unions, employer organisations and other interested persons in relation to work health and safety; and

(e) to formulate or recommend standards, specifications or other forms of guidance for the purpose of assisting duty holders under this Act and workers to maintain appropriate standards of work health and safety; and

(f) to promote, as widely as possible, and advise on education and training in work health and safety; and

(g) in cooperation with educational authorities or bodies to devise and approve courses in relation to work health and safety; and

(h) to approve and accredit training courses for health and safety representatives; and

(i) to recommend to the Minister the establishment of public inquiries into any matter relating to work health and safety; and
(j) to collect, publish and disseminate information on work health and safety; and

(k) to formulate reporting procedures and monitoring arrangements for identification of workplace hazards, and incidents in which injury or death is likely to occur in a work situation; and

(l) to commission and sponsor research into work health and safety; and

(m) to perform other functions that are conferred on the Commission under this Act or any other Act.

(2) The Commission may issue for public review and comment on any regulations, codes of practice or guidelines with respect to which it proposes under subclause (1)(b) to make any recommendations to the Minister.

(3) The Commission must ensure, as far as is practicable, that any information it provides is in such language and form as are appropriate for the persons to whom the information is directed.

(4) The Minister must within 60 days after receiving from the Commission a recommendation under subclause (1) reply in writing to the Commission in relation to that recommendation.

**Subdivision 3 — Committees**

10. **Committees**

(1) The Commission may from time to time establish any committee.

(2) The Commission may —

(a) determine a committee’s functions, membership and constitution; and

(b) subject to subclause (3), appoint a committee’s members and other persons as it thinks fit to be committee members; and

(c) give directions with respect to a committee’s functions and procedures.

(3) In appointing persons to be members of committees the Commission —

(a) must, as far as is practicable, appoint persons who represent duty holders under this Act, workers and persons having knowledge of or experience in work health and safety; and

(b) must have regard to the desirability of having a reasonable number of men and women, including persons of differing ethnic backgrounds and other groups with special needs.
(4) A committee must comply with a direction given to it under subclause (2)(c).

(5) At the request of the Commission, a committee must report on the performance of its functions to the Commission, in accordance with the Commission’s request.

11. Provisions relating to committees

(1) Each member of a committee must be a natural person.

(2) The Commission may remove a person from membership of a committee and may reconstitute or discharge a committee established by the Commission.

(3) A committee must ensure that an accurate record is kept and preserved of the proceedings of each meeting of the committee and of each resolution passed by the committee.

(4) Subject to this Act, a committee may determine its own procedures.

(5) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions and the Commission has approved the invitation.

Subdivision 4 — Constitution and proceedings of the Commission

12. Term of office

Subject to clause 30, an appointed member holds office for the term, not exceeding 3 years, that is specified in the member’s instrument of appointment and is eligible for reappointment.

13. Functions of deputy presiding member

(1) The deputy presiding member must perform the functions of the presiding member when the presiding member is unable to do so by reason of illness, absence or other cause, or when the office of presiding member is vacant.

(2) No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for the deputy presiding member so acting had not arisen or had ceased.

14. Deputy members

(1) The Minister may appoint an eligible person to be a deputy of an appointed member and may terminate such an appointment at any time.
(2) The provisions of clause 5 that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.

(3) A deputy of an appointed member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.

(4) Despite anything in this Act, a deputy of an appointed member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.

(5) A deputy of an appointed member, while acting as a member, has all the functions of and all the protection given to a member.

(6) No act or omission of a person acting in place of another under this section is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

15. General procedure concerning meetings

(1) The presiding member may at any time and must when so requested by the Minister or by not less than 5 members of the Commission convene a meeting of the Commission to be held at a time and place to be determined by the presiding member.

(2) The Commission must meet at least 4 times a year at intervals of not more than 3 months.

(3) The presiding member must preside at all meetings of the Commission at which the presiding member is present.

(4) If both the presiding member and deputy presiding member are absent from a meeting the members present are to appoint, by secret ballot, one of their number to preside, and that person has the powers of the presiding member under clause 16 in addition to any voting entitlements that the member otherwise has.

(5) A quorum for a meeting of the Commission is 7 members.

(6) The procedure for convening meetings of the Commission and the conduct of business at those meetings is, subject to this Act, to be as determined by the Commission.

16. Voting

(1) Subject to subclause (2), at a meeting of the Commission —

(a) only members appointed under clause 5(1)(d) are entitled to vote; and

(b) if any question requiring a vote arises the question must be decided by a majority of the votes of the members appointed
under clause 5(1)(d) if, and only if, not less than 6 of those members also constitute such majority.

(2) If —
(a) on a vote at a meeting of the Commission, a majority of the votes of members appointed under clause 5(1)(d) is constituted by 5 of those members; and
(b) on a vote at a subsequent meeting of the Commission on the same question, a majority of the votes is constituted by 5 of those members,

the presiding member may, at that subsequent meeting, cast a vote to be included in the majority vote.

(3) It is the duty of the Commission to work for the attainment of the objects of this Act by achieving a consensus, as far as this is practicable, among its members.

17. Holding meetings remotely

The presence of a person at a meeting of the Commission need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

18. Resolution without meeting

A resolution in writing signed by 7 members of the Commission, appointed under clause 5(1)(d), by letter, facsimile transmission, electronic mail or other written means has effect as if it had been passed at a meeting of the Commission.

19. Minutes

The Commission must ensure that an accurate record is kept and preserved of the proceedings at each meeting of the Commission and of each resolution passed by the Commission.

Subdivision 5 — Disclosure of interests etc.

20. Term used: member

In this Division —

member means a member of the Commission or a member of a committee, as the case may be.

21. Disclosure of interests

(1) A member who has a material personal interest in a matter being considered or about to be considered by the Commission or a committee must, as soon as possible after the relevant facts have come
to the member’s knowledge, disclose the nature of the interest at a
meeting of the Commission or the committee, as is relevant.

Penalty: a fine of $10 000.

(2) A disclosure under subclause (1) must be recorded in the minutes of
the meeting.

22. **Exclusion of interested member**

(1) A member who has a material personal interest in a matter that is
being considered by the Commission or a committee —

(a) must not vote, whether at a meeting or otherwise, on the
matter; and

(b) must not be present while the matter is being considered at a
meeting.

(2) In subclause (1)(a) or (b) a reference to a matter also refers to a
proposed resolution under clause 23 in respect of the matter, whether
relating to that member or a different member.

23. **Commission or committee may resolve that clause 22 inapplicable**

Clause 22 does not apply if the Commission or a committee has at any

time passed a resolution that —

(a) specifies the member, the interest and the matter; and

(b) states that the members voting for the resolution are satisfied
that the interest should not disqualify the member from
considering or voting on the matter.

24. **Voting where clause 22 applies**

(1) Despite clause 16, when the Commission is dealing with a matter in
relation to which a member of the Commission is disqualified under
clause 22, a question requiring a vote must be decided by a majority
of the votes of the members appointed under clause 5(1)(d) if, and
only if, not less than 5 of those members also constitute such majority.

(2) The Minister may deal with a matter to the extent that the
Commission cannot deal with it because of subclause (1).

25. **Minister may declare clauses 22 and 24 inapplicable**

(1) The Minister may by writing declare that clause 22 or 24 does not
apply in relation to a specified matter, either generally or for the
purpose of dealing with particular proposed resolutions.

(2) The Minister must, within 14 sitting days after a declaration under
subclause (1) is made, cause a copy of the declaration to be laid
before each House of Parliament.
Subdivision 6 — General

26. Duty not to make improper use of information

A member or former member of the Commission or a member or former member of a committee must not, whether within or outside the State, make improper use of information acquired by virtue of that position to gain, directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: a fine of $5 000.

27. Minutes of meetings

(1) The minutes of a meeting of the Commission must be open for inspection at its principal place of business by members of the public during normal office hours without fee, other than minutes relating to a matter determined to be confidential under subclause (3).

(2) A person may, on payment of the fee prescribed by the regulations, if any, obtain a copy of any minutes of the Commission available for inspection under subclause (1).

(3) The Commission may determine that a matter is confidential if it considers that its disclosure is likely to infringe the reasonable privacy of any person.

28. Annual report

(1) The Commission, not later than 30 September in each year, must make and submit to the Minister an annual report of its operations and the operation of this Act and any prescribed law for the preceding year ending on 30 June.

(2) The Minister must cause a copy of the Commission’s annual report submitted under subclause (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

(3) The Commission must ensure that after subclause (2) has been complied with copies of the reports referred to in that subclause are available on request for inspection at its principal place of business.

Division 4 — Matters relevant to the Commissioner and the Commission

29. Use of Government staff and facilities

(1) The Commission may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee in the department.
(2) The Commission may, by arrangement with the department, make use of any of the department’s facilities.

(3) An arrangement under subclause (1) or (2) must be made on the terms that are agreed to by the parties.

30. Vacation of office by Commissioner, appointed member

(1) The Commissioner or an appointed member may resign from office by notice in writing given to the Minister.

(2) The Commissioner or an appointed member (the person) may be removed from office by the Minister —

(a) for mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the person’s duties; or

(b) if the person is, according to the Interpretation Act 1984 section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(c) if the person is absent without leave of the Commission from 3 consecutive meetings of the Commission of which the person has had notice; or

(d) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Commission.

(3) An appointed member who is appointed under clause 5(1)(d)(i), (ii) or (iv) must be removed from office by the Minister if the person’s nomination is revoked.
Schedule 3 — Regulation making powers

[Draft Bill for public comment]

1. Duties

1.1 Matters relating to the way in which duties imposed by this Act are to be performed.

1.2 Matters relating to the regulation or prohibition of specified activities or a specified class of activities —

(a) at workplaces or a specified class of workplaces; or

(b) by a specified class of persons on whom duties or obligations are imposed by this Act, to eliminate or minimise risks to health and safety.

1.3 Imposing duties on persons in relation to any matter provided for under the regulations.

2. Incidents

Matters relating to incidents at workplaces including —

(a) regulating or requiring the taking of any action to avoid an incident at a workplace or in the course of conducting a business or undertaking; and

(b) regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the conduct of a business or undertaking.

3. Plant, substances or structures

Matters relating to plant, substances or structures, including —

(a) regulating the storage and handling of plant, substances and structures; and

(b) regulating or requiring —

(i) the examination, testing, labelling, maintenance or repair of plant and structures; or

(ii) the examination, testing, analysis or labelling of any substance.

4. Protection and welfare of workers

Matters relating to the protection and welfare of workers including —

(a) regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in specified circumstances; and

(b) regulating or requiring the provision of specified facilities for the welfare of workers at the workplace; and
5. **Hazards and risks**

Matters relating to hazards and risks including —

(a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard; and

(b) matters relating to safety cases, safety management plans and safety management systems (however described); and

(c) matters relating to measures to control risks.

6. **Records and notices**

6.1 The keeping and availability of records of health and safety representatives.

6.2 The keeping of records in relation to incidents.

6.3 The keeping of records of specified activities, matters or things to be kept by specified persons.

6.4 The giving of notice of or information about specified activities, matters or things to the regulator, an inspector or other specified person.

7. **Authorisations**

7.1 Matters relating to authorisations (including licences, registrations and permits) and qualifications, and experience for the purposes of Part 4 or the regulations including providing for —

(a) applications for the grant, issue, renewal, variation, suspension and cancellation of authorisations, including the minimum age to be eligible for an authorisation; and

(b) the evidence and information to be provided in relation to applications including the provision of statutory declarations; and

(c) exemptions; and

(d) variations of authorisations by the regulator whether on application or otherwise; and

(e) authorisation of persons as trainers and assessors; and

(f) examination of applicants for authorisations; and

(g) conditions of authorisations; and

(h) fees for applications for the grant, issue, renewal and variation of authorisations.
7.2 The recognition of authorisations under corresponding WHS laws and exceptions to recognition.

7.3 The sharing of information with corresponding regulators relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations.

8. **Work groups**

Matters relating to work groups and variation of work groups and agreements or variations of agreements relating to the determination of work groups.

9. **Health and safety committees and health and safety representatives**

Matters relating to health and safety committees and health and safety representatives.

10. **Issue resolution**

Matters relating to issue resolution including —

   (a) the minimum requirements for an agreed procedure for resolving an issue; and
   
   (b) the requirements for a default issue resolution procedure where there is no agreed procedure.

11. **WHS entry permits**

Note: Item 11 is not required in WA.

12. **Identity cards**

Matters relating to identity cards.

13. **Forfeiture**

Matters relating to —

   (a) costs of forfeiture and disposal of forfeited things; and
   
   (b) disposal of seized things and forfeited things.

14. **Review of decisions**

Matters relating to the review of decisions under the regulations including —

   (a) prescribing decisions as reviewable decisions for the purposes of Part 12 or for the purposes of the regulations; and
   
   (b) prescribing procedures for internal and external review of decisions under the regulations, subject to section 276(5); and
   
   (c) conferring jurisdiction on the Tribunal to conduct reviews of decisions under the regulations.
Schedule 4 — Work Health and Safety Tribunal

[Draft Bill for public comment]

1. Terms used

In this Schedule —

Commission and Chief Commissioner have the meanings given to those terms in the Industrial Relations Act 1979 section 7(1);

matter means an application made under section 229(1) for review of a decision.

2. Industrial Relations Commission to be called Work Health and Safety Tribunal when exercising jurisdiction under this Act

(1) By this subclause the Commission has jurisdiction to hear and determine matters.

(2) When sitting in exercise of the jurisdiction conferred by subclause (1) the Commission is to be known as the Work Health and Safety Tribunal (the Tribunal).

(3) A determination of the Tribunal on a matter has effect according to its substance and an order containing the determination is an instrument to which the Industrial Relations Act 1979 section 83 applies.

3. Jurisdiction to be exercised by commissioner with requisite qualifications

(1) The jurisdiction conferred by clause 2 in respect of any matter must be exercised —

(a) by the commissioner designated under the Industrial Relations Act 1979 section 16(2A) to exercise the jurisdiction; or

(b) if that commissioner is unable to act by reason of sickness, absence or other cause —

(i) by another commissioner; or

(ii) an acting commissioner appointed under the Industrial Relations Act 1979 section 17, to whom the Chief Commissioner may allocate the matter under section 16 of that Act.

(2) In allocating a matter for the purposes of subclause (1)(b) the Chief Commissioner must have regard to the desirability of the commissioner concerned having relevant knowledge in the field of work health and safety.

(3) A commissioner to whom a matter has been allocated under subclause (1)(b) may continue and complete the hearing and
(4) A person who is a commissioner may, even though the person’s designation has ceased to have effect under the *Industrial Relations Act 1979* section 16(2B), continue and complete the hearing and determination of part heard proceedings after another commissioner has been designated under section 16(2A) of that Act.

### 4. Tribunal’s review powers

(1) A person who applies under section 229(1) for a review of a decision may apply for a stay of the operation of the decision and the Tribunal may, on the conditions that the Tribunal determines, order that the operation of the decision be stayed wholly or in part pending the determination of the review.

(2) In determining an application made under section 229(1) for review of a decision the Tribunal may —

(a) confirm or vary the decision; or

(b) set aside the decision and substitute another decision that the Tribunal considers appropriate.

### 5. Practice, procedure and appeals

(1) The provisions of the *Industrial Relations Act 1979* sections 22B, 26(1), (2) and (3), 27, 28, 31(1), (2), (3) and (5), 33, 34(1), (3) and (4), 36 and 49 that apply to and in relation to the exercise of the jurisdiction of the Commission constituted by a commissioner apply to the exercise of the jurisdiction conferred by clause 2 —

(a) with such modifications as are prescribed under section 113 of that Act; and

(b) with such other modifications as may be necessary or appropriate.

(2) For the purposes of subclause (1), the *Industrial Relations Act 1979* section 31(1) applies as if paragraph (c) were deleted and the following paragraph were inserted:

(c) by a legal practitioner.

### 6. Hearing certain claims and matters together

(1) Subclauses (2) and (3) apply if —

(a) under the *Industrial Relations Act 1979*, an employee has referred to the Commission a claim that the employee has been harshly, oppressively or unfairly dismissed from employment; and
(b) a matter —

   (i) involving the same parties; and

   (ii) arising out of the same circumstances,

has been referred for determination under the jurisdiction conferred by clause 2.

(2) An employee referred to in subclause (1) may in writing request that a claim referred to in subclause (1)(a) be heard and determined by the commissioner who is hearing and determining the matter referred to in subclause (1)(b).

(3) If such a request is made, the Chief Commissioner, in exercising the powers conferred by the Industrial Relations Act 1979 section 16, must allocate the hearing and determination of the claim and the matter accordingly.

(4) If —

   (a) an employee has referred to the Commission a claim of the kind described in the Industrial Relations Act 1979 section 29(1)(b)(ii); and

   (b) the claim involves the same employer and arises out of the same circumstances as a matter that has been referred for determination under the jurisdiction conferred by clause 2, nothing in this section prevents the Chief Commissioner exercising the powers conferred by section 16 of that Act so that the claim is heard and determined by the commissioner who is hearing and determining the matter referred to in paragraph (b).
1. **Health and safety magistrates**

   Every magistrate holds office as a health and safety magistrate by virtue of this clause and ceases to hold that office upon ceasing to hold office as a magistrate.

2. **Jurisdiction of health and safety magistrate**

   (1) A health and safety magistrate has jurisdiction to hear and determine under the *Criminal Procedure Act 2004* proceedings brought under section 230(1), subject to the *Children’s Court of Western Australia Act 1988* section 19(1).

   (2) When exercising jurisdiction under subclause (1) a health and safety magistrate constitutes a court of summary jurisdiction.

   (3) The *Magistrates Court Act 2004* sections 15, 16, 35 and 36 and Part 3 Division 2 apply to and in relation to a health and safety magistrate in the same way as they apply to and in relation to the Magistrates Court and its officers.

3. **Administrative arrangements**

   The Chief Magistrate of the Magistrates Court must make such administrative arrangements as are necessary to enable a health and safety magistrate to carry out functions under this Act.

4. **Review of decisions under sections 179 and 180**

   (1) In this clause —

   *decision* means a decision under section 179 or 180;

   *review* means a review under section 229(2A) of a decision.

   (2) An application for a review of a decision must be made in accordance with the rules of court.

   (3) A person entitled to a thing under section 179 may apply, in accordance with the rules of court, for a stay of the operation of a decision under that section to forfeit the thing if the person applies for review of the decision and the court may, on the conditions that the court determines, order that the operation of the decision be stayed wholly or in part pending the determination of the review.

   (4) On a review of a decision the court may —

   (a) confirm or vary the decision; or

   (b) set aside the decision and substitute another decision that the court considers appropriate.
Schedule 6 — Transfer of administration of laws

1. Governor may transfer administration of certain laws to Minister

   (1) In this clause —

   department means the department of the Public Service principally assisting the Minister in the administration of this Act.

   (2) For the purposes of facilitating the coordination of the administration of laws relating to work health and safety, where the Governor is of the opinion that —

   (a) any law or a provision of a law relates to work health and safety and that law or that provision is administered by a Minister other than the Minister charged with the administration of this Act the Governor may by order transfer the administration of that law or that provision to the Minister; and

   (b) any law or provision of a law not relating to work health and safety that is administered by the Minister refers to an officer of the department the Governor may order that the reference must be read and construed as a reference to an officer specified in the order,

and an order has effect accordingly to its tenor.

   (3) An order made under subclause (2) may be amended or revoked by the Governor.

   (4) An order made under subclause (2) or (3) must be published in the Government Gazette and laid before each House of Parliament within 14 sitting days of the House.

   (5) An order under this clause may provide for the transfer of any function imposed by the transferred law from the officer or authorised person specified in that law to an officer of the department who has the relevant qualifications and whose office or designation is specified in the order and any duty or power conferred by or under the transferred law may be carried out or exercised by the officer so specified and any direction or order given by the officer so specified under or for the purposes of the transferred law has effect accordingly.

   (6) A transferred law must be taken to be a prescribed law for the purposes of Schedule 2 clause 9(1)(b)(ii).
Schedule 7 — Repeals, consequential amendments to other Acts

Division 1 — Repeal of occupational safety and health legislation

1. Occupational Safety and Health Act 1984 and Occupational Safety and Health Regulations 1996 repealed

(1) The Occupational Safety and Health Act 1984 is repealed.

(2) The Occupational Safety and Health Regulations 1996 are repealed.

Division 2 — Constitution Acts Amendment Act 1899 amended

2. Act amended

This Division amends the Constitution Acts Amendment Act 1899.

3. Schedule V amended

(1) In Schedule V Part 3 delete the item relating to the Mines Occupational Safety and Health Advisory Board.

(2) In Schedule V Part 3 insert in alphabetical order:

The Mining Industry Advisory Committee continued under the Mines Safety and Inspection Act 1994.

Division 3 — Dangerous Goods Safety Act 2004 amended

4. Act amended

This Division amends the Dangerous Goods Safety Act 2004.

5. Section 25 amended

After section 25(3) insert:

(4) The Chief Officer may share information with a regulator as defined in the Work Health and Safety Act 2014 section 4 —

(a) relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations under that Act; or

(b) that would otherwise achieve the object of that Act.
6. **Section 69A inserted**

After section 68 insert:

69A. **Confidentiality of information**

(1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act.

(2) The person must not do any of the following —

(a) disclose to anyone else —

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else;

(c) use the information or document for any purpose.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document —

(a) about a person, with the person’s consent; or

(b) that is necessary for the exercise of a power or function under this Act; or

(c) that is made or given by the Chief Officer or a person authorised by the Chief Officer if the Chief Officer reasonably believes the disclosure, access or use —

(i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or

(ii) is necessary for the administration or enforcement of the *Work Health and Safety Act 2014* or another Act prescribed by the regulations; or
(iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety;

or

(d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or

(e) that is required or authorised under a law.

7. **Schedule 1 amended**

In Schedule 1 after clause 10(6) insert:

(7A) The sharing of information with a regulator as defined in the Work Health and Safety Act 2014 section 4 relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations under that Act.

**Division 4 — Fair Trading Act 2010 amended**

8. **Act amended**

This Division amends the Fair Trading Act 2010.

9. **Schedule 1 amended**

(1) In Schedule 1 delete:

*Occupational Safety and Health Act 1984*

*Veterinary Chemical Control and Animal Feeding Stuffs Act 1976.*

(2) In Schedule 1 insert in alphabetical order:

*Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*

*Work Health and Safety Act 2014*

**Division 5 — Health Act 1911 amended**

10. **Act amended**

This Division amends the Health Act 1911.
11. Section 246B amended

In section 246B(2)(f) delete “within the meaning of the Occupational Safety and Health Act 1984,” and insert:

of the Public Service of the State principally assisting the Minister in the administration of the Work Health and Safety Act 2014,

Division 6 — Industrial Relations Act 1979 amended

12. Act amended

This Division amends the Industrial Relations Act 1979.

13. Section 7 amended

In section 7(3):

(a) delete “section 51G of the Occupational Safety and Health Act 1984” and insert:

the Work Health and Safety Act 2014 Schedule 4 clause 2

(b) delete paragraph (a) and insert:

(a) the Work Health and Safety Act 2014 Schedule 4 clause 2(1); or

14. Section 8 amended

In section 8(3A):

(a) in paragraph (a) delete “occupational safety and health; and” and insert:

work health and safety; and

(b) in paragraph (b) delete “Occupational Safety and Health Act 1984,” and insert:

Work Health and Safety Act 2014,
15. **Section 16 amended**

(1) In section 16(2A) delete “Occupational Safety and Health Act 1984 section 51G,” and insert:


(2) In section 16(2C) delete “Occupational Safety and Health Act 1984 section 51G” and insert:

*Work Health and Safety Act 2014* Schedule 4 clause 2

(3) Delete section 16(2D) and (2E).

16. **Section 49I amended**

In section 49I(1) delete “Occupational Safety and Health Act 1984,” and insert:

*Work Health and Safety Act 2014*,

17. **Section 113 amended**

Delete section 113(1)(d)(ii)(I) and insert:

(I) the *Work Health and Safety Act 2014*; and

18. **Act amended**

This Division amends the *Local Government Act 1995*.

19. **Section 5.40 amended**

In section 5.40(e) delete “Occupational Safety and Health Act 1984; and” and insert:

*Work Health and Safety Act 2014*; and
Division 8 — *Mines Safety and Inspection Act 1994* amended

20. Act amended

This Division amends the *Mines Safety and Inspection Act 1994*.

21. Section 4 amended

(1) In section 4(1) delete the definition of **safety and health magistrate**.

(2) In section 4(1) insert in alphabetical order:

**health and safety magistrate** means a person holding office as a health and safety magistrate under the *Work Health and Safety Act 2014* Schedule 5 clause 1;

(3) In section 4(1) in the definition of **Mining Industry Advisory Committee** delete “section 14A(2) of the *Occupational Safety and Health Act 1984*;” and insert:

section 16A(2);

(4) In section 4(1) in the definition of **Tribunal** delete “section 51G(2) of the *Occupational Safety and Health Act 1984*;” and insert:

the *Work Health and Safety Act 2014* Schedule 4 clause 2(2);

22. Section 6A amended

(1) In section 6A(1) in the definition of **workplace** delete “*Occupational Safety and Health Act 1984.*” and insert:


(2) In section 6A(2):

(a) delete “*Occupational Safety and Health Act 1984*” and insert:

*Work Health and Safety Act 2014*
(b) delete “Occupational Safety and Health Act 1984,” and insert:

Work Health and Safety Act 2014,

(3) In section 6A(3) delete “Occupational Safety and Health Act 1984 does not include any provision of Part II of that Act.” and insert:

Work Health and Safety Act 2014 does not include any provision of Schedule 2 of that Act.

(4) In section 6A(4) delete “Occupational Safety and Health Act 1984” and insert:

Work Health and Safety Act 2014

(5) After section 6A(5) insert:

(6) On and from the day on which the Work Health and Safety Act 2014 Schedule 7 clause 22 comes into operation, each reference in an instrument under this section that was in effect immediately before that day to the Occupational Safety and Health Act 1984 must be taken to be a reference to the Work Health and Safety Act 2014.

Note: The heading to amended section 6A is to read:

Application of this Act to workplace under Work Health and Safety Act 2014

23. Part 3 Division 1A inserted

At the beginning of Part 3 insert:

Division 1A — Mining Industry Advisory Committee

16A. Mining Industry Advisory Committee

(1) In this section — commencement day means the commencement of the Work Health and Safety Act 2014 Schedule 7 clause 1;
Commission means the Commission for Occupational Health and Safety established under the Work Health and Safety Act 2014 Schedule 2;

committee means the committee referred to in subsection (2);

mining industry means the mining industry in the State;

Ministers means these Ministers acting jointly —

(a) the Minister to whom the administration of this Act is committed (the Minister for Mines); and

(b) the Minister to whom the administration of the Work Health and Safety Act 2014 is committed.

(2) The advisory committee called the Mining Industry Advisory Committee that was in effect under the Occupational Safety and Health Act 1984 immediately before commencement day is continued by and in accordance with this section.

(3) A person who, immediately before commencement day, was a member of the Mining Industry Advisory Committee that was in effect under the Occupational Safety and Health Act 1984 is, on and from that day, to be taken to be a member of the committee continued by subsection (2) for the balance of the person’s term of appointment, and is eligible for reappointment under this Act.

(4) The functions of the committee are —

(a) to advise and make recommendations to the Ministers and the Commission on health and safety matters concerning the mining industry; and

(b) to liaise with the Commission to coordinate activities on related functions and to maintain parallel standards,

and in particular, but without limiting the generality of paragraphs (a) and (b) —

(c) to inquire into and report to the Ministers regarding any matter referred to it by the Ministers relating to health and safety in the mining industry; and
(d) to make recommendations to the Minister for Mines regarding the formulation, amendment or repeal of laws relating to work health and safety for which that Minister is responsible; and

(e) to prepare or recommend the adoption of codes of practice, guidelines, standards, specifications or other forms of guidance for the purpose of assisting employers, self-employed persons, employees, manufacturers or other persons to maintain appropriate standards of work health and safety in the mining industry; and

(f) to provide advice on —
   (i) education and publications; and
   (ii) training and training courses,
   with respect to work health and safety in the mining industry.

(5) The chairperson of the committee is to be the officer of the department nominated by the Minister for Mines to be a member of the Commission under the Work Health and Safety Act 2014 Schedule 2 clause 5(1)(c)(ii).

(6) Subject to subsection (4), the Ministers —
   (a) are to appoint the members of; and
   (b) may alter or reconstitute,
   the committee.

(7) The members of the committee are entitled to be paid such remuneration and travelling and other allowances as may be determined by the Ministers on the recommendation of the Public Sector Commissioner.

(8) Subject to any direction given to it by the Commission, the committee must determine its own procedures.

24. **Section 16 amended**

After section 16(7) insert:

(8) The State mining engineer and the State coal mining engineer may share information with a regulator as
defined in the *Work Health and Safety Act 2014* section 4 —

(a) relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations under that Act; or

(b) that would otherwise achieve the object of that Act.

25. **Section 62 amended**

In section 62(1)(b) delete “occupational safety and health accredited under section 14(1)(h) of the *Occupational Safety and Health Act 1984*,” and insert:

work health and safety accredited for the purposes of the *Work Health and Safety Act 2014*,

26. **Part 9 Division 3 heading amended**

In the heading to Part 9 Division 3 delete “*Occupational Safety and Health*” and insert:

**Work Health and Safety**

27. **Section 102 amended**

(1) In section 102(2):

(a) in paragraph (c) delete “Part VIB of the *Occupational Safety and Health Act 1984 (Part VIB)*; or” and insert:

the *Work Health and Safety Act 2014* Schedule 4; or

(b) in paragraph (d) delete “Part VIB.” and insert:

that Schedule.
(2) In section 102(3):
   (a) delete paragraph (a) and insert:

   (a) the Work Health and Safety Act 2014 Schedule 4; or

   (b) in paragraph (b) delete “Part,” and insert:

   Schedule,

(3) Delete section 102(4).

28. Section 102AAA inserted

At the end of Part 9 Division 3 insert:

102AAA. Conciliation

(1) This section applies where a matter has been referred to the Tribunal for determination under section 55(6), 55A(4), 56(11), 62(1), 67F or 74(2) of this Act.

(2) If the Tribunal considers that the issues involved may be resolved by conciliation —

   (a) the Tribunal may endeavour to assist the parties to reach an agreement on those issues; and

   (b) for that purpose the Tribunal may —

   (i) arrange conferences of the parties or their representatives presided over by the Tribunal; and

   (ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and

   (iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.

(3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this section, and any such direction, order
or declaration is enforceable as if it were given or made under the *Industrial Relations Act 1979* section 32.

(4) If the Tribunal gives or makes a direction, order or declaration under subsection (3) the Tribunal must —

(a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as is practicable; and

(b) make the text of the direction, order or declaration available to the parties as soon as is practicable after it is given or made.

(5) If the Tribunal —

(a) takes action under subsection (2)(a); and

(b) is satisfied that the parties have reached agreement on all of the issues involved,

the Tribunal may, with the consent of the parties, make a determination for the purposes of section 102 in terms of that agreement.

(6) If the Tribunal —

(a) takes action under subsection (2)(a); and

(b) subsection (5)(b) does not apply,

the Tribunal must determine the matter for the purposes of section 102.

(7) In making a determination mentioned in subsection (6) the Tribunal must endeavour to ensure that the matter is resolved —

(a) taking into account any agreement reached by the parties on any particular issue; and

(b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.
29. Section 104A inserted

After section 103 insert:

104A. Confidentiality of information

(1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act.

(2) The person must not do any of the following —

(a) disclose to anyone else —
   (i) the information; or
   (ii) the contents of or information contained in the document;

(b) give access to the document to anyone else;

(c) use the information or document for any purpose.

Penalty:

(a) in the case of an individual, a fine of $10 000;

(b) in the case of a body corporate, a fine of $50 000.

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document —

(a) about a person, with the person’s consent; or

(b) that is necessary for the exercise of a power or function under this Act; or

(c) that is made or given by the State mining engineer or the State coal mining engineer (the engineer) or a person authorised by the engineer if the engineer reasonably believes the disclosure, access or use —

   (i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or

   (ii) is necessary for the administration or enforcement of the Work Health and Safety Act 2014 or another Act prescribed by the regulations; or
(iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety;

or

(d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or

(e) that is required or authorised under a law.

(4) Nothing in this section affects the operation of section 26.

30. Section 104 amended

After section 104(1)(zm) insert:

(zna) the sharing of information with a regulator as defined in the Work Health and Safety Act 2014 section 4 relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations under that Act;

Division 9 — Petroleum (Submerged Lands) Act 1982 amended

31. Act amended

This Division amends the Petroleum (Submerged Lands) Act 1982.

32. Schedule 5 amended

(1) In Schedule 5 clause 3 in the definition of Tribunal delete “Occupational Safety and Health Act 1984 section 51G(2);” and insert:

Work Health and Safety Act 2014 Schedule 4 clause 2(2);
(2) In Schedule 5 clause 70(2):
(a) in paragraph (c) delete “Part VIB of the Occupational Safety and Health Act 1984; or” and insert:

the Work Health and Safety Act 2014 Schedule 4; or

(b) in paragraph (d) delete “Part.” and insert:

Schedule.

(3) In Schedule 5 clause 70(3):
(a) delete paragraph (a) and insert:

(a) the Work Health and Safety Act 2014 Schedule 4;
and

(b) in paragraph (b) delete “Part,” and insert:

Schedule.

(4) Delete Schedule 5 clause 70(4).

(5) At the end of Schedule 5 Division 5 insert:

71A. Conciliation

(1) This clause applies where a matter has been referred to the Tribunal for determination under clause 67 in relation to a decision made under clause 22.

(2) If the Tribunal considers that the issues involved may be resolved by conciliation —

(a) the Tribunal may endeavour to assist the parties to reach an agreement on those issues; and

(b) for that purpose the Tribunal may —

(i) arrange conferences of the parties or their representatives presided over by the Tribunal; and

(ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and
(iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.

(3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this clause, and any such direction, order or declaration is enforceable as if it were given or made under the *Industrial Relations Act 1979* section 32.

(4) If the Tribunal gives or makes a direction, order or declaration under subclause (3) the Tribunal must —

(a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as is practicable; and

(b) make the text of the direction, order or declaration available to the parties as soon as is practicable after it is given or made.

(5) If the Tribunal —

(a) takes action under subclause (2)(a); and

(b) is satisfied that the parties have reached agreement on all of the issues involved,

the Tribunal may, with the consent of the parties, make a determination for the purposes of clause 70 in terms of that agreement.

(6) If the Tribunal —

(a) takes action under subclause (2)(a); and

(b) subclause (5)(b) does not apply,

the Tribunal must determine the matter for the purposes of clause 70.

(7) In making a determination mentioned in subclause (6) the Tribunal must endeavour to ensure that the matter is resolved —

(a) taking into account any agreement reached by the parties on any particular issue; and

(b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.
Division 10 — Petroleum and Geothermal Energy Resources Act 1967 amended

33. Act amended

This Division amends the Petroleum and Geothermal Energy Resources Act 1967.

34. Schedule 1 amended

(1) In Schedule 1 clause 3 in the definition of Tribunal delete “Occupational Safety and Health Act 1984 section 51G(2);” and insert:

Work Health and Safety Act 2014 Schedule 4 clause 2(2);

(2) In Schedule 1 clause 69(2):

(a) in paragraph (c) delete “Part VIB of the Occupational Safety and Health Act 1984; or” and insert:

the Work Health and Safety Act 2014 Schedule 4; or

(b) in paragraph (d) delete “Part.” and insert:

Schedule.

(3) In Schedule 1 clause 69(3):

(a) delete paragraph (a) and insert:

(a) the Work Health and Safety Act 2014 Schedule 4;

and

(b) in paragraph (b) delete “Part,” and insert:

Schedule,

(4) Delete Schedule 1 clause 69(4).
(5) At the end of Schedule 1 Division 5 insert:

**70A. Conciliation**

(1) This clause applies where a matter has been referred to the Tribunal for determination under clause 66 in relation to a decision made under clause 21.

(2) If the Tribunal considers that the issues involved may be resolved by conciliation —
   (a) the Tribunal may endeavour to assist the parties to reach an agreement on those issues; and
   (b) for that purpose the Tribunal may —
      (i) arrange conferences of the parties or their representatives presided over by the Tribunal; and
      (ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and
      (iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.

(3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this clause, and any such direction, order or declaration is enforceable as if it were given or made under the Industrial Relations Act 1979 section 32.

(4) If the Tribunal gives or makes a direction, order or declaration under subclause (3) the Tribunal must —
   (a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as is practicable; and
   (b) make the text of the direction, order or declaration available to the parties as soon as is practicable after it is given or made.

(5) If the Tribunal —
   (a) takes action under subclause (2)(a); and
(b) is satisfied that the parties have reached agreement on all of the issues involved,

the Tribunal may, with the consent of the parties, make a determination for the purposes of clause 69 in terms of that agreement.

(6) If the Tribunal —

(a) takes action under subclause (2)(a); and

(b) subclause (5)(b) does not apply,

the Tribunal must determine the matter for the purposes of clause 69.

(7) In making a determination mentioned in subclause (6) the Tribunal must endeavour to ensure that the matter is resolved —

(a) taking into account any agreement reached by the parties on any particular issue; and

(b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.

Division 11 — Petroleum Pipelines Act 1969 amended

35. Act amended

This Division amends the Petroleum Pipelines Act 1969.

36. Schedule 1 amended

(1) In Schedule 1 clause 3 in the definition of Tribunal delete “Occupational Safety and Health Act 1984 section 51G(2);” and insert:

Work Health and Safety Act 2014 Schedule 4 clause 2(2);

(2) In Schedule 1 clause 69(2):

(a) in paragraph (c) delete “Part VIB of the Occupational Safety and Health Act 1984; or” and insert:

the Work Health and Safety Act 2014 Schedule 4; or

(b) in paragraph (d) delete “Part.” and insert:

Schedule.
(3) In Schedule 1 clause 69(3):
   
   (a) delete paragraph (a) and insert:
       
       (a) the Work Health and Safety Act 2014 Schedule 4;
       
       and

   (b) in paragraph (b) delete “Part,” and insert:
       
       Schedule,

(4) Delete Schedule 1 clause 69(4).

(5) At the end of Schedule 1 Division 5 insert:

70A. Conciliation

(1) This clause applies where a matter has been referred to the Tribunal for determination under clause 66 in relation to a decision made under clause 21.

(2) If the Tribunal considers that the issues involved may be resolved by conciliation —
   
   (a) the Tribunal may endeavour to assist the parties to reach an agreement on those issues; and

   (b) for that purpose the Tribunal may —
       
       (i) arrange conferences of the parties or their representatives presided over by the Tribunal; and

       (ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and

       (iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.

(3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this clause, and any such direction, order or declaration is enforceable as if it were given or made under the Industrial Relations Act 1979 section 32.
(4) If the Tribunal gives or makes a direction, order or declaration under subclause (3) the Tribunal must —
   (a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as is practicable; and
   (b) make the text of the direction, order or declaration available to the parties as soon as is practicable after it is given or made.

(5) If the Tribunal —
   (a) takes action under subclause (2)(a); and
   (b) is satisfied that the parties have reached agreement on all of the issues involved,

the Tribunal may, with the consent of the parties, make a determination for the purposes of clause 69 in terms of that agreement.

(6) If the Tribunal —
   (a) takes action under subclause (2)(a); and
   (b) subclause (5)(b) does not apply,

the Tribunal must determine the matter for the purposes of clause 69.

(7) In making a determination mentioned in subclause (6) the Tribunal must endeavour to ensure that the matter is resolved —
   (a) taking into account any agreement reached by the parties on any particular issue; and
   (b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.

Division 12 — Public Sector Management Act 1994 amended

37. Act amended

This Division amends the Public Sector Management Act 1994.

38. Section 8 amended

In section 8(1)(e) delete “Occupational Safety and Health Act 1984.” and insert:

39. Section 29 amended

In section 29(1)(m) delete “Occupational Safety and Health Act 1984,” and insert:

Work Health and Safety Act 2014,

Division 13 — Rail Safety Act 2010 amended

40. Act amended

This Division amends the Rail Safety Act 2010.

41. Section 59 amended

In section 59(2)(b) delete “a safety and health representative as defined in the Occupational Safety and Health Act 1984 section 3(1)” and insert:

a health and safety representative as defined in the Work Health and Safety Act 2014 section 4

42. Various references to Occupational Safety and Health Act 1984 amended

In the provisions listed in the Table:

(a) delete “Occupational Safety and Health Act 1984” and insert:

Work Health and Safety Act 2014

(b) delete “Occupational Safety and Health Act 1984” (each occurrence) and insert:

Work Health and Safety Act 2014

Table

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Division 14 — *Workers’ Compensation and Injury Management Act 1981* amended

43. **Act amended**

This Division amends the *Workers’ Compensation and Injury Management Act 1981*.

44. **Section 48 amended**

(1) In section 48(2) delete “*Occupational Safety and Health Act 1984.*” and insert:


(2) In section 48(3) delete “*Occupational Safety and Health Act 1984*” and insert:

Work Health and Safety Act 2014
45. **Section 95 amended**

In section 95(1)(b) delete “Occupational Safety and Health Act 1984; and” and insert:

Work Health and Safety Act 2014; and

46. **Section 100B amended**

In section 100B(1) delete “Occupational Safety and Health Act 1984” and insert:

Work Health and Safety Act 2014
Schedule 8 — Transitional provisions arising from the enactment of the Work Health and Safety Act 2014

1. Terms used

In this Schedule —

commencement day means the day on which Schedule 7 clause 1(1) comes into operation;

repealed Act means the Occupational Safety and Health Act 1984 as in force immediately before commencement day.

2. Interpretation Act 1984 not affected

Except where the contrary intention appears, the provisions of this Schedule do not prejudice or affect the application of the Interpretation Act 1984 to and in relation to the repeals effected by Schedule 7 clause 1.

3. Regulations for transitional matters

The regulations may contain provisions that are necessary or convenient for dealing with matters concerning the transition from the provisions of any written law applying before commencement day to the provisions of this Act, including regulations made under this Act, applying after commencement day.

4. WorkSafe Western Australia Commissioner

(1) The person who, immediately before commencement day, was the WorkSafe Western Australia Commissioner under the repealed Act is, on and from commencement day, to be taken to be the WorkSafe Western Australia Commissioner appointed under Schedule 2 clause 2 on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before commencement day.

(2) A person to whom subclause (1) applies retains all existing and accruing rights and benefits as if the appointment under this Act were a continuation of the person’s appointment under the repealed Act immediately before commencement day.

5. Commission

(1) The Commission for Occupational Safety and Health under the repealed Act is, on and from commencement day, to be taken to be the Commission for Occupational Health and Safety established under Schedule 2 clause 4.

(2) A person who, immediately before commencement day, was a member of the Commission for Occupational Safety and Health under
6. Advisory committees

(1) An advisory committee appointed under section 15 of the repealed Act that is in effect immediately before commencement day is, on and from that day, to be taken to be a committee established under Schedule 2 clause 10.

(2) A person who, immediately before commencement day, was a member of an advisory committee appointed under section 15 of the repealed Act is, on and from that day, to be taken to be a member of a committee established under Schedule 2 clause 10 for the balance of the person’s term under the repealed Act.

7. Tribunal commissioners

(1) The commissioner who, immediately before commencement day, was the commissioner designated under the Industrial Relations Act 1979 section 16(2A) to exercise the jurisdiction of the Occupational Safety and Health Tribunal under the repealed Act is, on and from commencement day, to be taken to be the commissioner referred to in Schedule 4 clause 3(1)(a).

(2) A commissioner who, immediately before commencement day, was a commissioner referred to in section 51H(1)(b)(i) or (ii) of the repealed Act is, on and from commencement day, to be taken to be a commissioner referred to in Schedule 4 clause 3(1)(b)(i) or (ii), as is applicable to the case.

8. Duties of designers

(1) Subject to this clause, the duties imposed on a designer under section 22 of this Act do not apply to or in relation to the designing of any plant, substance or structure (including with respect to carrying out any calculations, analysis, testing or examination or with respect to the provision of any information) if the designer commenced (or commenced and completed) designing the plant, substance or structure before commencement day.

(2) If —

(a) subclause (1) applies in relation to a particular design; and

(b) the designer would be subject to the operation of section 23 of the repealed Act if that section were still in operation,
then —

(c) the designer must comply with the relevant requirements of that section as if the repealed Act were still in operation; and

(d) if the designer fails to comply with paragraph (c), then action may be brought against the designer (including by the undertaking of a prosecution) as if the repealed Act were still in operation.

(3) If a designer commenced designing any plant, substance or structure before commencement day but has not completed the design by the second anniversary of commencement day, then the designer will, in relation to the design, cease to have the benefit of subclause (1) and the designer must comply with the requirements of this Act in relation to the duties of a designer (as if this Act had been in operation at the time that the designer commenced designing).

(4) Despite a preceding subclause, if —

(a) a designer carries out any calculations, analysis, testing or examination in connection with the performance of a duty under the repealed Act (as taken to be in operation under subclause (2)(d)); and

(b) the designer would, if the calculations, analysis, testing or examination were carried out under this Act, be subject to a requirement set out in section 22(4)(b) or (5) of this Act,

then the designer must comply with those requirements as if that section applied in relation to the plant, substance or structure.

9. Duties of manufacturers

(1) Subject to this clause, the duties imposed on a manufacturer under section 23 of this Act do not apply to or in relation to the manufacture of any plant, substance or structure (including with respect to carrying out any calculations, analysis, testing or examination or with respect to the provision of any information) if the manufacturer commenced (or commenced and completed) any process associated with the manufacturing of the plant, substance or structure before commencement day.

(2) If —

(a) subclause (1) applies in relation to the manufacture of any particular plant, substance or structure; and
(b) the manufacturer would be subject to the operation of
section 23 of the repealed Act if that section were still in
operation,
then —
(c) the manufacturer must comply with the relevant requirements
of that section as if the repealed Act were in operation; and
(d) if the manufacturer fails to comply with paragraph (c), then
action may be brought against the manufacturer (including by
the undertaking of a prosecution) as if the repealed Act were
still in operation.

(3) If a manufacturer commenced any process associated with the
manufacture of any plant, substance or structure before
commencement day but has not completed the manufacture by the
first anniversary of commencement day, then the manufacturer will,
in relation to the manufacture of the plant, substance or structure,
cease to have the benefit of subclause (1) and the manufacturer must
comply with the requirements of the Act in relation to the duties of a
manufacturer (as if this Act had been in operation at the time that the
manufacturer commenced this process).

(4) Despite a preceding subclause, if —
(a) a manufacturer carries out any calculations, analysis, testing
or examination in connection with the performance of a duty
under the repealed Act (as taken to be in operation under
subclause (2)(d)); and
(b) the manufacturer would, if the calculations, analysis, testing
or examination were carried out under this Act, be subject to
a requirement set out in section 23(4)(b) or (5) of this Act,
then the manufacturer must comply with those requirements as if that
section applied in relation to the plant, substance or structure.

10. Duties of importers

(1) Subject to this clause, the duties imposed on an importer under
section 24 of this Act do not apply to or in relation to the importing of
any plant, substance or structure (including with respect to carrying
out any calculations, analysis, testing or examination or with respect
to the provision of any information) if the importer commenced (or
commenced and completed) any steps constituting the importation of
the plant, substance or structure before commencement day.

(2) If —
(a) subclause (1) applies in relation the importing of any
particular plant, substance or structure; and
(b) the importer would be subject to the operation of section 23
of the repealed Act if that section were still in operation,
then —

(c) the importer must comply with the relevant requirements of that section as if the repealed Act were in operation; and

(d) if the importer fails to comply with paragraph (c), then action may be brought against the importer (including by the undertaking of a prosecution) as if the repealed Act were still in operation.

(3) If an importer commenced any process associated with the importing of any plant, substance or structure before commencement day but has not completed the importing by the first anniversary of commencement day, then the importer will, in relation to the importing of the plant, substance or structure, cease to have the benefit of subclause (1) and the importer must comply with the requirements of the Act in relation to the duties of an importer (as if the Act had been in operation at the time that the importer commenced this process).

(4) Despite a preceding subclause, if —

(a) an importer carries out any calculations, analysis, testing or examination in connection with the performance of a duty under the repealed Act (as taken to be in operation under subclause (2)(d)); and

(b) the importer would, if the calculations, analysis, testing or examination were carried out under this Act, be subject to a requirement set out in section 24(4)(b) or (5) of this Act,

then the importer must comply with those requirements as if that section applied in relation to the plant, substance or structure.

11. Duties of suppliers

(1) Subject to this clause, the duties imposed on a supplier under section 25 of this Act do not apply to or in relation to the supply of any plant, substance or structure (including with respect to carrying out any calculations, analysis, testing or examination or with respect to the provision of any information) if the supplier commenced (or commenced and completed) any process associated with the supply of the plant, substance or structure before commencement day.

(2) If —

(a) subclause (1) applies in relation to the supply of any particular plant, substance or structure; and

(b) the supplier would be subject to the operation of section 23 of the repealed Act as if that section were still in operation,

then —
(c) the supplier must comply with the relevant requirement of that section as if the repealed Act were in operation; and

(d) if the supplier fails to comply with paragraph (c), then action may be brought against the supplier (including by the undertaking of a prosecution) as if the repealed Act were still in operation.

(3) If a supplier commenced any process associated with the supply of any plant, substance or structure before commencement day but has not completed the supply by the first anniversary of commencement day, then the supplier will, in relation to the supply of the plant, substance or structure, cease to have the benefit of subclause (1) and the supplier must comply with the requirements of the Act in relation to the duties of a supplier (as if this Act had been in operation at the time that the supplier commenced this process).

(4) Despite a preceding subclause, if —

(a) a supplier carries out any calculations, analysis, testing or examination in connection with the performance of a duty under the repealed Act (as taken to be in operation under subclause (2)(d)); and

(b) the supplier would, if the calculations, analysis, testing or examination were carried out under this Act, be subject to a requirement set out in section 25(4)(b) or (5) of this Act,

then the supplier must comply with those requirements as if that section applied in relation to the plant, substance or structure.

12. Duties of persons who install, construct or commission plant or structures

(1) In this clause —

designated person means a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure.

(2) Subject to this clause, the duties imposed on a designated person under section 26 of this Act do not apply to or in relation to the installation, construction or commissioning of any plant or structure if the designated person commenced (or commenced and completed) any process associated with the installation, construction or commissioning of the plant or structure before commencement day.

(3) If a designated person commenced any process associated with the installation, construction or commissioning of any plant or structure before commencement day but had not completed the installation, construction or commissioning by the second anniversary of commencement day, then the designated person will, in relation to the installation, construction or commissioning of the plant or structure,
cease to have the benefit of subclause (2) and the designated person
must comply with the requirements of the Act in relation to the duties
of a designated person (as if this Act had been in operation at the time
that the designated person commenced this process).

13. Safety and health representatives and committees, inspectors

(1) A person who, immediately before commencement day, was an
inspector under the repealed Act is, on and from commencement day,
to be taken to have been appointed as an inspector under this Act.

(2) A person who, immediately before commencement day was, under
the repealed Act, a safety and health representative for a workplace is,
on and from commencement day, to be taken to be a health and safety
representative under this Act for the work group that corresponds to
the former workplace (with a term of office corresponding to the
balance of the person’s term of office under the repealed Act).

(3) A safety and health committee for a workplace that, immediately
before commencement day, was in effect under the repealed Act is, on
and from commencement day, to be taken to be a health and safety
committee under this Act for the workplace or part of the workplace
that corresponds to the former workplace (with the membership as
constituted under the repealed Act).

(4) If a process or proceeding —
   (a) to elect a safety and health representative; or
   (b) to establish or constitute a safety and health committee,
was commenced (but not completed) under the repealed Act before
commencement day, the process or proceeding may be continued and
completed under the repealed Act as if the repealed Act were still in
operation, and is to have effect as if it were completed immediately
before commencement day.

(5) Subclause (4)(a) ceases to apply at the expiration of 3 months after
commencement day.

14. Training for issue of provisional improvement notice

(1) A person who has completed a course of training prescribed for the
purposes of the definition of qualified representative in section 51AB
of the repealed Act must be taken to have completed any training
required under section 90(4) of this Act.

(2) Subclause (1) ceases to apply at the expiration of 6 months after
commencement day (and any relevant course of training under the
repealed Act will then cease to have effect for the purposes of this
Act).
15. **Functions and powers of inspectors**

(1) An inspector may, on or after commencement day, perform a function or exercise a power under this Act in relation to anything arising under or relevant to the repealed Act before commencement day (and this Act applies in relation to the performance or exercise of such a function or power as if a reference to this Act included a reference to the repealed Act).

(2) Without limiting subclause (1) —

(a) a reference in this Act to a contravention of this Act includes a reference to a contravention of the repealed Act; and

(b) a reference in this Act to an offence against this Act includes a reference to an offence against the repealed Act.

(3) Any action taken or information acquired under this Act (including on account of the operation of this clause) may be used for the purposes of the repealed Act (insofar as it may be relevant to an act, omission or circumstance occurring before commencement day).

(4) Nothing in this clause affects or limits any action that may be taken under or with respect to the repealed Act by virtue of the operation of any other Act or law.

16. **Disqualifications**

A disqualification under section 34 of the repealed Act (including a disqualification made after commencement day on appeal from a decision of the Tribunal) has effect for the purposes of section 60 of this Act as if it were a disqualification under section 65.

17. **Codes of practice**

(1) In this clause —

*prescribed code of practice* means an approved code of practice in force under section 57 of the repealed Act immediately before commencement day that is prescribed by the regulations for the purposes of this clause.

(2) A prescribed code of practice must be taken to be an approved code of practice under this Act (without the need to take any other step or to publish any notice under section 274).

(3) A prescribed code of practice under subclause (2) may be varied or revoked by the Minister in accordance with section 274.

18. **Authorisations**

(1) In this clause —
authorisation means a registration, licence, permit, accreditation or other form of authorisation granted or recognised under the repealed Act.

(2) An authorisation —
   (a) of a class prescribed by the regulations for the purposes of this clause; and
   (b) that was in effect immediately before commencement day,

   is to have effect under this Act in the manner, and for the time, prescribed by the regulations (and, to the extent prescribed by the regulations, must be taken to be a registration, licence, permit, accreditation or other form of authorisation granted or recognised under this Act).

(3) If an application for an authorisation of a kind referred to in subclause (2)(a) was commenced (but not completed) under the repealed Act before commencement day, the application may be continued and completed under the repealed Act as if the repealed Act were still in operation and any authorisation granted or recognised under that application is to have effect as if it were in effect immediately before commencement day.

19. Improvement and prohibition notices, provisional improvement notices

(1) In this clause —
   notice means an improvement notice, prohibition notice or provisional improvement notice as those terms are defined in the repealed Act.

(2) The repealed Act continues to apply, on and from commencement day, in relation to a notice that was in effect immediately before commencement day as if the repealed Act were still in operation.

20. Reviews etc.

(1) In this clause —
   former provisions means —
   (a) the repealed Act as in force immediately before commencement day; and
   (b) the Industrial Relations Act 1979 as in force immediately before commencement day;
   
   proceedings includes conciliation arrangements under section 51J of the repealed Act.

(2) Without affecting the Interpretation Act 1984 section 37(1) —
21. Instruments

An instrument under section 4(3) of the repealed Act that was in effect immediately before commencement day is, on and from commencement day, to be taken to be an instrument under section 12(4) and if a provision of or under the repealed Act is specified in the instrument, that provision must be taken to be the provision of or under this Act that most closely corresponds to the specified provision.
The Government proposes to introduce into Parliament a Bill —

- to provide for the health, safety and welfare of persons at work or affected by work; and
- to repeal the *Occupational Safety and Health Act 1984*; and
- to repeal the *Occupational Safety and Health Regulations 1996*; and
- to make consequential amendments to certain Acts; and
- for related matters.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government’s settled position.